**HOTEL FACILITY DISASTER SHELTER AGREEMENT**

**THIS AGREEMENT** (the “Agreement”) is made and entered into this \_\_\_\_ day of March 2020 (“Effective Date”) by and between <INSTER HOTEL LLC NAME> d/b/a <INSERT DBA NAME> (the “ Hotel Owner”) located at <INSERT BUSINESS ADDRESS> (the “Hotel”) and the MAYOR AND CITY COUNCIL OF BALTIMORE, acting by and through <INSERT RELEVANT DEPARTMENT> located at <INSERT ADDRESS> (the “City”) The Hotel Owner and the City are sometimes hereinafter referred to collectively as the “Parties”).

 WHEREAS, the Hotel Owner owns and operates a <INSERT # of ROOMS> unit hotel located at <INSERT HOTEL ADDRESS> (the “Facility”);

 WHEREAS, the City is seeking to immediately rent, use and occupy all of the public spaces and units in the Facility;

 WHEREAS, the Parties acknowledge and agree that the Facility is not designed as a medical or treatment facility and will be utilized by the City on “as is” basis without any additional upgrades or renovations; and

 NOW, THEREFORE in consideration of the mutual covenants and agreements contained in this Agreement, the receipt and sufficient of which the parties hereby acknowledge, the Parties agree to the following terms and conditions:

 1. Scope. The Hotel Owner will make all of the units in the Facility available for City use, except for those units that were otherwise not rented to the public in the normal course of business. The Hotel will ensure that all available units in the Facility will be in rentable condition and available for City use within 24-Hours from the Effective Date.

 2. Term and Extension. This Agreement shall commence on the Effective Date which shall be the date that both Parties have executed this Agreement and shall terminate sixty (60) days from the Effective date (the “Initial Term”). In the event the City wishes to extend the Initial Term, it may do so for a minimum period of fifteen (15) days by providing written notice as required in the “Notice” section of this Agreement (the “Extension Notice”). The Extension Notice must be provided at least five (5) days prior to the expiration of the initial term. The Initial Term and any extension are known as the Term of this Agreement. The Hotel Owner reserves the right to modify any and all terms of this Agreement (with the written concurrence of the City) prior to agreeing to an extension of the Initial Term.

 3. Deposit. To comply with the terms of this Agreement, the Hotel Owner will bear the cost of cancelling reservations and assisting guests to moving to other hotel properties. To compensate the Hotel for making units available in the Facility, the City shall submit a non-refundable deposit of $[INSERT DEPOSIT AMOUNT] (the “Deposit”). The Deposit shall be submitted by check or wire transfer to the Hotel Owner upon execution of this Agreement.

 4. Payment for Use of Facility. The City shall compensate the Hotel Owner at the agreed upon rate of $74.00 per room, per day for the Term of this Agreement (“Room Charge”). The City shall compensate Hotel Owner for all available rooms regardless of whether rooms are actually occupied, but the City shall receive a discount of $24.00 per each unoccupied room. The Parties acknowledge and agree that the Room Charge is not inclusive of cleaning, disinfecting, repair, or meal charges. The City shall compensate the Hotel Owner for Meals as set forth in Section 5(a) and applicable cleanings as set forth in Section 5(b).

 5. Amenities and Services. The Hotel Owner shall ensure that each unit is equipped with a mini-fridge, bed, shower/bath, toilet, television, and a separate heating/ventilation/air conditioning (HVAC) system. In the event that any of these items are out of order, the Hotel Owner will make every effort to repair or replace the item(s) in the normal course of business. Public spaces, such as lobby, meeting room and public restroom will be made available to hotel occupants. However, pool, fitness center, laundry room and all back of house areas will have restricted access and only be open to hotel staff. Room service will be not provided by the Hotel Owner in any unit. At the time of arrival for occupants, Hotel Owner will provide one (1) toiletry bag with some amenities such as toothbrush, toothpaste, lotion, shampoo, conditioner, shaving cream, shavers, etc.). These amenities and some linens (such as bath and hand towels) will be replenished upon request from occupants at no additional cost to the City. To protect hotel staff (and if reasonably available to the City and not needed for first responders or sick persons), the City shall make efforts to provide staff with sufficient supplies of disinfecting wipes, facemasks, hand sanitizer and disposable gloves. Except for amenities/services expressly stated in this Agreement or that otherwise receive the prior written approval of the City, the City shall in no event agree to pay for any pay-per-view movies, alcohol, tobacco, or any other amenities/services provided by the Hotel Owner to hotel occupants (the “Restricted Amenities”). Hotel Owner agrees to provide written notice to each hotel occupant stating that a hotel occupant is personally financially obligated to pay for any consumption or use of the Restricted Amenities by such hotel occupant, and the City shall in no event pay for the consumption or use of the Restricted Amenities.

 5(a). Meals. The Hotel shall provide three (3) meals daily per the schedule below:

 Breakfast:

 $5.00 per person/meal.

 Continental/”Grab-and-Go Bags”.

 To Include: One (1) piece of fruit, two (2) wrapped muffins or pastries, one (1) granola bar, one (1) bottle of water and one (1) bottle of fruit juice.

 \*One (1) bag per guest

Hot Lunch and Dinner:

 $12.00 per person/meal

 To Include: One (1) main and two (2) sides. Mains are chicken, fish or turkey. Sides are macaroni and cheese, greens, green beans, potatoes, mashed potatoes, and rice and beans.

 \*One (1) meal per guest

 \*Not all options available each day, menu to change daily.

Dietary restrictions shall be considered on an as needed basis. Meal times shall be posted at the front desk.

 5(b). Cleaning/Disinfecting Rooms. Upon checkout of an occupied unit, Hotel Owner shall have twenty-four (24) hours to have the unit professionally cleaned/disinfected from a third-party vendor (“Professional Cleaning”). Hotel Owner shall bear the initial expense of Professional Cleaning of $15.00 per unit. If the unit has to have additional Professional Cleaning after the Hotel Owner’s initial expense, the cost to the City is $\_\_\_\_ per Professional Cleaning. Hotel Owner may have Professional Cleaning in public areas of the hotel on an “as needed” basis and at its sole discretion. Professional Cleaning in public areas will cost $450.00 per area. The Facility may require a final Professional Cleaning of all areas upon the Termination of the Agreement. The cost of that final Professional Cleaning will be at the prevailing rate by the vendor but in no case greater than $\_\_\_\_\_\_\_\_\_. While the Hotel Owner shall bear the initial cost of Professional Cleanings, the Hotel Owner will submit invoices and bill back the City for additional Professional Cleanings as described above.

 6. Security. At its own expense, the City shall provide twenty-four (24) Security (the “Security Guard”) at the Facility. Under no circumstance shall the Security Guard be considered an employee or agent of the Hotel Owner Security Guard shall have no authority to make any commitment or act on behalf of the Hotel Owner. Further, under no circumstance shall the Hotel Owner be liable for any claims or costs associated with the acts, errors or omissions of the Security Guard. Security Guard must be on-site 24 hours from the Effective Date of this Agreement. In the event that a Security Guard is not on-site at the Facility, is a no-show or more than sixty (60) minutes late for a shift, the City shall pay a penalty of $500.00 per day to the Hotel. Other than for the provision of a Security Guard, the City is not responsible for the safeguarding of the property of the Hotel Owner or of the Hotel Owner’s guests.

 7. Check in Procedure to be defined.

 8. Check out Procedure to be defined.

 9. Total Compensation and Invoicing.

 9(a). Total Compensation. The total compensation to be paid by the City to the Hotel Owner for all charges, expenses, and other costs under this Agreement shall not exceed \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dollars ($\_\_\_\_\_\_\_\_\_\_\_\_), unless otherwise approved by the City and if applicable the Board of Estimates of Baltimore City.

9(b). Invoices. Hotel Owner shall submit a proper invoice for all Room Charges, Meal charges and charges for Professional Cleaning services on the first day of each month following the effective date of this Agreement. The City shall submit payment for each invoice within thirty (30) days from date of the City’s receipt of an invoice. Each invoice shall include payment remittance instructions and meet the invoicing requirements of the City.

 10. Notice. Any notices, demands or other communication required or permitted hereunder to be in writing shall be sent by certified mail, return receipt requested or by nationally recognized overnight courier service;

 If to Hotel Owner: [INSERT NAME]

 [INSERT HOTEL OWNER’S NAME]

 [INSERT ADDRESS]

 Email:

 Tel:

 If to City: [INSERT NAME]

 [INSERT HOTEL NAME]

 [INSERT ADDRESS]

 Email:

 Tel:

 11. Indemnity and Insurance.

11(a). Indemnity.

City agrees to indemnify, defend, and hold harmless the Hotel Owner and its officers, directors, agents, and employees from and against any and all demands, claims, and damages to persons or property, losses and liabilities, including reasonable attorney's fees, arising out of or caused from performance under the terms of this Agreement. However, the Hotel Owner agrees that any obligation of the City to indemnify the Hotel Owner under this section and otherwise in this Agreement is subject to available appropriations and shall be limited to an amount not greater than the maximum liability of a local government Proceedings Article, Annotated Code of Maryland.

The Hotel Owner shall indemnify, defend and hold harmless the City, its elected/appointed officials, employees, and agents from any and all claims, demands, liabilities, losses, damages, fines, fees, penalties, costs, expenses, suits, and actions, including attorneys’ fees and court costs, connected therewith, brought against the City, its elected/appointed officials, employees, and agents, arising as a result of: (a) breach of the Hotel Owner’s representations, warranties, covenants, or agreements under this Agreement; (b) the Hotel Owner’s violation or breach of any federal, state, local, or common law, regulation, law, rule, ordinance, or code, whether presently known or unknown; (c) breach of the Hotel Owner’s confidential obligations, including data security and privacy obligations; (d) any direct or indirect, willful, negligent, tortious, intentional, or reckless action, error, or omission of the Hotel Owner, its officers, directors, agents, or employees in connection with the performance of this Agreement, whether such claims are based upon contract, warranty, tort, strict liability or otherwise.

 11(b). Insurance.

The City (or its elected/appointed officials, employees, agents, or volunteers) will Self-Insure its liability this under this Agreement, to the extent allowable under the Local Government Tort Claims Act, Md. Code Ann., Cts. & Jud. Proc. § 5-301 et seq.

The Hotel Owner shall have insurance coverages and amounts as determined by the City’s Risk Management Office, including commercial general liability coverage at limits not less than $2,000,000.00 per occurrence and $4,000,000.00 aggregate, workers compensation coverage as required by law, and commercial automobile coverage at limit not less than $1,000,000.00. The City, its elected/appointed officials, employees, and agents shall be covered, by endorsement, as additional insured as respects to liability arising out of activities performed by or on behalf of the Hotel Owner in connection with this Agreement. Within twenty-four (24) hours following execution of this Agreement, the Hotel Owner shall furnish to the City a certificate of insurance, with a copy of the additional insured endorsement as verification that coverage is in force.

12. Termination.

12(a). Termination for Cause. If the Hotel Owner fails to fulfill its obligations under this Agreement properly and on time, or otherwise violates any provision of this Agreement, the City shall have the right to terminate the Agreement upon written notice thereof and specifying an effective date of termination. The City may, at its sole discretion, allow the Hotel Owner a specified time period in which to cure a breach and/or otherwise correct and/or improve its performance to the City’s satisfaction. The parties agree that they shall make good faith efforts in the performance of this Agreement. The City shall not be obligated to pay for any services rendered by the Hotel Owner after the effective date of termination pursuant to this section. Notwithstanding the above, the Hotel Owner shall not be relieved of liability to City for damages sustained by the City by virtue of any breach of this Agreement.

12(b). Appropriations. The payment of invoices and any amounts due the Hotel Owner under this Agreement is contingent upon the proper appropriation of funds by the Baltimore City Council in accordance with the Baltimore City Charter and Code.

 13. Retention of Records and Audits.

The Hotel Owner shall retain and maintain all records and documents relating to this Agreement for a minimum of three (3) years from the date of final payment under this Agreement or pursuant to any applicable statute of limitations, whichever is longer, except in cases where unresolved audit questions require retention for a longer period as determined by the City.

At any time during business hours and as often as the City may deem necessary, there shall be made available to the City for examination, the Hotel Owner’s records with respect to matters covered by this Agreement. The Hotel Owner shall permit the City to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, records of personnel, conditions of employment and other data relating to matters covered by this Agreement.

 14. Confidentiality.

The Hotel Owner agrees that any confidential information received from the City or its personnel in the furtherance of this Agreement shall remain strictly confidential and shall not be made available to any individual or organization without the prior written approval of City or pursuant to applicable federal, state, or local laws. The Hotel Owner shall comply with all applicable federal and state confidentiality requirements regarding personal information, including Md. Code Ann. State Gov. §10-1301 et seq. As required under Maryland law, the Hotel Owner shall implement and maintain reasonable security procedures and practices that are appropriate to the nature of the personal information disclosed to the Hotel Owner by the City or other government agencies and which are reasonably designed to help protect the personal information of the Hotel Owner’s guests from unauthorized access, use, modification, disclosure, or destruction. The provisions of this section shall remain binding upon the Hotel Owner after the expiration or earlier termination of this Agreement.

15. City Requirements.

15(a). Nondiscrimination.

The Hotel Owner shall operate under this Agreement so that no person otherwise qualified is denied employment or other benefits on the grounds of race, color, religion, ancestry, national origin, ethnicity, sex, age, marital status, sexual orientation, gender identity or expression, disability, genetic information or other unlawful forms of discrimination except where a particular occupation or position reasonably requires consideration of these attributes as an essential qualification for the position. The Hotel Owner shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

The Hotel Owner shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, gender identity or expression, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, suppliers, or commercial customers. The Hotel Owner shall provide equal opportunity for subcontractors to participate in all of its public sector and private sector subcontracting opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace, such as those specified in Article 5, Subtitle 28 of the Baltimore City Code, as amended from time to time. The Hotel Owner understands and agrees that violation of this clause is a material breach of this Agreement and may result in contract termination, debarment, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

Upon the City’s request, and only after the filing of a complaint against the Hotel Owner pursuant to Article 5, Subtitle 29, of the Baltimore City Code, as amended from time to time, the Hotel Owner agrees to provide the City, within 60 calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that the Hotel has used in the past four (4) years on any of its contracts that were undertaken with the Baltimore City Market Area as defined in Article 5, §28-1(d) of the Baltimore City Code, as amended from time to time, including the total dollar amount paid by the Hotel for each subcontract or supply contract. The Hotel Owner agrees to fully cooperate in any investigation conducted by the City pursuant to the City’s Commercial Non-Discrimination Policy, as contained in Article 5, Subtitle 29, of the Baltimore City Code as amended from time to time. The Hotel Owner understands and agrees that violation of this clause is a material breach of this Agreement and may result in contract termination, debarment, and other sanctions.

15(b). MBE/WBE. The requirements of the Baltimore City Code, Article 5, Subtitle 28 (pertaining to Minority and Women’s Business Enterprise), as amended, are hereby incorporated by reference into this Agreement. If applicable, failure of the Hotel Owner to comply with this subtitle shall constitute a material breach of this Agreement and shall entitle the City to terminate this Agreement immediately upon delivery of written notice of termination to the Hotel Owner. The Hotel Owner will make good faith efforts to utilize minority and women’s business enterprises and maintain records reasonably necessary for monitoring compliance with this subtitle. (See Art. 5, § 28-54, Baltimore City Code).

15(c). Local Hiring. Article 5, Subtitle 27 of the Baltimore City Code, as amended (the “Local Hiring Law”) and its rules and regulations apply to every contract for more than $300,000 made by the City, or on its behalf, with any person. The Local Hiring Law also applies to every agreement authorizing assistance valued at more than $5,000,000 to a City-subsidized project. Please visit www.oedworks.com for detailed on the requirements of the law. If applicable, the Local Hiring Law and the Local Hiring Rules and Regulations shall be attached hereto as an exhibit and incorporated herein.

15(d). Conflict of Interest. No elected official of the City, nor other officer, employee or agent of the City who exercises any functions or responsibilities in connection with this Agreement, shall have any personal interest, direct or indirect, in this Agreement. By executing this Agreement, the Hotel Owner asserts that it has not engaged in any practice or entered into any past or ongoing agreement that would be considered a conflict of interest with this Agreement. The Hotel Owner agrees to refrain from entering into all such practices or agreements during the term of this Agreement (and any extensions thereto) that could give rise to a conflict of interest. Furthermore, the Hotel Owner asserts that it has fully disclosed to the City any and all practices and/or agreements of whatever nature or duration that could give rise to a conflict of interest and will continue to do so during the term of this Agreement and any extensions thereto.

15(e). Unfair Labor Practices. Notwithstanding any other provisions in instant Agreement, the Hotel shall comply with the terms of the Board of Estimates of Baltimore City Resolution dated June 29, 1994 (if applicable) which states as follows:

* Contractors, subcontractors, their agents and employees may not engage in unfair labor practices as defined under the National Labor Relations Act and applicable federal regulations and state laws.
* Contractors, subcontractors, and their agents may not threaten, harass, intimidate or in any way impede persons employed by them who on their own time exercise their rights to associate, speak, organize, or petition governmental officials with their grievance.
* If the Board determines that a contractor, subcontractor, or their agents have violated the policy set forth in this Resolution said contractor, or subcontractor will be disqualified from bidding on City contracts, and if they are currently completing contracts, they will be found in default of their contracts.

15(f). No Dumping. The Hotel owner’s violation of any provision of City Health Title 7 {“Waste Control”}, Subtitle 6 {“Prohibited Disposal”}, constitutes a breach of this Agreement; and the City may determine, in its discretion, whether the violation is a material breach warranting termination of this Agreement.

16. State Requirement. Political Contribution Disclosure. The Hotel Owner is aware of, and will comply with all applicable provisions of the Maryland Annotated Code, Election Law Article, §14-101 et seq., “Disclosure By Persons Doing Public Business”, (“Election Law”). The Hotel Owner certifies, in accordance with §14-107 of the Election Law, that it has filed the statement required under §14-104(b)(1) of the Election Law.

 17. Governing Law. The terms of this Agreement shall be governed by and construed in accordance with the laws of the State of Maryland without regard to principles of conflicts of laws), and all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in state or federal (if permitted by law and a party elects to file an action in federal court) courts located in Baltimore, Maryland.

18. COMPLIANCE WITH LAWS:

The Hotel Owner hereby represents, warrants, covenants, and agrees that:

(a) It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;

(b) The Hotel Owner’s name in this Agreement is its full legal name;

(c) It has the requisite corporate power (if applicable), authority and legal capacity to enter into this Agreement and fulfill its obligations hereunder;

(d) The execution and delivery by it of this Agreement and the performance by it of its obligations hereunder have been duly authorized by all requisite action of its stockholders, partners or members, and by its board of directors or other governing body (if applicable);

(e) During the Term, it will comply with all federal, state and local laws, ordinances, rules and regulations, including interim expenditure and annual report requirements, and applicable codes of ethics pertaining to or regulating the services to be performed pursuant to this Agreement, including those now in effect and hereafter adopted;

(f) There are no suits or proceedings pending or threatened, whether in law or in equity, to the best of the Hotel Owner’s knowledge, which if adversely determined, would have a material adverse effect on the financial condition or business of the Hotel Owner; and

(g) It has obtained, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to perform its obligations under this Agreement.

(h) The Hotel Owner’s violation of the above representations and warranties shall entitle the City to terminate this Agreement immediately upon delivery of written notice of termination to the Hotel Owner.

19. No Waiver. The waiver by either party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any other or subsequent breach.

 20. Severability. If any provision of this Agreement is held to be unenforceable or invalid, then all other provisions of this Agreement shall continue to be in full force and effect, unless the part held to be unenforceable causes a substantial charge in the basic intentions and bargain of the Parties.

 21. Entire Agreement and Modification. This Agreement contains the entire agreement of the parties hereto with respect to the subject matter contained herein, and may not be amended or changed orally, but only by an agreement in writing signed by both parties.

 22. Impossibility. In the event of state, local or federal ordinance making the performance of any term of this Agreement impossible, the parties agree that they shall cooperate to facilitate performance.

 23. Survival. The provisions of this Agreement which, by their terms, require performance after the termination of this Agreement, or have application to events that may occur after the termination of this Agreement, shall survive the termination of this Agreement.

 24. Pre-existing Regulations. Any procurement regulations approved by the Board of Estimates of Baltimore City that are in effect on the date of execution of this Agreement are applicable to this Agreement.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties, or their duly authorized representatives, have executed this Agreement to be effective as of the Effective Date.

 **MAYOR AND CITY COUNCIL OF BALTIMORE**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**WITNESS** Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

<INSTER HOTEL LLC NAME

d/b/a <INSERT DBA NAME>

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**WITNESS**  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**APPROVED AS TO FORM APPROVED BY THE BOARD OF ESTIMATES**

**AND LEGAL SUFFICIENCY**

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Chief Solicitor Clerk Date