

Original

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number

20-602

SAP Number

County Administrative Office

Department Contract Representative
Telephone Number

Rhonesia Perry
909-387-4328

Contractor
Contractor Representative
Telephone Number
Contract Term
Original Contract Amount
Amendment Amount
Total Contract Amount
Cost Center

Orange Show Hospitality Inc.
Pradeep Patel
909-888-0271
May 22, 2020 – August 22, 2020
Up to \$600,000.00
Up to \$600,000.00

Briefly describe the general nature of the contract:

In response to COVID-19, the "Project Room Key" hotel and motel agreements were entered into pursuant to the Governor's State of Emergency Proclamation dated March 4, 2020, Executive Order N-25-20, and the President's Nationwide Emergency Declaration, and are directly related to that emergency and exigent circumstances and are necessary for the preservation of public health and safety to provide lodging services. Provision of rooms to the following populations help protect the public health and safety, lessen and/or avert the threats created by these exigent and emergency situations. 3) individuals who are asymptomatic but are at "high-risk" such as people over 65 or who have certain underlying health conditions and who require emergency non-congregate sheltering as a social distancing measure.

The agreement was signed by the Chief Executive Officer of the County of San Bernardino (CEO) on May 22, 2020, under the authority delegated to the CEO by the Board of Supervisors (Board) on March 24, 2020 (Item No. 67) in response to the COVID-19 pandemic, subject to ratification by the Board at the next available Board meeting, which is planned for June 9, 2020

FOR COUNTY USE ONLY

Approved as to Legal Form

Reviewed for Contract Compliance

Reviewed/Approved by Department

► *Suzanne Bryant*
Suzanne Bryant, County Counsel

►

►

Date *June 15, 2020*

Date

Date



EMERGENCY OCCUPANCY AGREEMENT

**EMERGENCY OCCUPANCY AGREEMENT COVERING PREMISES (Premises)
LOCATED AT:**

Authorized Representative Name: Pradeep Patel	
Title: Owner	Reservation Phone: 909-888-0271
Complete Property Street Address: 1280 S. E St., San Bernardino, CA 92408	
Total Number of Room(s) on property: 60 Rooms	
PROPERTY Reservation Email Address: orangeshowinn@gmail.com	
PROPERTY Owner's Full Name: Pradeep Patel	PROPERTY Owner Phone: 909-888-0271
PROPERTY Owner's Email Address: patellife@hotmail.com	
PROPERTY Owner's Complete Mailing Address: 1280 S. E St., San Bernardino, CA 92408	

This EMERGENCY OCCUPANCY AGREEMENT (Agreement) is made and entered into on May 18th, 2020 by and between the COUNTY OF SAN BERNARDINO (County), a political subdivision of the State of California, and Orangeshow Hospitality Inc. (Owner), a responsible contractor possessing the ability to successfully perform the terms of this Agreement.

RECITALS

This Agreement is entered into pursuant to the Governor's State of Emergency Proclamation dated March 4, 2020 and Executive Order N-25-20 and the President's Nationwide Emergency Declaration, in response to COVID-19, and is directly related to that emergency and exigent circumstances and is necessary for the preservation of public health and safety.

The Federal Emergency Management Agency (FEMA) defines an emergency or exigent circumstances as unexpected and unusually dangerous situations requiring immediate action or an urgent need for assistance or relief. The President's Nationwide Emergency Declaration and the Secretary of Health and Human Services' declaration of a Public Health Emergency for COVID-19 establish that exigent and emergency circumstances currently exist.

The County identifies, finds, and determines that immediate action is required to address the COVID-19 public health exigency and emergency situations.

Provision of rooms to the following populations will help protect the public health and safety, lessen and/or avert the threats created by these exigent and emergency situations: 1) individuals who are asymptomatic but are at "high-risk" such as people over 65 or who have certain underlying health conditions and who require emergency non-congregate sheltering as a social distancing measure.

This Agreement will only be used while the public health exigency and/or emergency situations exist. All provisions of this Agreement shall be read and construed in a manner that is consistent with this stated purpose. This Agreement has been procured in compliance with current FEMA procurement standards for grants conducted under emergency or exigent circumstances for COVID-19. For the duration of this Public Health Emergency, non-state entities may proceed with new noncompetitively procured contracts in order to protect public health and safety, or to lessen or avert the threats created by this emergency situation for 1) Emergency protective measures under FEMA's Public Assistance Program, and 2) use of FEMA's non-disaster grant funds by non-state recipients and sub-recipients to respond to or address COVID-19. This Agreement was procured by an informal bidding process consisting of solicitation of multiple hotels/motels and rate negotiations.

County and Owner mutually acknowledge that local, state, or federal authorities may issue official orders related to the COVID-19 pandemic, or take other official actions, subsequent to the execution of this Agreement that Parties to this Agreement cannot presently predict. County and Owner mutually acknowledge and agree that this Agreement shall be subject to the provisions of any such official action or order, particularly but not limited to Executive Orders of the Governor of the State of California and Orders of the County Public Health Officer, and the like ("Official Actions"), and if the provisions of any such Official Actions materially impact the terms of this Agreement, the provisions of those Official Actions shall govern.

- a. In the event that such Official Actions make occupancy and/or use of the Premises by County under this Agreement illegal, unlawful, or contrary to public policy, County shall provide written notice to Owner in the manner described herein, and County and Owner mutually agree that this Agreement shall terminate as of the date of that Official Action, at no penalty to County. In such an event, County shall pay outstanding funds due to Owner pro-rated from the date of the Official Action, along with all other

remaining sums due to Owner, within thirty (30) calendar days from the date of that Official Action.

- b. The parties acknowledge that Owner and Operator are providing the Premises for emergency purposes at the request of the County under the California Emergency Services Act (the "Act" (California Government Code §§ 8550 et seq.)). Pursuant to California Government Code §8655, the County and as such, is subject to certain immunities with respect thereto and shall not be liable for any claim based upon the exercise or performance, or the failure to exercise or perform, a discretionary function or duty on the part of the County or any employee of the County in carrying out the provisions of the Act.
- c. This is an acknowledgement that FEMA financial assistance will be requested by the County or State and if provided will be used to fund all or a portion of this Agreement. The Owner will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

NOW, THEREFORE, in consideration for the promises of this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties hereto agree as follows:

1. The Owner represents and warrants to County that Owner is the legal owner and/or is the authorized legal representative of management and has the right to enter into this Agreement without consent or approval from any other party. In the event of a breach of the foregoing representation and warranty, COUNTY shall have the right to terminate the Agreement with immediate effect upon written notice to Owner and Owner shall indemnify, defend (with counsel reasonably approved by COUNTY), and hold harmless COUNTY and its officers, employees, agents, and volunteers from any and all claims, actions, losses, damages and/or liability arising out of or related to said breach. The foregoing indemnity shall survive the expiration or earlier termination of the Agreement.
2. The Owner hereby authorizes the County and the County hereby rents from the Owner those certain Premises "AS IS" with appurtenances situated in the City of San Bernardino, County of San Bernardino, State of California, and more particularly described as follows:

Orange Show Hospitality Inc. located at 1280 S. E St., San Bernardino, CA 92408, as shown on the floor plans on the attached Exhibit A floor plan, which is hereby incorporated into this Agreement by this reference, and also including all meeting and parking spaces contiguous to the subject building(s) and unlimited use of the building's common areas and common facilities. The County shall have access to and use of the occupied Premises set forth in this Agreement twenty-four (24) hours per day, seven (7) days per week with no exceptions. The scope of services to be provided by the Owner under this

Agreement is attached hereto in Exhibit B which is hereby incorporated into this Agreement by this reference. The scope of services that the County plans on providing to the Premises is outlined in Exhibit C.

3. The term of this Agreement shall commence on May 22nd, 2020, and shall continue for a period of 90 days, with such rights of termination as may be hereinafter expressly set forth. Should notice of termination not be given the Agreement shall continue on a month to month basis on the same terms and conditions subject to the right of termination.
4. Either party may terminate this Agreement at any time at its convenience by giving written notice to the other party at least thirty (30) days prior to the date when such termination shall become effective.
5. Payments shall be paid by the County, from legally available funds and subject to California laws, with a payment of first month's rental equal to \$175,000.00 within 15 days of the execution of this Agreement. All subsequent rental payments as invoiced monthly in the amount of \$175,000.00 shall be paid by the 15th day following the receipt of a non-disputed invoice (i.e. payment for July, invoiced at \$175,000.00 no later than July 1, 2020, would be paid by July 16, 2020). Allowable rates for each month during said term are as follows:

Daily Rate per room: \$97.22 (\$175,000.00 monthly rate)

Total Number of Rooms: 60

Payments shall be paid to the Owner at the address specified in Paragraph 6. Owner shall invoice County at 30 day increments with all details County requires as specified in Exhibit D.

6. All notices and correspondence herein provided to be given by either party to the other, shall be deemed to have been fully given when made in writing and either deposited in the US Mail or delivered to the other party addressed as follows:

As to Owner:

Pradeep Patel

Patellife@hotmail.com

909-888-0271

As to County:

Rhonesia Perry

rhonesia.perry@eda.sbcounty.gov

Owner agrees to accept all payment for the Premises and other payments due from County to Owner under the Agreement via electronic payments directly deposited to Owner's designated bank account. Owner shall complete any and all County standard forms and provide all information required by County to process such electronic payments. In addition, on or before the date Owner executes the Agreement, Owner shall register with County's electronic procurement system.

7. Parking spaces, upon commencement of this Agreement, shall be unobstructed and completely accessible for the County's use.
8. Owner shall continue to operate the Premises with the emergency occupants as it would with hotel guests subject to the same rules as with normal hotel guest occupancy.
9. In addition to Exhibit B, Owner, at Owner's sole cost and expense, during the time of this Agreement shall furnish the following services, utilities, and supplies to the area occupied by the County and also to the common facilities such as lobbies, elevators, stairways, corridors, etc.:
 - a. Sewer, trash disposal, and water service, including both hot and cold water to the lavatories.
 - b. Elevator services.
 - c. Electricity and gas as necessary to provide power for heating, ventilating, and air conditioning, and as needed for the County's operations.
 - d. Pool, pool area, and pool equipment, if any.
 - e. Fire and life safety alarm systems.

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 the County's administrative costs, from the payments that may then be, or thereafter become due hereunder.

10. During the term of this Agreement, the Premises shall be maintained in good repair.
11. The County shall have the ability to assign this Agreement in collaboration with owner.
12. The Owner agrees that the County, while keeping and performing the covenants herein contained shall, at all times during the existence of this emergency occupancy, peaceably and quietly have, hold, and enjoy the occupied Premises

without suit, trouble, or hindrance from the Owner, or any person claiming under Owner.

13. Owner agrees that in no event shall County be liable to Owner for any alleged damages to business reputation due to the use of Premises by County under this Agreement. County will not be liable for any fire or other hazardous event during the term of this Agreement.
14. 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 does 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 thirty (30) 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 payment due or to become due under this 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 immediately or complete the repairs itself, deducting the cost thereof from the payment due or to become due under this Agreement.

In the event the County continues to rent said Premises although partially damaged, the payment as herein provided shall be reduced by the same ratio as the net square feet the County is thus precluded from occupying bears to the total net square feet in the occupied Premises. "Net square feet" shall mean actual inside dimensions and shall not include public corridors, stairwells, elevators, and restrooms.

15. If applicable: for those projects over \$1,000 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, CA 94102
Phone: (415) 703-4774
Fax: (415) 703-4771
For 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 Labor Code §§ 1777.5, 1777.6. and 1777.7 and applicable Regulations.

16. 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, medical condition, marital status, age, sex, or any other protected class. 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 § 12900 et seq.), the regulations promulgated thereunder (Government 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 §§ 11135-11139.8), and the regulations or standards adopted by the County to implement said Article.

17. Upon termination or expiration of this Agreement, the County will peacefully vacate the 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 the County has no control,

such as acts of third parties, or for which Owner is responsible pursuant to this Agreement.

18. Time is of the essence of this Emergency Occupancy 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.
19. Owner agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless County and its officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this Agreement from any cause whatsoever relating to or in any way connected with or arising from the use, occupancy, or operation of the Premises, except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of Indemnities. Owner's indemnification obligation applies to County's "active" as well as "passive" negligence but does not apply to County's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782. This provision shall survive the expiration or termination of the Agreement. County shall not be liable to Owner, its agents, employees, subcontractors or independent contractors for any personal injury or property damage suffered by them which may result from hidden, latent or other dangerous conditions in, on, upon or within the Premises unknown to the County, its officers, agents or employees. The specified insurance limits required in this Agreement shall in no way limit or circumscribe Owner's obligations to indemnify and hold harmless the County herein from third party claims. The County will defend and indemnify Owner in the event the validity of this Agreement is challenged by a third party.
20. County is a self-insured public entity for purposes of general liability and workers' compensation and will provide a certificate of self-insurance upon request.
21. All insurance policies identified herein, except for Workers' Compensation, shall contain endorsements naming the County and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85

Waiver of Subrogation Rights – The Owner shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto

liability insurance coverage provided shall not prohibit the Owner and Owner's employees or agents from waiving the right of subrogation prior to a loss or claim. The Owner hereby waives all rights of subrogation against the County.

Policies Primary and Non-Contributory – All policies required herein are to be primary and noncontributory with any insurance or self-insurance programs carried or administered by the County.

Severability of Interests – The Owner agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Owner and the County or between the County and any other insured or additional insured under the policy.

Proof of Coverage – The Owner shall furnish Certificates of Insurance to the County Department administering the contract evidencing the insurance coverage at the time the contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Owner shall maintain such insurance from the time Owner commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, the Owner shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

Acceptability of Insurance Carrier – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A-VII".

Deductibles and Self-Insured Retention - Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

Failure to Procure Coverage – In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by the Owner or County payments to the Owner will be reduced to pay for County purchased insurance.

Insurance Review – Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. Owner agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

22. The Owner agrees to provide insurance set forth in accordance with the requirements herein. If the Owner uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Owner agrees to amend, supplement or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the contract services.

Without in anyway affecting the indemnity herein provided and in addition thereto, the Owner shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

Workers' Compensation/Employers Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the Owner and all risks to such persons under this contract.

If Owner has no employees, it may certify or warrant to the County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management.

With respect to Owners that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

Commercial/General Liability Insurance – The Contractor shall carry General Liability Insurance covering all operations performed by or on behalf of the Contractor providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- (a) Premises operations and mobile equipment.
- (b) Products and completed operations.
- (c) Broad form property damage (including completed operations).
- (d) Explosion, collapse and underground hazards.
- (e) Personal injury
- (f) Contractual liability.
- (g) \$2,000,000 general aggregate limit.

Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If the Owner is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If the Owner owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

23. **Commercial Property Insurance** – Owner shall carry Commercial Property Insurance providing all risk coverage for the Premises, building(s), fixtures,

equipment and all property constituting a part of the Premises. Coverage shall be sufficient to insure one hundred percent (100%) of the replacement cost.

24. As a condition precedent to County's obligations under this Agreement, Owner warrants that to the best of its knowledge (i) the Premises and the property comply with the applicable requirements of all municipal, county, state, federal, and regulatory laws, statutes, codes, ordinances, and regulations for public and government buildings then in effect, including, but not limited to, applicable Health, Safety, Fire and Building codes, notice of completion, certificate of occupancy, California Title 24, and the Americans with Disabilities Act (collectively, "Laws"); (ii) an accessible path of travel exists from public transportation to the Premises pursuant to California Title 24 requirements; (iii) all improvements in or on the Premises and the property (whether constructed by Owner, prior tenants, or any third party) comply with all applicable covenants or restrictions of record for the property and all applicable Laws; (iv) Owner has not received any violations of Laws from any relevant government authority with respect to the Premises or the property; and (v) Owner has no knowledge of any pending or threatened claims of any violations of Laws from any third party with respect to the Premises or the property.

Owner covenants that Owner shall, at its sole cost and expense, maintain the Premises and the property in compliance with all applicable Laws for the duration of the Agreement. Owner represents and warrants to County that the foregoing is true and accurate as of the date this Agreement is executed by Owner. In the event of a breach of the foregoing representations, warranties, or covenants herein, Owner shall, at its cost and sole expense, promptly remedy any non-compliance with Laws and indemnify, defend (with counsel reasonably approved by County), and hold harmless County and its officers, employees, agents, and volunteers from any and all claims, actions, losses, damages and/or liability arising out of or related to said breach. Owner's indemnity obligation shall survive the expiration or earlier termination of the Agreement. In the event of that the Premises or the property requires modifications due to changes in Laws during the Agreement, Owner shall, at its sole cost and expense, promptly have such modifications completed.

Owner certifies to County that as of the commencement of this Agreement, an inspection of the Premises, the building(s), or the property has not been performed by a Certified Access Specialist in conjunction with the Agreement. Notwithstanding that an access inspection has not been performed, Owner remains obligated for the compliance of the Premises, the building(s), and the property with Laws for the duration of the Agreement. In the event that an access inspection is performed by Owner at any time during the Agreement, Owner shall provide County with a copy of the inspection report and Owner shall, at its sole cost and expense, promptly complete all required and recommended repairs and

modifications to the Premises, the building(s), or the property identified in the inspection report.

25. It is the responsibility of the Owner to notify County of Owner's procedures to address tenancy issues that may arise. County is not responsible for evictions or tenancy claims.
26. Owner hereby represents and warrants to County that to the best of its knowledge: (i) the Premises, the building(s), and the property have not been exposed to Hazardous Substances and are free of all Hazardous Substances; (ii) neither Owner nor any existing or former tenants or occupants at the Premises were or are in violation of or subject to an existing, pending or threatened investigation by any governmental authority under any applicable local, state, and federal law, regulation, ordinance or other legislation pertaining to air, water, or soil quality or the handling, transportation, storage, treatment, usage or disposal of Hazardous Substances; (iii) any handling, transportation, storage, treatment, usage, or disposal of Hazardous Substances at the Premises, the building(s), and the property has been or are in compliance with applicable laws; and (iv) no reportable use has occurred on the Premises, the building(s), and the property and the vapor, groundwater and soil on or under the Premises, the building(s), and the property is free of Hazardous Substances.

Owner shall indemnify, defend (with counsel reasonably approved by COUNTY), protect, and hold harmless County and its officers, employees, agents, and volunteers and the Premises, from any and all claims, actions, losses, damages, judgments, costs, expenses, penalties, and/or liability, including, but not limited to, attorneys' and consultant's fees, arising out of or related to the existence of any Hazardous Substances located in, on, under, or about the Premises, the building(s), and the property occurring: (i) prior to the commencement date and (ii) during the term of the Agreement to the extent not directly and solely caused by County. Additionally, the issuance of an order by any governmental authority directing Owner to cease and desist any illegal action in connection with a Hazardous Substance, or to remediate a contaminated condition caused by Owner or any person acting under Owner's direct control and authority is a default of the Agreement, and Owner shall be responsible for all costs and expenses of complying with such order, including any and all expenses imposed on or incurred by County in connection with or in response to such order. Owner's obligations under this paragraph shall include, but shall not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by County, and the cost of investigation, removal, remediation, restoration and/or abatement thereof. Owner's obligations under this provision shall survive the expiration or early termination of the Agreement. No termination, cancellation or release agreement entered into by County and Owner shall release Owner from its obligations under the Agreement with regard to Hazardous Substances unless

specifically agreed to by County in writing. Owner's indemnity obligation shall survive the expiration or earlier termination of the Agreement.

For the purposes of this Agreement, the following definitions shall apply:

i. "Hazardous Substance," as used in the Agreement, shall mean any product, substance, material, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (a) potentially injurious to the public health, safety or welfare, the environment or the Premises, the building(s), or the property; (b) regulated or monitored by any governmental authority; or (c) a basis for potential liability of Owner or County under any applicable statute or common law theory.

ii. "Reportable use" shall mean: (a) the installation or use of any above- or below-ground storage tank; (b) the generation, possession, storage, use, transportation or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with any governmental authority and/or (c) the presence at the Premises, the building(s), or the property of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises, the building(s), the property or neighboring properties.

iii. The term "applicable requirements" shall be deemed to refer to all applicable laws, covenants or restrictions of record, building codes, regulations and ordinances.

27. Owner represents and warrants to County that as of the commencement of this Agreement, the Premises, the building(s), and the property, including but not limited to all structural elements, the building systems, and other improvements thereon are in good working order, condition, and repair and water-tight. During the Agreement, Owner shall, at its sole cost and expense, provide the following services and perform all inspections, maintenance, repairs, and replacements as is necessary or as reasonably requested by County to keep in good working order, condition, and repair and water-tight, all structural elements, the building systems, and other improvements thereon, including but not limited to the following:

i. All structural and other elements of the Premises, building(s), and the property, inclusive of all components thereto and regardless of where situated on the Premises, including, but not limited to, the roof; foundation; slab; sub-flooring; façade; exterior and load-bearing walls; eaves, gutters, and downspouts; exterior windows, frames, and glass; exterior doors; lobbies, elevators, and stairs and stairwells; in the event of water intrusion, Owner shall repair any such intrusions and remediate any and all mold or other contaminants

and perform all recommended repairs in a report provided by its third-party contractors; and,

ii. All systems of the Premises, the building(s), and the property inclusive of all components thereto and regardless of where situated on the Premises, including, but not limited to, all mechanical, electrical, lighting, plumbing, water, and sewage and electric generators; plumbing maintenance shall include, but is not limited to, unclogging and repairing all drains, pipes, toilets, sinks, and other restroom fixtures and repairing water intrusion issues and remediation of mold and other contaminants regardless of cause; lighting maintenance shall include, but is not limited to, bulb and ballast replacements; and

iii. All heating, ventilation and air conditioning ("HVAC") systems of the Premises, the building(s), and the property, inclusive of all components thereto and regardless of where situated on the Premises; and

iv. All life-safety systems of the Premises, building(s), and the property, inclusive of all components thereto and regardless of where situated on the Premises, including, but not limited to, fire suppression; fire sprinklers; fire alarms; fire extinguishers; and exit signage; and

v. All grounds of the Premises, inclusive of all components thereto, including, but not limited to, parking lot, parking structures, accessible parking spaces, drive lanes, and driveways; sidewalks; fences and gates; exterior lighting.

28. Owner warrants and represents the Premises shall be readily accessible to and usable by individuals with disabilities in compliance with Title III of the Americans with Disabilities Act of 1990 and California Title 24, as amended from time to time and regulations issued pursuant thereto and in effect from time to time. Any cost incurred to cause the Premises to comply with said Act shall be borne by Owner.

29. 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 equipment when vacating the Premises.

30. Owner warrants that hotel staff will receive the same compensation as they would otherwise have received absent this Emergency Occupancy Agreement, including whether they are reassigned to another facility or relieved of duties for the duration of this Agreement and will re-hire any necessary staff if previously terminated, furloughed, or laid-off.

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

32. Owner shall, if applicable, append to this Agreement certain information on former County administrative officials (as defined below) who are employed by or represent Owner. The information provided includes a list of the full names of former County administrative officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of Owner. The information should also include the title/description of the official's last position with County, the date the official terminated County employment, the official's current employment and/or representative capacity with Owner, and the date the official entered Owner's employment and/or representation. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Administrative Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

33. The parties acknowledge and agree that the Agreement was entered into and intended to be performed in the County of San Bernardino, California. The parties agree that the venue for any action or claim brought by any party to the Agreement will be the Superior Court of California, County of San Bernardino. Each party hereby waives any law, statute (including but not limited to Code of Civil Procedure section 394), or rule of court that would allow them to request or demand a change of venue. If any third party brings an action or claim concerning the Agreement, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino.

34. The contacts for the day-to-day requirements are as follows:

County Representative:

Rhonesia Perry

rhonesia.perry@eda.sbcounty.gov

909-387-4328

Hotel Representative:

Pradeep Patel

Patellife@hotmail.com

909-888-0271

35. The County maintains written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts. No County employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the County may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.
36. The County and its contractors must comply with section 6002 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act. Owner shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired: competitively within a timeframe providing for compliance with the Agreement performance schedule, meeting Agreement performance requirements, or at a reasonable price.
37. For purposes of this Agreement, Owner agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 USC 7401-7674q) and the Federal Water Pollution Control Act as amended (33 USC 1251-1687). Any violation must be reported to the regional office of the Environmental Protection Agency, the California Governor's Office of Emergency Services, and FEMA. Owner agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.
38. Owner certifies that neither it nor its principals is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). Owner further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State. This Agreement is a covered transaction for purposes of 2 CFR 180 and 2 CFR 3000. As such the Owner is required to verify that none of the Owner, its principals, or its affiliates are excluded or disqualified. The Owner must comply with 2 CFR 180 subpart C and 2 CFR 3000 subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

39. Owner certifies, in compliance with Appendix A, 44 CFR Part 18 (which, by this reference, is hereby incorporated), 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 USC 1352. Owner shall disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal contract. 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 or use of the Premises. Owner and County also understand that they have not entered into any agreement with the occupants of the rooms related to the use of the Premises. **The occupants of the rooms are not persons who hire any dwelling unit from Owner or County within the meaning of California Civil Code section 1940. County is not responsible for evictions or tenancy claims.**
40. In the event of any dispute, question or disagreement arising from or relating to this Agreement or breach thereof, the parties hereto shall use their best efforts to settle the dispute, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.
41. Failure by Owner to comply with any of the provisions, covenants, requirements or conditions of this Agreement shall be a material breach of this Agreement. In the event of a non-cured breach, County may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Agreement:
- a. Afford Owner thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of County; and/or
 - b. Withhold funds pending duration of the breach; and/or
 - c. Offset against any monies due to Owner but yet unpaid by County those monies disallowed; and/or
 - d. Terminate this Agreement immediately.
42. Owner agrees to provide the County, the FEMA Administrator, or the Comptroller General of the United States, or any of their authorized representatives access to the documents, papers, books, and records of the Owner which are directly pertinent to this Agreement (and its funding sources) for the purposes of making audits and examinations. In compliance with the Disaster Recovery Act of 2018, the County and the Owner acknowledge and agree that no language in this

Agreement is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General.

43. This is an acknowledgement that FEMA financial assistance, California Homeless Emergency Aid Program funds, and/or HUD funds, or other federal and/or State financial assistance may be used to fund all or a portion of this Agreement relating to the provision of emergency shelter and/or eligible operational expenses. HUD Emergency Solutions Grant (ESG) funding, in an amount not to exceed \$366,531, may be used to fund Emergency Shelter Operations (576.102). The CFDA number for the ESG funding is 14.231 and the Federal Award Identification Number is E-19-UC-O60503. Owner will comply with all applicable laws, regulations, executive orders, policies, procedures, and directives.
44. 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.
45. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

(Signature Provisions on Following Page)

IN WITNESS WHEREOF, this Emergency Occupancy Agreement has been executed by the parties hereto as of the dates written below.


COUNTY OF SAN BERNARDINO

By: 

Gary McBride, Chief Executive Officer

Dated: 5/24, 2020

ORANGE SHOW HOSPITALITY INC.

By: 

Pradeep Patel, Owner

Dated: 5/22, 2020

EXHIBIT "A" SITE PLAN

EXHIBIT “B” OWNER’S SCOPE OF SERVICES

Owner’s staff shall provide the following materials a minimum of once every 7 days: new linens/towels, toiletries, shampoo, conditioner, soap, toilet paper and tissues. Owner’s staff shall stock and prepare all housekeeping carts prior to use by County or County appointed staff. Housekeeping carts shall be stocked with new linens/towels, toiletries, shampoo, conditioner, soap, toilet paper, tissues, and any cleaning/disinfecting supplies as needed. Owner’s staff shall remain responsible for general cleaning and janitorial services except those outlined in Exhibit C. Owner’s staff to coordinate with County to develop policies and procedures for hotel staff to facilitate the use of the Premises for the purposes outlined in this Agreement. All housekeeping/janitorial services shall be provided in accordance with any applicable health and safety protocols established by public health officials.

Owner shall establish a main point of contact or main points of contact for County or County appointed staff. Owner’s point of contact shall schedule, coordinate, and assign all daily duties for County or County appointed staff for the duration of this Agreement. Owner point of contact shall coordinate County or County appointed staff schedules with County Representative. Any issues or incidents involving County or County appointed staff shall be communicated to the County Representative. Owner and County Representative will work together to mitigate any issues or incidents in good faith.

Owner shall provide all necessary details County requires for funding.

The Premises will contact the Service Coordinator listed on the reservation request to report any customer issues, violations, etc. When a relocation is necessary, the Premises will allow 24 hours, after a relocation request to the Service Coordinator, for the relocation to be coordinated and completed.

The Premises shall provide disposable plastic bags to occupants at check in, one (1) for each week occupant will be in residence. Occupants shall collect soiled linens and towels each week and place them outside the room, sealed in the disposable bag. County or County appointed staff shall collect soiled linens and leave fresh linens/toiletries outside occupant’s door. Premises staff shall supply fresh linens and toiletries to County or County appointed staff to distribute to occupants each week. Premises staff shall provide additional disposable plastic bags as needed. Occupants shall be notified via knock or phone call when delivery is complete. Premises staff shall notify occupants of the completion of all pick-ups/deliveries via phone call if requested by County or County appointed staff. Premises staff is NOT required to enter occupant rooms for housekeeping services.

Owner shall be responsible for any and all property repairs to the Premises, above general maintenance of rooms occupied.

Owner will assign rooms and provide map of property to guests.

EXHIBIT “C” ANTICIPATED PLAN OF SERVICES TO BE PROVIDED BY COUNTY

1. The County shall, at its own expense, procure and arrange for security to be present at the Premises 24 hours a day. Security shall assist with any occupant issues and shall perform rounds in the hallways, lobby, and outdoor portions of the Premises.
2. The County shall, at its own expense, procure and arrange the delivery of meals to the Premises. The Premises shall store all meals delivered, up to one (1) days' worth of provisions. County or County appointed staff shall deliver daily portions to occupant's door and occupant shall be notified via knock and / or phone call when delivery is complete. County or County appointed staff may request occupants be notified of deliveries via phone call by Premises staff following the completion of all deliveries.
3. The County shall, at its own expense, provide housekeeping staff during the term of this Agreement. County or County appointed staff shall be responsible for picking up all soiled linens and trash from outside occupant rooms, delivering fresh linens and reusable bags to occupant rooms, and delivering all meals to occupant rooms. All deliveries may be placed on the ground outside of occupant rooms, County or County appointed staff may knock on occupants' doors following the completion of deliveries in lieu of requesting notification phone calls by Premises staff. County or County appointed staff shall utilize Owner's laundry vendor or onsite laundry facility to clean soiled linens collected from occupants' rooms. County or County appointed staff is not responsible for any damaged or lost linens.
4. Will abide by room capacity of single and double occupancy per room. Only service animals allowed.
5. Basic Operations for Housekeeping: Hotel staff will prepare housekeeping carts and linens for County appointed staff 2-3 times a week – cleaning. Designated day crew to clean 20 room per day based on preferred cleaning schedule. Designated night crew to wash sheet and towels fold for morning crew. Hotel Manager to coordinate housekeeping, laundry and maintenance temp staff. Hotel to provide cleaning supplies.
6. Will follow Owners recommendation to safe guard inventory of 4-6 rooms for back up rooms (Store supplies, staff rest or room moves due to maintenance issues)
7. Hotel management will assign rooms and provide map of property to guest
8. The County shall, at its own expense, procure and arrange for mobile laundry services to be set up on site. County or County appointed staff shall utilize the

mobile laundry services to clean all soiled towels and linens.

9. The County will provide personal protection equipment for County or County appointed staff. Owner shall provide all disinfectant supplies and shall be responsible for ordering additional quantities as needed.
10. The County will pay a flat fee to \$75,000 to Owner for Risk Mitigation / Decontamination / Damages / Cleaning fees. Payment of Risk Mitigation / Decontamination / Damages / Cleaning fee will be made along with the final invoice following the termination of this Agreement. Upon Agreement termination the Owner shall submit a separate invoice with proper documentation to the County. Proper documentation includes but is not limited to photos of damage, invoices or estimates from 3rd party cleaners, or itemized lists of cleaning activities to be performed by hotel staff.
11. The County will make reservations directly to Premises. The check-out date will be upheld by the Premises. County will enforce zero tolerance of any misconduct of guests during the duration of stay.

EXHIBIT D

Owner agrees to provide all necessary details about occupancy including, but not limited, to: invoices, occupancy reports including check-in dates, check-out dates, and rooming list including room numbers; number of persons housed in a format specified by the County.

INSERT DETAILS NEEDED FOR FUNDING REQUIREMENTS AND/OR SAMPLE INVOICE