

EMERGENCY BOOKING AND RENTAL AGREEMENT

This **EMERGENCY BOOKING AND RENTAL AGREEMENT** (this “Agreement”) is made and entered into by and between **HHC TRS LC PORTFOLIO LLC**, a Delaware limited liability company (the “Hotel”) and **FORT BEND COUNTY, TEXAS** (the “County”), acting by and through its duly authorized representative, pursuant to Governor Greg Abbott’s Declaration of State of Disaster issued on March 13, 2020, in response to COVID-19 and directly related to that emergency and necessary for the preservation of public health and Safety.

WHEREAS, in accordance with guidance issued by the U.S. Centers for Disease Control and Prevention, the Texas Department of Health and Human Services, and Fort Bend County Public Health, the County has issued a social distancing protocol and prohibited large gatherings; and

WHEREAS, to achieve its social distancing protocol and to minimize the spread of COVID-19, the County requires additional space and hotel rooms for those who may be impacted by the outbreak; and

WHEREAS, the Hotel and the County wish to set out the mutually agreeable terms for the booking and rental of hotel rooms and to provide for payment by the County to the Hotel for the use and occupancy of such rooms; and

NOW, THEREFORE, in consideration of the covenants and agreements contained in this Agreement, the County and the Hotel hereby agree as follows:

SECTION 1 **AGREEMENT DOCUMENTS**

The Agreement documents shall include the following:

1. This Emergency Booking and Rental Agreement
2. Exhibit A – Booking Rates
3. Exhibit B – Insurance Requirements
4. Exhibit C – COVID-19 Guest Letter

SECTION 2 **SCOPE OF AGREEMENT**

2.1 **Hotel Rooms**. The County may, upon three (3) days prior written notice to the Hotel, take all of the hotel rooms on the 4th floor (containing 44 rooms, 28 of which have 2 beds and 16 of which have 1 bed) of the Houston Marriott Sugar Land hotel at 16090 City Walk, Sugar Land, TX 77479 (subject to the service limitations set forth in Section 2.4), in accordance with the Booking Rates set forth in **Exhibit A**, which is attached hereto and incorporated herein for all purposes; provided, however, the County’s right to take the 4th floor will be subject to the approval of the Hotel, which may be given or withheld in the Hotel’s sole and absolute discretion. In addition, the County may, upon three (3) days prior written notice to the Hotel, also elect take all of the hotel rooms on the 5th floor (containing 46 rooms, 31 of which have 2 beds and 16 of which have 1 bed) of such hotel as well (subject to the service limitations set forth in Section 2.4), in accordance with the Booking Rates set forth in **Exhibit A**; provided, however, the County’s right to take the 5th floor will be subject to the approval of the Hotel, which may be given or withheld in the Hotel’s sole and absolute discretion. For purposes of clarity, the County may not take a portion of any guest room floors, and if the County elects to take the 5th floor in the middle of the Initial Term or any Renewal Term, then the term relating to the County’s use of the 5th floor will be coterminous with the Initial Term or the then-current Renewal Term, as applicable.

2.2 Additional Charges. The County shall also be responsible for the Food and Beverage Fee set forth in **Exhibit A** and all other charges and amounts due and payable by the County in accordance with the terms of this Agreement, including without limitation, all amounts for cleaning and disinfecting; repairs, maintenance, and replacements; and security.

2.3 Damages. The County shall be responsible for any and all damage caused to a room rented pursuant to the terms of this Agreement.

2.4 Service Limitations. None of the Hotel, Manager, or any of their employees will be required to enter into any guest rooms and will not be required to provide any housekeeping or maintenance services within any guest rooms. All deliveries by the Hotel, Manager, or any of their employees of meals, linens, towels, and other requested items will be delivered to the elevator landing on each guest room floor, to the extent that the Hotel and Manager has sufficient personal protective equipment for its staff. From there, the County will be responsible for delivering meals, linens, towels, and other requested items to each applicable guest room. Neither the Hotel nor Manager will provide any laundry services for the County's program participants, but will permit the County and its personnel to use the Hotel's laundry facilities to launder linens and towels collected from hotel guest rooms, at the rates set forth in **Exhibit A**. The County will be responsible, at its sole cost and expense, for any costs to maintain, repair, or replace any laundry equipment or facilities utilized by the County during the Term. The County's program participants will be required to place their (a) used linens and towels in trash bags and (b) trash in separate trash bags, both of which are to be placed in the hallway for pickup by the County at designated times. The County will be responsible for the disposal of all trash and such trash shall be placed into a separate dumpster provided by the County. The County will make personal protective equipment available for hotel staff, to the extent reasonably available.

2.5 Service Interruptions. NEITHER THE HOTEL NOR ITS MANAGER (defined in Section 16.2 below) SHALL BE LIABLE FOR ANY SERVICE INTERRUPTIONS OR FAILURE TO PROVIDE SERVICES that are due to (1) the failure, interruption or malfunctioning of any electrical or mechanical equipment, utility or other service to the Hotel; (2) the performance of repairs, maintenance, improvements or alterations; (3) the occurrence of any other event or cause not within the reasonable control of the Hotel or Manager, or (4) the refusal by a contractor or employee to provide services due to lack of personal protective equipment or other adequate safeguards. No service interruption or failure shall constitute a constructive eviction of the County, give rise to an abatement of any amounts due hereunder or relieve the County from the obligation to fulfill any covenant or agreement, unless such service interruption or failure is due to the performance of repairs, maintenance, improvements, or alterations that are not required as a result of the action or inaction of the County or any of its directors, officers, representatives, agents, servants, contractors, employees, patrons, guests, invitees, program participants, or licensees. In the case of a service interruption or failure that is due to the performance of repairs, maintenance, improvements, or alterations that are not required as a result of the action or inaction of the County or any of its directors, officers, representatives, agents, servants, contractors, employees, patrons, guests, invitees, program participants, or licensees, if there are not any additional rooms available for the County's program participants, then the County will be entitled to an abatement on the Booking Rate for room subject to the service interruption or failure. Such abatement will be given as a credit against any fees or expenses coming due by the County to the Hotel in accordance with this Agreement.

2.6 Access. The County shall require all of its program participants to use specially designated entrances and specific elevators. Guest room assignments and blocks will also be limited to the specific floors described above.

2.7 Interim Room Cleaning. Upon the County's program participants vacating any guest room on any floors taken by the County during the Term, the County shall pay a one-time charge of \$250 per guest room for cleaning and disinfecting of such guest room by a 3rd party company engaged by the Hotel to clean and disinfect the applicable guest room in accordance with industry standards or CDC issued guidelines, and the County agrees that such guest room cannot be re-occupied until it has been cleaned and disinfecting in accordance with this section. The County shall pay the Hotel the one-time charge per guest room stated above on the date the applicable program participant vacates the applicable guest room. The terms of this Section 2.7 shall survive any expiration or earlier termination of this Agreement.

2.8 Actions upon expiration. The County shall be responsible for vacating all guest rooms upon the expiration or earlier termination of this Agreement. The County shall be liable for the cost of returning the Hotel in as good order and condition as when received, including, without limitation, restoration and repair of all interior surfaces, floors, walls, ceilings, including restoring damaged floor tile and patching and repainting damaged interior wall surfaces to match adjacent existing surfaces, and including restoration and repair of all furnishings, fixtures and equipment, except for reasonably, ordinary use and wear thereof. This Agreement shall automatically extend with respect to each guest room that has not been vacated or cleaned in accordance with section 2.7. If, at the expiration or earlier termination of this Agreement, a guest room has not been vacated, the County shall then be liable for the Booking Rate at 200% of the amount set forth in **Exhibit A** for each additional night thereafter until the room is vacated and cleaned in accordance with this Agreement. Upon expiration or earlier termination of this Agreement, the County shall pay a one-time charge of \$750 per guest corridor (floor) for post Term cleaning and disinfecting service by a 3rd party company engaged by the Hotel to clean and disinfect the hotel lobby and path of travel, including, without limitation stairs, elevators, and corridors, used during the Term as identified in 23.2 or as may be modified by mutual agreement. If the County fails to surrender and vacate all or any portion of the hotel, a guest room, or the path of travel, including, without limitation stairs, elevators, and corridors, to the Hotel in the condition required hereunder, the County shall be liable for all costs incurred by the Hotel (or third parties under contract with the Hotel) to repair, replace, and/or restore the Hotel and/or the applicable guest room, including the furniture, fixtures, and equipment, linens, and towels, or the path of travel, including, without limitation stairs, elevators, and corridors, as applicable, to the required condition. The terms of this Section 2.8 shall survive any expiration or earlier termination of this Agreement.

2.9 Permitted Use. The County may use the Hotel solely for COVID-19 related emergency housing and support services (excluding homeless not currently at a shelter or incarcerated individuals) and for no other purpose. The County shall not use or permit the use of the Hotel for any purpose that is illegal, creates obnoxious odors (including tobacco smoke), noises or vibrations, is dangerous to persons or property, or could increase the Hotel's insurance costs. No medical services may be provided at the hotel.

SECTION 3 **TERM OF AGREEMENT**

3.1 Term. The term of this Agreement shall begin upon the date on which the Hotel approves the County's use all of the hotel rooms on the 4th floor and expire thirty (30) days after commencement (the "Initial Term"), unless terminated earlier in accordance with the provisions of this Agreement. The Initial Term may be renewed for additional 30-day terms with the mutual written consent of the parties at least ten (10) days in advance (each 30-day renewal term that is mutually consented to in writing is referred to a "Renewal Term"; the Initial Term, together with each Renewal Term, if any, are collectively referred to as the "Term").

SECTION 4 **INVOICES AND PAYMENT**

4.1 Booking Rate Payment Obligation. The County shall pay the Hotel the fees set forth in **Exhibit A** for each hotel guest room on the 4th floor of the hotel (and the 5th floor if the County elects to take all of the hotel rooms on the 5th floor (containing 46 rooms, 31 of which have 2 beds and 16 of which have 1 bed) of such hotel), in accordance with the provisions of this Agreement. A guest room may only be booked pursuant to this Agreement by the written request of the Public Health Preparedness Coordinator for Fort Bend County Health & Human Services, or other designee of the County. The Hotel shall not perform any additional services for the County not specified by this Agreement unless the County requests and the Hotel approves, in writing, the additional services. The County shall not be liable for any additional expenses of the Hotel not specified by this Agreement.

4.2 Payment Mechanics. In furtherance of the foregoing, upon the date on which the Hotel approves the County's use all of the hotel rooms on the 4th floor (and the 5th floor if the County elects to take all of the hotel rooms on the 5th floor of such hotel), and seven (7) days before each succeeding Renewal Term, the County shall pay the Hotel, in advance, without demand, invoice, offset, or deduction, an amount equal to the number of rooms in each guest room floor taken by the County x Booking Rate per room x 30 (or with respect to the 5th floor only, such other number of days the 5th floor is actually taken by the County) (the "Minimum Occupancy Fee"). By way of example, (a) if the Term commences on September 12, 2020, and during the Initial Term the County takes only the 4th floor, then on September 12, 2020, the County shall pay the Hotel \$145,860 (which is the Minimum Occupancy Fee for the Initial Term); and (b) if the Term commences on September 12, 2020, and the County initially takes only the 4th floor, but on September 20, 2020 provides written notice of its election to take all of the 5th floor as well (and the Hotel approves of such election on September 22, 2020), then on September 12, 2020, the County shall pay the Hotel \$145,860, and on September 22, 2020, the County shall pay the Hotel \$106,743.

SECTION 5 **LIABILITY**

5.1 THE HOTEL AND/OR MANAGER SHALL NOT BE LIABLE OR RESPONSIBLE FOR ANY CAUSES OF LOSS, LOSSES, ACTIONS OR DAMAGES, INCLUDING, BUT NOT LIMITED TO, PROPERTY LOSS, PROPERTY DAMAGE AND PERSONAL INJURY, OF ANY KIND OR CHARACTER, WHETHER REAL OR ASSERTED, TO THE EXTENT CAUSED BY THE ACTS OR OMISSIONS OF THE COUNTY, OR ITS DIRECTORS, OFFICERS, REPRESENTATIVES, AGENTS, SERVANTS, CONTRACTORS, EMPLOYEES, PATRONS, GUESTS, INVITEES, PROGRAM PARTICIPANTS, OR LICENSEES. THE COUNTY HEREBY EXPRESSLY RELEASES AND DISCHARGES THE HOTEL AND MANAGER FROM ANY AND ALL LIABILITY FOR ANY CAUSES OF LOSS, LOSSES, ACTIONS OR DAMAGE, INCLUDING, BUT NOT LIMITED TO, PROPERTY DAMAGE AND LOSS AND PERSONAL INJURY ARISING OUT OF OR IN CONNECTION WITH, DIRECTLY OR INDIRECTLY, THE SERVICES PERFORMED BY THE HOTEL AND/OR MANAGER UNDER THIS AGREEMENT, EXCEPT TO THE EXTENT OF THE NEGLIGENCE, INTENTIONAL TORT, OR WILFUL MISCONDUCT OF THE HOTEL. THE TERMS OF THIS SECTION 5.1 SHALL SURVIVE ANY EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

5.2 Intentionally omitted.

5.3 Intentionally omitted.

5.4 Intentionally omitted.

5.5 Intentionally omitted.

SECTION 6
INSURANCE REQUIREMENTS

6.1 The Hotel shall abide by the insurance requirements set forth in **Exhibit B**, which is attached hereto and incorporated herein for all purposes.

SECTION 7
AUDIT

7.1 The Hotel agrees that the County shall, until the expiration of seven (7) years after the termination or expiration of this Agreement in accordance with 23.12(u) below, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Hotel involving transactions relating to this Agreement. The Hotel agrees that the County shall have access during agreed upon dates and normal working hours to conduct audits in compliance with the provisions of this section. The County shall give the Hotel reasonable advance notice of intended audits.

SECTION 8
TERMINATION FOR CONVENIENCE

8.1 This Agreement may be terminated without cause by the County upon delivery of fourteen (14) days written notice to the Hotel; provided, however, the County shall be obligated to pay for guest rooms used through the effective date of termination (subject to Section 2.8 above) and for any associated Food and Beverage Fee, security costs, cleaning and disinfecting costs for each guest room, the lobby, and the path of travel, and any other obligation that survives expiration of this Agreement. The terms of this Section 8.1 shall survive any expiration or earlier termination of this Agreement.

SECTION 9
LICENSES AND PERMITS

9.1 The Hotel shall, at its sole expense, obtain and keep in effect all licenses and permits necessary for its operations.

SECTION 10
NONDISCRIMINATION

10.1 The Hotel shall not engage in any unlawful discrimination based on race, creed, color, national origin, sex, age, religion, disability, marital status, citizenship status, sexual orientation or any other prohibited criteria in any employment decisions relating to this Agreement, and the Hotel represents and warrants that to the extent required by applicable laws, it is an equal opportunity employer and shall comply with all applicable laws and regulations in any employment decisions.

SECTION 11
VENUE AND CHOICE OF LAW

11.1 The Hotel and the County agree that this Agreement shall be construed in accordance with the laws of the State of Texas. If any action, whether real or asserted, at law or in equity, arises on the basis of any provision of this Agreement, venue for such action shall lie in state courts located in Fort Bend County, Texas or the United States District Court for the Southern District of Texas – Houston Division.

SECTION 12
INDEPENDENT CONTRACTOR

12.1 It is expressly understood and agreed that the Hotel and its employees, representative, agents, servants, officers, contractors, subcontractors, and volunteers shall operate as independent contractors as to all rights and privileges and work performed under this Agreement, and not as agents, representatives or employees of the County. Subject to and in accordance with the conditions and provisions of this Agreement, the Hotel shall have the exclusive right to control the details of its operations and activities and be solely responsible for the acts and omissions of its employees, representative, agents, servants, officers, contractors, subcontractors, and volunteers. The Hotel acknowledges that the doctrine of *respondet superior* shall not apply as between the County and its officers, representatives, agents, servants and employees, and the Hotel and its employees, representative, agents, servants, officers, contractors, subcontractors, and volunteers. The Hotel further agrees that nothing herein shall be construed as the creation of a partnership or joint enterprise between the County and the Hotel. It is further understood that the County shall in no way be considered a Co-employer or a Joint employer of the Hotel, Manager, or any their respective employees, representative, agents, servants, officers, contractors, subcontractors, and volunteers of the Hotel. None of the Hotel, Manager, or any of their respective officers, agents, servants, employees or subcontractors of the Hotel shall be entitled to any employment benefits from the County. The Hotel shall be responsible and liable for any and all payment and reporting of payroll taxes on behalf of itself, and any of employees, representative, agents, servants, officers, contractors, subcontractors, and volunteers.

SECTION 13
GOVERNMENTAL POWERS AND IMMUNITIES

13.1 It is understood that by execution of this Agreement, the County does not waive or surrender any of its governmental powers or immunities related to torts. The County waives any defense as it relates to the contractual obligations contained herein other than those related to torts.

SECTION 14
PROHIBITION ON BOYCOTTING ISRAEL

14.1 **If the Hotel has fewer than 10 employees or this Agreement is for less than \$100,000, this section does not apply.** The Hotel acknowledges that in accordance with Chapter 2270 of the Texas Government Code, the County is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the Term. The terms “boycott Israel” and “company” shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. **By signing this Agreement, the Hotel certifies that the Hotel’s signature provides written verification to the County that the Hotel: (1) does not boycott Israel; and (2) will not boycott Israel during the Term.**

SECTION 15
IMMIGRATION NATIONALITY ACT

15.1 The Hotel shall verify the identity and employment eligibility of its employees who perform work under this Agreement, including completing the Employment Eligibility Verification Form (I-9). Upon request by the County, the Hotel shall provide the County with copies of all I-9 forms and supporting eligibility documentation for each employee who performs work under this Agreement. The Hotel shall adhere to all Federal and State laws as well as establish appropriate procedures and controls so that no services will be performed by any the Hotel employee who is not legally eligible to perform such services. The County, upon written notice to the Hotel, shall have the right to immediately terminate this Agreement for violations of this provision by the Hotel.

SECTION 16
THIRD-PARTY RIGHTS AND ASSIGNMENTS

16.1 The provisions and conditions of this Agreement are solely for the benefit of the County and the Hotel, and any lawful assign or successor of the Hotel, and are not intended to create any rights, contractual or otherwise, to any other person or entity.

16.2 The Hotel agrees that it will not subcontract or assign all or any part of its rights, privileges or duties hereunder without the prior written consent of the County, and any attempted subcontract or assignment of same without such prior consent of the County shall be void. The County acknowledges that hotel management is provided by Remington Lodging & Hospitality, LLC (“Manager”) and that certain building services are outsourced and provided by third parties. The County agrees that it will not subcontract or assign all or any part of its rights, privileges or duties hereunder without the prior written consent of the Hotel, and any attempted subcontract or assignment of same without such prior consent of the Hotel shall be void.

SECTION 17
BINDING COVENANTS

17.1 Subject to the limitations contained herein, the covenants, conditions and agreements made and entered into by the parties hereunder are declared to be for the benefit of and binding on their respective successors, representatives and permitted assigns, if any.

SECTION 18
AMENDMENTS, CAPTIONS, AND INTERPRETATION

18.1 Except as otherwise provided in this Agreement, the terms and provisions of this Agreement may not be modified or amended except upon execution of a written amendment to this Agreement executed by the County and the Hotel.

18.2 Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

18.3 If there is any dispute over the meaning or application of any provision of this Agreement, this Agreement shall be interpreted fairly and reasonably, and neither more strongly for or against any party, regardless of the actual drafter of this Agreement.

SECTION 19
AUTHORIZATION AND COUNTERPARTS AND ELECTRONIC SIGNATURES

19.1 Subject to approval by the Hotel’s franchisor, each party represents and warrants to the other that the person signing on its behalf below has the power and authority to enter into this Agreement.

19.2 This Agreement may be executed in several counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. A signature received via facsimile or electronically via email shall be as legally binding for all purposes as an original signature.

SECTION 20
SEVERABILITY, SURVIVAL AND NO WAIVER

20.1 It is agreed that in the event any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of such covenant, condition or provision shall in no way affect any other covenant, condition or provision does not materially prejudice either the

Hotel or the County in connection with the right and obligations contained in the valid covenants, conditions or provisions of this Agreement.

20.2 The failure of either party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder shall not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on any future occasion.

20.3 All provisions that by their nature must survive termination in order to be effective shall survive any termination or breach of this Agreement and shall remain in full force and effect regardless of any termination, noncompliance, breach or other claims or actions of the parties.

SECTION 21 **COMPLIANCE WITH LAWS**

21.1 This Agreement subject to all applicable federal, state and local laws, ordinances, rules and regulations, including, but not limited to, all provisions of the Orders of County's Commissioners Court, as amended.

21.2 **IF THE COUNTY NOTIFIES THE HOTEL OR ANY OF ITS OFFICERS, AGENTS, EMPLOYEES, OR SUBCONTRACTORS, OF ANY VIOLATION OF SUCH LAWS, ORDINANCES, RULES OR REGULATIONS, THE HOTEL SHALL IMMEDIATELY DESIST FROM AND CORRECT THE VIOLATION.**

SECTION 22 **SOLE AGREEMENT**

22.1 This Agreement, including any exhibits attached hereto and any documents incorporated herein, contains the entire understanding and agreement between the County and the Hotel, and any lawful assign and successor of the Hotel, as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement.

SECTION 23 **ADDITIONAL PROVISIONS**

23.1 **Security.** The County will be responsible, at its sole cost, expense, and liability, for providing two (2) security associates on duty twenty-four (24) hours per day, one (1) for inside of the building and one (1) for the outside of the building to provide safety for its program participants. Any additional security that is provided by the Hotel is solely for its own benefit. The County shall be responsible for limiting interactions with its program participants and hotel staff and to ensure that its program participants adhere to quarantine and social distancing protocols as established the Hotel, Manager, the County, and/or the CDC. The terms of this Section 23.1 shall survive any expiration or earlier termination of this Agreement.

23.2 **COVID-19 Protocols.** The County and the Hotel shall coordinate to create a mutually acceptable protocol for: (i) path of travel for the entry and exit of the County's program participants, including, without limitation stairs, elevators, and corridors, (ii) for pickup of and delivery of linens, towels, and trash, maintenance requests and other logistics including those set forth in **Exhibit C**. The County shall, and shall cause its program participants to, comply with the mutually agreed upon protocols established in accordance with this Section 23.2.

23.3 Hazardous Materials. The County agrees that it will comply with all applicable laws existing during the Term pertaining to the use, storage, transportation, and disposal of any hazardous substance as that term is defined in such applicable law. To the extent allowed by law, the County agrees that it is responsible to the exclusion of any such responsibility of the Hotel for its own proportionate share of liability for its negligent acts and omissions for claims, suits, and causes of action, including claims for property damage, personal injury and death, arising out of or connected to the storage, transportation, or disposal of any hazardous substance at the Hotel during the Term. Where the County is found to be in breach of this provision due to the issuance of a government order directing the County to cease and desist any illegal action in connection with a hazardous substance, or to remediate a contaminated condition caused by the County or any person acting under the County's direct control and authority, the County shall be responsible for all costs and expenses of complying with such order.

23.4 No Tenancy; Relief from Eviction Laws. In no event will this Agreement be deemed or construed to run with the land or create any tenancy or other permanent possessory rights on the part of the County or its invitees. This Agreement does not create any recordable interest and will not be recorded in any land records. No tenancy and/or eviction laws, regulations, rules, requirements, processes and proceedings ("Eviction Laws") shall be applicable with respect to the use of the Hotel by the County and its invitees hereunder. The County shall waive the applicability of all Eviction Laws with respect to the Hotel. In the event any individual is claiming tenancy rights, then the County, at the County's sole cost and expense, shall take all such necessary actions to remove such individual from the Hotel prior to expiration or termination of the Agreement.

23.5 Hotel and Manager Liability. Manager, as an agent of the Hotel, shall have no liability to the County, and the County hereby waives all claims against the Hotel and Manager for consequential, special or punitive damages, but not actual damages, allegedly suffered by the County. The terms of this Section 23.5 shall survive any expiration or earlier termination of this Agreement.

23.6 Liens. The County agrees to keep the hotel building and the Hotel and all equipment and property of the Hotel or Manager, located at the Hotel and directly related to the operations thereof, free and clear of any and all liens for work performed or materials furnished to or at the request of the County. The terms of this Section 23.6 shall survive any expiration or earlier termination of this Agreement.

23.7 Alterations. The County shall not perform any alterations (including, for example, any modification, demolition or reconfiguration of, or any improvement to) to the hotel without the prior written consent of the Hotel in its sole discretion.

23.8 No Use of Names. The County agrees not to use the name of the Hotel, the name of Hotel or its affiliates, the name of Manager or its affiliates, or any other trade names, trademarks, service marks, or other intellectual property of the Hotel (or its affiliates), or of the Manager (or its affiliates), or of the Hotel's franchisor or any variation of any of the foregoing, without the express written approval of the Hotel of such marks, which may be given or withheld in their the sole discretion by the Hotel of such marks. The terms of this Section 23.8 shall survive any expiration or earlier termination of this Agreement.

23.9 Subordination & Attornment. The County accepts this Agreement subject and subordinate to any mortgage(s), deed(s) of trust, ground lease(s) or other lien(s) now or subsequently affecting the Hotel, and to renewals, modifications, re-financings and extensions thereof. This clause shall be self-operative. At a mortgagor's request, the County shall, without charge, attorn to the successor-in-interest.

23.10 Notice.

- a. Each Party giving any notice or making any request, demand, or other communication (each, a “Notice”) pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).
- b. Each Party giving a Notice shall address the Notice to the receiving Party at the address listed below or to another address designated by a Party in a Notice pursuant to this Section:

County: Fort Bend County
Attn: County Judge
401 Jackson Street
Richmond, Texas 77469

Hotel: HHC TRS LC Portfolio LLC
Attn: Legal Department – Asset Management
14185 Dallas Parkway, Suite 1100
Dallas, Texas 75254

With copy to: Houston Marriott Sugar Land
Attn: General Manager
16090 City Walk
Sugar Land, Texas 77479

- c. A Notice is effective only if the party giving or making the Notice has complied with subsections 14.1 and 14.2 and if the addressee has received the Notice. A Notice is deemed received as follows:
 - i. If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.
 - ii. If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

23.11 **Remedies.** If either Party defaults in the performance of any of its obligations under this Agreement, the non-breaching Party will provide notice of the default and the breaching Party shall have three (3) days after receiving such notice to cure the default. Except with respect for defaults related to the payment of amounts due hereunder, if the breaching Party is not reasonably able to cure the default within a three (3) day period, the cure period shall be extended as long as the breaching Party commences the cure within the three (3) day period and thereafter diligently pursues the cure. In the event the default in the performance of any obligations under this Agreement remains uncured for more than three (3) days after the receipt of notice, or in the event such default is of such a nature that it cannot reasonably be cured within three (3) days and the breaching Party has not commenced to cure the default with due diligence, the non-breaching Party has not commenced to cure the default with due diligence, the non-breaching Party may pursue any and all legal and equitable rights and remedies permitted by applicable law including the termination of this Agreement.

23.12 Hotel understands and acknowledges that this Agreement may be totally or partially funded with federal and or state funds. As a condition of receiving these funds, Hotel represents that it is and will remain in compliance with all federal and or state terms as stated below. These terms flow down to all third party vendors and their subcontracts at every tier that exceed the simplified acquisition threshold, unless a particular award term or condition specifically indicates otherwise. The Hotel shall require that these clauses shall be included in each covered transaction at any tier. Hotel will require all of their staff to comply with Federal documentation requirements administered by the County.

- a. Americans with Disabilities Act (ADA) – Hotel shall comply with all federal, state, County, and local laws concerning this type of products/service/equipment/project and the fulfillment of all ADA requirements.
- b. Drug-Free Workplace – Hotel shall provide any and all notices as may be required under the Drug-Free Workplace Act of 1988, 28 CFR Part 67, Subpart F, to their employees and all sub-contractors to insure that the County maintains a drug-free workplace.
- c. Small, Minority Firms, Women’s Business Enterprises and Labor Surplus Area Firms – Hotel will take all necessary affirmative steps to assure that qualified small, minority firms, women’s business enterprises, and labor surplus area firms are used when possible by:
 - i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
 - iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
 - v. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and
 - vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in subsections (i) through (v) above.
- d. Energy Policy and Conservation Act – Hotel agrees to comply with the Energy Policy and Conservation Act (42 U.S.C. Section 6201).
- e. Debarment and Suspension –
 - i. The Hotel certifies that they are in compliance with the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180 which states that a contract award in any tier must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. § 180 that implement Executive Orders Nos. 12549 (3 C F R part 1986 Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235),

“Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order No. 12549. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount).

- ii. This certification is a material representation of fact relied upon by the County . If it is later determined that the Hotel did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (name of state agency serving as recipient and name of subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
 - iii. Hotel agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C 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.
- f. Byrd Anti-Lobbying Amendment – 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.
- g. Political Activities – Hotels are prohibited from using federal funds directly or indirectly for political purposes, including polling, lobbying or advocating for legislative programs or changes; campaigning for, endorsing, contributing to, or otherwise supporting political candidates or parties; and voter registration or get-out-the-vote campaigns. Generally, organizations or entities which receive federal funds by way of grants, contracts, or cooperative agreements do not lose their rights as organizations to use their own, private, non-federal resources for “political” activities because of or as a consequence of receiving such federal funds. These recipient organizations must thus use private or other non-federal money, receipts, contributions, or dues for their political activities, and may not charge off to or be reimbursed from federal contracts or grants for the costs of such activities.
- h. Procurement of Recovered Materials – Hotel must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). (1) In the performance of this Agreement, the Hotel shall make maximum use of products containing recovered materials that are EPA designated items unless the product cannot be acquired: (i) Competitively within a timeframe providing for compliance with the contract performance schedule; (ii) Meeting contract performance requirements; or (iii) At a reasonable price. (2) 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/comprehensiveprocurement-guideline-cpg-program>.

- i. Access to Records
 - i. The Hotel agrees to provide 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 Hotel which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
 - ii. The Hotel 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 Hotel agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- j. DHS Seal, Logo, and Flags – The Hotel shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA preapproval.
- k. Compliance with Federal Law, Regulations, and Executive Orders – The Hotel will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
- l. No Obligation by Federal Government – The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the County, Hotel, or any other party pertaining to any matter resulting from the contract.
- m. Program Fraud and False or Fraudulent Statements or Related Acts – The Hotel acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Hotel's actions pertaining to this Agreement.
- n. Civil Rights and Non-Discrimination – During the performance of this contract, the Hotel agrees as follows:
 - i. Nondiscrimination on the Basis of Race, Color, and National Origin – Hotel will comply with state and federal anti-discrimination laws including Title VI of The Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), FEMA's implementing regulations at 44 C.F.R. Part 7 (Nondiscrimination in Federally Assisted Programs), and the Department's implementing regulations at 6 C.F.R. Part 21 (Nondiscrimination on the Basis of Race, Color, or National Origin in Programs or Activities Receiving Federal Financial Assistance) which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
 - ii. Nondiscrimination on the Basis of Sex – Hotel will comply with Title IX of the Education Amendments of 1972 (codified as amended at 20 U.S.C. § 1681 et seq.), FEMA's implementing regulations at 44 C.F.R. Part 19 (Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance), and the Department's implementing regulations at 6 C.F.R. Part 15

(Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance) prohibit discrimination on the basis of sex in any education program or activity receiving Federal financial assistance.

- iii. Nondiscrimination on the Basis of Disability – Hotel will comply with The Americans with Disability Act of 1990 (codified as amended at 42 U.S.C. §§ 12101-12213) prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private public and private entities. Hotels must comply with the responsibilities under Titles I, II, III, IV, and V of the Americans with Disability Act of 1990 in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.
- iv. Nondiscrimination on the Basis of Handicap – Hotel will comply with Section 504 of the Rehabilitation Act of 1973 (codified as amended at 29 U.S.C. § 794) and FEMA’s implementing regulations at 44 C.F.R. Part 16 (Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Federal Emergency Management Agency) provide that no otherwise qualified handicapped individual in the United States will, solely by reason of handicap, be excluded from participation in, be denied the benefits of, or be subjected to, discrimination under any program or activity receiving Federal financial assistance.
- v. Nondiscrimination on the Basis of Age – Hotel will comply with the Age Discrimination Act of 1975 (codified as amended at 42 U.S.C. § 6101 et seq.), and Department of Health and Human Services implementing regulations at 45 C.F.R. Part 90 (Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance) prohibit discrimination against individuals on the basis of age in any program or activity receiving Federal financial assistance.
- vi. Nondiscrimination on the Basis of Limited English Proficiency – Hotel will comply with Title VI of the Civil Rights Act of 1964 prohibition against discrimination on the basis of national origin which requires that recipients and subrecipients of FEMA assistance take reasonable steps to provide meaningful access to persons with limited English proficiency. Hotel shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, English proficiency, or disability. Hotel shall not, on the grounds of race, color, creed, national origin, sex, age, English proficiency, or disability, exclude a person from participation in, deny him/her benefits, or subject him/her to discrimination. Hotel shall adhere to any Federal implementing regulations and other requirements that the Department and the FEMA have with respect to nondiscrimination.
- o. Contracting with Small, Minority Firms, Women’s Business Enterprises and Labor Surplus Area Firms – Hotel will take all necessary, affirmative steps to assure that qualified small and minority businesses, women’s business enterprises, and labor area surplus firms are used when possible by:

- i. Placing small and minority businesses and women's business enterprises on solicitation lists;
 - ii. Assuring that it solicits small and minority businesses and women's business enterprises whenever they are potential sources;
 - iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
 - iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women's business enterprises;
 - v. Utilizing the assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 - vi. Hotel must require subcontractors to take the five affirmative steps described in 1-5 above.
- p. Environmental and Historic Preservation Protections
- i. Case by case basis. FEMA will identify various environmental and historic preservation mitigation measures with which a Non-Federal Entity (NFE) must comply when performing the scope of work under a FEMA award. FEMA expects the NFE to include adequate third party provisions to facilitate compliance with such measures that the NFE has agreed to implement as a term and condition of the FEMA award.
 - ii. Hotel shall abide by all environmental and historic preservation mitigation measures identified by FEMA when performing the scope of work including: a. National Environmental Policy Act of 1969, Pub. L. No. 91-190 (1969) (codified as amended at 42 U.S.C. §§ 4321-4347); the National Historic Preservation Act, Endangered Species Act Endangered Species Act of 1973, Pub. L. No. 93-205 (1973) (codified as amended at 16 U.S.C. §§ 1531-1544);, Clean Water Act, other laws, and various executive orders.
- q. Disaster Reservists – Hotel may not in the performance of this Agreement utilize employees who are also Disaster Reservists. Disaster Reservists are personnel authorized by the special hiring authority in the Stafford Act that are not full-time employees, but rather work on an on-call, intermittent basis to perform disaster response and recovery activities.
- r. False Statements Act – Hotel agrees to comply with the False Statement Act sets forth liability for, among other things, any person who knowingly submits a false claim to the Federal government or causes another to submit a false claim to the government or knowingly makes a false record or statement to get a false claim paid by the government. 31 U.S.C. §§ 3729-3733.
- s. Fraud Waste and Abuse – Hotel understands that in the event County becomes aware of any allegation or a finding of fraud, waste, or misuse of funds received from FEMA or the

Office of the Governor, the County is required to immediately notify OOG of said allegation or finding and to continue to inform OOG of the status of any such on-going investigations. The County must also promptly refer to OOG any credible evidence that a principal, employee, agent, Hotel, subcontractor, or other person has -- (1) submitted a claim for award funds that violates the False Claims Act; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving award funds. County must also immediately notify OOG in writing of any misappropriation of funds, fraud, theft, embezzlement, forgery, or any other serious irregularities indicating noncompliance with grant requirements. County must notify the local prosecutor's office of any possible criminal violations.

- t. Prompt Payment – The Hotel is required to pay its subcontractors performing work related to the Underlying Agreement for satisfactory performance of that work no later than 30 days after the Hotel's receipt of payment for that work from County. In addition, the Hotel is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work is satisfactorily completed.
- u. Retention of Records – The Hotel agrees to maintain fiscal records and supporting documentation for all expenditures related to this Agreement pursuant to 2 CFR 200.333, UGMS, and state law. Hotel must retain, and will require its subcontractors of all tiers to retain, these records and any supporting documentation for a minimum period of not less than seven (7) years after the date of termination or expiration of the Agreement or any litigation, dispute, or audit arising from the performance of the Agreement. Records related to real property and equipment acquired with grant funds shall be retained for seven (7) years after final disposition.
- v. Veteran Preference – The Hotel shall give a hiring preference, to the extent practicable, to veterans (as defined in 5 USC Section 2108) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

[Intentionally blank]

ACCEPTED AND AGREED:

COUNTY:

FORT BEND COUNTY

By: _____
KP George, County Judge

HOTEL:

HHC TRS LC Portfolio LLC

By: Remington Lodging & Hospitality, LLC,
its managing agent

By: Stan Kennedy
Name: Stan Kennedy
Title: Chief Operating Officer

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$_____ to accomplish and pay the obligation of Fort Bend County under this contract.

Robert Ed Sturdivant, County Auditor

EXHIBIT A – BOOKING RATES

The Hotel will provide room nights on the 4th floor of the hotel, on an as-needed basis, at the following Booking Rate:

\$110.50 per day, per room (whether occupied or not), exclusive of taxes and fees

Subject to the County's election to take all of the hotel rooms on the 5th floor (containing 46 rooms, 31 of which have 2 beds and 16 of which have 1 bed) of the hotel, the Hotel will provide room nights on the 5th floor of the hotel, on an as-needed basis, at the following Booking Rate:

\$110.50 per day, per room (whether occupied or not), exclusive of taxes and fees

Hotel room rates are subject to all applicable taxes and fees (except for those which the County is exempt) in effect at the time of check-in, and any additional charges and/or gratuities described in this Agreement. Hotel rates confirmed above are for single occupancy only. No additional occupants are allowed, even if a particular room has more than one bed. Hotel room rates are also subject to adjustment by the Hotel as further described in this Agreement if the County's total program requirements are modified by the County.

Food and Beverage Fee: \$61.88 per person per day

(includes three box meals per day and one snack, along with beverages; provided, however, under no circumstances will the Hotel be obligated to provide any alcoholic beverages; pricing reflects GSA Federal Per Diem for Fort Bend County ME&I)

EXHIBIT B – INSURANCE REQUIREMENTS

A. Prior to commencement of the Services, Contractor shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Contractor shall provide certified copies of insurance endorsements and/or policies if requested by County. Contractor shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Contractor shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

1. Workers' Compensation insurance in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.
2. Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
3. Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.

B. County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation. All Liability policies including Workers' Compensation written on behalf of Contractor shall contain a waiver of subrogation in favor of County and members of Commissioners Court.

C. If required coverage is written on a claims-made basis, Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that work under the Agreement is completed.

EXHIBIT C – COVID-19 PROGRAM PARTICIPANT LETTER

NOTICE TO INDIVIDUALS WHO ARE SELF ISOLATING OR HAVE BEEN IDENTIFIED AS HAVING OR SUSPECTED HAVING, THE NOVEL CORONAVIRUS, COVID-19.

First, we want to welcome you to our hotel and we are sorry that you are visiting under such stressful conditions. We want you to know that we will do what we can to ensure your stay is as comfortable as possible; however, the County, who has contracted for the rooms, have implemented a list of conditions that must be adhered to during your stay. The list was created by the County, to protect you and our associates during this turbulent time.

- During your stay, the County asks you to remain in your room at all times. If you are observed outside your room, you could be asked to return immediately. If there are other similar instances, you may be asked to leave the property.
- During your stay, there will be no housekeeping services performed in your room. We understand that you will need clean linen, towels, etc. and ask that you call the front desk to arrange for delivery of same. In addition, when it is time for you to discard dirty linen or garbage, we ask that you bag linen and trash separately. The County will coordinate pick up times.
- The County asks that you not receive visitors during your stay at the hotel. If you do receive visitors, you may be asked to leave the property.
- If there is no food option at the hotel, please contact a local delivery service. The front desk will have the names of food services, restaurants, etc. and can assist with ordering.
- If there is a food option at the hotel, we will deliver items to your door for a pre-arranged drop off time. The items will be left outside your door by the County.
- No pets are allowed in your room.
- If there are any maintenance requests during your stay, they will be evaluated and addressed accordingly. Some requests may not be addressed.
- All trash pickups will be coordinated by the front desk.

Thank you for your patience and understanding!