

**THIRD AMENDMENT
TO EMERGENCY AGREEMENT
SAYANA CORPORATION
ADANTE HOTEL**

THIS **THIRD AMENDMENT TO EMERGENCY AGREEMENT** (this “*Amendment*”), dated as of April 18, 2022, for reference purposes, is entered into by and between **Sayana Corporation**, a California Corporation (“*Contractor*” or “*Hotel*”), and the City and County of San Francisco, a municipal corporation (“*City*”), acting by and through its Human Services Agency (the “*HSA*”), and with reference to the following facts and circumstances:

RECITALS

A. City and Contractor are parties to that certain Emergency Agreement, dated as of May 7, 2020 (the “*Emergency Agreement*”), pursuant to which Hotel granted City the right to use that certain real property and the improvements thereon consisting of a Ninety-Three (93) room hotel located at 610 Geary Street, in the City and County of San Francisco, commonly known as the “**Adante Hotel**”, 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.

B. The Emergency Agreement was amended pursuant to that certain First Amendment to Emergency Agreement by and between City and Hotel, dated as of March 23, 2021 (the “*First Amendment*”), as further amended by that certain Second Amendment to Emergency Agreement by and between City and Hotel, dated as of March 1, 2022_ (the “*Second Amendment*”, and together with the Emergency Agreement, and the First Amendment, the “*Agreement*”).

C. The San Francisco Board of Supervisors adopted Ordinance No. [REDACTED] on May [REDACTED], 2022 (the “*Ordinance*”), to authorize the extension of the Booking Period from April 17, 2022, to August 31, 2023, and to increase the Compensation under the Agreement by Four Million, Nine Hundred Eighteen Thousand, Three Hundred Fifty-One Dollars (\$4,918,351), from Nine Million, Nine Hundred Thirty-Eight Thousand, Five Hundred Fifteen Dollars (\$9,938,515), to Fourteen Million, Eight Hundred Fifty-Six Thousand, Eight Hundred Sixty-Six Dollars (\$14,856,866).

D. City and Contractor now desire to enter into this Amendment to, among other things, extend the Booking Period from April 17, 2022, to August 31, 2023, and increase the Compensation in accordance with the Ordinance and on the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, for and in consideration of the foregoing Recitals, which are incorporated into this Amendment by this reference, the mutual covenants and obligations of the parties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Hotel and the City herby agree as follows:

Section 1. Definitions. Capitalized terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

Section 2. Amendment of Agreement. The Agreement is hereby amended as follows:

(a) Amendment of Section 2.1. *Section 2.1 of the Agreement is hereby amended and restated in its entirety and shall hereinafter read as follows:*

“2.1 Term.

2.1.1. The term of this Agreement commenced on **May 14, 2020**, and will expire of its own accord on **August 31, 2023** (the “**Booking Period**”), unless earlier terminated as otherwise provided herein. In accordance with Section 8.1.1, City may terminate this

Agreement by providing at least thirty (30) days' written notice to Hotel of such termination.

2.1.2 On the conditions set forth below, City shall have the right to extend the Booking Period on a month to month basis by providing no less than thirty days' prior written notice to Hotel; provided, that (a) in no event shall any extension of the Booking Period extend beyond August 31, 2023, and (b) any extension of the Booking Period beyond August 31, 2023, shall require the Executive Director of HSA to first obtain the approval of the San Francisco Board of Supervisors by ordinance waiving any applicable restrictions in the Municipal Code."

(b) Amendment of Section 3.3.1. *The fourth sentence of Section 3.3.1 is hereby amended and restated in its entirety and shall hereinafter read as follows:*

"In no event shall the amount of this Agreement exceed Fourteen Million, Eight Hundred Fifty-Six Thousand, Eight Hundred Sixty-Six Dollars (\$14,856,866)."

(c) Addition of Section 3.3.6. *Section 3.3.6 is hereby added to the Agreement.*

"3.3.6. Property Damage Claims. If, at any time during or at the end of the Booking Period, there is any damage (other than ordinary wear and tear) caused to the Property by the City or any of its Guests ("**Property Damage**"), Hotel shall repair such Property Damage, and following Hotel's submission of a written description and photographs of such Property Damage and invoices therefor, the City shall promptly reimburse Hotel all undisputed amounts for the repair of such Property Damage, as such undisputed amounts are mutually agreed upon by the Parties, subject to the approval of the San Francisco Board of Supervisors acting in its sole discretion if required. Any remaining disputed amounts may be reserved by the Hotel in a Final Agreement Closeout and Release of Claims attached to this Agreement as **Appendix F**, and shall be subject to dispute resolution, as provided herein. The Hotel hereby reserves all other rights and remedies available to it at law or in equity for any Property Damage. City and Hotel acknowledge and agree that neither this paragraph, any not to exceed maximum amount of this Agreement, nor the allocation of amounts set forth in **Appendix B** shall limit or restrict City's obligation for costs incurred by Hotel to repair or restore the Property as required by this Agreement."

(d) Amendment of Appendix B. *The following amounts within Section 1 of Appendix B "Maximum Not-to-Exceed Compensation" are hereby amended and fully incorporated into the Agreement:*

Maximum Not-to-Exceed Amount of Agreement:

a. Total Not-to-Exceed Compensation:	\$14,856,866
b. Not-to-Exceed Compensation without Reimbursable Amount: <i>(93 x \$79 x 655) + (93 x \$70 x 549)</i>	\$8,386,275
c. b.):	\$1,257,941
d. Not-to-Exceed Reimbursable Amount (Food Service in Appendix E)	\$5,212,650

(e) **Amendment of Appendix E.** *Appendix E “Food Service by Hotel” is hereby Amended and Restated in its entirety and shall herein after be replaced with the Appendix attached to this Amendment as Exhibit B.*

Section 3. Effective Date. Each of the amendments set forth in Section 2 above shall be effective on and after April 18, 2022.

Section 4. Reference. No reference to this Amendment is necessary in any instrument or document at any time referring to the Agreement. Any future reference to the Agreement will be deemed a reference to the Agreement, as amended by this Amendment.

Section 5. No Other Amendment; Entire Agreement. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect. The Agreement as amended by this Amendment constitutes the entire agreement between City and Hotel with respect to the subject matter of the Agreement and supersedes and cancels any and all previous negotiations, agreements, or understandings, if any, regarding the matters contained in the Agreement. In the event of any conflict between the terms of the Agreement and the terms of this Amendment, the terms of this Amendment will control.

Section 6. Exhibits. The Exhibits attached hereto are incorporated into this Amendment by this reference.

Section 7. Applicable Law. This Amendment will be governed by, construed, and enforced in accordance with the laws of the State of California and City’s Charter. Any legal suit, action, or proceeding arising out of or relating to this Amendment shall be instituted in the Superior Court for the City and County of San Francisco, and each party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this Amendment has been brought in an inconvenient forum. The Parties also unconditionally and irrevocably waive any right to remove any such suit, action, or proceeding to Federal Court.

Section 8. Further Instruments. The parties to the Agreement and this Amendment agree to execute such further instruments and to take such further actions as may be reasonably required to carry out the intent of this Amendment.

Section 9. Counterparts; Electronic Signature. This Amendment may be executed in two or more counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument. The Parties may execute this Amendment by electronic signature.

[SIGNATURES ON FOLLOWING PAGE]

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

CITY

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

Trent Rhorer
Executive Director
Human Services Agency

Approved as to Form:

David Chiu
City Attorney

By: _____
Vincent L. Brown
Deputy City Attorney

HOTEL

SAYANA CORPORATION,
a California corporation

Chirag Patel
Manager

Supplier ID: **0000043291**

Exhibit A

Appendix B “Food Service By Hotel”

The Hotel and City continue to work in good faith to develop and incorporate food service programs, which will: (i.) not exceed \$70 per room per night from the period beginning May 14, 2020 through the night of March 31, 2021 (322 nights); and (ii) not exceed \$55 per room per night beginning April 1, 2021 through the night of April 17, 2022, 2022 (382 nights); and (iv) not exceed \$25 per room per night beginning April 18, 2022 through the night of August 31, 2023 (500 nights). The total not-to-exceed compensation of \$5,212,650 for the food service program is included in Appendix B.

The parties acknowledge that the City may terminate any food service program by providing at least fourteen (14) days written notice to Hotel of such termination, to be effective immediately upon the date specified in the notice, at no additional cost or termination fee. Notwithstanding, City agrees to use commercially reasonable efforts to provide more advanced notice to the extent it is practical or able to do so. City shall pay Hotel the daily food service rate through the termination date provided in City’s termination notice in accordance with the monthly invoice procedure provided in Appendix B.