



Office of the City Manager

CONSENT CALENDAR

June 2, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront

Subject: Amendment and Assignment of Capital Contribution Agreement: 200 Marina Blvd, LLC for the Doubletree Hotel

RECOMMENDATION

Adopt first reading of an Ordinance approving an Amendment and Assignment of the City's Capital Contribution Agreement with 200 Marina Boulevard, Berkeley, LLC (200 Marina LLC) for the Doubletree Hotel, which would assign the agreement by 200 Marina LLC to its parent company, Apollo Bright, LLC (Apollo LLC), and change the payment schedule for the capital contribution from \$3M due in June 2020 to \$375,000 due in October 2020 and \$2,675,000 due upon Council approval of the Marina streets construction contract, estimated to be in January 2021. Apollo LLC's obligation to make the two capital contribution payments totaling \$3 million will be backed by an irrevocable standby letter of credit, which will be provided to the City upon execution of the amendment and assignment.

FISCAL IMPACTS OF RECOMMENDATION

The total required capital contribution of \$3 million will remain the same; but with this amendment, will be payable in two installments: \$375,000 in October 2020 and \$2,675,000 at construction contract award, estimated to be in January 2021. There is not expected to be a fiscal impact from this change, since the funding will be delivered to the City in advance of when the capital work will be contracted.

CURRENT SITUATION AND ITS EFFECTS

On April 28, 2020, the Council approved a new ground lease with 200 Marina LLC for the Doubletree Hotel and an accompanying capital contribution agreement. The new lease made various changes, the most notable of which were an extension of the lease term by 22 years, and a substantial increase in the amount of base rent. The accompanying capital contribution agreement required 200 Marina LLC to make a \$3 million capital contribution payment to City for Marina street improvements. This contribution will allow the City to complete the \$8 million renovation of University Ave, Marina Blvd and Spinnaker Way, which is also funded with Measure T1 bond funds and SB1 street funding.

The new lease and capital contribution agreement became effective May 28, 2020; and the capital contribution was due three business days later, on June 2, 2020.

The representatives of 200 Marina LLC have requested a revision to this payment schedule, given the significant impact that the COVID-19 emergency is having on their industry. They requested postponing delivery of the payment until the City's Marina streets construction project is ready to proceed. Because postponement of the payment dates would technically constitute creation of new "indebtedness" for the hotel, 200 Marina has further requested that the City approve an assignment of the capital contribution agreement, as amended, by 200 Marina LLC to its parent company, Apollo LLC. The assignment is required because 200 Marina LLC's loan agreements with its existing lender include borrower covenants prohibiting 200 Marina from taking on additional indebtedness. As the parent company for multiple United States hotel properties including the Berkeley Doubletree, Apollo LLC has a stronger balance sheet than 200 Marina LLC and, so, City staff view the assignment as beneficial to City.

The Marina streets project was initially planned to be in construction this summer. That is now projected to be delayed approximately 8 months to February 2021. This is due in part to impacts from the COVID-19 emergency, which has inhibited the availability of General Fund dollars to cover T1 projects until the Phase 2 bond sale is completed. This Marina streets project needs to be delayed briefly to accommodate the timing of the next bond sale.

Given this change in the project's timeline, the City can accommodate a delay in payment from the hotel without any additional impact to the project.

Staff have proposed payment in two installments to facilitate project needs. The first payment of \$375,000 will offset costs prior to construction, including soft costs such as construction management. This first payment will be due in October 2020. The second payment of \$2,675,000 will be due prior to City entering into a construction contract. A construction contract for the work is estimated to be reviewed by Council for approval in January 2021, so payment will be due after Council review, and prior to contract execution.

For added security, Apollo LLC will provide the City with a \$3 million irrevocable standby letter of credit issued by the Industrial and Commercial Bank of China USA NA (ICBC USA) upon execution of this amendment and assignment. If Apollo LLC failed to timely make the required payments, City would draw upon the letter of credit and obtain the funds directly from ICBC USA.

ICBC – USA is the U.S. subsidiary of Industrial and Commercial Bank (ICBA); ICBA USA is a national bank chartered by the Office of the Comptroller of the Currency. It operates thirteen branches in New York and California, with three in New York, five in San Francisco Bay Area in northern California and five in greater Los Angeles area in southern California. The letter of credit will be provided to the City upon execution of the amendment and assignment of capital contribution agreement which will occur promptly following the effectiveness of the Ordinance approving the amendment and assignment.

BACKGROUND

The Doubletree Hotel is the City's largest Waterfront tenant, and its \$1.4 million in annual rent payments make up more than 20% of all Marina Fund revenue. The Hotel

also generates close to \$3 million/year in transient occupancy tax (TOT) for the General Fund.

On April 14, 2020 and April 28, 2020, the Council approved the first and second readings, respectively, of the Ordinance approving the new ground lease and capital contribution agreement with 200 Marina LLC (Ordinance No. 7,695-N.S.).

ENVIRONMENTAL SUSTAINABILITY

This amendment does not have any identifiable environmental impacts as it only changes the timing of the required capital contribution payments. As noted in the April 2020 staff report accompanying approval of Ordinance No. 7,695-N.S., the new lease as approved by Council provides for at least 10 new electric vehicle charging stations that will be accessible to the public at the Waterfront. Providing EV charging stations for public use directly supports the City's General Plan, Policy T-19, which calls for placing stations at major parking facilities and employment centers, and responds to Berkeley's Climate Action Plan, Goal 8, of encouraging low-carbon vehicles and fuels.

The new lease also commits 200 Marina LLC to opt up to Renewable 100, East Bay Community Energy's highest level, so that the hotel purchases 100% renewable and carbon-free electricity. This commitment helps the City meet its Climate Action Plan goals of lowering greenhouse gas emissions.

RATIONALE FOR RECOMMENDATION

The proposed delays in the hotel's payment schedule are consistent with delays in the City's own project schedule. The proposal does not introduce additional delays to the schedule, and accommodates the tenant's needs during this COVID emergency. The risk to the City of agreeing to delay the \$3 Million capital improvement contribution is mitigated by the fact that Apollo LLC, as the parent company of 200 Marina LLC and multiple other hotel ownership entities throughout the United States, has a stronger balance sheet than 200 Marina LLC; Apollo LLC will deliver a \$3 million standby letter of credit to secure its payment obligations under the agreement; and Apollo LLC's default under the capital contribution agreement, as amended and assigned, will continue to constitute a default by 200 Marina under the ground lease, which would entitle the City to exercise a variety of remedies including termination of the ground lease.

CONTACT PERSON

Scott Ferris, Director, Parks Recreation & Waterfront, 981-6700
Christina Erickson, Deputy Director, PRW, 981-6703

Attachments:

- 1: Ordinance
Exhibit A: First Amendment to Capital Contribution Agreement

ORDINANCE NO. –N.S.

AMENDMENT AND ASSIGNMENT OF CAPITAL CONTRIBUTION AGREEMENT FOR THE DOUBLETREE HOTEL, TO APPROVE AN ASSIGNMENT OF THE AGREEMENT BY 200 MARINA BLVD, LLC TO APOLLO BRIGHT, LLC AND EXTEND THE DEADLINE FOR PAYMENT OF THE CAPITAL CONTRIBUTION

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The City Manager, or designee, is hereby authorized to execute an amendment and assignment of the Capital Contribution Agreement among the City, 200 Marina Blvd, LLC, the owner of the Doubletree Hotel located at the Berkeley Marina, and Apollo Bright, LLC pursuant to which 200 Marina Blvd, LLC will assign its obligations under the agreement to its parent company, Apollo Bright, LLC and the parties will extend the deadline for the hotel's payment of the \$3 million capital contribution payment. Such amendment shall be on substantially the terms set forth in Exhibit A.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

Exhibit A: First Amendment and Assignment of Capital Contribution Agreement

FIRST AMENDMENT AND ASSIGNMENT OF
CAPITAL CONTRIBUTION AGREEMENT

(Marina Streets Work)

THIS FIRST AMENDMENT AND ASSIGNMENT OF CAPITAL CONTRIBUTION AGREEMENT ("**First Amendment**") is made and entered into as of June __, 2020 ("**Date of Amendment**"), by and among the CITY OF BERKELEY, a California municipal corporation ("**City**"), 200 MARINA BOULEVARD, BERKELEY, LLC, a Delaware limited liability company ("**200 Marina**"), and APOLLO BRIGHT LLC, a Delaware limited liability company ("**Apollo**").

RECITALS

A. On or about May 28, 2020 (the "**Original Effective Date**"), City, as landlord, and 200 Marina, as tenant entered into a ground lease ("**Ground Lease**") with respect to the Berkeley Marina Doubletree Hotel extending and continuing the prior 2008 ground lease.

B. As additional consideration for the Ground Lease, 200 Marina and City concurrently entered into a Capital Contribution Agreement dated as of the Original Effective Date ("**Capital Contribution Agreement**") pursuant to which 200 Marina was to make a \$3,000,000.00 Capital Improvement Contribution to the City simultaneously with the execution of the Ground Lease to fund a portion of the costs of certain Marina Streets Work, as more particularly set forth therein.

C. In early 2020, a pandemic outbreak of the COVID-19 virus spread globally. In March of 2020, to prevent spread of the viral outbreak, the Alameda County Health and Human Services Department issued a shelter in place order, which has been extended through May 31, 2020. The COVID-19 outbreak has caused extensive economic disruption, including delays to the City's Marina Streets Work project and reduced operation of the Doubletree Hotel.

D. In light of the ongoing COVID-19 public health crisis, 200 Marina has requested that City delay the timing of the required Capital Improvement Contribution to match the current anticipated timing of the City's Marina Streets Work project and allow 200 Marina to assign its obligation to make such Capital Improvement Contribution payments to 200 Marina's parent company, Apollo. City is willing to allow such an extension and assignment on the condition (i) that 200 Marina acknowledge and confirm that any uncured default by Apollo under the Capital Contribution Agreement as so assigned will also constitute a default by 200 Marina under the Ground Lease, and (ii) that Apollo deliver an irrevocable standby letter of credit securing its obligation to make such payments.

E. City, 200 Marina and Apollo desire by this First Amendment to (i) provide for assignment and assumption of the Capital Contribution Agreement by 200 Marina to Apollo, (ii) confirm that an uncured default by Apollo under the Capital Contribution

Agreement, as so assigned, will also constitute a default by 200 Marina under the Ground Lease per the terms of Section 14.1D. thereof; (iii) extend the date by which Apollo must make the required Capital Improvement Contribution, (iv) require Apollo to deliver to City an irrevocable standby letter of credit as security for Apollo's payment obligation, and (v) make certain other amendments to the Capital Contribution Agreement, as all set forth below.

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, City, 200 Marina and Apollo hereby agree as follows:

A G R E E M E N T

1. Recitals; Capitalized Terms. The foregoing recitals are incorporated by reference into this First Amendment. Capitalized terms used herein and not otherwise defined shall have the meanings given to such terms in the Capital Contribution Agreement.

2. Assignment and Assumption. 200 Marina hereby transfers and assigns to Apollo all rights and obligations of 200 Marina under the Capital Contribution Agreement as amended by this First Amendment. Apollo hereby accepts such assignment and assumes the obligations of 200 Marina under the Capital Contribution Agreement as so amended. City hereby consents to the foregoing assignment and assumption and releases 200 Marina from all of its obligations under the Capital Contribution Agreement. Effective as of the Original Effective Date, all references in the Capital Contribution Agreement to "200 Marina" will be deemed to refer to "Apollo".

3. 200 Marina Acknowledgments and Waivers. 200 Marina acknowledges and agrees that the rights of City, as landlord, under the Ground Lease, including City's right under Section 14.D. of the Ground Lease to declare a default under the Ground Lease as a result of Apollo's failure to timely pay the Capital Improvement Contributions to City per the terms of the Capital Contribution Agreement, as amended hereby, shall in no way be affected by (a) the release or discharge of Apollo in any creditor proceeding, receivership, bankruptcy or other similar proceeding, (b) the impairment, limitation or modification of the liability of Apollo or of any remedy for the enforcement of Apollo's liability, resulting from the operation of any present or future provision of Title 11 of the United States Code, as amended, or any other statute or proceeding affecting creditors' rights generally, (c) the rejection or disaffirmance of Apollo's payment obligations or any portion thereof in any such proceeding, or (d) the cessation, from any cause whatsoever, whether consensual or by operation of law, of the liability of Apollo to City under the Capital Contribution Agreement as amended hereby. 200 Marina waives any right to require City to proceed against Apollo or any other party, proceed against or exhaust any letter of credit security held City, or pursue any other remedy in City's power whatsoever. 200 Marina waives any defense arising by reason of any disability or other defense of Apollo, or by reason of the cessation from any cause whatsoever of the liability of Apollo.

4. Representations and Warranties of Apollo. Apollo represents and warrants to City as follows:

a. Apollo is duly organized and validly existing under the laws of Delaware.

b. Apollo has the necessary legal power, right and authority to enter into this First Amendment and to assume the obligations of 200 Marina under the Capital Contribution Agreement as amended hereby. All requisite action (corporate, company, partnership or otherwise) has been taken by Apollo in connection with the entering into of this First Amendment, and the consummation of the assignment and assumption set forth herein. Except as provided herein, no consent of any partner, shareholder, creditor, investor, judicial or administrative body or other party is required. The individuals executing this First Amendment on behalf of Apollo have the legal power, right and actual authority to bind Apollo to the terms and conditions hereof. The Capital Contribution Agreement as amended by this First Amendment is a valid, legally binding obligations of and enforceable against Apollo in accordance with its terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium laws or similar laws or equitable principals affecting or limiting the rights of contracting parties generally.

c. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings are pending or, to Apollo's knowledge, threatened in writing against Apollo, nor are any of such proceedings contemplated by Apollo.

5. Amendment of Section 3. Section 3 of the Capital Contribution Agreement (Payment of Capital Improvement Contribution) is hereby amended and restated in its entirety to read as follows:

“3. Payment of Capital Improvement Contribution; Letter of Credit Security.

(a) Apollo shall pay City the sum of Three Million and no/100th Dollars (\$3,000,000.00) (“**Capital Improvement Contribution**”) as consideration for City’s agreement to enter into the Ground Lease which extends the term of the 2008 Ground Lease. The Capital Improvement Contribution shall be payable in two installments as follows: Apollo shall pay City the first installment in the amount of Three Hundred Seventy-Five Thousand and no/100 Dollars (\$375,000.00) on or before October 30, 2020 (the “**First Payment**”). 200 Marina shall pay City the second installment in the amount of Two Million Six Hundred Twenty-Five Thousand and no/100 Dollars (\$2,625,000.00) (the “**Second Payment**”) within three (3) business days after City’s written demand therefor, which shall be made no earlier than January 20, 2021, and shall be accompanied by City’s written certification that City has selected a general contractor to perform the Marina Streets Work and is ready and able to enter into a construction contract with the contractor for such work.

(b) Concurrently with its execution of this First Amendment, Apollo shall deliver to City two unconditional, irrevocable standby letters of credit (collectively, the “**Letters of Credit**”), one in the amount of the First Payment with an initial expiry date of November 13, 2020 (the “**First Payment Letter of Credit**”), and the other in the amount of the Second Payment with an initial expiry date of June 30, 2021 (the “**Second Payment Letter of Credit**”). The Letters of Credit shall be substantially in the form of Exhibit 2 attached hereto and incorporated herein and shall be issued by Industrial and Commercial Bank of China USA NA or another US chartered national bank with offices in the San Francisco Bay Area acceptable to City in its reasonable discretion (in each case, the “**Issuing Bank**”). The Letters of Credit shall serve as security for the performance of Apollo’s obligation to pay the Capital Improvement Contribution as provided herein. The Letters of Credit shall be renewed, or a new Letter of Credit on the same terms shall be delivered to City, at least fifteen (15) days prior to its expiration, until the Letter of Credit is no longer required to be posted by Apollo or is required to be returned by City. Within five (5) business days following Apollo’s timely payment of the First Payment, City shall return the First Payment Letter of Credit to the Issuing Bank pursuant to the Letters of Credit in order to cause the First Payment Letter of Credit to be terminated. Within five (5) business days following Apollo’s timely payment of the Second Payment, City shall return the Second Payment Letter of Credit to the Issuing Bank pursuant to the Letters of Credit in order to cause the Second Payment Letter of Credit to be terminated.”

6. Amendment of Exhibit 1 (Marina Streets Work Schedule). Exhibit 1 to the Capital Contribution Agreement is hereby deleted and replaced with Exhibit 1-A attached hereto and incorporated herein.

7. Amendment of Subsection 7(b) (Force Majeure). Subsection 7(b) of the Capital Contribution Agreement is hereby amended and restated in its entirety to read as follows:

“(b) Force Majeure. Except as to Apollo’s obligation to pay the Capital Improvement Contribution which shall not be subject to enforced delay, subject to the limitations set forth below, performance by either party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Capital Contribution Agreement shall be extended, where delays are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; unusually severe weather; acts or omissions of the other party; or acts or failures to act of any public or governmental agency or entity (other than the acts or failures to act of City which shall not excuse performance by City). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within 30 days of the commencement of the cause. Times of performance under this Capital Contribution Agreement may also be extended in writing by the mutual agreement of City and Apollo.”

8. Addition of New Section 8. A new Section 8 is hereby added to the Capital Contribution Agreement to read as follows:

“8. Default and Remedies. Any failure by Apollo to perform fully and timely under this Agreement, or (ii) any representation or warranty made by Apollo under this Agreement, as amended, proves to have been incorrect or misleading in any material respect when made, shall constitute an event of default (“**Event of Default**”) hereunder. Upon the occurrence of an Event of Default hereunder, City may exercise any and all remedies available to it under this Agreement, at law and in equity, including, without limitation, City’s right to draw down the Letter of Credit.”

9. Amendment of Section 7(c). Section 7(c) of the Capital Contribution Agreement is hereby amended and restated in its entirety to read as follows:

“(c) Notices. Any notice, demand or other communication required or permitted hereunder shall be in writing and, unless otherwise specified herein, shall be (i) personally served, (ii) deposited in the mail, registered or certified, return receipt requested, postage prepaid, (iii) delivered by reputable overnight courier service, or (iv) transmitted by hand delivery, addressed as set forth below or to such other address as such party shall have specified most recently by written notice. Any notice or other communication required or permitted to be given hereunder shall be deemed effective (a) upon personal service or hand delivery, (b) on the third business day following the date of mailing by certified mail, fully prepaid, or (c) on the next business day if sent by overnight courier. The addresses for such communications shall be:

Apollo: Apollo Bright LLC
140 East 45th Street, 29th Fl
New York, New York 10017
Telephone: (646) 887-9118

City: City of Berkeley
2180 Milvia Street
Berkeley, California 94704
Attention: City Manager
Telephone: (510) 981-7000
Facsimile: (510) 981-7099

With a copy to:
City of Berkeley
2180 Milvia Street
Berkeley, California 94704
Attention: City Attorney
Telephone: (510) 981-6991
Facsimile: (510) 981-6960”

10. Addition of New Subsections 7(j) and 7(k). The following new Subsections (j) and (k) are hereby added to Section 7 of the Capital Contribution Agreement to read as follows:

“(j) Time of the Essence. Time is of the essence of this Agreement and of each and every term and condition hereof.

(k) Venue. Any legal actions under this Agreement shall be brought only in the Superior Court of the County of Alameda, State of California, or in the United District Court for the Northern District of California if subject to Federal jurisdiction. The parties irrevocably and unconditionally waive any objection to the laying of venue of any action or proceeding in such courts and irrevocably waive and agree not to plead or claim that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

11. Ratification of Capital Contribution Agreement. The Capital Contribution Agreement, as amended by this First Amendment, is hereby ratified, confirmed and approved in all respects. In the event of any inconsistency between the provisions of this First Amendment and the provisions of the Capital Contribution Agreement, the provisions of this First Amendment shall govern.

12. Entire Agreement. This First Amendment, together with the Capital Contribution Agreement and Ground Lease, sets forth the entire understanding of the parties with respect to the subject matter hereof. There are no agreements between City, 200 Marina and Apollo other than those set forth in writing and signed by the parties. Neither party hereto has relied upon any understanding, representation or warranty not set forth herein, either oral or written, as an inducement to enter into this First Amendment.

13. Successors and Assigns. The provisions contained herein shall bind and inure to the benefit of the heirs, representatives, successors and assigns of the parties hereto.

14. Execution. By their signatures below, each person executing this First Amendment represents that he or she has the authority to execute this First Amendment and to bind the party on whose behalf the execution is made.

[remainder of page left intentionally blank]

IN WITNESS WHEREOF, this First Amendment is made as of the day and year first above written.

200 MARINA:

200 MARINA BOULEVARD, BERKELEY, LLC, a Delaware limited liability company

By: Junson Assets Management, LLC, a Delaware limited liability company

Its: Manager

By: _____
Bingdong Zhao

Its: Manager

Date: _____

APOLLO BRIGHT, LLC, a Delaware limited liability company

By: _____

Name: Jiangwei Liu

Its: Operating Manager

Date: _____

CITY:

CITY OF BERKELEY, a public body corporate and politic

By: _____
Dee Williams-Ridley
City Manager

Date: _____

Approved as to form:

Farimah Brown, City Attorney

Registered by:

Jenny Wong, City Auditor

Attest:

Mark Numainville, City Clerk

[LETTERHEAD]

EXHIBIT 1-A

MARINA STREET WORKS SCHEDULE

This project report will be updated monthly and posted to the City's website at <https://www.cityofberkeley.info/MeasureT1Updates.aspx>.

EXHIBIT 2

FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT

[Name of Issuing Bank]

[Address]

[Address]

[Date]

IRREVOCABLE STANDBY LETTER OF CREDIT

BENEFICIARY: City of Berkeley _____ _____ Attn: _____	APPLICANT: Apollo Bright, LLC _____ _____ Attn: _____
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LETTER OF CREDIT NUMBER: _____

INITIAL EXPIRY DATE: [Insert November 13, 2020 or June 30, 2021, as applicable]

AMOUNT: [Insert \$375,000 or \$2,625,000, as applicable]

We hereby issue this irrevocable standby letter of credit available by payment by draft(s) drawn at sight on _____ Bank and accompanied by a certificate signed by the City Manager or other authorized representative of the Beneficiary indicating either (1) or (2) below:

(1) "This certifies that the City of Berkeley ("City") has properly made demand upon Apollo Bright, LLC ("Applicant") for amounts payable by Applicant to the City under that certain Capital Contribution Agreement dated May ____, 2020, as amended and assigned by the First Amendment and Assignment of Capital Contribution Agreement dated June ____, 2020, by and among City, 200 Marina Boulevard, Berkeley, LLC, and Applicant (as amended and assigned, the "Agreement") and that Applicant has failed to pay such amounts to the City within the required time period."

OR

(2) "This certifies that the City of Berkeley ("City") has received notice from _____ Bank that letter of credit number _____ will not be extended beyond its current expiration date and that the amount of the draft accompanying this certificate does not exceed the amounts payable by 200 Marina Boulevard, Berkeley, LLC ("Applicant") under that certain Capital Contribution Agreement dated May ____, 2020, as amended and assigned by the First Amendment and Assignment of Capital Contribution Agreement dated June ____, 2020, by and among City, 200 Marina Boulevard, Berkeley, LLC, and Applicant (as amended and assigned, the "Agreement")."

Beneficiary is to return the original letter of credit to _____ Bank after Applicant's payment, in full, of all amounts payable by Applicant as set forth in the Agreement.

Drafts drawn under this letter of credit must bear the clause: "Drawn under _____ Bank Irrevocable Standby Letter of Credit Number _____." Partial and multiple drawings are allowed. Beneficiary must approve any reductions in the amount of this letter of credit if any such reduction request is submitted to our bank by Applicant. This letter of credit initially expires on [*Insert November 13, 2020 or June 30, 2021, as applicable*], but shall be automatically extended, without amendment, for consecutive six (6) month periods unless we have provided written notice to you by courier at your address above that we elect not to renew this letter of credit beyond the date specified in the notice, which date shall be at least fifteen (15) calendar days after the date of the notice.

Each draft and certificate presented hereunder shall be dated the date of its presentation and each such draft and certificate shall be presented at the _____ Bank office as stated below and shall be presented on a business day. We hereby engage with you that documents drawn in compliance with the terms of this letter of credit will be duly honored upon presentation to us at _____ on or before the close of business on the expiration date, as such date may be automatically extended as provided above. Payment against a complying presentation shall be made within three business days after presentation at the place for presentation or by wire transfer to a duly requested account of Beneficiary.

To the extent not inconsistent with the express terms of this letter of credit, this letter of credit shall be governed by, and construed in accordance with, the International Standby Practices 1998, ICC Publication No. 590.

_____ BANK
By: _____
Its: _____