

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



Contract Number
20-879

SAP Number

County Administrative Office

Department Contract Representative
Telephone Number

Rhonesia Perry
909-387-4328

Contractor
Contractor Representative
Telephone Number
Contract Term

Ayres – Redlands, LP
Gregg Kleminsky
(909) 335-9024
August 28, 2020-December 31,
2020

Original Contract Amount
Amendment Amount
Total Contract Amount
Cost Center

Up to \$ 1,337,144.76

Up to \$ 1,337,144.76

Briefly describe the general nature of the contract:

This is an Agreement with Ayres – Redlands, LP for the provision of accommodations in an Isolation Capacity as a response to COVID-19 for first responders, healthcare personnel, county staff, and agents while the public health exigency and/or emergency situation exists.

FOR COUNTY USE ONLY

Approved as to Legal Form

Suzanne Bryant, Deputy County Counsel

Date 9-23-2020

Reviewed for Contract Compliance

Date

Reviewed/Approved by Department

Date

Ayres – Redlands, LP

County of San Bernardino Preferred Rate Agreement

This Preferred Rate Agreement (Agreement) is entered into for the period effective from August 28, 2020 to December 31, 2020, between County of San Bernardino (County), and Ayres – Redlands, LP (Owner). These room(s) will be used to include, add, and hold in the “Isolation Capacity” as a response to COVID-19 for first responders, healthcare personnel, county staff, and agents. The Agreement specifically excludes housing of Homeless and transitional individuals unless Owner authorizes acceptance of this clientele in writing in advance of any placement. As of the Effective Date, the preferred room rate is “last room availability (LRA)” in the event of immediate occupancy.

Authorized Representative Name (s): Marissa Kramer , General Manager Gregg Kleminsky, Vice President – Controller	
Title: General Manager	Reservation Phone: 909-335-9024
Complete Property Street Address: 1015 W. Colton Ave., Redlands, CA 92374	
Total Number of Room(s) on property: Up to 107 Rooms	
PROPERTY Reservation Email Address: mkramer@ayreshotels.com	
PROPERTY Owner’s Full Name: Ayres – Redlands, LP	PROPERTY Owner Phone: 909-335-9024
PROPERTY Owner’s Email Address: N/A	
PROPERTY Owner’s Complete Mailing Address: 1015 W. Colton Ave., Redlands, CA 92374	

THE PROPERTY OWNER/AUTHORIZED REPRESENTATIVE AND THE COUNTY AGREE THAT:

1. This Agreement shall be governed by the laws of the State of California.
2. The Owner is the owner of, or is the authorized representative of the owner of, the property located at 1015 W. Colton Ave., Redlands, CA 92374.
3. The Owner will ensure that the PROPERTY will hold preferred room rate for usage till last available room is sold. The County will notify hotel to reserve a room under the contract terms within 4 hours of occupancy.
4. Both parties agree that a credit card will be placed on file, however billing will be charged to a master account that is paid monthly based upon checkout date. The

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PROPERTY is required to submit invoice(s) to the COUNTY by the last day of the month for reservations that have checked out within the month (i.e. submit invoice for payment for the month of July by July 31st.) Payment remittance will be within 30 days of receipt. Either party may terminate this Agreement upon 30 days written notice to the other party. The COUNTY will only make payment on rooms actually occupied.

5. The COUNTY will make reservations directly to the Property via email to the Service Coordinator, and personnel ID will be required for check in verification. All reservations will be made for up to 14 consecutive days, unless otherwise noted. The check-out date will be upheld by the PROPERTY unless the COUNTY communicates an extension is needed. If such extension is requested by County, notification will be sent directly to the Property via email to the Service Coordinator within 24 hours. Should an extension be needed by the COUNTY on a Saturday, communication with the Property Front Desk will be via phone call and email sent by the COUNTY to the PROPERTY to verify the extension.
6. The PROPERTY will contact the Service Coordinator listed on the reservation request to report any customer issues, violations, etc. When a relocation is necessary, the PROPERTY will allow 24 hours, after a relocation request to the Service Coordinator, for the relocation to be coordinated and completed.
7. THE COUNTY will pay up to \$400 in Risk Mitigation / Decontamination Cleaning fees for each occupied room per occupancy. Approved fees with proper documentation must be submitted to the COUNTY from the PROPERTY. Proper documentation includes but is not limited to photos of damage, invoices from 3rd party cleaners, or itemized lists of cleaning activities performed by hotel staff.
8. The daily room rate of \$90.00 per diem is exclusive of transient occupancy tax (TOT), in the event County guests are exempt from TOT exemption certificates will be provide by the County or the County's guest will provide exemption certificates to meet the City's exemption requirement.
9. The COUNTY shall procure and arrange the delivery of meals to the PROPERTY. The PROPERTY shall store all meals delieverd, up to one (1) weeks' worth of provisions, and deliver one (1) breakfast meal, one (1) lunch meal and one (1) dinner meal per day to each room occupied under this contract. PROPERTY staff shall deliver meals to occupant's door and occupant shall be notified via knock or phone call when delivery is complete. PROPERTY staff is NOT required to enter occupant rooms for meal delivery. The PROPERTY will provide housekeeping a minimum of once every 7 days to collect and replenish sheets, towels, and any

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toiletries (shampoo, conditioner, soap, etc.) for the occupant. The PROPERTY shall provide disposable plastic bags to occupants, one (1) for each week occupant is in residence. Occupants shall collect soiled linens and towels each week and place them outside the room, sealed in the disposable bag. PROPERTY staff shall collect soiled linens and leave fresh linens/toiletries outside occupant's door. Occupants shall be notified via knock or phone call when delivery is complete. PROPERTY staff is NOT required to enter occupant rooms for housekeeping services.

10. THE COUNTY customers will stay a maximum of 14 days unless an extension is requested. It is the responsibility of the PROPERTY to notify THE COUNTY if any rooms remain occupied after the 14th day.
11. Exhibit A is hereby incorporated by this reference and agreed to by the parties.
12. 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.

SUMMARY OF PAYMENT

THE COUNTY agrees to pay PROPERTY Owner:

Daily room rental amount:	\$ 90.00
Up to 107 Rooms	

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ACCEPTANCE OF TERMS AND CONDITIONS

PROPERTY Owner/Authorized Representative:

I am the owner/agent of the property listed above. I agree to accept payment from the COUNTY for PROPERTY room payment assistance for the COUNTY Customers. I understand the terms and conditions of this agreement and am willing to abide by them.

Name of PROPERTY Owner/Authorized Representative: Marissa Kramer or Gregg Kleminsky

Signature: Marissa Kramer

Date: 9/9/2020

County of San Bernardino:

Authorized Representative: Gary McBride, Chief Executive Officer

Signature: [Handwritten Signature]

Date: 9/14/20

Approved as to Legal Form:

Suzanne Bryant, Deputy County Counsel

Signature: [Handwritten Signature]

Date: 9-11-2020

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EXHIBIT A TO PREFERRED RATE AGREEMENT

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 will help protect the public health and safety, lessen and/or avert the threats created by these exigent and emergency situations

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.

- 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. 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.
1. 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

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the evaluation and treatment of employees and applicants for employment are free of such discrimination.

2. 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.
3. 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 the Agreement from any cause whatsoever relating to or in any way connected with or arising from the use, occupancy, or operation of the Premises, including the acts, errors or omissions of any person and for any costs or expenses incurred by County on account of any claim 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.
4. Commercial/General Liability Insurance – Owner shall carry General Liability Insurance covering all operations performed by or on behalf of Owner 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.
5. 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.

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6. 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.
7. If Owner has employees as defined by the State of California, Owner shall procure and maintain Workers' Compensation Insurance, in full compliance with the Workers' Compensation and Occupational Disease Laws of all authorities having jurisdiction over the Property. Such policy shall include Employer's Liability (Coverage B) and Occupational Disease coverage, with limits not less than One Million Dollars (\$1,000,000) per person, per occurrence. Policy shall provide a Waiver of Subrogation in favor of the County.
8. As a condition precedent to County's obligations under this Agreement, Owner warrants that (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

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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.

9. It is the responsibility of the County to ensure occupants vacate Owner's guestrooms in a timely manner. Owner will assist the County with removal. It is the County's obligation to pay for occupied rooms until occupants permanently leave Owner's guestrooms.
10. 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.
11. 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.
12. 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.
13. 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

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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.

14. 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.
15. 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.
16. 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>). Consultant 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.
17. Owner certifies 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.
18. 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.
19. Termination: Either party may cancel the Agreement upon 30 days written notice. In the event a legal challenge is made or threatened regarding the Agreement between the County and Owner, either party may cancel the Agreement immediately without penalty or further liability. In the event of such an immediate cancellation, both parties will diligently work to sever the relationship as quickly as possible; no new guests will be sent to the hotel or accepted as guests and when existing guests complete their quarantine period, the guest will check out immediately.

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20. 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.

Failure by County to comply with any provisions, covenants, requirements or conditions of this Agreement shall be a material breach of this Agreement. In the event of a non-cured breach, Owner may, at its sole discretion and in addition to any other remedies available by law, in equity, or otherwise specified in the Agreement:

- a. Afford County thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of Owner; and/or
- b. Terminate this agreement immediately.

The County remains responsible for all charges, including room, taxes, and decontamination/cleaning fees up to \$400 through the removal of all County occupants. All unpaid charges and final charges are due Net 30 Days upon receipt of a non-disputed invoice.

21. 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.

22. Owner shall provide all necessary details County requires for funding.