

BOARD of SUPERVISORS



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MEMORANDUM

HOMELESSNESS AND BEHAVIORAL HEALTH SELECT COMMITTEE

SAN FRANCISCO BOARD OF SUPERVISORS

TO: Supervisor Hillary Ronen, Chair
Homelessness and Behavioral Health Select Committee

FROM: Stephanie Cabrera, Assistant Clerk

DATE: July 17, 2023

SUBJECT: **COMMITTEE REPORT, BOARD MEETING**
Tuesday, July 18, 2023

The following file should be presented as COMMITTEE REPORT at the regular Board meeting on Tuesday, July 18, 2023. This item was acted upon at the Homelessness and Behavioral Health Select Committee meeting on Friday, July 14, 2023, at 10:00 a.m., by the votes indicated.

Item No. 64 **File No. 230761**

[Agreement Amendment - Sayana Corporation - Adante Hotel - Not to Exceed \$18,499,439 - Waiver of Certain Administrative and Environment Code Requirements]

Ordinance authorizing the Department of Homelessness and Supportive Housing (HSH) to amend the booking agreement with the Sayana Corporation, operator of the Adante Hotel, to increase the not to exceed amount by \$3,642,573 for a total amount not to exceed \$18,499,439, and to extend the term of the agreement from August 31, 2023, for a new term of May 14, 2020, through August 31, 2024; waiving for said agreement certain requirements of the Administrative and Environment Codes; and authorizing HSH to enter into amendments that do not increase the obligations or liabilities to the City and are necessary to effectuate the purposes of the agreement.

(Fiscal Impact)

RECOMMENDED AS A COMMITTEE REPORT

Vote: Supervisor Rafael Mandelman - Aye
Supervisor Shamann Walton - Aye
Supervisor Dean Preston - Aye

cc: Board of Supervisors
Angela Calvillo, Clerk of the Board
Alisa Somera, Legislative Deputy
Anne Pearson, Deputy City Attorney

File No. 230761

Committee Item No. 3

Board Item No. 64

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Homelessness and Behavioral Health Select Date: July 14, 2023

Board of Supervisors Meeting: Date: July 18, 2023

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| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
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| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
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| <input type="checkbox"/> | <input type="checkbox"/> | Contract / DRAFT Mills Act Agreement |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
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OTHER

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Prepared by: Stephanie Cabrera

Date: July 5, 2023

Prepared by: Stephanie Cabrera

Date: July 17, 2023

Prepared by: _____

Date: _____

Items 3, 4 & 5 Files 23-0761, 23-0762, 23-0763	Department: Homelessness & Supportive Housing (HSH)
EXECUTIVE SUMMARY	
<p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> • The proposed ordinances would: (a) approve amendments to three hotel booking agreements, including agreements with the Adante Hotel (File 23-0761), the Cova Hotel (File 23-0763), and The Monarch (File 23-0762), extending the terms through August 31, 2024 and increasing the not to exceed amounts; and (b) waive certain requirements of the Administrative and Environment Codes for the agreements. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • HSH is using three hotels that were previously closed as Shelter in Place Hotels as non-congregate shelter programs, including the Monarch (100 rooms), the Cova Hotel (95 rooms), and the Adante Hotel (93 rooms). These sites serve adults experiencing homelessness regardless of COVID-19 vulnerability. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • The proposed ordinances would increase the not-to-exceed amounts by \$3.6 million (Adante), \$2.9 million (Cova), and \$4.1 million (Monarch). • In FY 2023-24, the total budgeted costs per unit per night for the hotels (including property rental costs, programming, food, and security) ranges from \$188 for the Monarch up to \$242 for the Cova Hotel <p style="text-align: center;">Policy Consideration</p> <ul style="list-style-type: none"> • The non-congregate shelter hotels are more expensive to operate than temporary congregate shelter as well as permanent supportive housing. The FY 2022-23-2024-25 budget includes funding for the three former SIP hotels for an additional year to maintain needed system shelter capacity for adults while HSH identifies ongoing funding for an expanded shelter portfolio and lower-cost options for non-congregate shelter. <p style="text-align: center;">Recommendation</p> <ul style="list-style-type: none"> • Approve the proposed ordinances. 	

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of \$10 million or more, or (3) requires a modification of more than \$500,000 is subject to Board of Supervisors approval.

File 22-0703 approved extensions for hotel booking agreements through August 31, 2023. Amendments to extend beyond August 31, 2023 and to waive applicable restrictions in the Municipal Code require approval of the Board of Supervisors.

BACKGROUND

Shelter in Place Program Ended

The Human Services Agency (HSA) entered into booking agreements with hotels to provide rooms for shelter-in-place, isolation and quarantine, and first responders under the City's Shelter in Place Hotel Program (SIP Program).¹ At its highest capacity, the SIP Program, provided 2,288 rooms across 25 sites. According to the Department of Homelessness and Supportive Housing (HSH), the program served over 3,700 guests, including adults, families, and Transitional Aged Youth (ages 18-24).² The SIP Program provided non-congregate temporary shelter for people experiencing homelessness who were most vulnerable to COVID-19.

The SIP Program ended in December 2022. Three-quarters of guests exited to stable locations, including housing or shelter. Over 1,800 people - two-thirds of eligible guests - exited to housing.³

Hotel Close-Out Costs

Under the booking agreements, the City may be responsible for all repair costs associated with restoring the hotel to its previous condition, even if they exceed the contingency amount. To date, hotel close-out costs have exceeded the total contract costs for nine out of 22 hotels closed. The Board of Supervisors has approved settlements for damages to nine former Shelter in Place Hotels, totaling approximately \$44.5 million. According to HSA staff, the City is not anticipating additional settlements and all hotels have been closed-out except for three hotels that are

¹ According to the Mayor's emergency proclamation and supplements, HSA did not need to adhere to competitive solicitation and procurement procedures in the Administrative Code, obtain commission approval, or include terms otherwise required by the Administrative and Environment Codes (such as the Minimum Compensation Ordinance) to enter into or amend the agreements.

² <https://hsh.sfgov.org/covid-19/shelter-in-place-hotel-program-overview/>

³ More than 2,500 guests were eligible for the SIP Housing Process. An additional 800 guests were not eligible, including 500 guests that were not eligible because they exited the SIP hotels before November 2020 when the City began its coordinated effort to house guests. The remaining 300 non-eligible guests did not have high risk of negative impacts from COVID-19 and were offered problem solving services and shelter bed placements.

currently being used by HSH for non-congregate shelter and one that the Department of Public Health for other programs.⁴ HSH staff report that they are managing the condition of their remaining three hotel sites by conducting walk-throughs of each room as they turnover, conducting weekly inspections of each room, and clarifying janitorial expectations with non-profit site managers.

Hotels Used as Non-Congregate Shelter

HSH is using three hotels that were previously closed as Shelter in Place Hotels as non-congregate shelter programs, including the Monarch (100 rooms), the Cova Hotel (95 rooms), and the Adante Hotel (93 rooms). These sites serve adults experiencing homelessness regardless of COVID-19 vulnerability. There are 288 units across all three sites, which have served 642 unique guests as shown in Exhibit 1 below. HSH staff report that units are filled through the City's centralized shelter placement process, and available units are allocated daily to referring entities such as the San Francisco Homeless Outreach Team (SFHOT), the Healthy Streets Operation Center (HSOC), and hospital discharge. According to HSH staff, 240 rooms are occupied (93 percent) out of 255 non-congregate rooms across the three sites (excluding 11 overflow rooms for isolation, six rooms that are offline for repairs, and 16 rooms that are used for operations, including staff offices and supply rooms).

⁴ DPH currently uses one former SIP hotel (Days Inn) for: (a) shelter for people experiencing homelessness to provide management of chronic alcohol use disorder and safe sobering; and (b) isolation for individuals and families who have communicable diseases of public health concern and do not have a safe place to isolate. However, according to DPH staff, DPH expects to close-out at Days Inn before the current booking agreement ends on August 31, 2023 and plans to transfer guests before close-out to an alternate site.

Exhibit 1: Three Hotels Used as Non-Congregate Shelter

	Adante Hotel	Cova Hotel	The Monarch	Total
Address	610 Geary Street	655 Ellis Street	1015 Geary Street	
Date Opened as Non-Congregate Shelter	3/7/22	12/27/21	9/26/22	
Number of Rooms	93 rooms	95 rooms	100 rooms	288 rooms
Unique Guests Served (As of June 7, 2023)	229 guests	257 guests	178 guests	642 guests
Current Use (units)	75 shelter units; 11 overflow units; 7 operations units	92 shelter units; 3 operations units	94 shelter units; 6 operations units	261 shelters; 11 overflows; 16 operations
Shelter Units Offline for Repairs	4 units	1 unit	1 unit	6 units
Occupancy (excl. offline and isolation units)	98% 70/71 shelter units 3/11 isolation units	86% 78/91 shelter units	99% 92/93 shelter units	94% 240/255 shelter 3/11 isolation
Hotel Operator	Sayana Corporation	Shin International, Inc.	Lombard Hotel Group	
Service Provider	Five Keys Schools and Programs	Episcopal Community Services	WeHope	

Source: HSH

Hotel Booking Agreements for Three Hotels

HSA entered into the original booking agreements with the three hotels between May and July 2020 and subsequently amended the agreements twice to extend the term and increase the not-to-exceed amounts. In July 2022, the Board of Supervisors approved the third amendments to the hotel booking agreements for the Cova Hotel, the Adante Hotel, and the Monarch, extending the terms through August 31, 2023 and increasing the not-to-exceed amounts (File 22-0703). HSA subsequently entered into the fourth amendment for the Cova Hotel to add a surcharge of \$2.83 per room per night to be paid from the contingency beginning September 1, 2022 with no change to the not-to-exceed amount or term. HSH has separate grant agreements with the service providers for programming at the sites.

DETAILS OF PROPOSED LEGISLATION

The proposed ordinances would: (a) approve amendments to three hotel booking agreements, including agreements with the Adante Hotel (File 23-0761), the Cova Hotel (File 23-0763), and The Monarch (File 23-0762), extending the terms through August 31, 2024 and increasing the not to exceed amounts; and (b) waive certain requirements of the Administrative and Environment Codes for the agreements. Details for the proposed amendments to the booking agreements are shown in Exhibit 2 below.

Exhibit 2: Proposed Amendments to Three Hotel Booking Agreements

	Adante Hotel (4th Amendment, File 23-0761)	Cova Hotel (5th Amendment, File 23-0763)	The Monarch (4th Amendment, File 23-0762)
Address	610 Geary Street	655 Ellis Street	1015 Geary Street
Number of Rooms	93 rooms	95 rooms	100 rooms
Term Begin Date	5/14/2020	5/26/2020	8/4/2020
Current End Date	8/31/2023	8/31/2023	8/31/2023
Proposed End Date	8/31/2024	8/31/2024	8/31/2024
Proposed Term length	1,570 nights	1,558 nights	1,488 nights
Current Not to Exceed Amount	\$14,856,866	\$11,385,311	\$15,005,460
Proposed Not to Exceed Amount	\$18,499,439	\$14,304,253	\$19,127,760
Change in Term Length	365 nights	365 nights	365 nights
Change in Not to Exceed Amount	\$3,642,573	\$2,918,942	\$4,122,300

Source: Proposed amended agreements

Exemptions from the Administrative Code and the Environment Code

Under the proposed ordinances, the hotel booking agreements would continue to be exempt from the following requirements of the Administrative and Environment Codes:

- Salary History Ordinance (Admin. Code Chapter 12K)
- Minimum Compensation Ordinance (Admin. Code Chapter 12P)
- Consideration of Criminal History in Hiring and Employment Decisions (Admin. Code Chapter 12T)
- Slavery Era Disclosure Ordinance (Admin. Code Chapter 12Y)
- Local Business Enterprise and Non-Discrimination in Contracting Ordinance (Admin. Code Chapter 14B)
- First Source Hiring Program (Admin. Code Chapter 83)
- Sugar-Sweetened Beverage Funding Ban Ordinance (Admin. Code Chapter 101)
- Tropical Hardwood and Virgin Redwood Ban (Environ. Code Chapter 8)
- Arsenic and Treated Wood Products (Environ. Code Chapter 13)
- Food Service and Packaging Waste Reduction Ordinance (Environ. Code Chapter 16)
- Bottled Water Ordinance (Environ. Code Chapter 24)

Extending the term beyond August 31, 2024 for each of the three agreements would require approval by the Board of Supervisors to continue waiving the above requirements.

FISCAL IMPACT

The proposed ordinances would increase the not-to-exceed amounts by \$3.6 million (Adante), \$2.9 million (Cova), and \$4.1 million (Monarch) as shown in Exhibit 2 above. The contract not to exceed amounts include a 15 percent contingency for reimbursable expenses above the monthly room rate. The contingency amount is for use at the City's discretion and is primarily intended

for repair costs at contract close-out. According to the agreements, the City may be responsible for all repair costs associated with restoring the hotel to its previous condition, even if they exceed the contingency amount.

Funding for the extension year for the three booking agreements is from state grant funds and General Fund support.

Actual Spending

Budgeted and actual expenditures as of June 2023 for the three agreements are shown below. Actual expenditures include invoices through May 2023 as well as some available June 2023 costs.

Exhibit 3: Actual Spending for Three Agreements, June 2023

Site Name	Current End Date	Current Not-to-Exceed Amount	Actual Spend to Date (As of June 2023)	Remaining Amount	Percent Spend
Adante Hotel	8/31/2023	\$14,856,866	\$13,250,145	\$1,606,721	89%
Cova Hotel	8/31/2023	11,385,311	9,895,576	1,489,735	87%
The Monarch	8/31/2023	15,005,460	13,710,259	1,295,201	91%
Total		\$41,247,637	\$36,855,980	\$4,391,657	89%

Source: HSH

Cost per Room

In FY 2023-24, the total budgeted costs per unit per night for the hotels (including property rental costs, programming, food, and security) ranges from \$188 for the Monarch up to \$242 for the Cova Hotel, as shown in Exhibit 4 below.

Exhibit 4: Budgeted Cost Per Unit, FY 2023-24

Site (shelter units)	Booking Agreement			Total	Unit/Night
	(excl. meals)	Meals*	Service Agreement		
Adante (86 units)	\$2,376,150	\$848,625	\$4,188,697	\$7,413,472	\$236
Cova (92 units)	2,538,210	954,840	4,642,549	8,135,599	242
Monarch (94 units)	2,562,000	915,000	2,966,736	6,443,736	188
Total (272 units)	\$7,476,360	\$2,718,465	\$11,797,982	\$21,992,807	\$222

Source: HSH

*Meals at the Adante Hotel and The Monarch are provided through the hotel booking agreement, and meals at the Cova Hotel are provided by a separate agreement.

The per unit cost for The Monarch is lower than the other two hotels because of lower service agreement costs. According to HSH staff, this is due to lower staffing levels for case management, housekeeping, and janitorial services compared to the other two hotels.

POLICY CONSIDERATION**Use of Hotels for HSH Emergency Shelter Sites**

The non-congregate shelter hotels are more expensive to operate than temporary congregate shelter as well as permanent supportive housing. Based on prior reporting, we estimate the current cost of temporary congregate shelters to be \$105 per person per night, a figure which includes property rental costs (which are often minimal because they are on public land) and programming. In addition, permanent supportive housing is more than twice as cost-effective to operate than the SIP hotels according to HSH. The higher cost for the hotels (\$222 per unit per night) reflects the non-congregate setting as well as the temporary nature of the SIP hotel model, which was set-up quickly as part of the City's COVID-19 emergency response. HSH estimates the cost to operate a new non-congregate shelter could cost as much as \$175 per bed per night (including property rental cost and programming), which reflects additional staffing and higher compensation for providers.

According to HSH staff, the new citywide strategic plan to prevent and end homelessness prioritizes non-congregate settings (such as cabins and hotels) over congregate settings, and HSH funds several non-congregate adult and family shelters, including 711 Post Street, the Baldwin Hotel, and the Oasis Inn. The FY 2022-23-2024-25 budget includes funding for the three former SIP hotels for an additional year to maintain needed system shelter capacity for adults while HSH identifies ongoing funding for an expanded shelter portfolio and lower-cost options for non-congregate shelter.

RECOMMENDATION

Approve the proposed ordinances.

1 [Agreement Amendment - Sayana Corporation - Adante Hotel - Not to Exceed \$18,499,439 -
2 Waiver of Certain Administrative and Environment Code Requirements]

3 **Ordinance authorizing the Department of Homelessness and Supportive Housing (HSH)**
4 **to amend the booking agreement with the Sayana Corporation, operator of the Adante**
5 **Hotel, to increase the not to exceed amount by \$3,642,573 for a total amount not to**
6 **exceed \$18,499,439, and to extend the term of the agreement from August 31, 2023, for**
7 **a new term of May 14, 2020, through August 31, 2024; waiving for said agreement**
8 **certain requirements of the Administrative and Environment Codes; and authorizing**
9 **HSH to enter into amendments that do not increase the obligations or liabilities to the**
10 **City and are necessary to effectuate the purposes of the agreement.**

11 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
12 **Additions to Codes** are in *single-underline italics Times New Roman font*.
13 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
14 **Board amendment additions** are in double-underlined Arial font.
15 **Board amendment deletions** are in ~~strikethrough Arial font~~.
16 **Asterisks (* * * *)** indicate the omission of unchanged Code
17 subsections or parts of tables.

18 Be it ordained by the People of the City and County of San Francisco:

19 Section 1. Background and Findings.

20 (a) On February 25, 2020, Mayor London Breed proclaimed a state of emergency in
21 response to the COVID-19 pandemic (the "Proclamation"). On May 11, 2020, the Mayor
22 issued the Thirteenth Supplement to the Proclamation, authorizing City departments to enter
23 into COVID-19 related contracts with a term of one year or less without following the
24 competitive solicitation and procurement procedures in the Administrative Code. Under the
25 authority of the Thirteenth Supplement to the Proclamation, the Human Services Agency

1 ("HSA") entered into an Emergency Hotel Booking Agreement with Sayana Corporation,
2 operator of the Adante Hotel ("Adante Hotel Booking Agreement"), HSA Contract No.
3 1000017957.

4 (b) On February 19, 2021, the Mayor issued the Thirty-Fifth Supplement to the
5 Proclamation, authorizing departments to extend the terms of COVID-19 related emergency
6 contracts up to 12 months, without including terms otherwise required by the Administrative
7 and Environment Codes. Under the Authority of the Thirty-Fifth Supplement, HSA extended
8 the Adante Hotel Booking Agreement until February 28, 2022, and increased the total not to
9 exceed amount to \$9,333,643.

10 (c) On February 10, 2022, the Mayor issued the Forty-Fifth Supplement to the
11 Proclamation, authorizing HSA to amend any emergency hotel booking agreement in place as
12 of February 10, 2022 to extend the term of such agreements to August 31, 2022. The Forty-
13 Fifth Supplement also provided that any further contract extensions would require approval by
14 the Board of Supervisors. Under the authority of the Forty-Fifth Supplement, HSA amended
15 the Adante Hotel Booking Agreement to extend the term through April 17, 2022, and
16 increased the total not to exceed amount to \$9,938,515.

17 (d) In Ordinance No. 167-22, the Board of Supervisors authorized HSA to extend the
18 terms of several booking agreements through August 31, 2023. Under the Authority of Ord.
19 No. 167-22, HSA amended the Adante Hotel Booking Agreement to increase the amount by
20 \$4,918,351 for a new not-to-exceed amount of \$14,856,866, with a term through August 31,
21 2023, and to extend the waiver of the provisions in the Administrative and Environment Codes
22 that HSA previously waived under the authority of the Mayor's Supplements to the
23 Proclamation.

1 (e) On January 1, 2023, HSA assigned the Adante Hotel Booking Agreement to the
2 Department of Homelessness and Supportive Housing (“HSH”) for continued use as 93 units
3 of non-congregate shelter for adults experiencing homelessness.

4 (f) The Mayor’s proposed FY2023-24 and FY2024-25 budget makes critical
5 investments in new shelter, housing, and prevention as called for in the recently released
6 citywide strategic plan “Home by the Bay: An Equity-Driven Plan to Prevent and End
7 Homelessness in San Francisco.” The Plan calls for new investments and strategies to
8 reduce unsheltered homelessness by half over the next five years. In order to make progress
9 on these goals, it is critical that HSH maintain existing non-congregate shelter capacity.

10 (g) This ordinance extending the term of the Adante Hotel Booking Agreement for an
11 additional year is necessary to enable HSH to maintain its inventory of non-congregate
12 shelter. The ordinance thereby furthers the interests of the City by allowing for the
13 uninterrupted use of these hotel rooms, and avoiding the inevitable delay and expenditure of
14 limited staff resources that would be caused by restarting the procurement process to
15 reacquire the rooms.

16 (h) The Administrative Code and the Environment Code typically require that new and
17 amended contracts include provisions requiring the contractor to adhere to various City
18 policies. Requiring Sayana Corporation to comply with these requirements as a condition of
19 extending the agreement would likely impose costs and delays that would further impede
20 HSH’s ability to provide uninterrupted non-congregate shelter units.

21
22 Section 2. Amendment of Existing Contract to Extend Term and Increase Not-To-
23 Exceed Amount; Continued Waiver of Provisions of the Administrative and Environment
24 Codes.

1 (a) Pursuant to Charter Section 9.118(b), the Board of Supervisors hereby approves
2 the Fourth Amendment to the Adante Hotel Booking Agreement, to increase the not-to-exceed
3 amount by \$3,642,573 for a new not-to-exceed amount of \$18,499,439, and to extend the
4 contract term from August 31, 2023 to August 31, 2024.

5 (b) The Board of Supervisors authorizes HSH to amend the Adante Hotel Booking
6 Agreement without adherence to the requirements of Administrative Code Chapters 12K
7 (Salary History Ordinance), 12P (Minimum Compensation Ordinance), 12T (Consideration of
8 Criminal History in Hiring and Employment Decisions), 12Y (Slavery Era Disclosure
9 Ordinance), 14B (Local Business Enterprise and Non-Discrimination in Contracting
10 Ordinance), 83 (First Source Hiring Program), and 101 (Sugar-Sweetened Beverage Funding
11 Ban Ordinance), and Environment Code Chapters 8 (Tropical Hardwood and Virgin Redwood
12 Ban), 13 (Arsenic Treated Wood Products), 16 (Food Service and Packaging Waste
13 Reduction Ordinance), and 24 (Bottled Water Ordinance).

14 (c) The Board of Supervisors authorizes HSH to enter into any additional amendments
15 to the Adante Hotel Booking Agreement approved pursuant to this Section 2 that the
16 department determines, in consultation with the City Attorney, are in the best interest of the
17 City, do not further extend the term of the agreement or increase the not-to-exceed amount
18 stated in this ordinance, do not otherwise materially increase the obligations or liabilities of the
19 City, are necessary or advisable to effectuate the purposes of the agreement, and are in
20 compliance with all applicable laws.

21 (d) Within 30 days of the Agreement being fully executed by all parties, HSH shall
22 provide the executed Agreement to the Clerk of the Board of Supervisors for inclusion in File
23 No. 230761.
24
25

LEGISLATIVE DIGEST

[Agreement Amendment - Sayana Corporation - Adante Hotel - Not to Exceed \$18,499,439 - Waiver of Certain Administrative and Environment Code Requirements]

Ordinance authorizing the Department of Homelessness and Supportive Housing (HSH) to amend the booking agreement with the Sayana Corporation, operator of the Adante Hotel to increase the not to exceed amount by \$3,642,573 for a total amount not to exceed \$18,499,439, and to extend the term of the agreement from August 31, 2023, for a new term of May 14, 2020, through August 31, 2024; waiving for said agreement certain requirements of the Administrative and Environment Codes; and authorizing HSH to enter into amendments that do not increase the obligations or liabilities to the City and are necessary to effectuate the purposes of the agreement.

Amendments to Current Law

This uncodified Proposed Ordinance would authorize the Department of Homelessness and Supportive Housing (“HSH”) to amend the booking agreement with Sayana Corporation, the operator of the Adante Hotel to provide non-congregate shelter to people experiencing homelessness by extending the term from August 31, 2023 to August 31, 2024; waive certain requirements in the Administrative and Environment Codes; and authorize HSH to enter into amendments that do not increase the obligations or liabilities to the City and are necessary to effectuate the purposes of the agreement.

Background Information

On February 25, 2020, Mayor London Breed proclaimed a state of emergency in response to the COVID-19 pandemic (the “Proclamation”). On May 11, 2020, the Mayor issued the Thirteenth Supplement to the Proclamation, authorizing City departments to enter into COVID-19 related contracts with a term of one year or less and that exempted the departments from certain contracting requirements. On February 19, 2021, the Mayor issued the Thirty-Fifth Supplement to the Proclamation authorizing a term extension of up to 12 months for the COVID-19 related emergency contracts initially authorized by the Thirteenth Supplement.

Under the authority of the Thirteenth Supplement, the Human Services Agency (“HSA”) entered into hotel booking agreements with 30 hotels to provide rooms for shelter-in-place, isolation and quarantine, and first responders.

On February 10, 2022, the Mayor issued the Forty-Fifth Supplement to the Proclamation authorizing HSA to amend any hotel booking agreement the agency had in place as of February 10, 2022 for the use of hotel rooms to house individuals experiencing homelessness or individuals who are at risk of developing severe COVID-19 to extend the term of any such agreements up to and including August 31, 2022. The Supplement also provided that if any

such amendment included an option to further extend the term beyond August 31, 2022, HSA must first have obtained approval of the Board of Supervisors by ordinance waiving any applicable restrictions in the Municipal Code before exercising such extension.

On July 28, 2022, in Ordinance No. 167-22, the Board of Supervisors authorized HSA to enter into hotel booking agreements up to August 31, 2023, and to extend the waiver of the provisions in the Administrative and Environment Codes that HSA previously waived under the authority of the Mayor's Supplements to the Proclamation. On January 1, 2023, HSA assigned the Adante Hotel agreement to HSH to continue to provide 93 units of non-congregate shelter to adults experiencing homelessness.

On June 1, 2023, the Mayor's proposed FY2023-24 and FY2024-25 makes critical investments in new shelter, housing, and prevention as called for in the recently released citywide strategic plan "Home by the Bay: An Equity-Driven Plan to Prevent and End Homelessness in San Francisco." The Plan calls for new investments and strategies to reduce unsheltered homelessness by half over the next five years. In order to make progress on these goals, it is critical that HSH maintain existing non-congregate shelter capacity.

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San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102

Phone: 415.252.3100 . Fax: 415.252.3112

ethics.commission@sfgov.org . www.sfethics.org

Received On:

File #: 230761

Bid/RFP #:

Notification of Contract Approval

SFEC Form 126(f)4

(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)

A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

1. FILING INFORMATION

TYPE OF FILING	DATE OF ORIGINAL FILING (for amendment only)
Original	
AMENDMENT DESCRIPTION – Explain reason for amendment	

2. CITY ELECTIVE OFFICE OR BOARD

OFFICE OR BOARD	NAME OF CITY ELECTIVE OFFICER
Board of Supervisors	Members

3. FILER'S CONTACT

NAME OF FILER'S CONTACT	TELEPHONE NUMBER
Angela Calvillo	415-554-5184
FULL DEPARTMENT NAME	EMAIL
office of the clerk of the Board	Board.of.Supervisors@sfgov.org

4. CONTRACTING DEPARTMENT CONTACT

NAME OF DEPARTMENTAL CONTACT	DEPARTMENT CONTACT TELEPHONE NUMBER
Bryn Miller	415-279-0662
FULL DEPARTMENT NAME	DEPARTMENT CONTACT EMAIL
HOM Homelessness and Supportive Housing	bryn.miller@sfgov.org

5. CONTRACTOR	
NAME OF CONTRACTOR Sayana Corporation	TELEPHONE NUMBER 415-710-4190
STREET ADDRESS (including City, State and Zip Code) 2468 39th Street, San Francisco, CA 94116	EMAIL

6. CONTRACT		
DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)	ORIGINAL BID/RFP NUMBER	FILE NUMBER (If applicable) 230761
DESCRIPTION OF AMOUNT OF CONTRACT \$18,499,439		
NATURE OF THE CONTRACT (Please describe) Extension of Adante booking agreement through August 2024.		

7. COMMENTS

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
<input checked="" type="checkbox"/>	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES Board of Supervisors
<input type="checkbox"/>	THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Patel	Naresh	CEO
2	Patel	Rajendra	CFO
3	Patel	Ashok	COO
4			
5			
6			
7			
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9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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Check this box if you need to include additional names. Please submit a separate form with complete information. Select “Supplemental” for filing type.

10. VERIFICATION

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

<p>SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK</p> <p>BOS Clerk of the Board</p>	<p>DATE SIGNED</p>
---	---------------------------

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

THIS **FOURTH AMENDMENT TO EMERGENCY AGREEMENT** (this “*Amendment*”), dated as of August 31, 2023, 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 Department of Homelessness and Supportive Housing (the “*HSH*”), 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**” (the “*Improvements*”), 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*”), as further amended by that certain Third Amendment to Emergency Agreement by and between City and Hotel, dated as of April 18, 2022 (the “*Third Amendment*”, and together with the Emergency Agreement, the First Amendment, and the Second Amendment, the “*Agreement*”).

C. The San Francisco Board of Supervisors adopted Ordinance No. _____ on _____ and effective as of _____ (the “*Ordinance*”, attached hereto), to authorize the extension of the Booking Period from August 31, 2023, to August 31, 2024, and to increase the Compensation under the Agreement by Three Million, Six Hundred Forty-Two Thousand, Five Hundred Seventy-Three Dollars (\$3,642,573), from Fourteen Million, Eight Hundred Fifty-Six Thousand, Eight Hundred Sixty-Six Dollars (\$14,856,866), to Eighteen Million, Four Hundred Ninety-Nine Thousand, Four Hundred Thirty-Nine Dollars (\$18,499,439).

D. City and Contractor now desire to enter into this Amendment to, among other things, (a) extend the Booking Period from August 31, 2023 to August 31, 2024, and (b) 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 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.

2.1.1. The term of this Agreement commenced on **May 14, 2020**, and will expire of its own accord on **August 31, 2024** (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, 2024, and (b) any extension of the Booking Period beyond August 31, 2024, shall require the Executive Director of HSH 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 Eighteen Million, Four Hundred Ninety-Nine Thousand, Four Hundred Thirty-Nine Dollars (\$18,499,439).”

(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: | \$18,499,439 |
| b. Not-to-Exceed Compensation without Reimbursable Amount: | \$10,762,425 |
| <i>(93 x \$79 x 655) + (93 x \$70 x 914)</i> | |
| Not-to-Exceed Reimbursable Amount (Contingency, 15% of amount in | |
| c. b.): | \$1,614,364 |
| d. Not-to-Exceed Reimbursable Amount (Food Service in Appendix E) | \$6,122,650 |

(d) 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 A**.*

Section 3. Effective Date. Each of the amendments set forth in Section 2 above shall be effective retroactively as of the date of this Amendment; provided that, this Amendment shall not become effective until the date of the effectiveness of the Ordinance.

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

Shireen McSpadden
Executive Director
Homelessness and Supportive Housing

Approved as to Form:

David Chiu
City Attorney

By: _____
Adam Radtke
Deputy City Attorney

HOTEL

SAYANA CORPORATION,
a California corporation

Chirag Patel
Manager

Supplier ID: **0000043291**

Exhibit A

Appendix E “Food Service By Hotel”

The Hotel and City continue to work in good faith to 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 February 28, 2022 (333 nights); and (iii) not exceed \$55 per room per night beginning March 1, 2022 through the night of April 17, 2022 (47 nights); (iv) not exceed \$55 per room per night beginning April 18, 2022 through the night of June 30, 2022 (74 nights); and (v) not exceed \$25 per room per night beginning July 1, 2022 through the night of August 31, 2024 (792 nights). The total not-to-exceed compensation of \$6,122,650 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.

Exhibit B
Ordinance
[Attached]

**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**” (the “*Improvements*”), 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 Ordinance No. 167-22 on July 28, 2022 and effective as of August 28, 2022 (the “*Ordinance*”, attached hereto), 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, (a) extend the Booking Period from April 17, 2022, to August 31, 2023, and (b) 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) Addition of Section 4.8. *Section 4.8 Department Transition and Continuity is hereby added to the Agreement to read as follows:*

"4.8 Departmental Transition and Continuity. Over the course of the term of this Agreement (i.e., through August 31, 2023), it is anticipated that administration of this Agreement on behalf of the City may be transferred from the Human Services Agency ("**HSA**") to the Department of Homelessness and Supportive Housing ("**HSH**"). As part of the transfer, the departmental contact(s) and invoicing procedures specified in this Agreement will shift from the HSA to HSH. The City's obligations under this Agreement will not change. HSA must notify the Hotel in writing of the all new departmental contacts and invoicing procedures. After written notice is given to the Hotel, all references in this Agreement to "HSA", "Department", or "City" shall be construed as a reference to "HSH."

(e) Amendment of Section 8.1.3. *Section 8.1.3 of the Agreement is hereby amended and restated in its entirety and shall read as follows:*

“8.1.3 Upon expiration (or earlier termination) of this Agreement, the City shall peacefully surrender the Property to the Hotel in as good order and condition and repair as when received, except for reasonable, ordinary use and wear thereof. The City shall ensure, at no cost to the Hotel, that all its employees, guests, and invitees have completely vacated the Property prior to the expiration (or earlier termination) of this Agreement. If the City fails to surrender the Property to Hotel (a) on the date required, and (b) in the condition required hereunder, after the expiration of any applicable notice and cure periods the City will be liable for all reasonable out of pocket costs incurred by the Hotel (or third parties under contract with the Hotel) to repair or restore the Property to the required condition to satisfy City's surrender obligations hereunder; provided, however, that if City has failed to return the Property in the condition required, then within three (3) days following City's vacating the Property, Hotel shall undertake reasonable repairs to mitigate and or avoid any loss of use of the Property.”

(f) **Amendment of Appendix A.** *Appendix A is amended d as follows:*

(i) **“Population to be Housed”** is amended and restated in its entirety to read as follows:

“Hotel will house the following populations during the Term:

City will use seventy-two (72) rooms at the Improvements as a Non-Congregate Shelter to house Non-congregate Shelter Program participants, who are adults, without custody of minor children, experiencing homelessness and who have no fixed, regular, and adequate nighttime residence, are unsheltered, and have a need for adequate emergency nighttime sleeping accommodations. Fourteen (14) rooms will be used at the Improvements for Isolation and Quarantine to house individuals whose current housing situation does not allow them to self-quarantine at home in an effort to minimize the spread of the COVID-19 virus.

Individuals will be identified and assessed by the Department of Homelessness and Supportive Housing SF Homeless Outreach Team in coordination with the Department of Public Health Street Medicine Team (or through a shelter placement process approved by the Department of Homelessness and Supportive Housing).

(ii) **“City Scope of Service”** is amended as follows:

d. PPE – City will no longer provide PPE.

k. Third Party Vendors – City will no longer provide Guest Laundry services.

m Room Cleaning – The first sentence shall be amended to delete “but in accordance with CDC requirements.

(g) **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:** \$8,386,275

(93 x \$79 x 655) + (93 x \$70 x 549)

Not-to-Exceed Reimbursable Amount (Contingency, 15% of amount in

- c. **b.):** \$1,257,941
- d. **Not-to-Exceed Reimbursable Amount (Food Service in Appendix E)** \$5,212,650

(h) 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 A.*

Section 3. Effective Date. Each of the amendments set forth in Section 2 above shall be effective retroactively as of the date of this Amendment; provided that, this Amendment shall not become effective until the date of the effectiveness of the Ordinance.

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

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

DocuSigned by:
Shireen McSpadden
C4D7B7818868449...
Shireen McSpadden
Executive Director
Homelessness and Supportive Housing

Approved as to Form:

David Chiu
City Attorney

By: DocuSigned by:
Vincent Brown
5D88F562E4274BB...
Vincent L. Brown
Deputy City Attorney

HOTEL

SAYANA CORPORATION,
a California corporation

DocuSigned by:
Chirag Patel
22DB845FFE8E426...
Chirag Patel
Manager

Supplier ID: **0000043291**

Exhibit A

Appendix E “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 February 28, 2022 (333 nights); and (iii) not exceed \$55 per room per night beginning March 1, 2022 through the night of April 17, 2022 (47 nights); (iv) not exceed \$55 per room per night beginning April 18, 2022 through the night of June 30, 2022 (74 nights); and (v) not exceed \$25 per room per night beginning July 1, 2022 through the night of August 31, 2023 (427 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.

Exhibit B

Ordinance

[Attached]

1 [Human Services Agency - Agreements with Hotels Providing Non-Congregate Shelter to
2 Persons Experiencing Homelessness]

3 **Ordinance authorizing the Human Services Agency (HSA) to amend certain hotel**
4 **booking agreements that were executed on or before February 10, 2022, to provide**
5 **non-congregate shelter to people experiencing homelessness by extending the terms**
6 **beyond August 31, 2022, through August 31, 2023; waiving for said agreements certain**
7 **requirements in the Administrative and Environment Codes; approving certain**
8 **agreements with anticipated expenditures in excess of \$10 million under Charter,**
9 **Section 9.118; and authorizing HSA to enter into modifications of such agreements that**
10 **do not increase the obligations or liabilities to the City and are necessary to effectuate**
11 **the purposes of the agreement.**

12 **NOTE:** **Unchanged Code text and uncodified text** are in plain Arial font.
13 **Additions to Codes** are in *single-underline italics Times New Roman font*.
14 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
15 **Board amendment additions** are in double-underlined Arial font.
16 **Board amendment deletions** are in ~~strikethrough Arial font~~.
17 **Asterisks (* * * *)** indicate the omission of unchanged Code
18 subsections or parts of tables.

19 Be it ordained by the People of the City and County of San Francisco:

20 Section 1. Background and Findings.

21 (a) On February 25, 2020, Mayor London Breed proclaimed a state of emergency in
22 response to the COVID-19 pandemic (the "Proclamation"). On March 3, 2020, the Board of
23 Supervisors concurred in the February 25 Proclamation and in the actions taken by the Mayor
24 to meet the emergency.

25 (b) On March 13, 2020, the Mayor issued the Second Supplement to the Proclamation,
which found that "it is in the public interest to take steps to ensure that people remain housed

1 during this public health emergency” and that “there is a severe shortage of affordable rental
2 housing in the City, people who are evicted are at a risk of homelessness, and homeless
3 individuals are less equipped to mitigate risks related to COVID-19.”

4 (c) On May 11, 2020, the Mayor issued the Thirteenth Supplement to the
5 Proclamation, authorizing City departments to enter into COVID-19 related contracts with a
6 term of one year or less and that exempted departments from following the competitive
7 solicitation and procurement procedures in the Administrative Code, obtaining approval from
8 the commission overseeing each department, including contract terms that the department
9 head determined may impede the City’s ability to obtain state or federal reimbursement, and
10 Civil Service Commission approval.

11 (d) In Resolution No. 330-20 adopted in July 2020, the Board of Supervisors
12 expressed its intent that no person experiencing homelessness who has been brought into the
13 COVID-19 Response System, which includes City or privately-funded hotel rooms,
14 congregate shelters, and Recreational Vehicles, be discharged to the streets, and that all
15 people in the COVID-19 Response System receive a “Coordinated Entry Assessment” for
16 appropriate housing matches. In Resolution No. 330-20, the Board also urged the Department
17 of Homelessness and Supportive Housing (HSH) to release a comprehensive plan that
18 outlines anticipated steps to prevent people in Shelter-in-Place (SIP) hotels or other COVID-
19 Response System housing options from being discharged to the streets.

20 (e) Following the first wave of the coronavirus, HSA entered into booking agreements
21 with 30 hotels to provide rooms for shelter-in-place, isolation and quarantine, and first
22 responders. As of November 15, 2020, the City was providing temporary shelter in over 2,000
23 rooms to individuals or families in hotels. Pursuant to the Thirteenth Supplement, HSA
24 waived commission approvals and certain contract terms in the hotel booking agreements.
25

1 (f) On January 21, 2021, President Joe Biden directed the Federal Emergency
2 Management Agency (FEMA) to make assistance available to local governments to fund non-
3 congregate sheltering at 100% of federal cost share until September 30, 2021, in contrast to
4 the previous policy of making FEMA assistance available at 75% of the federal cost share.

5 (g) On February 19, 2021, in the Thirty-Fifth Supplement to the Proclamation, the
6 Mayor authorized City departments to extend the COVID-19 related emergency contracts
7 initially authorized by the Thirteenth Supplement. For contracts executed before February 1,
8 2021, the Thirty-Fifth Supplement authorized a term extension of up to 12 months. The
9 Thirty-Fifth Supplement also authorized City departments to execute or amend COVID-19
10 related contracts on or after February 1, 2021 without complying with competitive solicitation
11 or commission approval, and without including terms otherwise required by the Administrative
12 and Environment Codes.

13 (h) Under the authority of the Thirty-Fifth Supplement, HSA extended the term for hotel
14 booking agreements for an additional 12 months, and waived terms in those agreements that
15 would otherwise be required by the Administrative and Environment Codes.

16 (i) On February 10, 2022, in the Forty-Fifth Supplement to the Proclamation, the Mayor
17 authorized the Executive Director of HSA to amend any agreement the agency had in place
18 as of February 10, 2022 for the use of hotel rooms to house individuals experiencing
19 homelessness or individuals who are at risk of developing severe COVID-19 to extend the
20 term of any such agreements up to and including August 31, 2022. The Supplement further
21 provided that any amendment to extend the term of such agreements beyond August 31,
22 2022 and to waive applicable restrictions in the Municipal Code, would require approval of the
23 Board of Supervisors by ordinance.

1 (j) On March 1, 2022, President Biden directed FEMA to extend assistance to local
2 governments including funding for non-congregate sheltering at 100% federal cost share up to
3 and including July 1, 2022.

4 (k) This ordinance is necessary to enable HSA to expeditiously amend its hotel
5 booking agreements to extend the duration of such agreements beyond August 31, 2022 to
6 maintain stable housing for individuals who might otherwise be discharged to the streets. The
7 ordinance thereby furthers the interests of the City, by avoiding the inevitable delay and
8 expenditure of limited staff resources that would be caused by restarting the procurement
9 process to reacquire hotel rooms. The ordinance will enable the uninterrupted use of hotel
10 rooms by authorizing HSA to negotiate a term extension quickly to ensure the best use of the
11 rooms.

12 (l) HSA intends to wind down the majority of hotel booking agreements by December
13 31, 2022. However, HSA may also assign a limited number of agreements to HSH so that
14 HSH can continue to operate non-congregate shelters after December 31, 2022 through
15 August 31, 2023, contingent upon the availability of funding to do so. HSA may also assign a
16 limited number of agreements to the Department of Public Health ("DPH") so that DPH can
17 provide ongoing isolation or quarantine sites. Any future extensions beyond August 31, 2023
18 would require either further approval of the Board to extend the term of such agreements and
19 to waive any relevant provisions of the Municipal Code, or inclusion of such Code provisions.

20 (m) The Administrative Code and the Environment Code typically require that new and
21 amended contracts include provisions requiring the contractor to adhere to various policies
22 enacted by the Board. Requiring hotels to comply with these requirements as a condition of
23 extending the agreements would likely impose costs and delays that would further impede
24 HSA's ability to provide uninterrupted housing.
25

1 Section 2. For purposes of Sections 3 and 4 of this ordinance, "Hotel Booking
2 Agreement" shall mean any hotel booking agreement executed between HSA and a hotel or
3 motel on or before February 10, 2022 for the use of rooms as isolation and quarantine
4 facilities, or to house individuals experiencing homelessness and/or who are at risk of
5 developing severe COVID-19. A list of all Hotel Booking Agreements is on file with the Clerk
6 of the Board of Supervisors in File No. 220703.

7
8 Section 3. Amendment of Existing Contracts to Extend Term; Waiver of Requirements
9 for Board of Supervisors Approval.

10 (a) HSA may amend a Hotel Booking Agreement to extend the term of the agreement,
11 or may exercise an option to extend the term of an existing agreement, beyond August 31,
12 2022 for an additional twelve months up to and including August 31, 2023.

13 (b) Hotel Booking Agreements amended as authorized by Section 3(a), above, shall
14 continue to be exempt from the requirements of Administrative Code Chapters 12K (Salary
15 History Ordinance), 12P (Minimum Compensation Ordinance), 12T (Consideration of Criminal
16 History in Hiring and Employment Decisions), 12Y (Slavery Era Disclosure Ordinance), 14B
17 (Local Business Enterprise and Non-Discrimination in Contracting Ordinance), 83 (First
18 Source Hiring Program), and 101 (Sugar-Sweetened Beverage Funding Ban Ordinance), and
19 Environment Code Chapters 8 (Tropical Hardwood and Virgin Redwood Ban), 13 (Arsenic
20 Treated Wood Products), 16 (Food Service and Packaging Waste Reduction Ordinance), and
21 24 (Bottled Water Ordinance).

22
23 Section 4. Authorization to Enter into Amendments Pursuant to Charter Section 9.118.

24 (a) Existing Agreements.
25

1 (1) On May 7, 2020, HSA entered into an Emergency Hotel Booking Agreement
2 with Sayana Corporation (operator of the "Adante Hotel"), for an amount not to exceed
3 \$5,460,053, HSA Contract No. 1000017957. The Adante Hotel Emergency Hotel Booking
4 Agreement was amended pursuant to the First Amendment to the Adante Hotel Emergency
5 Hotel Booking Agreement, dated March 23, 2021, and was further amended by the Second
6 Amendment to the Adante Hotel Emergency Hotel Booking Agreement, dated March 1, 2022.
7 The First and Second Amendments did not cause the total agreement amount to exceed \$10
8 million. HSA desires to enter into a Third Amendment (the "Third Adante Amendment"), dated
9 retroactively to April 18, 2022, to exercise an option to extend the term of the agreement
10 consistent with Section 3 of this ordinance and to increase the agreement amount by
11 \$4,918,351 for a new not to exceed amount of \$14,856,866.

12 (2) On May 23, 2020, HSA entered into an Emergency Hotel Booking
13 Agreement with KHP II SF Sutter LLC (operator of the "Kimpton Buchanan Hotel") for an
14 amount not to exceed \$8,551,713, HSA Contract No. 1000018159. The Kimpton Buchanan
15 Hotel Emergency Hotel Booking Agreement was amended pursuant to the First Amendment
16 to the Kimpton Buchanan Hotel Emergency Hotel Booking Agreement, dated as of May 2021,
17 and was further amended by the Second Amendment to the Kimpton Buchanan Hotel
18 Emergency Hotel Booking Agreement, dated March 1, 2022. The First and Second
19 Amendments did not cause the total agreement amount to exceed \$10 million. HSA desires
20 to enter into a Third Amendment (the "Third Kimpton Amendment"), dated retroactively to April
21 3, 2022, to exercise an option to extend the term of the agreement consistent with Section 3
22 of this ordinance and increase the contract amount by ~~\$4,071,617~~2,699,497 for a new not to
23 exceed amount of ~~\$14,064,232~~12,692,112.

24 (3) On April 23, 2020, HSA entered into an Emergency Hotel Booking
25 Agreement with SF Vertigo LLC (operator of the "Hotel Vertigo"), for an amount not to exceed

1 \$4,571,078, HSA Contract No. 1000017798. The Hotel Vertigo Emergency Hotel Booking
2 Agreement was amended pursuant to the First Amendment to the Hotel Vertigo Emergency
3 Hotel Booking Agreement, dated March 22, 2021 and was further amended by the Second
4 Amendment to the Hotel Vertigo Emergency Hotel Booking Agreement, dated March 1, 2022.
5 The First and Second Amendments did not cause the agreement amount to exceed \$10
6 million. HSA desires to enter into a Third Amendment (the "Third Vertigo Amendment"), dated
7 retroactively to July 3, 2022, to exercise an option to extend the term of the agreement
8 consistent with Section 3 of this ordinance and increase the contract amount by \$2,279,277
9 for a new not to exceed amount of \$12,273,030.

10 (4) On July 23, 2020, HSA entered into an Emergency Hotel Booking
11 Agreement with Lombard Hotel Group (operator of the "Monarch Hotel"), for an amount not to
12 exceed \$5,871,025, HSA Contract No. 1000019022. The Monarch Hotel Emergency Hotel
13 Booking Agreement was amended pursuant to the First Amendment to the Monarch Hotel
14 Emergency Hotel Booking Agreement, dated March 23, 2021 and was further amended by the
15 Second Amendment to the Monarch Hotel Emergency Hotel Booking Agreement, dated
16 March 1, 2022. The First and Second Amendments did not cause the agreement amount to
17 exceed \$ 10 million. HSA desires to enter into a Third Amendment (the "Third Monarch
18 Amendment"), dated retroactively to May 27, 2022, to exercise an option to extend the term of
19 the agreement consistent with Section 3 of this ordinance and increase the contract amount
20 by \$5,019,360 for a new not to exceed amount of \$15,005,460.

21 (5) On May 15, 2020, HSA entered into an Emergency Hotel Booking
22 Agreement with Shin International, Inc. (operator of the "Cova Hotel"), for an amount not to
23 exceed \$5,230,724, HSA Contract No. 1000018023. The Cova Emergency Hotel Booking
24 Agreement was amended pursuant to the First Amendment to the Cova Emergency Hotel
25 Booking Agreement, dated March 22, 2021 and was further amended by the Second

1 Amendment to the Cova Emergency Hotel Booking Agreement, dated March 1, 2022. The
2 First and Second Amendments did not cause the agreement amount to exceed \$10 million.
3 HSA desires to enter into a Third Amendment (the "Third Cova Amendment"), dated
4 September 1, 2022, to exercise an option to extend the term of the agreement consistent with
5 Section 3 of this ordinance and increase the contract amount by \$2,870,981 for a new not to
6 exceed amount of \$11,385,311.

7 (b) Copies of the agreements listed in subsection (a)(1) through (a)(5) are on file with
8 the Clerk of the Board of Supervisors in File No. 220703.

9 (c) Approval. Charter Section 9.118(b) provides that the agreements entered into by a
10 department, board, or commission requiring anticipated expenditures by the City and County
11 of ten million dollars, shall be subject to approval by the Board of Supervisors. Pursuant to
12 Section 9.118(b), the Board of Supervisors approves the agreements described in Section
13 4(a) of this ordinance, as follows:

14 (1) The Board of Supervisors hereby approves the Third Adante Amendment to
15 HSA Contract No. 1000017957 to increase the amount by \$4,918,351 for a new not to exceed
16 amount of \$14,856,866.

17 (2) The Board of Supervisors hereby approves the Third Kimpton Amendment
18 to HSA Contract No. 1000018159 to increase the amount by \$4,071,6172,699,497 for a new
19 not to exceed amount not of \$14,064,23212,692,112.

20 (3) The Board of Supervisors hereby approves the Third Vertigo Amendment to
21 HSA Contract No. 1000017798 to increase the amount by \$2,279,277 for a new not to exceed
22 amount of \$12,273,030.

23 (4) The Board of Supervisors hereby approves the Third Monarch Amendment
24 to HSA Contract No. 1000019022 to increase the amount by \$5,019,360 for a new not to
25 exceed amount of \$15,005,460.

1 (5) The Board of Supervisors hereby approves the Third Cova Amendment to
2 HSA Contract No. 1000018023 to increase the amount by \$2,870,981 for a new not to exceed
3 amount of \$11,385,311.

4 (d) The Board of Supervisors recognizes and provides retroactive approval of the Third
5 Adante Amendment, dated April 18, 2022, the Third Kimpton Amendment, dated April 3,
6 2022, the Third Vertigo Amendment, dated July 3, 2022, and the Third Monarch Amendment,
7 dated May 27, 2022.

8 (e) The Board of Supervisors authorizes HSA to enter into any modifications to the
9 agreements approved pursuant to this Section 4, prior to their final execution by all parties,
10 that HSA determines, in consultation with the City Attorney, are in the best interest of the City,
11 do not otherwise materially increase the obligations or liabilities of the City, are necessary or
12 advisable to effectuate the purposes of the agreement, and are in compliance with all
13 applicable laws.

14 (f) Within 30 days of the agreements referenced in Section 4(c), above, being fully
15 executed by all parties, HSA shall provide the executed agreements to the Clerk of the Board
16 of Supervisors for inclusion in File No. 220703.

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1 Section 5. Effective Date. This ordinance shall become effective 30 days after
2 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
3 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
4 of Supervisors overrides the Mayor's veto of the ordinance.

5

6

7 APPROVED AS TO FORM:
8 DAVID CHIU, City Attorney

9

9 By: /s/ Henry L. Lifton
10 HENRY L. LIFTON
10 Deputy City Attorney

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City and County of San Francisco
Tails
Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 220703

Date Passed: July 26, 2022

Ordinance authorizing the Human Services Agency (HSA) to amend certain hotel booking agreements that were executed on or before February 10, 2022, to provide non-congregate shelter to people experiencing homelessness by extending the terms beyond August 31, 2022, through August 31, 2023; waiving for said agreements certain requirements in the Administrative and Environment Codes; approving certain agreements with anticipated expenditures in excess of \$10 million under Charter, Section 9.118; and authorizing HSA to enter into modifications of such agreements that do not increase the obligations or liabilities to the City and are necessary to effectuate the purposes of the agreement.

July 13, 2022 Budget and Finance Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

July 13, 2022 Budget and Finance Committee - RECOMMENDED AS AMENDED

July 19, 2022 Board of Supervisors - PASSED ON FIRST READING

Ayes: 11 - Chan, Dorsey, Mandelman, Mar, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton

July 26, 2022 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Chan, Dorsey, Mandelman, Mar, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton

File No. 220703

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 7/26/2022 by the Board of Supervisors of the City and County of San Francisco.


Angela Calvillo
Clerk of the Board


London N. Breed
Mayor

7/28/22
Date Approved



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
2/7/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER BIPIN KAPADIA INSURANCE AGENCY 1150 SOUTH BASCOM AVENUE, STE # 28 SAN JOSE, CA 95128	CONTACT NAME: Bipin Kapadia PHONE (A/C. No. Ext): (408) 280-7878 FAX (A/C. No): (408) 280-7555 E-MAIL ADDRESS: bipin@bkapadia.com
	INSURER(S) AFFORDING COVERAGE INSURER A: PACIFIC COMP INS CO. INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:
INSURED SAYANA CORPORATION DBA: ADANTE HOTEL 1150 S BASCOM AVE, #28 SAN JOSE, CA 95128	

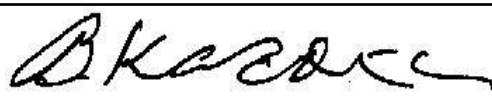
COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY <input type="checkbox"/> AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	X	WA-003499-04	7/2/2021	7/2/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
THE CERTIFICATE HOLDER IS ADDED AS WAIVER OF SUBROGATION IN FAVOR OF THE CITY FOR ALL WORK PERFORMED BY HOTEL, IT'S EMPLOYEES, AGENTS AND SUBCONTRACTORS FOR THE PROPERTY LOCATED AT:
650 GEARY STREET, SAN FRANCISCO, CA 94102.

30 DAYS NOTICE OF CANCELLATION

CERTIFICATE HOLDER THE CITY & COUNTY OF SAN FRANCISCO HUMAN SERVICES AGENCY 170 OTIS STREET SAN FRANCISCO, CA 94103	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
--	---

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

THIS **SECOND AMENDMENT TO EMERGENCY AGREEMENT** (this “**Amendment**”), dated as of March 1, 2022, for reference purposes, is 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**” and together with the Emergency Agreement, 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 August 31, 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 17, 2022, and (b) increase the Compensation by Six Hundred Four Thousand, Eight Hundred Seventy-Two Dollars (\$604,872), from Nine Million, Three Hundred Thirty-Three Thousand, Six Hundred Forty-Three Dollars (\$9,333,643) to Nine Million, Nine Hundred Thirty-Eight Thousand, Five Hundred Fifteen Dollars (\$9,938,515), 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.

2.1.1. The term of this Agreement commenced on **May 14, 2020**, and will expire of its own accord on **April 17, 2022** (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 December 31, 2022, and (b) any extension of the Booking Period beyond April 17, 2022, 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 **Nine Million, Nine Hundred Thirty-Eight Thousand, Five Hundred Fifteen Dollars (\$9,938,515)**."

(c) Amendment of Section 3.9. *Section 3.9 of the Agreement shall hereinafter read as follows:*

"To the extent applicable, Hotel shall, and shall cause its contractors and subcontractors to, comply with the prevailing wage requirements of the California Department of Industrial Relations under California Labor Code Section 1720 et. seq. and implementing rules and regulations."

(d) Amendment of Section 8.1.1. *Section 8.1.1 of the Agreement is hereby amended and restated in its entirety and shall hereinafter read as follows:*

"8.1.1. (a) This Agreement shall expire of its own accord on the expiration of the Booking Period set forth in Section 2.1.

(b) City shall have the option, with not less than thirty (30) days' written notice to Hotel, to terminate this Agreement for any reason. City may send the termination notice to Hotel at any time during the Booking Period. Within the notice, City will specify the termination date, which will be at least thirty (30) days after the effective date of the notice. For example, if City sends a termination notice to Hotel with an effective date of May 1, 2022, the Booking Period will terminate thirty (30) days thereafter (City's last night of occupancy would be no earlier than May 31, 2022).

City agrees to use commercially reasonable efforts to provide more advanced notice of City's intent to vacate the Premises, to the extent it is practical or able to do so. Any notice provided by City in advance of the minimum thirty (30) days required under this Agreement will be considered "Advance Notice". Upon receipt of any Advance Notice, Hotel may submit to City a request for City to assess the feasibility of accelerating the termination period to occur at a mutually agreeable date earlier than the date specified in the Advance Notice; provided, however, that failure of either party to agree upon an earlier termination through the Advance Notice procedure will not be deemed an event of default under this Agreement."

(e) Addition of Section 8.1.4. *Section 8.1.4 is hereby added to the Agreement.*

"Upon the expiration of the Booking Period or earlier termination of this Agreement, City and Hotel will enter into the Final Agreement Closeout and Release of Claims, attached hereto as **Appendix F**."

(f) Amendment of Section 11.6. *Section 11.6 of the Agreement is hereby amended and restated in its entirety and shall hereinafter read as follows:*

“The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to this Agreement. If the Parties are unable to resolve the dispute, then the parties may comply with the Hotel Dispute Review Board Protocol attached hereto as **Appendix G**, and incorporated herein by this reference. Neither Party will be entitled to legal fees or costs for matters resolved under this Section. In the event of litigation resulting or arising from this Agreement, each Party shall pay its own attorneys’ fees.”

(g) 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: | \$9,938,515 |
| b. Not-to-Exceed Compensation without Reimbursable Amount: | \$5,124,765 |
| <i>(93 x \$79 x 655) + (93 x \$70 x 48)</i> | |
| Not-to-Exceed Reimbursable Amount (Contingency, 15% of amount in | |
| c. b.): | \$768,715 |
| d. Not-to-Exceed Reimbursable Amount (Food Service in Appendix E) | \$4,045,035 |

(h) 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 C.*

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

HOTEL

SAYANA CORPORATION,
a California corporation

DocuSigned by:
Chirag Patel
22DB345FFE8E426...
Chirag Patel
Manager

Supplier ID: **0000043291**

Approved as to Form:

David Chiu
City Attorney

By: DocuSigned by:
Vincent L. Brown
5D88F582E4274BB...
Vincent L. Brown
Deputy City Attorney

Exhibit A

APPENDIX F

FINAL AGREEMENT CLOSEOUT AND RELEASE OF CLAIMS

This Final Agreement Contract Closeout and Release of Claims (“**Release**”) is made and entered into this **XXX** day of **XXXXXXXX** by and between **XXXXXXXXXXXXXXXXXXXX** (“**Hotel**”), and the City and County of San Francisco, a municipal corporation, (“**City**”), acting by and through its Human Services Agency (collectively “**Parties**”).

RECITALS

WHEREAS, the City and Hotel entered into an Emergency Agreement, dated **XXXXXX**, as amended from time to time (the “**Agreement**”), to house individuals experiencing homelessness or individuals who are at risk of developing severe COVID-19 (**attached hereto as Attachment1, including all contract amendments**);

WHEREAS, issues arose between the Parties regarding final Agreement costs;

WHEREAS, the Parties now wish to resolve all issues and close out the Agreement by mutual consent, reserving Hotel’s right to file a Government Code Claim with the City for disputed amounts, if any;

NOW, THEREFORE, it is agreed between Hotel and City as follows:

Agreement Closeout and Release

1. **Effective Date.** This Release shall be effective as of the date last executed below. Execution by the Parties via electronic signature and DocuSign is permitted.

2. **Agreement Sum.** Hotel and the City agree as follows:

Payments to Date:	\$XXXXXX
Invoices to Date (<i>excluding Final Invoice</i>)	\$XXXXXX
Advance/Deposit (<i>if any</i>)	(\$XXXXX)
Final Invoice Due	\$XXXXXX
FINAL PAYMENT DUE TO HOTEL:	\$XXXXXX

Original Agreement Sum:	\$XXXXXX
Total Payment (<i>Including Final Payment</i>)	\$XXXXXX
Agreement Balance	\$XXXXXX

3. **Agreement Closeout.** The Parties agree that the Agreement will be fully and finally closed upon the City’s payment of the final invoice.

4. **Unpaid Agreement Funds.** Hotel agrees that the City will retain all unpaid funds under the Agreement, and that no unpaid amounts under the Agreement are due to Hotel beyond those included in the final invoice. Hotel acknowledges and hereby agrees that there are no unresolved or outstanding claims in dispute against the City arising from the Agreement and/or Project.

DELETE PARAGRAPH 5 IF THERE ARE NO CLAIMS IN DISPUTE

5. **Disputed Claim(s).** The following items are disputed (each a “**Disputed Claim**”) and each is specifically excluded from the operation of this Agreement and Release:

- a. **XXXXXXXXXXXXXXXXXXXXX**: Hotel's demand for XXXXXXXXXXXXX.
- b. **XXXXXXXXXXXXXXXXXXXXX**: Hotel's demand for XXXXXXXXXXXXX.

Nothing herein shall operate to toll, waive, or excuse Hotel's compliance with the Government Code Claim requirements under California Government Code Section 900, et seq., and San Francisco Administrative Code Chapter 10 as to the Disputed Claims.

6. **Full and Final Release.** Hotel agrees that, in consideration of the payment set forth in Paragraph 2, above, and excluding each Disputed Claim described in paragraph 5, above, Hotel releases and forever discharges the City, its boards and commissions, and all of its officers, agents, members, employees, authorized representatives, assignees and transferees from any and all liability, claims, demands, actions or causes of action of whatever kind or nature arising out of or in any way concerned with the Agreement and/or Project.

7. **Waiver of Civil Code Section 1542.** Hotel certifies that it is aware of, understands, and expressly waives the protections of Section 1542 of the Civil Code of the State of California, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Being aware of this code section, Hotel expressly waives and relinquishes all rights and benefits that it may have under Section 1542, as well as under any other statute or common law principle of similar effect with respect to the release contained herein.

8. **No Admission of Liability.** No aspect of this Release is intended to be, nor at any time shall be construed, deemed, or treated in any respect as an admission of any wrongdoing or liability on the part of either Party.

9. **Terms of Agreement; Headings.** The terms of this Release are contractual and not a mere recital. The headings are for convenience only and do not limit or alter the described paragraphs in any manner and cannot be used for determining any of the rights, remedies or obligations of the Parties.

10. **Representation of Understanding and Release.** The Parties each affirms and acknowledges that it has carefully read this Release, fully appreciate, and understand the Release's contents and legal effect and have executed this Release voluntarily and of their own free will and act.

11. **Attorneys' Fees and Costs.** The Parties each shall bear its own court costs, attorneys' fees and other expenses incurred in connection with the Agreement, the Project, and this Release.

12. **Severability.** If any provision of this Release is determined to be invalid, illegal or unenforceable, the remaining parts of this Release shall not be affected or impaired and shall continue to be valid, effective and enforceable to the fullest extent permitted by law.

13. **Authority to Execute and Bind.** The Parties each represents and warrants the persons executing this Release on each Party's behalf have full and complete legal authority to do so and to bind the Party on behalf of which this Release is executed.

14. **Governing Law.** This Release shall be construed and enforced in accordance with the laws of the State of California, with venue in San Francisco.

15. **Entire Release.** This Release contains the entire agreement of the Parties.

16. **Modification.** This Release may be modified or amended only by written agreement signed by a duly authorized representative of each Party.

17. **Cooperation in Drafting.** Each party has cooperated in the drafting and preparation of this Release. If there is any claimed uncertainty or ambiguity, this Release will be construed as if all parties to this Release jointly prepared it.

IN WITNESS WHEREOF, the Parties hereto have executed this Release on the day last reflected below.

*****CAUTION: THIS IS A RELEASE – READ BEFORE EXECUTING*****

HOTEL

CITY

Signature: _____

Signature: _____

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

END OF DOCUMENT

Attachment 1 to Final Agreement Closeout and Release Of Claims

Emergency Agreement and Amendments

(See attached)

Exhibit B

APPENDIX G

HOTEL DISPUTE REVIEW BOARD PROTOCOL

1. Dispute

A Dispute is a disagreement, related to a damages claim by the Hotel under the Agreement between the City and the Hotel.

2. Intent

This Dispute Review Protocol is an informal and nonbinding process intended to provide third-party review of and a proposed resolution for each Dispute under the Agreement. The Protocol will result in a cost assessment report ("**DRB Report**"). The DRB Report is a non-binding, privileged and confidential settlement document inadmissible in evidence under California Evidence Code Section 1152. The DRB Report may not be used in discovery, in evidence, or for any purpose other than an informal, nonbinding, attempt at resolution of a Dispute.

3. Dispute Review Board (DRB)

The DRB is a two-member board, consisting of one member selected by the City and one member selected by the Hotel. The Parties reserve the right to select a mutually agreeable third member to act as Chair for all DRB activities, should the Parties mutually agree that a Chair would foster settlement negotiations. For ease of contracting, the Hotel will contract with the Chair, subject to review and approval of the Contract and associated fees by the City.

4. City and Hotel Site Administrators

The City and Hotel each will nominate a Site Administrator to administer the DRB Protocol and to select the first two DRB members. All DRB Protocol communications will be made through the Site Administrators.

5. DRB Protocol

The DRB and Site Administrators are responsible for implementing the DRB Protocol. The Protocol may include formulating rules of operation, scheduling site visits, holding DRB meetings, and identifying other procedures as mutually agreed by the Parties.

As early as practicable, the Site Administrators each will identify and exchange the name of a selected DRB member. Within five calendar days of the exchange, the Parties will meet and agree upon a mutually agreeable schedule and scope for the Hotel site inspection, as necessary, and will agree upon a date for the exchange of cost estimates.

On a mutually agreed upon schedule, the DRB members and Site Administrators will meet to review the cost estimates and attempt resolution of the Dispute.

6. Written Notice of Dispute Resolution Failure

Should the Parties fail to resolve a Dispute within 30 days of the cost estimate exchange, the Site Administrators will provide written notice to the DRB of the Dispute resolution failure. Within 5 days of such written notice, the Site Administrators may elect to select a DRB Chair to lead further discussions. The DRB Chair will be mutually agreed upon.

7. DRB Report

Within 15 days of issuance of the Dispute resolution failure notice, the DRB will issue a DRB Report. The DRB Report is an informal non-binding, inadmissible written recommendation for Dispute resolution.

The Parties will have 3 calendar days to accept or reject the DRB Report recommendation for Dispute resolution and/or to request clarification. If the DRB provides clarification, the Parties will have an additional 3 calendar days to accept or reject the DRB Report. If accepted, the Parties will execute a Final Agreement Closeout and Release of Claims.

8. San Francisco Board of Supervisors Approval

The City and Hotel each understands and agrees that any proposed Dispute resolution may require formal approval by the San Francisco Board of Supervisors acting in its sole discretion.

9. Government Code Claim Filing Requirements

The Hotel understands and agrees that nothing herein shall operate to toll, waive, or excuse the Hotel's compliance with the Government Code Claim requirements under California Government Code Section 900, *et seq.*, and San Francisco Administrative Code Chapter 10 as to the disputed claims.

10. Compensation of the Dispute Review Board

The City and Hotel agree that each will bear its own fees and expenses for that Party's individually selected DRB member. The Parties will share equally the fees and expenses of DRB Chair, if any, after approval of the DRB Chair's invoice by both parties.

Exhibit C

Appendix E “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 February 28, 2022 (333 nights); and (iii) not exceed \$55 per room per night beginning March 1, 2022 through the night of April 17, 2022 (47 nights). The total not-to-exceed compensation of \$4,045,035 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.

**First Amendment to
Emergency Agreement between the City and County of San Francisco
and
Sayana Corporation
Adante Hotel**

THIS FIRST AMENDMENT (this “Amendment”) is made as of **March 23, 2021**, in San Francisco, California, by and between **Sayana Corporation** (“**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 7, 2020 (the “**Original Agreement**”), and extended by the extension notice from City dated August 13, 2020 (the Original Agreement and extension notice are collectively, the “**Agreement**”), for Rooms and Services at the property commonly known as the **Adante Hotel** located at 610 Geary Street, San Francisco, CA 94102, 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 **May 14, 2020** and will expire of its own accord on **February 28, 2022** (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. Additionally, if City receives notice, either directly or by general announcement, that FEMA reimbursement for this Agreement will be reduced or unavailable, City will use commercially reasonable efforts to notify the Hotel of such information, unless such notification to the Hotel is prohibited by law or regulation.

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 **Five Million Four Hundred Sixty Thousand and Fifty Three Dollars (\$5,460,053).**”; 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 Three Hundred Thirty-Three Thousand, Six Hundred Forty-Three Dollars (\$9,333,643).**”

4. **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.

5. **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.

6. **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:** **\$9,333,643**
- b. Not-to-Exceed Compensation without Reimbursable Amount: \$4,812,285 (93 x \$79 x 655)
- c. Not-to-Exceed Reimbursable Amount: \$721,843 (15% of b.)
- (93 x \$70 x 322
+93 x \$55 x333)
- d. Not-to Exceed Reimbursable Amount (Food Service in App. E) \$3,799,515

7. **Amend Appendix E.** Appendix E is hereby deleted from the Agreement, and the following is hereby added in its place and fully incorporated into the Agreement:

Appendix E
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 February 28, 2022 (333 nights). The total not-to-exceed compensation of \$3,220,125 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.

8. **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.

9. **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

SAYANA CORPORATION,
a California corporation

Recommended by:

DocuSigned by:
Trent Rhorer
9753A8870BB74EE...

Trent Rhorer
Executive Director
Human Services Agency

DocuSigned by:
Chirag Patel
22DB345EEE8E426

Chirag Patel
Manager

City Supplier number: _____

Approved as to Form:

Dennis J. Herrera
City Attorney

DocuSigned by:
David Ries
EFF1B6C5BE4244A...

By: David K. Ries
Deputy City Attorney

Approved:

Sailaja Kurella
Acting Director of the Office of
Contract Administration, and
Purchaser

DocuSigned by:
Sailaja Kurella
78EAE44AB01C4E0...

**City and County of San Francisco
Human Services Agency**

Emergency Agreement between the City and County of San Francisco

and

Sayana Corporation

**Adante Hotel
610 Geary Street
San Francisco, CA 94102**

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Preamble

This Agreement is made this 7th day of May, 2020, in the City and County of San Francisco, State of California, by and between Sayana Corporation, a California Corporation ("**Hotel**"), as the owner of the Adante Hotel, located at 610 Geary Street, San Francisco, CA 94102 ("**Property**"), and City (as defined below).

Recitals

WHEREAS, this Agreement is an emergency services contract awarded pursuant to procedures applicable under the Local Emergency declared by Mayor London Breed on Tuesday, February 25, 2020, and Chapter 21 of the San Francisco Administrative Code; and

WHEREAS, the Human Services Agency ("**Department**") wishes to procure the following emergency services in support of the Local Emergency: provision of hotel rooms and related services in the Hotel as more particularly described herein and in Appendix A (Rooms and Scope of Services); and,

WHEREAS, City will only use the Rooms and Services (as hereinafter defined) to further the public health and safety in connection with its response to the Local Emergency by sheltering and serving persons, including those (a) who have, or might have, come in close contact with a COVID-19 positive individual but have not been tested, or who have been tested and are awaiting results, or (b) who have tested positive for COVID-19 but do not have a medical need to be hospitalized (each of the foregoing, a "**Guest**", and collectively, the "**Group**"), all as further described in Appendix A; and

WHEREAS, the Parties understand and acknowledge that Department will allow persons described in the foregoing recital to use the Rooms and Services, solely as invitees, for shelter as a necessary response to the Emergency, and such persons will have no right to exclusively occupy the Rooms as tenants under State or local laws, including the San Francisco Rent Ordinance (Section 39 of the San Francisco Administrative Code), nor claim any right of possession or occupancy of the Property beyond the status of invitee of City considering the Local Emergency upon which this Agreement is based.

Now, **THEREFORE**, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

1.1 "**Agreement**" means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements which are specifically incorporated into this Agreement by reference as provided herein.

1.2 "**City**" means the City and County of San Francisco, a municipal corporation, acting by and through the Executive Director of the Human Services Agency.

1.3 "**Hotel**" has the meaning set forth in the Preamble.

1.4 "**Effective Date**" means the date upon which the City's Controller certifies the availability of funds for this Agreement as provided in Section 3.1.

1.5 "**Party**" and "**Parties**" mean the City and Hotel either collectively or individually.

1.6 "**Rooms and Services**" means collectively the hotel rooms and related services to be provided by Hotel as described in Appendix A (Rooms and Scope of Services).

Article 2 Term of the Agreement

2.1 Term.

2.1.1 The term of this Agreement shall be for four months, commencing on May 14, 2020, and expiring of its own accord on September 13, 2020 (the "Booking Period), subject to earlier termination as provided in this Agreement.

2.1.2 City shall have the right to extend the Booking Period on a month-to month basis, provided that in no event shall any extension extend beyond May 13, 2021. In order to exercise the right to extend the booking period on a month-to-month basis, the City shall provide the Hotel with written notice of their intent to extend the booking period at least 30 days prior to the expiration date. The parties agree that any extension shall be on the same terms and conditions as the original Agreement.

2.2 Booking of Rooms Procedure (Reserved)

Article 3 Financial Matters

3.1 Certification of Funds; Budget and Fiscal Provisions.

This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges for the Rooms and Services will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. 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.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS 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."

3.3 Compensation.

3.3.1 **Payment.** The flat daily rate payable to the Hotel for the Rooms and Services is \$7,347 (based upon a daily rate of \$79 per room per night). 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." For avoidance of doubt, the Hotel can invoice the flat daily rate portion of the Rooms and Services for the current month. Compensation shall be paid for the Rooms and Services identified in the invoice that the Executive Director of the Human Services Agency ("**HSA Director**"), in his or her reasonable discretion, concludes has been satisfactorily provided. Payment shall be made within 15 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 **Five Million Four Hundred Sixty Thousand and Fifty Three Dollars (\$5,460,053)**. 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. A portion of payment may be withheld until conclusion of the Agreement if agreed to by both parties as retainage, described in Appendix B. In no event shall City be liable for interest or late charges for any late payments.

3.3.2 Payment Limited to Satisfactory Services. Hotel is not entitled to any payments from City until the HSA Director confirms that the Rooms and Services have been provided in a manner satisfying all of the requirements of this Agreement. Rooms and Services that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Hotel without delay at no cost to the City.

3.3.3 Withhold Payments. If Hotel fails to provide Rooms and Services in accordance with Hotel's obligations under this Agreement, following written notice of such failure and after the City has sanitized the applicable Room such that Hotel is permitted to enter the Room to take steps necessary to remedy the failure, if the failure is not cured by Hotel within 24 hours, the City may withhold any and all payments due Hotel that are attributable to the noticed failure until such failure to perform is cured, and Hotel shall not stop performance under this Agreement as a result of City's withholding of payments as provided herein.

3.3.4 Invoice Format. Invoices furnished by Hotel under this Agreement must be in a form acceptable to the Controller and City, and must include a unique invoice number. Payment shall be made by City as specified in Section 3.4, or in such alternate manner as the Parties have mutually agreed upon in writing.

3.3.5 LBE Payment and Utilization Tracking System. (Reserved)

3.4 Getting paid by the City for goods and/or services.

3.4.1 All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through, the City's Automated Clearing House (ACH) payments service/provider. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit www.sfgov.org/ach.

3.4.2 The following information is required to sign up: (i) The enroller must be their company's authorized financial representative, (ii) the company's legal name, main telephone number and all physical and remittance addresses used by the company, (iii) the company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor), and (iv) the company's bank account information, including routing and account numbers.

3.5 Federal and/or State Funded Contracts. (Reserved)

3.6 Contract Amendments.

3.6.1 Formal Contract Amendment: Except as expressly set forth herein, Hotel shall not be entitled to an increase in the Compensation or, except as provided in Section 2.1.2, an extension of the Booking Period unless the Parties agree to a Formal Amendment in accordance with the San Francisco Administrative Code and Section 11.5 (Modifications of this Agreement).

3.6.2 City Revisions to Program Budgets (Reserved)

3.7 Audit and Inspection of Records.

Hotel agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to the Rooms and Services. Hotel will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Hotel shall maintain such data and records in an accessible location and condition for a period of not fewer than three years, unless required for a longer duration due to Federal, State, or local requirements of which the City will notify Hotel in writing, after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Hotel shall include the same audit and inspection rights and record retention requirements in all subcontracts.

3.8 Submitting False Claims.

The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any entity who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. An entity will be deemed to have submitted a false claim to the City if the entity: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

3.9 Payment of Prevailing Wages (Reserved)

Article 4 Services Hotel and City Agrees to Perform.

Hotel agrees to provide the Rooms and perform the Services provided for in Appendix A, "Rooms and Scope of Services." Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Hotel for, Rooms and Services beyond the Rooms and Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5, "Modification of this Agreement." Hotel agrees that all hotel rooms and other spaces within the Hotel property that are not included in the Rooms provided to City under this Agreement, including, but not limited to, conference and meeting rooms, shall remain secured and unoccupied during the Booking Period. City shall perform all services set forth in Appendix "A" to be provided by or on behalf of City. Hotel shall have no responsibility to provide the same.

4.1 Qualified Personnel. (Reserved)

4.2 Subcontracting. (Reserved)

4.3 Independent Contractor; Payment of Employment Taxes and Other Expenses. (Reserved)

4.4 Assignment.

The Rooms and Services to be provided and performed by Hotel are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Hotel unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

4.5 **Warranty.** Hotel agrees to provide the Services to a standard that is commercially reasonable for hotel operations during the Local Emergency, subject to (i) the availability of sufficient Hotel employees to provide the Services and (ii) any changes in applicable law, rule, or regulation.

4.6 **Liquidated Damages. (Reserved)**

4.7 **Bonding Requirements. (Reserved)**

Article 5 Insurance and Indemnity

5.1 Insurance.

5.1.1 **Required 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 for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(c) Commercial Automobile Liability Insurance (Reserved)

(d) Professional liability insurance (Reserved)

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

(f) Cyber and Privacy Insurance (Reserved).

5.1.2 Hotel's Commercial General Liability Insurance policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees, excluding any claims relating to COVID-19 illness. Notwithstanding the foregoing, City shall waive this requirement in the event Hotel provides third party certification satisfactory to City's Risk Manager that such Additional Insured endorsement is not available under Hotel's insurance policy at commercially reasonable rates.

5.1.3 Hotel's Commercial General Liability policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

5.1.4 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."

5.1.5 Should any of the required insurance be provided under a claims-made form, Hotel shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

5.1.6 Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

5.1.7 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.

5.1.8 Before providing any Hotels and Services, Hotel shall furnish to City certificates of insurance with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Hotel's liability hereunder.

5.1.9 The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by Hotel, its employees, agents and subcontractors.

5.1.10 If Hotel will use any subcontractor(s) to provide Services, Hotel shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Hotel as additional insureds.

5.2 Indemnification.

5.2.1 Hotel shall indemnify and hold harmless City and its officers, agents, and employees from, and, if requested, shall immediately defend them from and against, any and all claims, demands, losses, damages, costs, expenses, and liability or potential liability (legal, contractual, or otherwise) arising directly or indirectly in any way from Hotel's performance of this Agreement, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except to the extent such loss, damage, injury, liability or claim was caused by the negligence or willful misconduct of City in which case damages shall be apportioned pro rata under the California doctrine of comparative fault. Hotel's foregoing indemnity and hold harmless obligations shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

5.2.2 In addition to Hotel's obligation to indemnify City, Hotel specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claims, lawsuits, and/or demands of any kind which actually or potentially falls within this indemnification provision, even if the claims, lawsuits, and/or demands of any kind are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Hotel by City and continues at all times thereafter.

5.2.3 Hotel shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the 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.

5.2.4 City shall indemnify and hold harmless Hotel and its officers, agents, and employees from, and, if requested, shall immediately defend them from and against, any and all claims, demands, losses, damages, costs, expenses, and liability or potential liability (legal, contractual, or otherwise) arising directly or indirectly in any way from City's performance of this Agreement, including the City's obligation to repair damage caused by the Guests and not repaired as required under Section 8.1.3, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except to the extent such loss, damage, injury, liability or claim was caused by the negligence or willful misconduct of Hotel in which case damages shall be apportioned pro rata under the California doctrine of comparative fault. City's foregoing indemnity and hold harmless obligations shall include,

without limitation, reasonable fees of attorneys, consultants and experts and related costs and Hotel's costs of investigating any claims against the City.

Article 6 Liability of the Parties

6.1 Liability of City.

CITY'S PAYMENT OBLIGATIONS FOR ROOMS AND SERVICES UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION 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 ROOMS AND SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

6.2 Liability for Use of Equipment. (Reserved)

6.3 Liability of Hotel.

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.

THE HOTEL'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT SHALL BE CAPPED IN THE AGGREGATE AT AN AMOUNT NOT TO EXCEED 1.5 TIMES THE AMOUNT OF COMPENSATION FOR THE ROOMS AND SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT. HOTEL'S MAXIMUM LIABILITY LIMIT SET FORTH IN THIS PARAGRAPH SHALL NOT APPLY TO:

(1) DAMAGES CAUSED BY HOTEL'S GROSS NEGLIGENCE (FOR PURPOSES OF THIS SECTION, "GROSS NEGLIGENCE" SHALL MEAN A WANT OF EVEN SCANT CARE OR EXTREME DEPARTURE FROM THE ORDINARY STANDARD OF CONDUCT) OR WILLFUL MISCONDUCT;

(2) HOTEL'S OBLIGATION TO INDEMNIFY AND DEFEND CITY PURSUANT TO THE GENERAL INDEMNIFICATION AND INFRINGEMENT INDEMNIFICATION PROVISIONS HEREIN;

(3) DAMAGES THAT ARISE FROM THE UNAUTHORIZED USE OR DISCLOSURE OR FAILURE TO MAINTAIN CONFIDENTIALITY OF CITY'S INFORMATION IN THE POSSESSION OR CONTROL OF HOTEL (DATA BREACH), INCLUDING ALL OF CITY'S RELATED COSTS OF INVESTIGATION AND NOTIFICATION, AND STATUTORY FINES AND PENALTIES;

(4) WRONGFUL DEATH CAUSED BY HOTEL; AND

(5) CLAIMS COVERED BY THE INSURANCE.

HOTEL'S LIABILITY FOR CLAIMS, LOSSES OR EXPENSES RELATED TO COVID-19 ILLNESSES IS LIMITED TO FIVE MILLION DOLLARS (\$5,000,000). THE FOREGOING SHALL NOT INCLUDE ILLNESS SUFFERED BY HOTEL'S EMPLOYEES IN THE PERFORMANCE OF THE WORK.

Article 7 Payment of Taxes

City shall reimburse Hotel for all local sales, hotel and use taxes actually incurred and paid by Hotel in connection with this Agreement; provided sales tax on items provided as part of any food service plan shall be included in the cost of the food service plan. Hotel shall apply for an exemption from the payment of hotel (transient occupancy) taxes with respect to Rooms and Services provided under this Agreement. [http://www.sftreasurer.org/sites/default/files/2020-04/Hotel Exemption COVID-19 Form Rev 4.2.2020.pdf](http://www.sftreasurer.org/sites/default/files/2020-04/Hotel%20Exemption%20COVID-19%20Form%20Rev%204.2.2020.pdf). Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Hotel. Hotel recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. If taxes are owed by City under this Agreement, then Hotel will specify the amount due independent from any charges for the Rooms and Services.

7.1 Withholding. (Reserved)

Article 8 Termination and Default

8.1 Expiration of Local Emergency / Termination for Convenience

8.1.1 This Agreement shall expire of its own accord on the expiration date set forth in Section 2.1. In addition, City shall have the option, in its sole discretion with not less than 30 days' written notice, to terminate this Agreement, at any time during the term hereof, for convenience. City shall also have the option, in its sole discretion and without penalty of any kind, to terminate this Agreement upon a determination by the City that Hotel is unable to continue to provide the Rooms and Services described in Appendix A or otherwise in this Agreement. In any case, the City shall provide written notice that specifies the date on which termination shall become effective.

8.1.2 Upon receipt of the notice of termination, Hotel shall commence and perform, with diligence, all actions necessary on the part of Hotel to effect the termination of this Agreement on the date specified by City and to minimize the liability of Hotel and City to third parties as a result of termination. All such actions of Hotel shall be subject to the prior approval of City. Within 30 days after the specified termination date, Hotel shall submit to City an invoice. City's payment obligation under this Section shall survive termination of this Agreement.

8.1.3 Upon expiration (or earlier termination) of this Agreement, the City shall peacefully surrender the Property to the Hotel in as good order and condition and repair as when received, except for reasonable, ordinary use and wear thereof. The City shall ensure, at no cost to the Hotel, that all its employees, guests, and invitees have completely vacated the Property prior to the expiration (or earlier termination) of this Agreement. If the City fails to surrender the Property to Hotel (a) on the date required, and (b) in the condition required hereunder, after the expiration of any applicable notice and cure periods the City will be liable for all reasonable out of pocket costs incurred by the Hotel (or third parties under contract with the Hotel) to repair or restore the Property to the required condition to satisfy City's surrender obligations hereunder.

8.2 Termination for Default; Remedies.

8.2.1 City may terminate this Agreement for Hotel's default in the event that Hotel fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement,

including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default is not cured within thirty (30) calendar days after written notice thereof from City to Hotel (“Event of Default”).

8.2.2 On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Hotel any Event of Default; Hotel shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Hotel under this Agreement or any other agreement between City and Hotel: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Hotel pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City.

8.3 Non-Waiver of Rights.

The omission by either Party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other Party at the time designated, shall not be a waiver of any such default or right to which the Party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

8.4 Rights and Duties upon Termination or Expiration.

8.4.1 This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

Article 3	Financial Provisions		11.9	Agreement Made in California; Venue
Article 5	Insurance and Indemnity		11.10	Construction
6.1	Liability of City		11.11	Entire Agreement
6.3	Liability of Hotel		11.12	Compliance with Laws
Article 7	Payment of Taxes		11.13	Severability
Article 8	Termination and Default		Article 13	Data and Security

8.4.2 Subject to the survival of the Sections identified in Section 8.4.1, above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect.

Article 9 Rights In Deliverables (Reserved)

Article 10 Additional Requirements Incorporated by Reference

10.1 Laws Incorporated by Reference.

The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at http://www.amlegal.com/codes/client/san-francisco_ca/

10.2 Conflict of Interest.

By executing this Agreement, Hotel certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City’s Charter; Article III, Chapter 2 of City’s Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code

(Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

10.3 Prohibition on Use of Public Funds for Political Activity. (Reserved)

10.4 Consideration of Salary History. (Reserved)

10.5 Nondiscrimination Requirements.

In the performance of this Agreement, Hotel covenants and agrees that it will not discriminate against an applicant for employment because of race, color, religion, sex, age, ancestry, national origin, sexual orientation, handicap, veteran's status, medical condition, marital status, or citizenship because of habit, local custom, or otherwise. All applicants for employment and employees are to be treated without regard to their race, color, religion, sex, age, ancestry, and national origin, sexual orientation, handicap, veteran's status, medical condition, marital status, or citizenship. Such equal treatment shall apply, but not be limited to, employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

10.6 LBE and Non-Discrimination in Contracting Ordinance. (Reserved)

10.7 Minimum Compensation Ordinance. (Reserved)

10.8 Health Care Accountability Ordinance.

10.9 First Source Hiring Program. (Reserved)

10.10 Alcohol and Drug-Free Workplace.

City reserves the right to deny access to, or require Hotel to remove from, City facilities personnel of any Hotel or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

10.11 Limitations on Contributions. (Reserved)

10.12 Slavery Era Disclosure. (Reserved)

10.13 Working with Minors. (Reserved)

10.14 Consideration of Criminal History in Hiring. (Reserved)

10.15 Public Access to Nonprofit Records and Meetings. (Reserved)

10.16 Food Service Waste Reduction Requirements. (Reserved)

10.17 Distribution of Beverages and Water. (Reserved)

10.18 Tropical Hardwood and Virgin Redwood Ban. (Reserved)

10.19 Preservative Treated Wood Products. (Reserved)

Article 11 General Provisions

11.1 Notices to the Parties.

Unless otherwise indicated in this Agreement, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To CITY:	Human Services Agency 170 Otis Street San Francisco, CA 94103 Attn: Robert E. Walsh	e-mail: Robert.walsh@sfgov.org
And:	City Attorney's Office 1390 MARKET STREET 7TH FLOOR SAN FRANCISCO, CA 94102 ATTN.: HEALTH TEAM	e-mail: <PM e-mail>
To Hotel:	SAYANA CORPORATION 610 GEARY STREET SAN FRANCISCO, CA 94102	e-mail: keelopatel@gmail.com
	LAW OFFICE OF MICHAEL HEATH 3251 STEINER ST. SAN FRANCISCO, CA 94123 MHEATH@MHEATHLAW.COM	

Any notice of default must be sent by registered mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

11.2 Compliance with Americans with Disabilities Act.

Hotel shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation. Parties expressly agree that currently the Hotel complies with the applicable federal state and local disability laws

11.3 Incorporation of Recitals.

The matters recited above are hereby incorporated into and made part of this Agreement.

11.4 Sunshine Ordinance.

Hotel acknowledges that this Agreement and all records related to its formation, Hotel's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

11.5 Modification of this Agreement.

This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, "Notices to Parties," regarding change in personnel or place, and except by written instrument executed and approved in the same manner as this Agreement.

11.6 Dispute Resolution Procedure.

The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.36, Hotel may submit to the Contracting Officer a written request for administrative review and documentation of the Hotel's claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Hotel of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Hotel shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

11.7 Government Code Claim Requirement.

No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Hotel's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

11.8 Health and Human Service Dispute Resolution Procedure. (Reserved)

11.9 Agreement Made in California; Venue.

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

11.10 Construction.

All paragraph captions are for reference only and shall not be considered in construing this Agreement.

11.11 Entire Agreement.

This contract and the attached addendums set forth the entire Agreement between the Parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, "Modification of this Agreement."

11.12 Compliance with Laws.

Hotel shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

11.13 Severability.

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

11.14 Cooperative Drafting.

This Agreement has been drafted through a cooperative effort of City and Hotel, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

11.15 Order of Precedence.

Hotel agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, and the attached Appendices. If the Appendices to this Agreement include any standard printed terms from the Hotel, Hotel agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and Hotel's printed terms attached, the City's terms shall take precedence.

11.16 Notification of Legal Requests.

Hotel shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests ("Legal Requests") related to all data given to Hotel by City in the performance of this Agreement ("City Data" or "Data"), or which in any way might reasonably require access to City's Data, and in no event later than 24 hours after it receives the request. Hotel shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement.

Article 12 Department Specific Terms

12.1 Third Party Beneficiaries.

No third parties are intended by the parties hereto to be third party beneficiaries under this Agreement, and no action to enforce the terms of this Agreement may be brought against either party by any person who is not a party hereto.

12.2 Federal and State Financial Participation (Reserved)

Article 13 Data and Security

13.1 Nondisclosure of Private, Proprietary or Confidential Information.

13.1.1 Protection of Private Information. If this Agreement requires City to disclose "Private Information" to Hotel within the meaning of San Francisco Administrative Code Chapter 12M, Hotel and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Hotel is subject to the enforcement and penalty provisions in Chapter 12M.

13.1.2 Confidential Information. In the performance of Services, Hotel may have access to City's proprietary or Confidential Information, the disclosure of which to third parties may damage City. If City discloses proprietary or Confidential Information to Hotel, such information must be held by Hotel in confidence and used only in performing the Agreement. Hotel shall exercise the same standard of care to protect such information as a reasonably prudent Hotel would use to protect its own proprietary or Confidential Information.

13.2 Payment Card Industry (“PCI”) Requirements. (Reserved)

13.3 Protected Health Information.

Hotel, all subcontractors, all agents and employees of Hotel and any subcontractor shall comply with all federal and state laws regarding the transmission, storage and protection of all private health information disclosed to Hotel by City in the performance of this Agreement. Hotel agrees that any failure of Hotel to comply with the requirements of federal and/or state and/or local privacy laws shall be a material breach of the Agreement. In the event that City pays a regulatory fine, and/or is assessed civil penalties or damages through private rights of action, based on an impermissible use or disclosure of protected health information given to Hotel or its subcontractors or agents by City, Hotel shall indemnify City for the amount of such fine or penalties or damages, including costs of notification. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Agreement.

Article 14 Official Actions Relating to the Emergency; FEMA Assistance

14.1 Orders of Local, State or Federal Officials.

City and Hotel mutually acknowledge that local, state, or federal authorities may issue official orders related to the COVID-19 epidemic, or take other official actions, subsequent to the execution of this Agreement that Parties to this Agreement cannot presently predict. City and Hotel mutually acknowledge and agree that this Agreement shall be subject to the provisions of any such official action or order ("Official Actions"), as they may be revised and updated. If the provisions of any such Official Actions materially impact the terms of this Agreement, the provisions of those Official Actions shall govern. Hotel shall stay updated on the status of the City Health Officer orders by checking the Department of Public Health website (sfdph.org) regularly. Hotel is strongly encouraged to post a copy of relevant Health Officer orders onsite and to provide a copy to any member of the public asking for a copy.

14.2 FEMA Assistance.

This is an acknowledgement that FEMA financial assistance will be requested by City and if provided will be used to fund all or a portion of this Agreement. Hotel shall comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives, including the FEMA Emergency & Exigency Contracts Requirements attached hereto as Appendix D and incorporated herein by reference.

Article 15 MacBride And Signature

15.1 MacBride Principles -Northern Ireland.

The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Hotel confirms that Hotel has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

CITY

HOTEL

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

SAYANA CORPORATION
a California corporation

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

By: _____
Chirag Patel
Chirag Patel
Manager

Recommended by:

DocuSigned by:
Andrico Penick
By: _____
3441150C0287459...
Andrico Q. Penick
Director of Property

Approved as to Form:

Dennis J. Herrera
City Attorney

DocuSigned by:
David Ries
By: _____
EFF1B0C5BE4244A...
David K. Ries
Deputy City Attorney

Appendices

- A: Rooms and Scope of Services
- B: Calculation of Charges
- C: Invoice (if applicable)
- D: FEMA Emergency & Exigency Contracts Requirements
- E: Food Service

Appendix A
Rooms and Scope of Services

[See attached]

**Appendix B
Calculation of Charges**

1. Maximum Not-to-Exceed Amount of Agreement

- a. Total Not-to-Exceed Compensation - **\$5,460,053** (b. + c. + d.)
- b. Not-to-Exceed Compensation without Reimbursable Amount - **\$2,681,655** ($\$79 * 93 * 365$)
- c. Not-to-Exceed Reimbursable Amount (15% of amount in b.) - **\$402,248**
- d. Not-to-Exceed Reimbursable Amount for (Food Service in Appendix E) - **\$2,376,150** ($\$70 * 93 * 365$)

2. Method of Payment

A. Hotel shall submit monthly invoices by the fifteenth (15th) business day of each month, in the format attached in Appendix C, based upon the number of Rooms and Services provided in the immediately preceding month (other than the Compensation for the flat daily rate, which shall be invoiced for the current month). All deliverables associated with the Rooms and Services listed in Appendix A shall be reported on the invoice(s) each month.

B. Hotel acknowledges that City cannot make any payments to Hotel unless Hotel is qualified as an approved vendor in City's financial and payment system. Therefore, City will not be in default of any monetary obligation under the Agreement and no interest or late charge will apply if Hotel is not an approved vendor with City. All Compensation that has accrued while Hotel is not an approved vendor will be payable within twenty (20) days after City receives Hotel's written notice and the Contract Monitoring Division confirms that Hotel is approved as a City Vendor.

3. Compensation and Final Invoice

A. Hotel agrees to comply with its Program Budgets of Appendix B in the provision of Services. Changes to the budget that do not increase or reduce the maximum dollar obligation of the City are subject to the provisions of the Department of Public Health Policy/Procedure Regarding Contract Budget Changes. Hotel agrees to comply fully with that policy/procedure.

B. A final closing invoice, clearly marked "FINAL," shall be submitted no later than forty-five (45) calendar days following the closing date of the Agreement, and shall include only those Services rendered during the referenced period of performance.

4. No invoices for Services provided by law firms or attorneys, including, without limitation, as subcontractors of Hotel, will be paid unless the provider received advance written approval from the City Attorney.

**Appendix C
Invoice Template**

[To be inserted, if applicable]

Appendix D
FEMA Emergency & Exigency Contracts Requirements

1. Precedence of FEMA Requirements. This contract may be eligible for FEMA funding. FEMA requires inclusion of the following contract provisions for procurement under exigent or emergency circumstances. In the event of a conflict between this appendix and other provisions of the Agreement that address the same or a similar requirement, the provisions that are stricter and impose the greater duties upon Hotel shall apply.

2. Work Hours and Safety Standards. Hotel agrees as follows:

A. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (A) of this section Hotel and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Hotel and subcontractor(s) shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (A) of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (A) of this section.

C. Withholding for unpaid wages and liquidated damages. The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Hotel or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (B) of this section.

D. Subcontracts. Hotel or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (A) through (D) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Hotel shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (A) through (D) of this section.

E. **Exceptions.** This Section 5 does not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence

3. Clean Air Act. Hotel agrees as follows:

A. Hotel agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

B. Hotel agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

C. Hotel agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

4. Federal Water Pollution Act. Hotel agrees as follows:

A. Hotel agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

B. Hotel agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

C. Hotel agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

5. Debarment and Suspension. Hotel agrees as follows:

A. To the extent this contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000, Hotel is required to verify that none of Hotel's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

B. To the extent this contract is a covered transaction, Hotel must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

C. This certification is a material representation of fact relied upon by the City. If it is later determined that Hotel did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

D. Hotel agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C throughout the period of any contract that may arise from this offer. Hotel further agrees to include a provision requiring such compliance in its lower tier covered transactions.

6. Procurement of Recovered Materials

A. In the performance of this contract, Hotel shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

- i. Competitively within a timeframe providing for compliance with the contract performance schedule;
- ii. Meeting contract performance requirements; or
- iii. At a reasonable price.

B. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

C. Hotel also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

7. Department of Homeland Security Seal, Logo, and Flags. Hotel shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

8. Compliance with Federal Law, Regulations, and Executive Orders. This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. Hotel will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

9. No Obligation by Federal Government. The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the City, Hotel, or any other party pertaining to any matter resulting from the contract.

10. Program Fraud and False or Fraudulent Statements or Related Acts. Hotel acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Hotel's actions pertaining to this contract.

11. Byrd Anti-Lobbying Certification.

A. Hotels who apply or bid for an award of \$100,000 or more shall file the required certification pursuant to the Byrd Anti-Lobbying Amendment, 31 U.S.C. §1352, as amended. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to

pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

B. If this contract is for a price of \$100,000 or more, Hotel, and its lower tiers, must sign and submit to the City the following certification:

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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Sayana Corporation ("Hotel"), certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, Hotel understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

SAYANA CORPORATION

Chris A. Sted

Signature of Hotel's Authorized Official

Manager

Name and Title of Hotel's Authorized Official

5/8/20

Date

**Appendix E
Food Service by Hotel]**

The Hotel and City are working in good faith to develop and incorporate a food service program to not exceed the greater of \$70 per room night and/or \$2,376,150 (see Appendix B). The terms and conditions of such program, if and when mutually approved by Hotel and City, shall be attached hereto as Appendix E. In no event will Hotel be allowed to charge City for costs under this Appendix without express written consent of City.