

CITY OF MONTEBELLO
CALL AND NOTICE OF A SPECIAL MEETING

**PLEASE TAKE NOTICE THAT THE MAYOR HAS CALLED A
SPECIAL MEETING AS FOLLOWS:**

**CITY OF MONTEBELLO CITY HALL
CITY COUNCIL CHAMBERS
1600 WEST BEVERLY BOULEVARD
MONTEBELLO, CALIFORNIA¹
WEDNESDAY, NOVEMBER 15, 2017 – 5:00 P.M.**

FOR THE PURPOSE OF THE FOLLOWING:

OPENING CEREMONIES

1. **CALL MEETING TO ORDER:** Mayor Romero
2. **ROLL CALL:** City Clerk I. Barajas
3. **INVOCATION**
4. **PLEDGE OF ALLEGIANCE**
5. **STATEMENT OF PUBLIC ORAL COMMUNICATIONS:** Members of the public interested in addressing the City Council during this Special Meeting may only address the items which have been described in the notice of this Special Meeting in accordance with Government Code Section 54954.3(a). If you wish to speak on said item, please fill out a form provided at the door, and turn it in to the City Clerk prior to the beginning of Oral Communications so that you will have an opportunity to speak before or during consideration of that item. This also includes any request for Public Oral Communications on items listed for Closed Session prior to the City Council recessing into Closed Session.

Please be aware that the maximum time allotted for individuals to speak shall not exceed three (3) minutes per speaker. Please show courtesy to others and direct all of your comments to the Mayor.

***IN CONSIDERATION OF OTHERS, PLEASE TURN OFF, OR MUTE,
ALL CELL PHONES AND PAGERS.***

PUBLIC ORAL COMMUNICATIONS

¹ *In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Building Official at 323/887-1497. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.102-35.104 ADA Title II)*

CLOSED SESSION

The City Attorney shall provide a briefing on the item listed for Closed Session as follows:

- 6. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**
Government Code Section 54956.9(d)(1)
Various Workers' Compensation matters. Case names unspecified due to disclosure would jeopardize existing settlement negotiations.

- 7. PUBLIC EMPLOYEE APPOINTMENT/EMPLOYMENT**
Government Code Section 54967
Title: Fire Chief
Title: Director of Community Development
Title: Interim City Manager

- 8. PUBLIC EMPLOYEE DISMISSAL/DISCIPLINE/RELEASE**
Government Code Section 54957(b)(1)

OPEN SESSION

- 9. HILTON GARDEN INN MANAGEMENT AGREEMENT WITH HOTEL ADVENTURES LLC**

COMMENT: The City Council will consider a new Hotel Operations, Management, and Maintenance Agreement with Hotel Adventures, LLC, for the Hilton Garden Inn. The current agreement is scheduled to expire in December, and staff recommends that the City continue to retain an experienced qualified professional to provide hotel management services to ensure continued success of the facility.

RECOMMENDATION: That the City Council: (1) approve a Hotel Operations, Management, and Maintenance Agreement with Hotel Adventures, LLC, for the management of the Hilton Garden Inn, in substantially the form as presented, with the final Agreement subject to the review and approved by the City Attorney and Bond Counsel to ensure conformance with the bond indenture and covenants; and (2) authorize the Mayor to execute the Agreement in final form.

ADJOURNMENT



LILLIAN GUZMAN, Deputy City Clerk
November 14, 2017

CITY OF MONTEBELLO

CITY COUNCIL AGENDA STAFF REPORT

TO: Honorable Mayor and City Council Members

FROM: Danilo Batson, Assistant City Manager
Arnold M. Alvarez-Glasman, City Attorney

SUBJECT: Hilton Garden Inn Management Agreement with Hotel Adventures LLC

DATE: November 15, 2017

RECOMMENDATION

That the City Council: (1) approve a Hotel Operations, Management, and Maintenance Agreement with Hotel Adventures, LLC, for the management of the Hilton Garden Inn, in substantially the form as presented, with the final Agreement subject to the review and approved by the City Attorney and Bond Counsel to ensure conformance with the bond indenture and covenants; and (2) authorize the Mayor to execute the Agreement in final form.

BACKGROUND

The City has received a request from the current Hilton Garden Inn hotel operator to renew their operations and management agreement which is due to expire December of this year.

On or about November 29, 2001, and in conjunction with construction of the Hilton Garden Inn ("HGI"), the City entered into a Hotel Management Agreement ("Agreement") with Hotel Adventures LLC, a California limited liability company. Because the City and its staff lack the specialized experienced necessary to conduct the day to day operations and management of the HGI, through the Agreement the City retained the professional services of Hotel Adventures to provide these services on its behalf.

The term of the Agreement was fifteen (15) years commencing with HGI's opening, and required Hotel Adventures to, among other things, maintain, manage, and operate all aspects of the HGI's operations. In consideration for these services, the pays Hotel Adventures an Operations Management Fee that, during the most recent fiscal year was approximately \$230,174. This amount is funded from the HGI's operating revenues.

Because construction of the HGI was funded with bond monies, the Operations Management Fee is subordinate to debt services obligations which are also paid from hotel operating revenues. If hotel revenues are insufficient to pay both debt service and the Operations Management Fee, the latter is deferred with interest until adequate revenues are available.

Hotel Adventures has requested a renewal of their agreement for an additional thirty (30) years. The City's Bond Counsel has reviewed the proposed Agreement and has expressed concerns regarding the length of the term. Hotel Adventures has revised their proposed Agreement with attempts to address Bond Counsel's comments.

ANALYSIS

Over the fifteen (15) year term of the Agreement, the HGI has been an extremely successful facility and is a popular destination for City residents and visitors alike. The HGI has generated adequate operating revenues to make scheduled debt service payments, and City staff has been extremely satisfied with the services provided by Hotel Adventures.

With the current term scheduled to expire, Hotel Adventures is requesting the City Council approve an updated version of the Agreement. The material terms of the proposed new agreement are as follows:

- The new Agreement would commence on December 18, 2017, and would continue for a thirty (30) year term;
- The proposed Management Operations Fee is \$596,000 per year (over \$100,000 less than the management fee for Home2Suites), subject to annual CPI adjustments; and
- The terms of the new Agreement are otherwise essentially identical to the Hotel Management Agreement approved relatively recently for the new Home2Suites hotel that is currently under construction.

If the City Council approves the new Agreement with Hotel Adventures, staff recommends that the Agreement be circulated for final review by bond counsel to ensure its terms are consistent with the bond indenture and related covenants, and that bond counsel be authorized to make non-substantive changes needed to comply with the same.

SUMMARY

The City Council will consider a new Hotel Operations, Management, and Maintenance Agreement with Hotel Adventures, LLC, for the Hilton Garden Inn. The current agreement is scheduled to expire in December, and staff recommends that the City continue to retain an experienced qualified professional to provide hotel management services to ensure continued success of the facility.

ATTACHMENTS

Proposed Agreement

4813-8179-7972, v. 1

AGREEMENT NO. XXXX

HOTEL OPERATIONS, MANAGEMENT AND MAINTENANCE

AGREEMENT

BETWEEN

CITY OF MONTEBELLO

AND

HOTEL ADVENTURES LLC

FOR

HILTON GARDEN INN BY HILTON

HOTEL OPERATIONS, MANAGEMENT AND MAINTENANCE

AGREEMENT

This Hotel Operations, Management and Maintenance Agreement ("Agreement") dated October 31, 2017 is by and between the City of Montebello, (hereinafter "City") and Hotel Adventures LLC, a California limited liability company, (hereinafter "HALLC") for Hilton Garden Inn by Hilton.

RECITALS

- A. The City owns certain real property (the "Site") located in the City of Montebello known as 801 Via San Clemente and surrounded by the Montebello Championship Golf Course, Country Club, Quiet Cannon and Hilton Home2 Suites (the "Golf Course Property"), all to be known as the "CAMPUS". The City desires the operations, management and maintenance of a premium hotel facility on the Site (the "Hotel Facility") and desires to enter into an agreement with HALLC to continue to provide the Hilton Garden Inn by Hilton Franchise, operate and manage and maintain said hotel facility.
- B. The City has no expertise or experience with respect to operating, managing, maintaining, renovating, and creating an actionable long-term business plan for a hotel that will work in synergy with the existing Montebello Championship Golf Course, Home2 Suites by Hilton and Quiet Cannon Conference and Event Center, the Campus.
- C. The City desires experienced business ownership with quality operations, management and hotel room sales and marketing experience and services for the Hotel Facility with an ongoing business plan for the continued success of the operation. These services must provide the expertise and competent management in planning, design, renovation, maintenance, fiscal management to enhance City revenues and optimize the synergy between multiple operations on the golf course to bring a "Campus Environment and Guest Experience" to the golf and hospitality complex and optimize the use of the Hotel Facilities (as defined below), develop and manage a marketing, promotion and sales team, enhance the reputation and image not only for the Hotel Facility but the entire CAMPUS, Montebello business community and the entire City of Montebello. The CAMPUS consisting of the Golf Course, Quiet Cannon Conference and Events Center, Home2 Suites by Hilton and the Hilton Garden Inn have a major impact on the overall image of the City of Montebello as viewed by the community at large and Southern California Cities, businesses, visitors, and guests.
- D. The HALLC Team is in the business of developing, operating, managing, maintaining, and improving hotel facilities such as the services and facilities described herein this Agreement. The HALLC Team possesses the knowledge, skill, and experience necessary to provide the quality and level of services, which the City desires.
- E. The City is desirous of having HALLC provide the services described above with respect to the Hilton Garden Inn Franchise, business plan and development, operations management, maintenance, and renovation of the Hotel Facility commencing on the beginning of the Operations Phase (as defined below) and HALLC desires such engagement on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises, contained herein and other considerations the sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

ARTICLE I.
OPERATIONS PHASE

Section 1.1 Term.

The "Operations Phase" shall commence on December 18, 2017 and shall continue for thirty (30) years.

Section 1.2 Designation and Appointment.

The City hereby designates and appoints HALLC as its agent with the authority to plan and develop business, provide franchise, manage, operate, market, promote, maintain, and renovate the Hotel Facility during the Operations Phase as defined herein and HALLC accepts such designation and appointment.

Section 1.3 HALLC's Operations Phase Management Services.

In connection with the performance of its responsibilities hereunder, HALLC shall act consistent with the terms of this Agreement. HALLC's specific responsibilities during the Operations Phase will include, but not be limited to the following:

- (a) Hotel Facility Maintenance. Maintenance services for the Hotel Facility will be provided by HALLC and HALLC will be responsible for the performance elements of the electrical and mechanical systems, building exterior, drains, roof, entrance, exterior building lighting, interior promenades, and walkways. Such maintenance shall also include custodial cleaning services, pest control and trash removal. Maintenance includes repairs, routine preventative maintenance, and any other activities necessary to maintain the Hotel Facility in first class condition and useable on all occasions as a Hotel Facility. HALLC will also enter into and maintain in effect any and all janitorial, custodial, housekeeping. City shall be responsible for separately maintaining those exterior items excluded including utilities to the facility and the maintenance thereof along with street frontage and parking lot lighting, surfacing of street, parking lots, public sidewalk, curb and gutter and street frontage, parking lot and building landscape and irrigation in a design and standard suitable to a first-class hotel and HALLC. Said HALLC maintenance shall be paid out of operating funds as incurred.
- (b) Hotel Renewal and Replacement (hereafter "R&R"). HALLC shall be responsible for the collection of Gross Revenues (as defined in the Indenture) generated by the Hotel Facility. Gross Revenues shall be deposited with the Trustee into a separate trust account for the Hotel Facility and for allocation to the Revenue Fund held by the Trustee, all in accordance with the Indenture. Amounts in the Revenue Fund for Renewal and Replacements ("R&R") is to be spent on Hotel Facility and deposited by the Trustee each June and December to an R&R fund as provided in the Indenture. R&R planned and executed by HALLC shall be approved by City Manager and Trustee (which approvals shall not be unreasonably withheld). Upon payment in full of all Hotel Bond debt during the term herein, HALLC shall no longer pay the monthly amounts over \$100,000.00 Hotel Operating account balance to the Bond Trustee but rather wire transfer funds direct to a City established separate bank account as so designated by the City Council or City Manager. The R&R portion shall be wire transferred monthly into a separate City Hotel R&R account as designated by City Council or City Manager at 5% of the monthly Gross Revenue which shall specifically be designated for Hotel R&R and may only be designated, approved, withdrawn, and utilized for Hotel R&R by the written approval of both City Manager and HALLC. Said account and approvals shall require both signatories and not be unreasonably withheld in order to keep the Hotel in a first-class condition. All withdrawals and expenditures out of the Hotel R&R account must go from the separate Hotel R&R account to the Hotel Operating Account where it will only be spent on Hotel R&R. Any funds from the R&R account that are placed

in the Operating Account that are not spent on Hotel R&R shall be returned to the R&R account for future Hotel R&R use.

- (c) Operational Services and Management. HALLC will be responsible for services required to operate the Hotel Facility in a first-class manner including but not limited to: the hiring, training and development of professional managerial staff; hiring, training and development of employee staff; communication with and adherence to the brand standards of Hilton Worldwide; development of protocols and procedures to be initiated and maintained for the benefit of guests with regards to sales, housekeeping, food and beverage, and overall hospitality.
- (d) Marketing, Promotions & Sales. HALLC will provide and train sales personnel for the sales of both guest rooms and meeting spaces. HALLC will also provide full marketing and promotions of Hotel Facility, utilizing both community and Internet based marketing including but not limited to: high quality photography, virtual tours, website development, community involvement, community promotion, traditional advertising, social media marketing and Hilton Worldwide Marketing, Advertising, and Promotion. HALLC will also provide expertise with regards to marketing and maintaining high quality online website services.
- (e) Reputation and Image of the City. HALLC has created and shall maintain an image for the Hotel Facility that will enhance not only the reputation and image of the Campus, but also the City both in terms of the business community and the City as a whole.
- (f) Synergy Between Hotels, Golf Course & Quiet Cannon Conference & Events Center. HALLC will create and maintain a synergistic relationship between the Hilton Home2 Suites and the Hilton Garden Inn (collectively, the "Hotel Facilities") for the mutual benefit of both Hotel Facilities in attracting and maintaining guests. Due to the creation of synergy between the two Hotel Facilities and their ability to work in unison for the benefit of the City in optimizing Occupancy, ADR and City Revenues between the Hotel Facilities FBO City. HALLC will also create and maintain a symbiotic relationship between the Quiet Cannon Conference & Events Center in attracting room stays from and for events. Notwithstanding the foregoing, while there is still tax-exempt bond financing, patrons of the Quiet Cannon Conference & Events Center shall have no greater rights to or more favorable terms for the use of or access to the Hotel Facilities than any other entity booking under contract or frequently booking multiple rooms. This shall not preclude programs, incentives or offers which benefit the intended purposes of or the synergy between the Quiet Cannon Conference & Events Center and/or the Hotel Facilities, but which do not bestow upon or benefit any patron or customer of the Quiet Cannon or conversely the Hotel Facilities in any manner different than any other member of the general public booking under contract. The intended synergistic result of the Quiet Cannon and the Hotel Facilities is to enhance the number of patrons available for the Hotel Facilities, but will not include joint marketing efforts which benefit the private business interests of the Quiet Cannon Conference & Events Center unless paid proportionally as applicable to Quiet Cannon Conference and Event Center. All operations shall work toward a Campus environment.
- (g) Security/Emergency. HALLC will arrange for all security/emergency services plan for general facilities security/emergency; HALLC shall prepare a security/emergency plan which will include both emergency and non-emergency procedures and protocols to be followed by HALLC and contracted Security Personnel.
- (h) Revenues and Expenditures. Subject to this Agreement and consistent with the Indenture, HALLC will be responsible for the collection of revenues generated by the Hotel Facility, including promptly instituting and diligently pursuing collection actions for unpaid receivables on behalf of the City. HALLC shall deposit all such revenues on a daily basis in an account with an FDIC insured institution selected by HALLC ("Operating Account"). Amounts contained in the Operating Account shall be transferred and applied in a manner

consistent with the Indenture. HALLC is authorized to make disbursements from the Operating Account to pay all operating costs and expenses prior to transferring all sums in excess of \$100,000 monthly. The City is hereby authorized, at any time, to obtain information and records from the depository concerning the deposit account and to inspect the same, and the bank may rely on this Agreement in providing such information without the need for further documentation, provided, however, that if the depository requires further assurances from HALLC to provide such information, HALLC shall promptly provide such assurances to the depository. In its discretion, HALLC may offer discounted and no charge rates incentives, satisfaction promotions, marketing, special event, charitable and generally accepted hospitality industry practices, including but not limited to Hilton or other hospitality recognized programs. Upon payment in full of all bonded indebtedness by Bond Trustee, HALLC shall transfer said monthly sums directly to City in a special separate Bank account as designated by City Council.

- (i) Hilton Garden Inn. Unless mutually agreed between HALLC and the City, during the term of this Agreement, the Hotel Facility shall be operated as the Hilton Garden Inn Los Angeles/Montebello, pursuant to a Franchise agreement between HALLC and the Hilton Hotels Corporation.
- (j) Insurance. HALLC will obtain and maintain on behalf of the City any and all insurance necessary for the building and operation of the Hotel Facility through a qualified insurance broker selected by HALLC, subject to approval of the City Manager, which shall not unreasonably be withheld. Such insurance may include any policy or self-insurance program subject to the approval of the City Manager, which shall not be unreasonably withheld. The premium on each such insurance policy shall be considered an operating expense.
- (k) Structural Soundness. HALLC shall immediately notify the City of any condition that affects or impairs, or threatens to affect or impair, the structural integrity or soundness of the Hotel Facility observed during the ordinary course of HALLC's operation of the Hotel Facility.
- (l) Employees. HALLC shall be responsible for employing or contracting with a leasing company to provide for all personnel as necessary for the fulfillment of its responsibilities as required by this Agreement. Any compensation paid to any employee or said leasing company shall be an expense to the operation.
- (m) Safety and Loss Control. Reasonable care shall be exercised at all times by HALLC for the protection of all persons in the Hotel Facility, including personnel and property. HALLC shall exercise reasonable care to detect and minimize hazards and shall take prompt action where loss control and/or safety measures should be reasonably expected.
- (n) Hotel Guest Golf Reservations. Upon request to the City's golf pro, made by a guest directly or through HALLC's General Manager or Manager on Duty, any individual while a guest at the Hotel Facility shall receive preferred golf course starting times. Such preference shall be exclusively for the personal use of the guest and not for any business use. City, through its golf pro, will accommodate such requests for preferred golf course starting time, subject to those times having already been reserved; provided, however, that the City need not accommodate such a request if it is for a preferred starting time on a day of a scheduled tournament. The purpose of this subparagraph is to facilitate the accommodation of golfing requests of guests while staying at the Hotel Facility and must not be read otherwise to extend to HALLC or any other person engaged in any trade or business any right or interest in the operations of the golf course, the setting of its starting times or the conduct of any other golf course related operation.
- (o) Maintain the Hotel Facility for Operations. Such responsibility shall include, though not

necessarily be limited to the following:

- (p) Staffing. Define job descriptions and develop personnel policies. Recruit and train staff, required personnel, including on-site management personnel who may be employed through a leasing company selected and contracted with HALLC, at the option of HALLC. While the ultimate decision with regard to the selection and hiring of employees shall rest exclusively with HALLC, HALLC shall use its best efforts to recruit and employ qualified local residents.
- (q) Food and Beverage Services. Quiet Cannon Montebello Inc. shall continue to provide all hotel food and beverage operations for the period of the Operations Phase per the Food and Beverage Agreement between Quiet Cannon Montebello Inc and HALLC as was approved and acknowledged by City;
- (r) Accounting Systems. HALLC shall develop cash handling procedures and implement charts of accounts and total accounting system, including but not limited to payroll, accounts payable, general ledger accounts and managerial reports all to be audited, managed, and supervised by HALLC controller at cost. The implementation of these procedures and systems shall be reviewed by independent accountants employed by the City in connection with their annual examination.
- (s) Bond Indenture Procedures. Review and adhere to procedures set forth in the bond Indenture entered into by and between the City and The Bank of New York Mellon Trust Company, N.A. as Trustee (the "Indenture").
- (t) Operational & Managerial Services. Perform such other operational and managerial services consistent herewith as the City may reasonably require.
- (u) Annual Budget. Prepare and submit to the City the Annual Operating Budget no later than the first business day of November of each year.
- (v) Hotel Inspections. Once every quarter Hilton Garden Inn is to be inspected by the HALLC Team and receive a written review to be kept on file at the Hotel. Said review shall consist of a complete physical inspection of the entire facility and property, a financial review, an accounting and procedure review, an employee file, procedure and practices review, and a Food and Beverage and Health review. Semi-Annually Hilton Worldwide shall conduct a comprehensive Hotel Evaluation and Quality Assurance Audit consisting of all the above reviews and additional reviews of all Hilton Worldwide and Hilton Garden Inn Brand Standard, Policies, Procedures, and Documentation. HALLC will receive a Hilton Worldwide score every six months and although a passing quality assurance and evaluation score may be acceptable to Hilton Worldwide and the City, the HALLC Team will not be satisfied with anything less than an outstanding rating of 95%+ for each and every inspection.
- (w) Accounting Books and Records. HALLC shall provide Daily Financial Reports and Monthly Financial Statements of Hilton Garden Inn by email to City Manager and Director of Finance. The City Manager shall provide a summary of the Monthly Financial Statements of Hilton Garden Inn to the City Council on a quarterly basis, with any proprietary and confidential information redacted as directed by the City Attorney. HALLC hereby agrees that such information may be provided to the City Council, and shall work with the City Manager to timely make such information available to the City Council.
- (x) Public Relations & Community Involvement. HALLC shall be responsible for

public relations with regards to the Hotel Facility, including but not limited to: participation in City community service organizations, community events and charitable non-profit organizations. HALLC shall additionally provide community service to the residents of Montebello by creating a place to stay that is close to home for their visiting loved ones, friends, and guests in a nice hotel facility nestled in a beautiful and peaceful environment overlooking the beautiful Montebello Championship Golf Course.

Section 1.4 Freeway Signage.

City shall have pay for and maintain throughout the term of this Agreement, along the Championship Golf Course property, visible from the Route 60 Freeway, or any golf course location to be established hereafter by HALLC and City, two 10MM to 16MM LED signs each approximately 20'x 60' V shaped single covered poles with Hilton Garden Inn static display above one identifying and marketing the Hotel Facilities and Campus. In addition, City acknowledges and directs HALLC to design new freeway signage and the City shall cooperate with and approve and help pay for new Hotel freeway signs as described above provided they meet the requirements of the California Department of Transportation, or such other State agency having jurisdiction over such signage if said requirements or jurisdiction applies to on premise signs.

Section 1.5. Annual Operating Budget; City Control Over Hotel Facility

Not later than one (1) month prior to each Calendar Year thereafter, HALLC shall prepare and submit to the City Manager an operating budget (the "Annual Operating Budget") which shall set forth in detail all operating revenues and expenses, all in accordance with generally accepted accounting principles. HALLC shall include in each Annual Operating Budget a description of the rates to be charged for guests at the Hotel Facility and the methodology for setting such rates. Any R&R or other capital expenditure with respect to the Hotel Facility and any disposition of any portion of the Hotel Facility are also subject to the approval by the City Manager which approval shall not be unreasonably withheld. The Annual Operating Budgets required to be submitted by HALLC under this Section 1.5 are subject to approval by the City Manager (which shall not be unreasonably withheld); provided, that if the City Manager has not approved or disapproved the Annual Operating Budget after 30 days, the City Manager shall be deemed to have approved the Annual Operating Budget. Emergency R&R may be authorized by HALLC without prior approval of City Manager since the operation provides performance time sensitive guest lodging 24/7/365.

Section 1.6. Operations Phase Taxes and Tariffs

The Operations Phase Base Management Fee to HALLC and City Distributions (as defined below) shall be subordinated to annual Bond Debt Service paid semi-annually and shall be paid from Net Revenues after Bond Debt Service, as set forth herein and consistent with the Indenture. After all Bond Debt Service is paid in full then HALLC Fee and City Distributions shall be made Quarterly.

Section 1.7. City Distributions; Term of this Agreement; Operations Phase Management Fee; Hilton Franchise Fees; Other Operating Expenses

- (a) From the Commencement of the Operations Phase, the City shall receive a distribution ("City Distribution") annually from the Trustee from funds available for such purpose in accordance with the Indenture. The Management Fee to HALLC shall be paid on or before the fifth business day of January and July of each year. The first and last payment shall be prorated as applicable. The first payment shall not be payable until the original City/HALLC Agreement is paid in full.

- (b) From the commencement of the Operations Phase HALLC shall receive an annual management fee of \$597,000 as adjusted upward based upon changes in the Annual CPI Index (Los Angeles-Riverside-Orange County, CA Consumer Price Index (not seasonally adjusted, series ID CUURA421SA0) increase using December 2017 as the base month/year as the "Operations Phase Base Management Fee" or "Management Fee"). The Term of this Agreement shall be thirty (30) years from the commencement of the Operations Phase. The payment of the Management Fee for the first & last year of the Term shall be prorated as applicable. HALLC shall be paid the Operations Phase Base Management Fee semi-annually from the Trustee out of the Revenue Fund on the fifth (5th) Day of January and fifth (5th) day of July each year. Upon payoff of all bonded indebtedness the City shall pay out of a special separate bank account funded from Hotel Revenues. Any amount of unpaid Operations Phase Management Fee due HALLC shall still be owed to HALLC and shall carry forward to the next semi-annual payment until paid in full, subject to the requirements of Revenue Procedure 2017-13. The City shall receive all remaining funds after the HALLC semi-annual payment provided the Net Revenues after Bond Debt Service are sufficient and all Operations Phase Management Fee owed to HALLC is current. Any sums due and owing HALLC under this Agreement shall be paid in full by the end of the term. Subject to written City Manager approval, the City shall reimburse HALLC for reasonable out-of-pocket and third-party expenses incurred for the operations of the Hotel Facility and benefit thereof; however, HALLC shall not receive any additional Management Fee for such services.
- (c) HALLC shall pay all operating expenses including the Hilton franchise fees as they are incurred in the ordinary course of business, limited to those moneys in the Operating Account. The actual franchise fees amount shall be paid directly to Hilton Hotels from the Operating Account.

Section 1.8. Termination.

- (a) This Agreement may be terminated without cause upon a positive vote of four members of the five-member Montebello City Council. Should for any reason, the number of members of the City Council change, a positive vote of not less than four-fifths (4/5's) of the total membership shall be required. Upon the termination of this Agreement without cause, as set forth in this Agreement, by the City, the City shall immediately pay HALLC liquidated damages in the amount of all Operations Phase Management Fees to be paid over the remaining term of this Agreement. "Operations Phase Management Fees" means Management Fee payable by the City to HALLC during the Operations Phase.
- (b) In the event of a material default or breach as defined in Section 2.5, this Agreement may be terminated for cause upon a positive vote of not less than a majority of the entire membership of the Montebello City Council; provided the City Council first complies with the notice and an opportunity to cure provisions of Section 2.5. In the event that the termination of this Agreement occurs with cause or as a result of a breach by HALLC after failure to cure, the City shall have no obligation to pay HALLC any damages, liquidated or otherwise, for such termination or breach. Additionally, the City shall not be obligated to pay to HALLC any damages, liquidated or otherwise, for termination due to any Act of God, destruction or taking of the Hotel Facility or any property of the City or HALLC. In the event of a Act of God, destruction or taking the Hotel shall be rebuilt and or restored by City to the best of its and HALLC abilities to accomplish it.
- (c) Notwithstanding the foregoing, HALLC shall not withdraw any monies from the Operating Account, and the City shall not otherwise reimburse HALLC, for

compensation or benefits paid to any of its executive level out of operation employees.

Section 1.9. No Inconsistent Tax Position.

HALLC shall not take any tax position that is inconsistent with being a service provider to the City with respect to the Hotel Facility. Without limiting the preceding sentence, HALLC will not claim for federal income tax purposes any investment tax credit, or any deductions for depreciation, amortization or rent, with respect to the Hotel Facility.

ARTICLE II
GENERAL PROVISIONS

Section 2.1. Mutual Covenant.

The City and HALLC will cooperate with each other in the performance of their respective duties hereunder with a view toward maximizing the image and financial success of the Hotel Facility and the City. Throughout the term of this Agreement, but subject to this Agreement, the City shall retain all final authority over the assets and revenues of the Hotel Facility.

Section 2.2. Relationship of Parties.

The City and HALLC agree that the only relationship created hereby is one for supplying management, Franchise, and services as outlined in this Agreement, and HALLC is an independent contractor and not an employee or partner of the City. HALLC has authority to act as the representative of the City in carrying out its obligations under this Agreement, but has authority to bind the City only to the extent necessary to operate and maintain the hotel facility per this Agreement in a first-class condition.

Section 2.3. Best Efforts.

HALLC shall use its best efforts to minimize operating expenses, maximize gross revenues and maintain an efficient, well run, well maintained operation with improvements to keep it current and in very good condition at the Hotel Facilities in accordance with the terms of this Agreement.

Section 2.4. Accounting Records Reports and Practices.

- (a) HALLC shall maintain, in accordance with generally accepted accounting principles, and acceptable to Hilton Hotels Corporation and the City adequate books of account, records and other data with respect to its management and operation of the Hotel Facilities and shall maintain such books, records and other data as maintained on the premises of the Hotel Facility and provide accounting and controller daily work and supervision and oversight thereof. Accountant(s) and Controller shall be considered an operating expense.
- (b) HALLC shall establish internal financial control policies and practices that are in accordance with generally accepted standards in the industry and acceptable to the Hilton Hotels Corporation.
- (c) HALLC will maintain accounting records and supporting documentation on behalf of the City. The City shall have unlimited access to all accounting records and supporting

documentation prepared by HALLC relating to the Hotel Facility during the current year and past six (6) years. Such right to access shall be exercised in a reasonable manner, and shall include on-site audits, review and copying of records.

- (d) HALLC shall prepare and provide by email to City Manager and Director of Finance a Daily Report, within twenty (20) days of each month end, HALLC shall furnish to the City an unaudited Monthly and YTD balance sheet and statement of profit and loss for the Hotel Facilities, all prepared in accordance with generally accepted accounting principles.
- (e) As soon as practical after the close of each Calendar Year, which shall be from January 1 to December 31 of each year ("Calendar Year"), but no later than forty-five (45) days after the close of each Calendar Year, HALLC shall furnish to the City an unaudited balance sheet containing a statement of profit and loss, and a statement of cash flows, each relating to the Hotel Facility and prepared in accordance with generally accepted accounting principles.
- (f) The City, at its expense, shall prepare an annual audited financial statement and perform audits as may be required.

Section 2.5. Default. Right to Cure and Termination.

The following shall constitute events of default hereunder which shall be, as to the City, the sole basis for termination of this Agreement for cause:

- (a) Failure by either party to pay or deposit sums by one party to the other within seven (7) days' notice by the other of such failure, provided that if the default is of a nature that it cannot be cured within seven (7) days, then the defaulting party shall not be deemed in default if it takes reasonable steps to commence to cure the monetary default within such seven (7) day period and proceeds with due diligence thereafter to cure monetary default within thirty (30) days of notice of default.
- (b) The substantial failure of either HALLC or City to perform or fulfill any of the material non-monetary covenants, obligations or conditions of such party specifically enumerated in this Agreement in such a manner as to defeat the purpose or object of this Agreement, and failure to cure such material non-monetary default within ten (10) days of notice thereof; provided that there shall be no event of default declared for non-monetary defaults hereunder if such failure relates to a non-material covenant, obligation, or condition of a party, or reasonably will take longer than ten (10) days to cure so long as the defaulting party commences cure within such period and thereafter proceeds with due diligence to cure its default.
- (c) Violation by HALLC of any laws, ordinances, rules and regulations or orders of any public authority having jurisdiction over the Hotel Facility which are material to the City and failure by HALLC to cure or reach resolution with respect to the applicable violation within thirty (30) days following notice of any violation thereof from the City, or the applicable governmental agency; provided, however, that HALLC shall not be in default hereunder if such cure or resolution cannot be reasonably accomplished within such period so long as HALLC commences cure within such thirty (30) day period and proceeds with due diligence thereafter to cure or resolve its default.

Upon the occurrence and continuance beyond any applicable cure period of any event of default described above, the non-defaulting party may give the defaulting party notice of its intention to terminate this Agreement after the expiration of a period ten (10) days from the date of such notice and, upon the expiration of such period, this Agreement shall expire. The Indemnity provisions in

Section 3.7 hereof shall survive the termination of this Agreement; however, if the non-defaulting party has failed to give notice of its intention to terminate this Agreement within 180 days of the occurrence of the event of default, such right to terminate this Agreement shall be deemed waived.

Section 2.6. Insurance.

HALLC shall procure and maintain the following insurance policies or as otherwise reasonably directed from time to time by the City Manager.

- (a) General commercial liability insurance, in a policy exclusive to the Hotel Facilities, against claims for bodily injury or death, or damage to property occurring upon, in or about the Hotel Facility, with coverage of not less than \$2,000,000 per occurrence or as may be required by Hilton Hotels, subject to a deductible not exceeding \$25,000 for any one claim or as may be required by Hilton Hotels. HALLC shall procure such policy on behalf of the City and shall name the City as insured's or additional insured's; and
- (b) Workers compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure HALLC against liability for compensation under the workers compensation insurance law now in force in California, or any act hereafter enacted. HALLC shall have no obligation to procure or maintain workers compensation insurance for any personnel retained for the benefit of the Hotel Facility by a third-party employee leasing agency or a limited liability company or HALLC related corporation, even if such personnel are directly supervised by HALLC.
- (c) EPLI Insurance with a deductible as available and affordable in the marketplace.
- (d) All insurance described above shall be provided under policies issued by insurers of recognized responsibility licensed or admitted to do business in the State of California. The cost of such policies will be an operating expense.
- (e) HALLC shall deliver to the City a certificate of such insurance not later than thirty (30) days prior to the Opening Date and within thirty (30) days after the end of each Fiscal Year thereafter.

Section 2.7. Indemnification of HALLC.

City shall indemnify HALLC its officers, directors, agents, members, and employees (the "HALLC Indemnified Parties") from and against any threatened, pending or completed actions, suits or proceedings, whether civil, administrative or investigative, in connection with the services provided for the City pursuant to this Agreement. To the extent such actions, suits or proceedings arise from an event covered by insurance purchased on or behalf of the Project, the HALLC Indemnified Parties shall seek recovery from insurance prior to seeking indemnification from the City, provided that in such event, the HALLC Indemnified Parties will be indemnified for the expense of any applicable insurance deductible. To the extent such actions, suits or proceedings arise from an event which is not covered by insurance, City's indemnity shall include reimbursing the HALLC Indemnified Parties for expenses (including reasonable attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by an HALLC Indemnified Party in connection with such action, suit or proceeding. This Section 3.7(a) will not apply if the actions of the HALLC Indemnified Parties constituted negligence or misconduct, unless such action was directed by the City.

Section 2.8. Destruction or Taking of the Hotel Facility.

In the event that the Hotel Facility or any part of the Hotel Facility is destroyed by fire, explosion other casualty, or is taken by a governmental authority pursuant to eminent domain powers, so that all or a substantial portion of the Hotel Facility cannot be operated, and the insurance proceeds are insufficient

or the City fails (City shall try) to pay the difference, to rebuild, restore, repair and reopen the same for business within seven hundred and twenty (720) days after the happening of said fire or other casualty or taking, then and in said event, either the City or HALLC shall have the right (but not the obligation) to cancel and terminate this Agreement. In the event the City cancels this Agreement, any amounts of insurance proceeds or award paid for any condemnation action shall be paid to the City. All insurance proceeds or condemnation award less bonded indebtedness balance shall be held available for payment by the City to HALLC of any liability of the City to HALLC under this Agreement; however, any payment liability of the City to HALLC under this Agreement in the event of such fire, other casualty or taking shall be limited to such amounts.

Section 2.9. Assignment, Sale, Binding Effect.

HALLC shall have the right to sell, assign or transfer this Agreement and any of its rights or duties hereunder to a company with equal to or greater experience in hotel management with City's prior written consent thereto, which consent shall not be unreasonably withheld. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Section 2.10. Compliance with Laws.

HALLC will comply with all federal, state and local ordinances, statutes, rules and regulations as they relate to the operation of the Hotel Facility.

Section 2.11. Non-Waiver.

The failure of either party at any time to enforce a provision of this Agreement shall in no way affect the validity of this Agreement or any part hereof or the right of such party thereafter to enforce each and every provision hereof.

Section 2.12. Amendment.

The parties may amend this Agreement only by written agreement executed by the parties.

Section 2.13. Choice of Law.

The laws of California shall govern the rights and obligations of the parties under this Agreement without regard to principles of conflict of law.

Section 2.14. Severability.

Any provision of this Agreement decreed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of this Agreement.

Section 2.15. Notices.

All notice required by this Agreement shall be in writing and shall be sufficiently given and served upon the other party if sent by registered or certified United States mail, postage prepaid and addressed as follows:

With a copy to:

City of Montebello
1600 West Beverly Blvd.
Montebello, California 90640
Attention: City Manager

Alvarez-Glasman & Colvin
13181 Crossroad Parkway North, Ste. 400
Industry, California 91746
Attention Arnold M. Alvarez-Glasman
City Attorney

If Sent to HALLC:

Hotel Adventures, LLC
17762 Irvine Blvd., Suite 4
Tustin, California 92780
Attention: Managing Member

Harper & Burns LLP
453 S. Glassell Street
Orange, California 92866
Attention: John R. Harper, Attorney

Section 2.16. Force Majeure.

Except as otherwise provided herein, in the event that either party shall be delayed or hindered in the performance of any act required hereunder by fire, earthquake, flood, act of God, riot, civil commotion or other matter of condition of like nature, including the unavailability of sufficient fuel or energy to operate the Facilities, or any law, ordinance, rule, regulation or order of any public or military authority stemming from the existence of economic controls, riot, hostilities, war or governmental law and regulations, strikes, labor disputes or boycotts, not the fault of the party delayed or hindered from performing such act required under the terms hereof, performance of such acts shall be excused for the period of the delay and the period of such party's performance of such act shall be extended for a period equivalent to such delay.

[signatures on following page]

IN WITNESS WHEREOF, the parties hereto cause this Agreement to be executed on the day and year first written.

CITY OF MONTEBELLO

HOTEL ADVENTURES LLC

By: Vivian Romero
Its: Mayor

By: Brad Perrin
Its: Managing Member

By: Francesca Tucker-Schuyler
Its: City Manager

By: John Harper; Harper & Burns LLP
Legal Counsel, Hotel Adventures LLC

APPROVED AS TO FORM:

By: Arnold Alvarez-Glasman
City Attorney, City of Montebello

ATTEST:

By: Irma Barajas
City Clerk, City of Montebello