

**Second Amendment to  
Emergency Agreement between the City and County of San Francisco  
and  
SF Americania LLC  
Americania Hotel**

THIS SECOND AMENDMENT (this “Amendment”) is made as of **March 22, 2021**, in San Francisco, California, by and between **SF Americania LLC** (“Hotel” or “Contractor”), and the **City and County of San Francisco**, a municipal corporation (“City”).

WHEREAS, City and Hotel have entered into a COVID-19-related emergency services contract, dated March 24, 2020 (the “**Original Agreement**”), subsequently amended by the “**First Amendment**” dated June 11, 2020 and extended by the extension notice from City dated June 23, 2020 (the Original Agreement and extension notice are collectively, the “**Agreement**”), for Rooms and Services at the property commonly known as the **Americania Hotel** located at 121 7<sup>th</sup> Street, San Francisco, CA 94103, to further the public health and safety in connection with City’s response to the Local Emergency declared by Mayor London Breed on Tuesday, February 25, 2020, as supplemented from time to time, including the Thirty-Fifth Supplemental Declaration dated February 19, 2021, authorizing the extension of COVID-19-related contracts; and

WHEREAS, City and Hotel desire to modify the Agreement on the terms and conditions set forth herein to extend the Booking Period, incorporate standard City contracting provisions and amend Appendix B, among other things; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Hotel and City agree that the Agreement is hereby amended as follows:

1. **Defined Terms**. Capitalized terms not defined in this Amendment shall have the meaning set forth in the Agreement.
2. **Replace Section 2.1**. Section 2.1 is hereby deleted from the Agreement, and the following is hereby added in its place and fully incorporated into the Agreement:
  - 2.1 **Term**. The term of this Agreement commenced on **March 24, 2020** and will expire of its own accord on **November 15, 2021** (City’s last night is November 14, 2021) (the “**Booking Period**”), unless earlier terminated as otherwise provided herein. After **June 30, 2021**, City may terminate this Agreement by providing at least thirty (30) days written notice to Hotel of such termination. Notwithstanding, City agrees to use commercially reasonable efforts to provide more advanced notice to the extent it is practical or able to do so.
3. **Amend Section 3.1**. Section 3.1 is hereby deleted from the Agreement, and the following is hereby added in its place and fully incorporated into the Agreement:
  - 3.1 **Certification of Funds; Budget and Fiscal Provisions**. This Agreement is subject to the budget and fiscal provisions of the City’s Charter. This Agreement will

terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Hotel's assumption of risk of possible non-appropriation is part of the consideration for this Agreement. Notwithstanding anything herein to the contrary, Hotel shall have no obligation to provide Services if no appropriation has been made for the City's payment obligations hereunder.

**THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.**

4. **Amend Section 3.2.** Section 3.2 is hereby deleted from the Agreement, and the following is hereby added in its place and fully incorporated into the Agreement:

3.2 **Guaranteed Maximum Costs.** The City's payment obligation to Hotel cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Hotel under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, "Modification of this Agreement."

5. **Amend Section 3.3.1.** Section 3.3.1 is hereby deleted from the Agreement, and the following is hereby added in its place and fully incorporated into the Agreement:

3.3.1 **Payment.** The flat daily rate for the Rooms and Services is \$14,157 per day (based upon a daily rate of \$99 per room per night and 143 rooms). Hotel shall provide an invoice to the City on a monthly basis for the monthly amount due under this Agreement for the Rooms and Services for the current month ("**Compensation**") and any additional charges and reimbursement payable by City under this Agreement for the immediate preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be paid within 10 calendar days of receipt of the invoice, unless the City notifies the Hotel that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed **Nine Million Seven Hundred Fifty-Nine Thousand, Four Hundred and Fifty Dollars \$9,759,450**. The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. In no event shall City be liable for interest or late charges for any late payments.

6. **Amend Section 3.3.3.** The amount of "\$429,240" in Section 3.3.3 is hereby replaced with the amount "\$432,210."

7. **Replace Section 3.3.4.** Section 3.3.4 is hereby deleted from the Agreement, and the following is hereby added in its place and fully incorporated into the Agreement:

3.3.4 **Payment Limited to Satisfactory Services.** If one of the Rooms is not usable by a Guest due to an engineering issue not caused by the City or a Guest, then the City shall (i) clean the Room in accordance with its obligations in Appendix A, and (ii) after the Room has been cleaned, notify Hotel in writing of the problem with the Room and certifying that it has been cleaned. Hotel shall then be given access to the Room in order to resolve the issue. If the Room remains unavailable more than 24 hours after Hotel's receipt of such Notice, the amount of the Compensation shall be reduced by \$99.00 for each day thereafter until Hotel resolves the issue and notifies the City of the same.

8. **Replace Article 5 & Article 6.** Article 5 and Article 6 are hereby deleted from the Agreement, and Appendix E – Insurance and Liability Indemnity and Liability of the Parties (as defined below) is added in their place and fully incorporated into the Agreement

9. **Replace Section 10.3.** Section 10.3 is hereby deleted from the Agreement, and the following is hereby added in its place and fully incorporated into the Agreement:

10.3 **Prohibition on Use of Public Funds for Political Activity.** In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

10. **Replace Section 10.11.** Section 10.11 is hereby deleted from the Agreement, and the following is hereby added in its place and fully incorporated into the Agreement:

10.11 **Limitations on Contributions.** By executing this Agreement, Hotel acknowledges its obligations under Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Hotel's board of directors; Hotel's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10 percent in Hotel; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Hotel. Hotel certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 and has provided the names of the persons required to be informed to City department with whom it is contracting.

11. **Amend Appendix B.** The following amounts within Section 1 of Appendix B Calculation of Charges are hereby amended, increased, and fully incorporated into the Agreement:

a. <b>Total Not-to-Exceed Compensation:</b>	<b>\$9,759,450</b>	
b. Not-to-Exceed Compensation without Reimbursable Amount: 3/24/20 - 6/10/20	\$1,096,524	<i>(142 rooms x \$99 x 78 nights)</i>
c. Not-to-Exceed Compensation without Reimbursable Amount: 6/11/20 - 11/14/21	\$7,389,954	<i>143 rooms x (\$99 x 522 nights)</i>
d. Not-to-Exceed Reimbursable Amount:	\$1,272,972	<i>(15% of b.)</i>

12. **New Appendix E.** A new Appendix E in the form attached hereto is hereby attached to the Agreement and is fully incorporated within the Agreement.

13. **Full Force and Effect.** Except as specifically amended in this Amendment, the terms and conditions of the Agreement, as amended by this Amendment, shall remain unchanged and in full force and effect. In the event of any conflict between the terms and conditions of the Agreement and the terms and conditions of this Amendment, the terms and conditions of this Amendment shall control.

14. **Counterparts.** This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

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IN WITNESS WHEREOF, Hotel and City have executed this Amendment as of the date first referenced above.

**CITY**

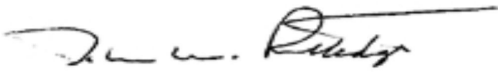
**HOTEL**

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

SF AMERICANIA LLC,  
a Delaware limited liability company

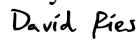
Recommended by:

DocuSigned by:  
  
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Trent Rhorer  
Executive Director  
Human Services Agency

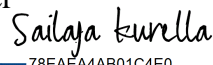
By:   
Name: John W. Rutledge  
Title: Authorized Signatory

City Supplier number: 0000042406

Approved as to Form:

Dennis J. Herrera  
City Attorney  
DocuSigned by:  
  
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By: \_\_\_\_\_  
David K. Ries  
Deputy City Attorney

Approved:

Sailaja Kurella  
Acting Director of the Office of Contract Administration, and Purchaser  
DocuSigned by:  
  
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By: \_\_\_\_\_

## APPENDIX E

### Insurance and Indemnity and Liability of the Parties

#### A. Insurance.

i. **Required Hotel Coverages.** Without in any way limiting Hotel's liability pursuant to the "Indemnification" Section of this Agreement, Hotel must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

(b) Commercial General Liability Insurance with limits not less than \$5,000,000 each occurrence (which may include umbrella or excess liability coverage) for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(c) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(d) Professional liability insurance (**Reserved**)

(e) Technology Errors and Omissions Liability coverage (**Reserved**)

(f) Cyber and Privacy Insurance (**Reserved**).

ii. Hotel's Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to name as Additional Insured the City and County of San Francisco; *provided, however*, that City acknowledges and agrees that such endorsement shall not apply for any claims relating to losses arising from COVID-19.

iii. All policies shall be endorsed to provide thirty (30) days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in Section 11.1, entitled "Notices to the Parties."

iv. (**Reserved**)

v. (**Reserved**)

vi. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

vii. Before providing any Rooms and Services, Hotel shall furnish to City certificates of insurance from insurance companies that are authorized to do business in the State of California, evidencing all coverages set forth above.

viii. If City or Hotel will use any subcontractor(s) to provide services at or to the Property, such Party shall require the subcontractor(s) to provide all reasonably necessary insurance and to name the other Party as an additional insured.

ix. **Required City Coverages.** Without in any way limiting City's liability pursuant to the "Indemnification" Section of this Agreement, City shall carry and maintain for the mutual benefit of the Hotel and the other Hotel Parties (as defined below) general public liability insurance against claims for personal injury, wrongful death or property damage occurring on or about the Property (as defined below), in an amount of at least \$1 Million per occurrence and \$3 Million aggregate, and such insurance policy (if the City is not self-insured as provided below) must be endorsed to name as Additional Insured the Hotel. City shall obtain and maintain at all times during the Booking Period workers compensation coverage up to statutory limits covering all City employees providing services or working in the hotel Property. Any claims made by City employees shall be made to City under its established worker's compensation process and City will administer those claims. Any insurance maintained by City shall be primary and non-contributory to any insurance maintained by Hotel or any of the other Hotel Parties. In lieu of maintaining commercial insurance coverage, City may adopt alternative risk management programs, including self-insurance up to the limits required in the Section.

## B. **Indemnification.**

i. **Indemnification by City.** City shall completely and unconditionally indemnify, defend and hold Hotel; its manager, Oxford Hotels and Resorts, LLC, any lender to Hotel; and any of the direct or indirect members, managers, officers, directors, employees, contractors, agents and representatives and their successors and assigns of the foregoing (collectively, the "**Hotel Parties**") harmless from and against any and all liabilities, losses, damages, causes of action, suits, claims, judgments or expenses, including reasonable attorneys' fees and court costs and expenses, including without limitation any of the foregoing resulting from COVID-19 (collectively, "**Claims**"), asserted or arising out of or relating in any way, directly or indirectly from the use or occupancy of any part of the Property or the use of any hotel services or facilities at the Property, by City or any of City's servants, agents, licensees, employees, contractors, volunteers, or invitees (including without limitation any Guests or any other persons City permits or causes to occupy any rooms at the Property) (collectively, "**Invitees**") including without limitation Claims made or asserted by any third parties (including any employees of the Hotel) for bodily injury, sickness (including without limitation sickness or death resulting from COVID-19), disease, loss of consortium or services, death or damage to property, by reason of or incident to City's or its Invitees' use of the Property, the Rooms or the Services, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except to the extent such Claim was caused by the gross negligence or willful misconduct of the Hotel Parties, in which case damages shall be apportioned pro rata under the California doctrine of comparative fault. For clarity, the City's liability does not extend to Claims covered by Hotel's workers compensation insurance. In addition, if any Hotel employee makes a claim under such employee's health insurance for reimbursement or payment for testing for COVID-19, and such claim is denied, the City shall reimburse Hotel in an amount equal to the employee's out-of-pocket cost for such test.

ii. **Indemnification by Hotel.** Hotel shall defend, indemnify, and hold City harmless from and against any and all Claims arising from Hotel's breach of Hotel's obligations under this Agreement, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except to the extent such Claim was caused by the gross negligence or willful misconduct of the

City or its Invitees, in which case damages shall be apportioned pro rata under the California doctrine of comparative fault.

iii. **Infringement Indemnity.** Hotel shall indemnify and hold City harmless from all loss and liability, including reasonable attorneys' fees, court costs and all other litigation expenses for any infringement of patent rights, copyright, trade secret, or any other proprietary right or trademark, and all other intellectual property claims, lawsuits, and/or demands of any kind of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Hotel's Rooms and Services, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except to the extent such Claim was caused by the gross negligence or willful misconduct of the City or its Invitees, in which case damages shall be apportioned pro rata under the California doctrine of comparative fault.

## **Article 16      Liability of the Parties**

### **C.      Liability of City.**

CITY'S PAYMENT OBLIGATIONS FOR THE COMPENSATION UNDER THIS AGREEMENT SHALL BE LIMITED TO THE NOT-TO-EXCEED AMOUNT PROVIDED FOR IN SECTION 3.3.1, "PAYMENT," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT; PROVIDED, HOWEVER, THAT THIRD-PARTY CLAIMS SHALL NOT BE CONSIDERED "CONSEQUENTIAL" CLAIMS.

### **D.      Liability for Use of Equipment. (Reserved)**

### **E.      Liability of Hotel.**

i. **INCIDENTAL AND CONSEQUENTIAL DAMAGES.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL HOTEL BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

ii. **COVID-19.** HOTEL SHALL HAVE NO LIABILITY FOR THIRD-PARTY CLAIMS, LOSSES OR EXPENSES RELATED TO COVID-19 ILLNESSES, EXCEPT TO THE EXTENT CONCLUSIVELY DETERMINED BY A FINAL, NON-APPEALABLE JUDGMENT FROM A COURT OF COMPETENT JURISDICTION, THAT HOTEL'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT WAS THE PROXIMATE CAUSE OF THE COVID-19 INFECTION GIVING RISE TO SUCH CLAIM, UNLESS OTHERWISE MUTUALLY AGREED BY HOTEL AND THE CITY.

iii. **EXCLUSIONS.** HOTEL'S LIABILITY LIMIT SET FORTH ABOVE SHALL NOT APPLY TO CLAIMS COVERED BY HOTEL'S INSURANCE.