

**SECOND AMENDMENT
TO EMERGENCY AGREEMENT
KHP III SF SUTTER LLC
KIMPTON BUCHANAN HOTEL**

THIS **SECOND AMENDMENT TO EMERGENCY AGREEMENT** (this “*Amendment*”), dated as of March 1, 2022, for reference purposes, is by and between **KHP III SF Sutter LLC**, a Delaware limited liability company (“*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 23, 2020 (the “*Original Agreement*”), pursuant to which Hotel granted City the right to use that certain real property and the improvements thereon consisting of a One Hundred Thirty One (131) room hotel located at 1800 Sutter Street in the City and County of San Francisco, commonly known as the “**Kimpton Buchanan 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 Original Agreement was amended pursuant to that certain First Amendment to Emergency Agreement by and between City and Hotel, dated as of May 2021 (the “*First Amendment*”). The Original Agreement, as modified by the First Amendment, is referred to in this Amendment as the “*Agreement*”.

C. Section 2 of the Forty-Fifth Supplement to the February 25, 2020 Mayoral Proclamation declaring the existence of a local emergency (“*Section 2 of the Forty-Fifth Supplement*”) authorizes the Executive Director of the HSA to extend the term of the Agreement up to and including April 2, 2022.

D. City and Contractor now desire to enter into this Amendment to, among other things, (a) extend the Booking Period from February 28, 2022, to April 2, 2022, and (b) increase the Compensation by Four Hundred Ninety-Two Thousand, One Hundred Seventy-Four Dollars (\$492,174), from Nine Million Five Hundred Thousand, Four Hundred Forty-One Dollars (\$9,500,441) to Nine Million, Nine Hundred Ninety-Two Thousand, Six Hundred Fifteen Dollars (\$9,992,615), 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 hereby 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. The term of this Agreement commenced on **June 1, 2020**, and will expire of its own accord on **April 2, 2022** (the “**Booking Period**”), unless earlier terminated as otherwise provided herein. In accordance with Section 8.1.1, either City or Hotel may terminate this Agreement as of any date by providing at least thirty (30) days’ written notice to the other party of such termination.

(b) Amendment of Section 3.3.1. *The fifth 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 **Nine Million, Nine Hundred Ninety-Two Thousand, Six Hundred Fifteen Dollars (\$9,992,615).**”

(c) 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: | \$9,992,615.00 |
| b. Not-to-Exceed Compensation without Reimbursable Amount:
(131x\$99x670) | \$8,689,230.00 |
| c. Not-to-Exceed Reimbursable Amount: | \$1,303,385.00 |

Section 3. Effective Date. Each of the amendments set forth in Section 2 above shall be effective on and after March 1, 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

Recommended by:

DocuSigned by:

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Trent Rhorer
Executive Director
Human Services Agency

HOTEL

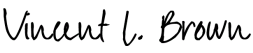
KHP III SF SUTTER LLC, a Delaware limited liability company

DocuSigned by:

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Judith C. Miles
Executive Member and Secretary

Supplier ID: **0000043439**

Approved as to Form:

David Chiu
City Attorney

By: 
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Vincent L. Brown
Deputy City Attorney