

**First Amendment to
Emergency Agreement between the City and County of San Francisco
and
KHP III SF Sutter LLC
Kimpton Buchanan Hotel**

THIS FIRST AMENDMENT (this “Amendment”) is made as of **May __, 2021**, in San Francisco, California, by and between **KHP III SF Sutter 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 May 23, 2020 (the “**Original Agreement**”), and extended by notice from City on September 4, 2020 (the Original Agreement and extension notice are collectively, the “**Agreement**”), for Rooms and Services at the property commonly known as the **Kimpton Buchanan Hotel** located at 1800 Sutter Street, San Francisco, CA 94115, 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, amend Appendix B and Appendix E, 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 **June 1, 2020** and will expire of its own accord on **February 28, 2022** (the “**Booking Period**”), unless earlier terminated as otherwise provided herein. Notwithstanding the foregoing, either City or Hotel may terminate this Agreement as of any date on or after **September 30, 2021**, by providing at least thirty (30) days written notice to Hotel of such termination.

3. **Amend Section 3.3.1**. The following sentence from **Section 3.3.1** is hereby deleted from the Agreement:

“In no event shall the amount of this Agreement exceed **Eight Million Five Hundred Fifty-One Thousand Seven Hundred and Thirteen Dollars (\$8,551,713)**”; and

the following sentence is hereby added in its place and fully incorporated into the Agreement:

“In no event shall the amount of this Agreement for Rooms and Services exceed **Nine Million Five Hundred Thousand, Four Hundred Forty-One Dollars (\$9,500,441).**”

4. **Amend Section 8.1.1.** The following sentence from Section 8.1.1 is hereby deleted from the Agreement:

“In any event, City shall be required to pay to Hotel upon the expiration or earlier termination of this Agreement an amount equal to the Compensation that City is obligated to pay under this Agreement through the later of (i) July 31, 2020, or (ii) 30 days after the date of City’s notice of termination.”;

the following sentence is hereby added in its place and fully incorporated into the Agreement:

“In any event, City shall be required to pay to Hotel upon the expiration or earlier termination of this Agreement an amount equal to the Compensation that City is obligated to pay under this Agreement through the later of (i) September 30, 2021, or (ii) 30 days after the date of City’s notice of termination.”

5. **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.

6. **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.

7. **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. Total Not-to-Exceed Compensation - \$9,500,441 (b. + c.)
b. Not-to-Exceed Compensation without Reimbursable Amount - \$8,261,253 (\$12,969 * 637)
c. Not-to-Exceed Reimbursable Amount (15% of amount in b.) - \$1,239,188

8. **Delete Appendix E.** Appendix E is hereby deleted from the Agreement.

9. **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.

10. **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

KHP III SF SUTTER LLC,
a Delaware limited liability company

Recommended by:

DocuSigned by:
Trent Rhorer
9753A8870BB74EE...
Trent Rhorer
Executive Director
Human Services Agency

DocuSigned by:
Judith C. Miles
E864C162ABE94BE...
By: Judith C. Miles
Executive Member and Secretary
Supplier ID: 0000043439

Approved as to Form:

Dennis J. Herrera
City Attorney
DocuSigned by:
David Ries
EFF1B0C5BE4244A...
By: David K. Ries
Deputy City Attorney

Approved:

Sailaja Kurella
Acting Director of the Office of
Contract Administration, and
Purchaser
DocuSigned by:
Taranek Moayed
9AE44694D614E7...
By: