

File No. 211235

Committee Item No. 7

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date February 9, 2022

Board of Supervisors Meeting Date \_\_\_\_\_

#### Cmte Board

- |                                     |                          |  |
|-------------------------------------|--------------------------|--|
| <input type="checkbox"/>            | <input type="checkbox"/> | Motion                                       |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution                                   |
| <input type="checkbox"/>            | <input type="checkbox"/> | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Digest                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Youth Commission Report                      |
| <input type="checkbox"/>            | <input type="checkbox"/> | Introduction Form                            |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/> | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Subcontract Budget                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Application                                  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Public Correspondence                        |

#### OTHER (Use back side if additional space is needed)

- |                                     |                          |  |
|-------------------------------------|--------------------------|--|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Emergency Agreement - 3/24/2020</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Amendment No. 1 - 6/11/2020</u>     |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Amendment No. 2 - 3/22/2021</u>     |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____                                  |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____                                  |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____                                  |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____                                  |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____                                  |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____                                  |

Completed by: Brent Jalipa Date February 4, 2022

Completed by: Brent Jalipa Date \_\_\_\_\_

1 [Contract Amendment - SF Americania LLC - Emergency Agreement - 121 Seventh Street -  
2 Not to Exceed \$16,430,164]

3 **Resolution approving a third amendment to an emergency agreement between the**  
4 **Human Services Agency (HSA) and SF Americania LLC, for the City's continued use of**  
5 **143 hotel rooms and associated services located at the Americania Hotel on 121**  
6 **Seventh Street; increasing the contract amount by \$6,670,714 for a total amount not to**  
7 **exceed \$16,430,164; extending the booking period for a potential total term of March**  
8 **24, 2020, through October 9, 2022; and to authorize the Executive Director of HSA to**  
9 **enter into amendments or modifications to the contract that do not materially increase**  
10 **the obligations or liabilities to the City and are necessary to effectuate the purposes of**  
11 **the contract or this Resolution.**

12  
13 WHEREAS, In response to the COVID-19 pandemic, Mayor London Breed declared a  
14 "Local Emergency" on Tuesday, February 25, 2020, as supplemented from time to time,  
15 including the Thirty-Fifth Supplemental Declaration dated February 19, 2021, authorizing the  
16 extension of COVID-19-related contracts; and

17 WHEREAS, The Human Services Agency ("HSA"), in coordination with the Department  
18 of Public Health, the Department of Emergency Management, the Department of  
19 Homelessness and Supportive Housing ("HSH"), the Real Estate Division ("RED"), the Office  
20 of Contract Administration ("OCA"), and other City stakeholders (collectively, the "City's  
21 COVID-19 Response Team"), procured hotel rooms and related emergency services in  
22 support of the Local Emergency; and

23 WHEREAS, The City uses the rooms to further the public health and safety by  
24 sheltering people who are otherwise within a vulnerable population and have no means to  
25 socially-distance from possible COVID infection; and

1 WHEREAS, The City entered into an Emergency Agreement dated March 24, 2020,  
2 with SF Americania LLC ("Hotel") for the City's use of 142 hotel rooms plus associated  
3 services, as amended by a First Amendment to Emergency Agreement dated June 11, 2020,  
4 and a Second Amendment dated March 22, 2021, to extend the term and add an available  
5 room and increase the maximum contract amount (collectively, the "Booking Contract"); and

6 WHEREAS, The Booking Contract originally ran from March 24, 2020, through July 23,  
7 2020 (the initial "Booking Period"), and through an extension notice dated June 23, 2020, the  
8 Booking Period was extended on a month-to-month basis and through the Second  
9 Amendment, the Booking Period was extended to November 15, 2021; and

10 WHEREAS, HSA and HSH wish to continue to use the hotel rooms, as well as continue  
11 to procure food services from Hotel in connection with the use of the hotel rooms; and

12 WHEREAS, HSA, in consultation with the Office of the City Attorney, negotiated a  
13 proposed Third Amendment to Emergency Agreement (the "Third Amendment") with the Hotel  
14 to increase the contract amount to a not to exceed contract amount of \$16,430,164 and to  
15 extend the Booking Period through October 9, 2022, for a total potential Booking Period of  
16 March 24, 2020 to October 9, 2022 (928 nights), subject to early termination rights as  
17 described in the Booking Contract; and

18 WHEREAS, A copy of the Third Amendment is on file with the Clerk of the Board in File  
19 No. 211235; and

20 WHEREAS, Charter, Section 9.118, requires Board of Supervisors approval of the  
21 Third Amendment; now, therefore, be it

22 RESOLVED, That the Board of Supervisors hereby authorizes a Third Amendment to  
23 increase the contract amount to a total not to exceed amount of \$16,430,164 and to extend  
24 the potential Booking Period until October 9, 2022, subject to early termination rights as  
25

1 described in the Booking Contract, and to perform all of City's obligations under the Booking  
2 Contract as amended; and, be it

3 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive  
4 Director of HSA to enter into any amendments or modifications to the Booking Contract that  
5 HSA determines, in consultation with the City Attorney, do not otherwise materially increase  
6 the obligations or liabilities of the City, are necessary or advisable to effectuate the purposes  
7 of the Booking Contract or this Resolution, and are in compliance with all applicable laws,  
8 including the City's Charter; and, be it

9 FURTHER RESOLVED, That within thirty (30) days of the Third Amendment being fully  
10 executed by all parties, HSA shall provide the final Third Amendment to the Clerk of the Board  
11 for inclusion into the official file.

Available: \$4,901,089

Fund ID:	10482
Department ID:	149657
Authority ID:	10001
Project ID:	10036444
Account ID:	538010
Activity ID:	0005

/s/

Ben Rosenfield  
Controller

Funding for Fiscal Year 2022/2023 is  
subject to the enactment of the Annual  
Appropriation Ordinance for Fiscal Year  
2022/2023.

RECOMMENDED:

/s/

Human Services Agency  
Executive Director

/s/

Department of Homelessness and Supportive Housing  
Director

<b>Item 7</b> <b>File 21-1235</b>	<b>Department:</b> Human Services Agency (HSA)
<b>EXECUTIVE SUMMARY</b>	
<p style="text-align: center;"><b>Legislative Objectives</b></p> <ul style="list-style-type: none"> <li>The proposed resolution would approve the third amendment to the Emergency Agreement between the City and SF Americana LLC, for the continued use of 143 hotel rooms and associated services by increasing the agreement amount by \$6,670,714, from \$9,759,450 to not to exceed \$16,430,164, and extending the term from November 15, 2021 to October 9, 2022.</li> </ul> <p style="text-align: center;"><b>Key Points</b></p> <ul style="list-style-type: none"> <li>Americana Hotel, located at 121 Seventh Street, is a 143-room hotel, which is contracted with the City through the Shelter In Place Hotel program to provide housing for unhoused people at-risk for COVID-19. The Human Services Agency (HSA) entered into the original agreement with SF Americana LLC in March 2020, which has been amended two times. The first two Amendments to the agreement did not require Board of Supervisors approval because they were below \$10 million.</li> </ul> <p style="text-align: center;"><b>Fiscal Impact</b></p> <ul style="list-style-type: none"> <li>Under the agreement, the average daily rate for rooms and reimbursable expenses (hotel services) is \$123.68. Total new spending provided by the proposed amendment is \$6,670,714.</li> <li>Actual expenses totaled \$9,744,232 through the current agreement term, which ended on November 15, 2021, and the hotel incurred additional room costs of \$1,047,328 for the remainder of November, as well as December and January, for total actual spending of \$10,791,561 as of January 2022.</li> <li>The contingency amount for repair costs is increasing from 15% to 25% of the room costs under the proposed Third Amendment, or approximately \$22,979 per room. According to Section 8.1.3 of the agreement, the City is responsible for all repair costs associated with restoring the hotel to its previous condition, even if they exceed the contingency amount.</li> <li>An estimated 93 percent of agreement costs are reimbursable by FEMA through March 2022 according to HSA staff. Costs not reimbursed by FEMA will be paid from the State's Project Roomkey Allocation (expiring in June 2022) and the Federal Emergency Solutions Grant.</li> </ul> <p style="text-align: center;"><b>Recommendations</b></p> <ul style="list-style-type: none"> <li>Amend the proposed resolution to clarify that approval is retroactive.</li> <li>Approve the proposed resolution, as amended.</li> </ul>	

**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.

**BACKGROUND**

In response to the COVID-19 emergency, the City established the COVID-19 Alternative Shelter Program. This Program provided shelter in place sites, congregate setting sites, and isolation and quarantine sites to COVID-vulnerable individuals, most of whom were experiencing homelessness. These shelters included hotel rooms, congregate units, and recreational vehicles. As discussed below, as of July 1, 2022, the operation of ongoing Alternative Shelter Programs moved back to home departments. The City is in the process of winding down the Shelter in Place Hotel program by September 30, 2022 as the City moves from response to recovery.

One of the Shelter in Place Hotel agreements is for the Americana Hotel located at 121 Seventh Street, which has 143 rooms. Under the agreement, the San Francisco Human Services Agency (HSA) controls the entire hotel; no rooms are rented to the general public at this time.

*Historical Changes to the Agreement*

The original emergency services agreement between the City and SF Americana LLC was for a 122-night term from March 24, 2020 through July 23, 2020, for a not to exceed amount of \$6,696,144. (See Exhibit 1 below) The original agreement gave the City the right to extend the Term ("Booking Period") on a month-to-month basis after July 23, 2020 through March 23, 2021 upon 30 days prior notice to the Hotel owner.

The first two Amendments to the agreement did not require Board of Supervisors approval because they were below \$10 million. On June 11, 2020, HSA adopted the First Amendment to the Agreement which added an additional available room and incorporated provisions necessary to be eligible for cost recovery from the Federal Emergency Management Agency (FEMA).

**Exhibit 1. Historical Terms of Americana Hotel Agreement**

	<b>Original Agreement Total</b>	<b>Amendment 1</b>	<b>Amendment 2</b>	<b>Proposed Amendment 3</b>	<b>Unit Cost</b>
Number of Rooms	142 rooms	143 rooms	143 rooms	143 rooms	
Monthly Billing Rate	\$429,240	\$432,210	\$432,210	\$432,210	
Expiration Date	July 23, 2020	July 23, 2020	Nov 15, 2021	Oct 9, 2022	
Term length	122 nights	122 nights	601 nights	929 nights	
Room Costs	\$5,150,880	\$5,186,520	\$8,486,478	\$13,144,131	\$98.94
Contingency (% of Room Costs)	\$1,545,264 (30%)	\$1,509,624 (29%)	\$1,272,972 (15%)	\$3,286,033 (25%)	\$24.74
<b>Not to Exceed Amount</b>	<b>\$6,696,144</b>	<b>\$6,696,144</b>	<b>\$9,759,450</b>	<b>\$16,430,164</b>	<b>\$123.68</b>

Source: Amendments 1-3 of the Emergency Agreement with 1231 Market Street Owner, LP

On June 23, 2020, the City exercised its option under Section 2.1 of the Agreement to extend the term on a month-to-month basis commencing July 23, 2020.

On March 22, 2021, HSA administratively adopted the Second Amendment to the Agreement under its Emergency Ordinance Authority to extend the term by 479 nights and increase the total not to exceed amount from \$6,696,144 to \$9,759,450.

*Shelter in Place Hotel Program- Status as of February 2022*

At its highest capacity, San Francisco's Shelter in Place Hotel Program, provided 2,288 rooms across 25 sites. According to Department of Homelessness and Supportive Housing (HSH) staff, the program has served over 3,700 guests, including adults, families, and Transitional Aged Youth (ages 18-24). The Program provides non-congregate temporary shelter for people experiencing homelessness who are most vulnerable to COVID-19. The City has begun the process of rehousing guests temporarily sheltered in Shelter in Place hotels and closing the hotels. HSH took over operations of the Shelter in Place Hotel Program in July 2021 after the City's COVID-19 Command Center was closed.

HSH is responsible for matching individuals with long-term placements and will continue through September 2022 when HSH expects the last hotels to close. As of February 1, 2022, HSH has rehoused 1,057 Shelter in Place hotel guests out of 2,596 total exited hotel guests<sup>1</sup> and closed nine out of 25 hotels. The remaining 14 hotels are still open. As of February 2, 2022, there were 1,163 active Shelter in Place Hotel guests, occupying 1,079 units (including units that may be occupied by more than one guest). The hotels stopped accepting new guests in June 2021. The hotel closing schedule is shown in Exhibit 2 below.

<sup>1</sup> According to HSH staff, many of the guests who left the program did so voluntarily. Others moved to another institutional setting (e.g. hospital or other residential non-psychiatric medical facility) or transferred to other shelter programs (e.g. Navigation Centers or Transitional Housing) based on their needs. An unspecified number were discharged from the program due to unsafe behavior.

**Exhibit 2. Shelter in Place (SIP) Hotel Closure Schedule, As of January 27, 2022**

<b>Site Status</b>	<b>Number of Sites</b>
Closed SIP Sites	9
Active SIP Sites	14
Sites Closing in 2022 Q1	4
Sites Closing in 2022 Q2	5
Sites Closing in 2022 Q3	5

Source: HSH

According to HSH staff, HSH notifies service providers at least three months in advance of starting the closure of that site so that HSH and the provider can ensure 90-day notification to guests prior to site closure and to allow HSH to assist guests with rehousing. Given the planned hotel closure schedule through September 2022, there may be additional Shelter in Place Hotel contracts that will require Board of Supervisors approval to extend.

#### **DETAILS OF PROPOSED LEGISLATION**

The proposed resolution would retroactively approve the third amendment to the Emergency Agreement between the City and SF Americania LLC, for the continued use of 143 hotel rooms and associated services by increasing the agreement amount by \$6,670,714, from \$9,759,450 to not to exceed \$16,430,164; and would extend the booking period by an additional 328 nights, for a total term of 929 nights from March 24, 2020 to October 9, 2022.

#### **FISCAL IMPACT**

Actual expenses totaled \$9,744,232 through the current agreement term, which ended on November 15, 2021, and the hotel incurred additional room costs of \$1,047,328 for the remainder of November, as well as December and January, for total actual spending of \$10,791,561 as of January 2022. Americania Hotel budgeted and actual expenditures for the current agreement term are shown in Exhibit 3 below

**Exhibit 3. Americania Hotel Budget vs Actuals, March 24, 2020 – January 31, 2022**

	<b>Total Budgeted</b>	<b>Actual Expenses thru Nov 15, 2021</b>
Room	\$8,486,478	\$8,486,478
Contingency <sup>a</sup>	1,272,972	1,257,754
<b>Total</b>	<b>\$9,759,450</b>	<b>\$9,744,232</b>
<i>Expenses incurred after agreement term (Nov 15, 2021 - January 31, 2022)</i>		
Room Costs		\$1,047,328
<b>Total Actual Expenses to Date</b>		<b>\$10,791,561</b>

Source: HSA

<sup>a</sup> The Second Amendment to the Agreement provides for Americania Hotel to invoice the City each month for the flat rate of \$432,210 and for additional reimbursable services, up to 15 percent of the flat room rate.

*Reimbursable Expenses*

The contract not to exceed amount includes a contingency for reimbursable expenses above the monthly room rate. According to HSA staff, the contingency amount is for use at the City's discretion and is primarily intended for repair costs at contract close-out. Under the Original Agreement, the City is required to return the property to the Hotel "in as good order and condition and repair as when received, except for reasonable, ordinary use and wear thereof."

Section 8.1.3 of the Original Agreement included a contingency amount calculated as 30% of the room costs. The contingency was reduced to 15% of the room costs in the Second Amendment, but would increase to 25% under the proposed Third Amendment, or approximately \$22,979 per room. According to HSA staff, the change in contingency calculation reflects the change in use of the property over the term of the agreement from Shelter in Place to Isolation and Quarantine and back to Shelter in Place. According to Robert Walsh, HSA Director of Facilities, Shelter in Place rooms typically require additional repair costs compared to Isolation and Quarantine rooms because Shelter in Place guests stay longer compared to Isolation and Quarantine guests. The change in contingency calculation from 15% to 25% of room costs results in an additional \$9,192 contingency amount per room (from \$13,788 to \$22,979). Restoration of rooms is completed by hotel contractors. According to Section 8.1.3 of the agreement, the City is responsible for all repair costs, even if they exceed the contingency amount. According to HSA, the City is not expecting to exceed the contingency amount to restore the hotel.

*Funding Sources*

The Third Amendment to the Agreement would be initially funded by the General Fund. HSA staff anticipate that around 93 percent of costs from the beginning of the agreement through March 31, 2022, will be reimbursed by FEMA. The remaining costs that are not eligible for FEMA reimbursement—due to client ineligibility or costs incurred after the April 2022 expiration of FEMA funding—will be funded by other state and federal sources, including the State's Project Roomkey Allocation (expiring in June 2022) and the Federal Emergency Solutions Grant.

## RECOMMENDATIONS

1. Amend the proposed resolution to clarify that approval is retroactive.
2. Approve the resolution, as amended.

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

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

WHEREAS, City and Hotel have entered into an emergency services contract, dated March 24 2020, (the “**Original Agreement**”) subsequently amended by the “**First Amendment**” dated June 11, 2020, and the “**Second Amendment**” dated March 22, 2021 (the Original Agreement and First Amendment and Second Amendment are collectively, the “**Agreement**”), for Rooms and Services at the property commonly known as the **Americania Hotel** located at 121 7th Street, San Francisco, CA 94103, to further the public health and safety in connection with City’s response to the Local Emergency declared by Mayor London Breed on Tuesday, February 25, 2020 as supplemented from time to time, including the Thirty-Fifth Supplemental Declaration dated February 19, 2021, authorizing the extension of COVID-19-related contracts; and

WHEREAS, City and Hotel desire to modify the Agreement on the terms and conditions set forth herein to extend the Booking Period; and

WHEREAS, the City’s Board of Supervisors approved this Agreement by Resolution Number \_\_\_\_\_ on \_\_\_\_\_; 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 Agreement 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 commences on March 24, 2020 and will expire of its own accord on October 9, 2022 (the last night will be October 8, 2022) (the “**Booking Period**”), unless earlier terminated as otherwise provided herein. City may terminate this Agreement by providing at least thirty (30) days written notice to Hotel of such termination. Notwithstanding, City agrees to use commercially reasonable efforts to provide more advanced notice to the extent it is practical or able to do so.

3. **Amendment to Article 3.3.1 Payment**. The following sentence from Section 3.3.1 is hereby deleted from the Agreement:

“In no event shall the amount of this Agreement exceed **Nine Million Seven Hundred Fifty Nine Thousand, Four Hundred and Fifty Dollars \$9,759,450.**”; 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 exceed **Sixteen Million Four Hundred Thirty Thousand, One Hundred Sixty-Four Dollars (\$16,430,164).**”

4. **Replace Article 3.3.3 Deposit.** Section 3.3.3 is hereby deleted from the Agreement, and the following is hereby added in its place and fully incorporated into the Agreement

3.3.3 **Deposit.** Upon execution of this Agreement, the City shall deposit with the Hotel the amount of \$429,240 by wire transfer to an account designated by the Hotel, which amount is equal to one month of Compensation, or alternatively, along with its first payment of Compensation, City may elect to request Hotel to invoice for prepayment of last month’s Compensation. The Hotel may use any and all of the Deposit to pay for the repair of any damage that may be caused to the Property by the City or any of its Guests. In addition, throughout the Booking Period the Hotel may invoice the City for its reasonable costs to pay for the repair of such damage, payable from the “Not-to-Exceed Reimbursable Amount” (contingency funds) in Appendix B below. The Hotel hereby reserves all other rights and remedies available to it under this Agreement, at law or in equity for damage to the Property caused by the City or any of its Guests. 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 ~~to repair or restore the Property as required by this Agreement~~ ~~nor~~ for costs incurred by Hotel to repair or restore the Property as required by this Agreement. The Deposit will be held by the Hotel and may be commingled with other funds; any interest earned on the Deposit, if any, shall be the property of the Hotel.

5. **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 - \$ 16,430,164**

b. **Not-to-Exceed Compensation for Room Nights - \$ 13,144,131**

c. **Not-to-Exceed Reimbursable Amount - \$ 3,286,033**

6. **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.

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

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

CITY AND COUNTY OF SAN  
FRANCISCO,  
a municipal corporation

HOTEL

SF AMERICANIA LLC,  
A Delaware limited liability company

\_\_\_\_\_  
Trent Rhorer  
Executive Director  
Human Services Agency

\_\_\_\_\_  
John W. Rutledge  
Authorized Signatory

City Supplier number: 0000042406

Approved as to Form:

Dennis J. Herrera  
City Attorney

By: \_\_\_\_\_  
David K. Ries  
Deputy City Attorney

Approved:

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

By: \_\_\_\_\_

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

**Emergency Agreement between the City and County of San Francisco**

**and**

**SF Americania LLC  
a Delaware limited liability company**

**Americania Hotel  
121 – 7th Street  
San Francisco, CA**

## Table of Contents

<b>Article 1</b>	<b>Definitions.....</b>	<b>1</b>
<b>Article 2</b>	<b>Term of the Agreement .....</b>	<b>1</b>
2.1	Term .....	1
<b>Article 3</b>	<b>Financial Matters .....</b>	<b>2</b>
3.1	Certification of Funds; Budget and Fiscal Provisions.....	2
3.2	Intentionally .....	2
3.3	Compensation.....	2
3.4	Getting paid by the City for goods and/or services.....	3
3.5	Federal and/or State Funded Contracts. (Reserved).....	3
3.6	Contract Amendments.....	3
3.7	Audit and Inspection of Records.....	3
3.8	Submitting False Claims. ....	4
<b>Article 4</b>	<b>Services Hotel and City Agrees to Perform. ....</b>	<b>4</b>
4.1	Qualified Personnel. (Reserved) .....	4
4.2	Subcontracting. (Reserved) .....	4
4.3	Independent Contractor; Payment of Employment Taxes and Other Expenses. ....	4
4.4	Assignment.....	4
4.5	Warranty. (Reserved) .....	5
4.6	Liquidated Damages. (Reserved) .....	5
4.7	Bonding Requirements. (Reserved) .....	5
<b>Article 5</b>	<b>Insurance and Indemnity .....</b>	<b>5</b>
5.1	Insurance. ....	5
5.2	Indemnification. ....	6
<b>Article 6</b>	<b>Liability of the Parties .....</b>	<b>6</b>
6.1	Liability for Use of Equipment. (Reserved).....	6
6.2	Liability of Hotel and City. ....	7
<b>Article 7</b>	<b>Payment of Taxes .....</b>	<b>7</b>
7.1	Withholding. (Reserved) .....	7
<b>Article 8</b>	<b>Termination and Default.....</b>	<b>7</b>
8.1	Expiration of Local Emergency / Termination .....	7

8.2	Termination for Default; Remedies.....	7
8.3	Non-Waiver of Rights. ....	8
8.4	Rights and Duties upon Termination or Expiration. ....	8
<b>Article 9</b>	<b>Rights In Deliverables (Reserved) .....</b>	<b>8</b>
<b>Article 10</b>	<b>Additional Requirements Incorporated by Reference.....</b>	<b>8</b>
10.1	Laws Incorporated by Reference.....	8
10.2	Conflict of Interest.....	8
10.3	Prohibition on Use of Public Funds for Political Activity. (Reserved).....	8
10.4	Consideration of Salary History. (Reserved).....	8
10.5	Nondiscrimination Requirements. ....	9
10.6	LBE and Non-Discrimination in Contracting Ordinance. (Reserved) .....	9
10.7	Minimum Compensation Ordinance. (Reserved).....	9
10.8	Health Care Accountability Ordinance.....	9
10.9	First Source Hiring Program. (Reserved).....	9
10.10	Alcohol and Drug-Free Workplace. ....	9
10.11	Limitations on Contributions. (Reserved) .....	9
10.12	Slavery Era Disclosure. (Reserved).....	9
10.13	Working with Minors. (Reserved).....	9
10.14	Consideration of Criminal History in Hiring. (Reserved) .....	9
10.15	Public Access to Nonprofit Records and Meetings. (Reserved) .....	9
10.16	Food Service Waste Reduction Requirements. (Reserved).....	9
10.17	Distribution of Beverages and Water. (Reserved).....	9
10.18	Tropical Hardwood and Virgin Redwood Ban. (Reserved) .....	9
10.19	Preservative Treated Wood Products. (Reserved).....	9
<b>Article 11</b>	<b>General Provisions .....</b>	<b>10</b>
11.1	Notices to the Parties. ....	10
11.2	Compliance with Americans with Disabilities Act. (Reserved).....	10
11.3	Incorporation of Recitals. ....	10
11.4	Sunshine Ordinance.....	10
11.5	Modification of this Agreement. ....	11
11.6	Dispute Resolution Procedure. ....	11

11.7	Government Code Claim Requirement. ....	11
11.8	Health and Human Service Dispute Resolution Procedure. (Reserved) .....	11
11.9	Agreement Made in California; Venue. ....	11
11.10	Construction.....	11
11.11	Entire Agreement.....	11
11.12	Compliance with Laws. ....	11
11.13	Severability.....	12
11.14	Cooperative Drafting. ....	12
11.15	Order of Precedence. ....	12
11.16	Notification of Legal Requests. ....	12
11.17	No Representations or Warranties Regarding Property. ....	12
11.18	Licenses and Permits. ....	12
<b>Article 12</b>	<b>Department Specific Terms .....</b>	<b>13</b>
12.1	Third Party Beneficiaries.....	13
12.2	Federal and State Financial Participation .....	13
<b>Article 13</b>	<b>Data and Security.....</b>	<b>13</b>
13.1	Nondisclosure of Private, Proprietary or Confidential Information. ....	13
13.2	Payment Card Industry (“PCI”) Requirements. (Reserved).....	13
13.3	Relationship. ....	13
13.4	Protected Health Information. ....	14
<b>Article 14</b>	<b>MacBride And Signature .....</b>	<b>14</b>
14.1	MacBride Principles -Northern Ireland. ....	14

## Agreement

This Agreement is made this 24th day of March, 2020, in the City and County of San Francisco, State of California, by and between SF Americania LLC, a Delaware limited liability company ("**Hotel**"), as the owner of the Americania Hotel, located at 121 – 7th Street, San Francisco, CA ("**Property**"), and City, acting by and through its Human Services Agency (as defined below).

### Recitals

**WHEREAS**, this Agreement is an emergency contract awarded pursuant to procedures applicable under the Local Emergency declared by Mayor London Breed on Tuesday, February 25, 2020; 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 use the rooms to further the public health and safety in connection with its response to the Local Emergency by sheltering (a) people who have been exposed to the Covid-19 virus or are under medical quarantine; or (b) health care workers and first responders (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, 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 City's Rent Ordinance.

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 this Agreement is fully executed and delivered by both Parties..

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.

The term of this Agreement shall commence on March 24, 2020 and expire of its own accord on July 23, 2020 (the "**Booking Period**"), unless earlier terminated as otherwise provided herein. City shall have the

right to extend the Booking Period on a month-to month basis by providing no less than 30 days prior written notice to Hotel; provided, that (i) in no event shall any extension extend beyond March 23, 2021 and (ii) after July 23, 2020, either party may terminate this Agreement by providing thirty (30) days written notice to the other party of such termination. Any such extension shall be on the terms and conditions set forth in this Agreement.

### **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. 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 Intentionally Omitted.**

#### **3.3 Compensation.**

3.3.1 **Payment.** The flat monthly rate for the Rooms and Services is \$429,240. Hotel shall provide an invoice to the City on a monthly basis for the monthly room rate 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." Hotel understands and agrees the not to exceed maximum amount of this Agreement is as follows:

##### **1. Total Not-to-Exceed Fixed Booking Amount- \$6,696,144**

##### **a. Subset without Reimbursable Amount - \$5,150,880**

##### **b. 30% not to exceed Reimbursable Amount - \$1,546,564**

3.3.2 If the Booking Period begins or ends on a day other than the first or last day of a month, the Compensation shall be prorated on a daily basis for the partial month. Compensation shall be paid for the Rooms and Services identified in the invoice provided to the City by Hotel. Payment of the Compensation shall be made within 10 calendar days after receipt of the invoice, and payment for all other charges shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Hotel that a dispute as to the invoice exists. The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. In the event that the Hotel incurs any additional costs or expenses for Services provided at the Property in order to accommodate special requests of the City to assist it in handling the COVID-19 pandemic at the Hotel and agreed upon in writing by the City and Hotel, then the City shall reimburse all such actual and reasonable additional costs and expenses. City shall have the right to use up to 50% of the parking spaces at the Property at no charge. To the extent the City requires the use of any additional parking spaces at the Property, the City shall pay a flat fee of \$20 per vehicle per day.

3.3.3 **Deposit.** Upon execution of this Agreement, the City shall deposit with the Hotel the amount of \$429,240 by wire transfer or ACH to an account designated by the Hotel, which amount is equal to one month of Compensation, or alternatively, along with its first payment of Compensation, City may elect to request Hotel to invoice for prepayment of last month's Compensation. The Hotel will hold the Deposit as security for any damage that may be caused to the Property by the City or any of its Guests. The Hotel may use any and all of the Deposit that is necessary to pay for the repair of such

damage. To the extent there is no damage to the Property (other than normal wear and tear) the Hotel shall apply the Deposit to any other amounts owed to it by the City, including arising from any breach by the City. To the extent there are no additional amounts owed by the City, Hotel shall return the Deposit to the City within thirty (30) days following the end of the Booking Period or earlier termination of this Agreement, which obligation survives the expiration or earlier termination of this Agreement. The Hotel hereby reserves all other rights and remedies available to it at law or in equity for damage to the Property caused by the City or any of its Guests. The Deposit will be held by the Hotel and may be commingled with other funds; any interest earned on the Deposit, if any, shall be the property of the Hotel.

#### **3.3.4 Intentionally omitted.**

**3.3.5 Withhold Payments.** If Hotel fails to provide Rooms and Services in accordance with Hotel's obligations under this Agreement, following written notice from City to the Hotel of such failure the City may withhold any and all payments due Hotel 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.

**3.3.6 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.

#### **3.3.7 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](http://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 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 five 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..

### **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." Hotel agrees that all hotel rooms and other spaces within the 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 and the City shall have no right to use or enter at any time without the prior written consent of the Hotel in its sole discretion. City shall be responsible for and shall provide perform all obligations and services set forth in Section 3 of Appendix A to be provided by or on behalf of City. Hotel shall have no responsibility to provide the same. The City shall not perform any alterations (including, for example, any modification, demolition or reconfiguration of, or any improvement) to the Rooms or other portions of the Property, without the prior written consent of the Hotel, which such consent shall be at Hotel's sole discretion.

#### **4.1 Qualified Personnel. (Reserved)**

#### **4.2 Subcontracting. (Reserved)**

#### **4.3 Independent Contractor; Payment of Employment Taxes and Other Expenses.**

#### **4.4 Assignment.**

4.4.1 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. Notwithstanding the foregoing, City acknowledges that this Agreement may have been and may be collaterally assigned to any mortgage lender to Hotel.

4.4.2 City shall not assign all or any part of its interest under this Agreement, and shall not sublease, license or permit the use of the Property by any person or entity except City in strict

accordance with the provisions of this Agreement. Any such assignment, sublease, license or permission to use shall be void ab initio. Such prohibition shall not preclude City from entering into service contracts and similar agreements to perform City services required under this Agreement.

**4.5 Warranty. (Reserved)**

**4.6 Liquidated Damages. (Reserved)**

**4.7 Bonding Requirements. (Reserved)**

**4.8 Collective Bargaining Agreements.** A condition to this Agreement becoming effective is the execution by the Hotel of a modification of the Collective Bargaining Agreement applicable to the Hotel permitting the rental of rooms and provision of services as provided in this Agreement, and the execution by the Hotel and the applicable bargaining unit of an agreement that their members will not be involved in servicing guest rooms or performing any other Hotel services except as expressly set forth in Appendix “A”.

## **Article 5 Insurance and Indemnity**

**5.1 Insurance.**

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

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

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

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

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

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

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

**5.1.2 Commercial General Liability and Commercial Automobile Liability Insurance** policies must be endorsed to provide:

**5.1.3** 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.”

**5.1.4 (Reserved).**

**5.1.5 (Reserved).**

**5.1.6** 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.

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

5.1.8 **Required City Coverages.** Without in any way limiting City's liability pursuant to the "Indemnification" Section of this Agreement, City shall carry and maintain for the mutual benefit of the Hotel and the other Hotel Parties (as defined below) general public liability insurance against claims for personal injury, wrongful death or property damage occurring on or about the Property (as defined below), in an amount of at least \$1 Million per occurrence and \$3 Million aggregate. City shall obtain and maintain at all times during the Booking Period workers compensation coverage up to statutory limits covering all City employees providing services or working in the hotel Property. Any claims made by City employees shall be made to City under its established worker's compensation process and City will administer those claims. Any insurance maintained by City shall be primary and non-contributory to any insurance maintained by Hotel or any of the other Indemnitees. In lieu of maintaining commercial insurance coverage, City may adopt alternative risk management programs, including self-insurance up to the limits required in the Section.

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

## 5.2 **Indemnification.**

5.2.1 City shall completely and unconditionally indemnify, defend and hold Hotel, its manager, Oxford Hotels and Resorts, LLC, any lender to Hotel, and their respective officers, managers, members, directors, employees, contractors, agents and representatives and their successors and assigns (collectively, the "**Hotel Parties**") harmless from and against any and all liabilities, losses, damages, causes of action, suits, claims, judgments or expenses, including reasonable attorneys' fees and court costs and expenses, including without limitation any of the foregoing resulting from COVID-19 (collectively, "**Claims**"), asserted or arising out of or relating in any way, directly or indirectly from the use or occupancy of any part of the Property or the use of any hotel services or facilities at the Property, by City or any of City's servants, agents, licensees, employees, contractors, volunteers, or invitees (including without limitation any Guests or any other persons City permits or causes to occupy any rooms at the Property) (collectively, "**Invitees**") including without limitation Claims made or asserted by any third parties (including any employees of the Hotel) for bodily injury, sickness (including without limitation sickness or death resulting from COVID-19), disease, loss of consortium or services, death or damage to property, by reason of or incident to City's or its Invitees' use of the Property, the Rooms or the Services, excluding Claims arising from the gross negligence or willful misconduct of the Hotel Parties or a breach of the Hotel's obligations under this Agreement.

5.2.2 Notwithstanding anything set forth in this Agreement to the contrary, with respect to direct claims of Hotel, City shall not be required to pay Hotel's attorneys' fees or costs and City's obligation to indemnify shall be resolved on a comparative negligence basis.

5.2.3 Hotel shall defend, indemnify, and hold City harmless from and against any and all liabilities, losses, damages, causes of action, suits, claims, judgments or expenses, including reasonable attorneys' fees and court costs and expenses, arising from Hotel's breach of Hotel's obligations under this Agreement.

## **Article 6 Liability of the Parties**

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

## 6.2 **Liability of Hotel and City.**

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

## **Article 7      Payment of Taxes**

City shall reimburse Hotel for all hotel, temporary occupancy taxes, sales and use taxes within 30 days after receipt of an invoice from Hotel. Real property taxes shall remain the responsibility of Hotel. Payment of any taxes, including real property 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, subject to City's obligation to reimburse the Hotel for any and all occupancy taxes, sales and use taxes incurred by the Hotel during the Booking Period. Hotel shall include a line item in its invoice for taxes.

## 7.1 **Withholding. (Reserved)**

## **Article 8      Termination and Default**

### 8.1 **Expiration of Local Emergency / Termination**

8.1.1 This Agreement shall expire of its own accord at the end of the Booking Period.

8.1.2 Upon receipt of any notice of termination, City and Hotel shall commence and perform, with diligence, all actions necessary on the part of City and 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. 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, the City will be liable for all 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 Either party may terminate this Agreement for default in the event that the other party fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement in any material respect, 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 to such defaulting party to Hotel ("**Event of Default**").

8.2.2 On and after any Event of Default, each party shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, each party shall have the right (but no obligation) to cure (or cause to be cured) on behalf of the other party any Event of Default that continues past the applicable notice and cure period.

### **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
6.2	Liability of Hotel and City		11.11	Entire Agreement
Article 7	Payment of Taxes		11.12	Compliance with Laws
Article 8	Termination and Default		11.13	Severability
			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/](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, registered or certified, return receipt requested, overnight courier, 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:	SF Americania LLC 350 West Hubbard St. Suite 440 Chicago, Illinois 60654 Attn: John W. Rutledge and Sarang Peruri	e-mail:      jwr@oxford-capital.com and speruri@oxford-capital.com
And to	Sheppard Mullin Richter & Hampton LLP 70 West Madison Street, 48 <sup>th</sup> Floor Chicago, Illinois, 60602 Attn: Lawrence C. Eppley, Esq.	e-mail:      leppley@sheppardmullin.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. (Reserved)**

### **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. 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 sets 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

Hotel under this Agreement, and Hotel and City 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 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.**

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

#### **11.17 No Representations or Warranties Regarding Property.**

Notwithstanding anything herein to the contrary, Hotel makes no representations or warranties regarding the condition of the Property. City accepts the Property in its "AS IS, WHERE IS" condition with all faults. In particular, Hotel makes no representation or warranty regarding the suitability of the Property for the housing of any person who has either contracted COVID-19, exposed to persons with COVID-19 or who is a member of a high risk group who needs to be protected from exposure to COVID-19, or whether occupancy of the Property is beneficial to the Group. City acknowledges that it has entered into this Agreement, and has decided to book the Group at the Property, based on its own determination and judgment.

#### **11.18 Licenses and Permits.**

City shall, at its sole cost and expense, obtain any and all permits, licenses, and other approvals necessary for any activities or services it will conduct or provide on the Property. Nothing contained herein shall be deemed a representation by Hotel that such use is allowable or that such permits, licenses, and other approvals are obtainable. Hotel shall reasonably cooperate with City, upon request, to obtain any such

permits, licenses, and other approvals, provided that Hotel shall not incur any cost or expense in connection therewith. City shall have no right to create or place any liens on the Property.

## **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**

Hotel acknowledges that some or all of the items, products, or services that Hotel furnishes to City under this Agreement may be included, directly or indirectly, in whole or in part, in claims submitted by City to Federal or State health care programs. By executing this Agreement Hotel certifies that it is not currently, and shall not during the term of this Agreement become, excluded, directed to be excluded, suspended, ineligible or otherwise sanctioned from participation in any Federal or State assistance programs. Hotel shall notify City, as provided in Section 11.1, within thirty (30) days of any such exclusion, suspension, ineligibility, or other sanction. This is a material term of this Agreement.

## **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, a party may have access to the other party's proprietary or Confidential Information, the disclosure of which to third parties may damage such party. If a party discloses proprietary or Confidential Information to the other, such information must be held by the receiving party in confidence and used only in performing the Agreement. Each party shall exercise the same standard of care to protect such information as a reasonably prudent person would use to protect its own proprietary or Confidential Information, subject to the requirements under the Sunshine Ordinance and any other applicable laws.

**13.1.3 Proprietary Information.** The City agrees not to use, without the express prior written approval of the Hotel (which such consent shall be at Hotel's sole discretion), the name of Owner, the name of the Property, or any other trade names, trademarks, service marks, or other intellectual property belonging to the Hotel or its property manager, or any of their affiliates, which approval may be withheld in the sole discretion of the Hotel.

### **13.2 Payment Card Industry ("PCI") Requirements. (Reserved)**

### **13.3 Relationship.**

The relationship between Hotel and the City is solely that of owner and temporary occupant, and will not be deemed a partnership, joint venture, agency or tenancy. In no event will this Agreement be deemed or construed to run with the land or create any tenancy or other permanent possessory rights on the part of the City or its invitees. This Agreement does not create any recordable interest and will not be recorded in any land records.

#### **13.4 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.

### **Article 14 MacBride And Signature**



#### **14.1 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. San Francisco Administrative Code 12.F.5. requires that all City contracts 'shall contain a statement urging companies doing business in Northern Ireland to move toward resolving employment inequities, and encouraging them to abide by the MacBride Principles.'



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

**CITY**

**CITY AND COUNTY OF SAN FRANCISCO,**  
a municipal corporation

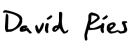

DocuSigned by:  
 3/25/2020  
By:   
Trent Rhorer  
Executive Director  
Human Services Agency

Recommended by:

DocuSigned by:  
 3/25/2020  
By:   
**Andrico Q. Penick**  
**Director of Property**

Approved as to Form:

Dennis J. Herrera  
City Attorney

DocuSigned by:  
 3/25/2020  
By:   
**David K. Ries**  
**Deputy City Attorney**

**Hotel**

**SF AMERICANIA LLC,**  
a Delaware limited liability company



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

**Appendices**

- A: Rooms and Scope of Services
- B: Calculation of Charges
- C: Invoice

## Appendix A

### Rooms and Scope of Services

1. Hotel shall provide 142 Rooms as more particularly described in the Price Quote Response Form attached to this Appendix A.
2. Hotel shall provide the following Services:
  - a. Utilities, HVAC, cable television, internet access and internal room telephone service; provided, however that Hotel shall have no responsibility for interruptions in any such service except to the extent caused by the Hotel (e.g., failure to pay a utility bill)
  - b. On-site three times weekly exterior and common area and public restroom cleaning and servicing
  - c. Off-site, on-call maintenance for routing public area repairs and functionality
  - d. Guestroom keys to be created in group batches and handed to the on-site Human Services Agency (“HSA”) representative for distribution and check-out purposes
  - e. Access and use of on-site laundry room by City staff or contractors
  - f. Access to housekeeping supplies: i.e., carts, vacuums, general cleaning supplies
  - g. In no event shall the Services exceed the limits of any applicable collective bargaining agreement with respect to Hotel employees described herein
  - h. No Guest access to Hotel amenities will be provided, including to any laundry facilities, business center, food and beverage venue, pool, spa, fitness center, public telephone, public restrooms or convenience store/grab-and-go facility.
  - i. For use only by City’s onsite staff, City shall have access to: Board Room or similar room for onsite administrative purposes, Valet Room or similar room for storage of necessary supplies, and public restrooms.
  - j. Hotel shall provide to the City operational hand-off of the Rooms with instructions as needed as of the commencement of the Booking Period, and the Property shall be completely vacated with no staff, including contractors. Hotel’s staff and contractors shall enter the Property only in connection with performance of the Services in accordance with this Agreement.

For the avoidance of doubt, the Hotel’s employees or contractors will not access individual guest rooms of any quarantined or isolated Guest for any reason during the Booking Period. All in-room services shall be provided by City’s trained employees or by City contractors.

3. The following services and obligations shall be obligations of the City and shall not be included in the Services:
  - a. On-site safety training for provided Hotel staff and any third party outside vendor for the Hotel, and any City employees or City contractors
  - b. Full personal protective gear for any of the foregoing
  - c. All food and beverages required for the Group, any City staff, and any other Invitees
  - d. An on-site HSA representative at all time

- e. All on-site security, including any security necessary to enforce any restrictions imposed upon Invitees by City
- f. City will maintain a list of persons who will be Guests, and will update the list daily for any changes that occur, including all new arrivals and all departures. City personnel will be responsible for assigning rooms to Guests and will be responsible for determining any segregation of Guests on particular floors.
- g. City shall develop a clear fire evacuation plan and protocol which shall be subject to Hotel's reasonable review and approval, and it will implement such plan and protocol with respect to all Invitees
- h. City shall be solely responsible for collecting, cleaning and returning all linens, towels and similar products used in the Rooms. Such linens shall be professionally cleaned at off-site facilities or by City at Hotel's on-site facility.
- i. City will use the Rooms only for accommodations, or in a manner, which does not qualify as health care or community care services for which a facility license or regulatory oversight is required under California law, as enforced during the term of the Agreement. City's HSA specialists will solely make all determinations regarding those persons who are eligible to be members of the Group, including without limitation those persons who do not need hospital or acute health care services or procedures. Any health services that are provided to members of the Group while they are using any of the Rooms will be in the nature of home health services or personal assistance and care services, including observation and supervision, provided to persons in their own homes or in non-medical residential facilities and City will only permit such services to be provided by duly licensed or duly qualified persons. There will be no general visitation by outsiders permitted. HSA specialists will be responsible for screening and limiting visitors to any of the Group occupying Rooms. City shall be responsible for ensuring that any medical supplies are stored and handled in accordance with all applicable laws and regulations, and that any medical waste is properly disposed of in accordance with all applicable laws and regulations.
- j. City, at its sole cost and expense, shall restore any portion of the Property to the same condition as existed prior to the use by City and its Invitees and shall be responsible for immediately repairing and/or restoring any damage to the Property and to any Hotel personal property, ordinary wear and tear excepted. Prior to the end of the Booking Period City shall, at its sole cost and expense, cause all guest rooms and all other areas of the Property used by any of the Invitees, and any and all linens and laundry facilities to be cleaned and sanitized to the highest government recommended standards by a third party industrial cleaning company reasonably acceptable to Hotel. Any improvements or betterments made by City to the Property (which may only be made with the prior written consent of the Hotel) shall inure to and remain the property of Hotel. City specifically agrees to surrender and cease its use of the Property, and to return the same to Hotel in the condition required above at the end of the Booking Period. If City or any of its Guests fails to leave any of the guest rooms or fails to surrender any other area of the Property, Hotel may charge City a fee for each day that City or such Invitee fails to surrender the guest room or other area in an amount that is equal to its standard room rack rates, which amount shall be due and payable by City within thirty (30) days after written demand by Hotel to City for such payment, and City shall pay all costs and expense incurred

in evicting any Invitee who fails to leave any of the guest rooms at the end of the Booking Period. City agrees that, in addition to the remedies expressly provided for herein, Hotel shall have all remedies available at law or in equity for City's failure to comply with this provision.

**Appendix B**  
**Calculation of Charges**

- 1. Total Not-to-Exceed Fixed Booking Amount- \$6,696,144**
  - c. Subset without Reimbursable Amount - \$5,150,880**
  - d. 30% not to exceed Reimbursable Amount - \$1,546,564**

- 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 (if applicable), based upon the number of Rooms and Services provided in the immediately preceding month (other than the Compensation, which shall be invoiced for the current month). All deliverables associated with the Rooms and Services listed in Section 2 of Appendix A, times the unit rate as shown in in Section 2 of Appendix B shall be reported on the invoice(s) each month. 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. Final Invoice**

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 MUTUALLY ADDED BY THE PARTIES, IF APPLICABLE]**

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

THIS FIRST AMENDMENT (this "Amendment") is made as of **June 11, 2020**, in San Francisco, California, by and between **SF Americania LLC** ("**Hotel**" or "**Contractor**"), and the City and County of San Francisco, a municipal corporation ("**City**").

WHEREAS, City and Hotel have entered into an emergency services contract, dated March 24, 2020 (the "**Agreement**"), for Rooms and Services at the property commonly known as the Americania Hotel located at 121 Seventh Street, San Francisco, CA, 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; and

WHEREAS, City and Hotel desire to modify the Agreement on the terms and conditions set forth herein to incorporate provisions necessary to be eligible for cost recovery from the Federal Emergency Management Agency and to add one additional guest room to the Agreement, for a total of 143 guest rooms; and

WHEREAS, the Federal Emergency Management Agency requires inclusion of these certain contract provisions for procurement under exigent or emergency circumstances;

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 Agreement shall have the meaning set forth in the Agreement.

2. **Addition to Article 7.** The following is hereby added to the end of the first paragraph of Article 7 and fully incorporated into the Agreement:

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).

3. **New Article 15.** The following new Article 15 is hereby added to and fully incorporated into the Agreement:

**Article 15      Official Actions Relating to the Emergency;  
FEMA Assistance**

**15.1    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.

#### 15.2 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.

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

5. **Additional Room.** On the date hereof, an additional Room is hereby added to the Agreement, for a total of 143 Rooms. In connection therewith:

(a) In Section 3.3.1 of the Agreement, the flat monthly rate for the Rooms and Services shall be modified to \$432,210.

(b) In Section 3.3.1 and in Appendix B of the Agreement, the Total Not-to-Exceed Fixed Booking Amount shall be modified to read as follows:

Total Not-to-Exceed Fixed Booking Amount -	\$6,696,144
Subset without Reimbursable Amount -	\$5,186,520
30% not to exceed Reimbursable Amount -	\$1,509,624

(c) City shall promptly deposit with the Hotel the additional amount of \$2,970 as a prepayment of the last month's Compensation with respect to the additional Room, which amount shall be held and applied by the Hotel as part of the Deposit.

6. **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.

7. **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.

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

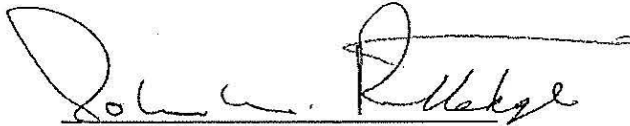
CITY AND COUNTY OF SAN FRANCISCO, SF AMERICANIA LLC  
a municipal corporation

DocuSigned by:

Trent Khorer

0753A8870B874EE...

Trent Khorer  
Executive Director  
Human Services Agency



John W. Rutledge  
Authorized Signatory

City Supplier number: 0000042406

Approved as to Form:

Dennis J. Herrera  
City Attorney

DocuSigned by:

By: David Ries

EFF150C6BE4244A...

David K. Ries  
Deputy City Attorney

## 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 2 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.

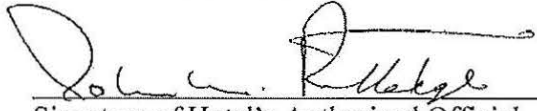
(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this 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.

**SF Americania LLC** ("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.

**SF AMERICANIA LLC**

  
\_\_\_\_\_  
Signature of Hotel's Authorized Official

John W. Rutledge, Authorized Signatory  
Name and Title of Hotel's Authorized Official

June 11, 2020  
Date

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

//

//

//

//

//

//

//

//

//

//

//

//

//

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

**CITY**

CITY AND COUNTY OF SAN  
FRANCISCO,  
a municipal corporation

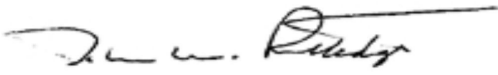
Recommended by:

DocuSigned by:  
  
9753A8870BB74EE...

Trent Rhorer  
Executive Director  
Human Services Agency

**HOTEL**

SF AMERICANIA LLC,  
a Delaware limited liability company

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

City Supplier number: 0000042406

Approved as to Form:


Dennis J. Herrera  
City Attorney

DocuSigned by:  
  
EFF1B6C5BE4244A...

By: \_\_\_\_\_  
David K. Ries  
Deputy City Attorney

Approved:

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

DocuSigned by:  
  
78EAEA4AB01C4E0...

By: \_\_\_\_\_

## APPENDIX E

### Insurance and Indemnity and Liability of the Parties

#### A. Insurance.

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

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

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

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

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

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

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

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

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

iv. (**Reserved**)

v. (**Reserved**)

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

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

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

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

## **B. Indemnification.**

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

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

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

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

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

### **C.      Liability of City.**

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

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

### **E.      Liability of Hotel.**

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

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

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



## 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](mailto:ethics.commission@sfgov.org) . [www.sfethics.org](http://www.sfethics.org)

Received On:

File #: 211235

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

original

##### DATE OF ORIGINAL FILING (for amendment only)

##### AMENDMENT DESCRIPTION – Explain reason for amendment

#### 2. CITY ELECTIVE OFFICE OR BOARD

##### OFFICE OR BOARD

Board of Supervisors

##### NAME OF CITY ELECTIVE OFFICER

Members

#### 3. FILER'S CONTACT

##### NAME OF FILER'S CONTACT

Angela Calvillo

##### TELEPHONE NUMBER

415-554-5184

##### FULL DEPARTMENT NAME

office of the clerk of the Board

##### EMAIL

Board.of.Supervisors@sfgov.org

#### 4. CONTRACTING DEPARTMENT CONTACT

##### NAME OF DEPARTMENTAL CONTACT

Robert walsh

##### DEPARTMENT CONTACT TELEPHONE NUMBER

415-557-5644

##### FULL DEPARTMENT NAME

HSA Human Services Agency

##### DEPARTMENT CONTACT EMAIL

Robert.walsh@sfgov.org

5. CONTRACTOR	
<b>NAME OF CONTRACTOR</b> SF Americania LLC	<b>TELEPHONE NUMBER</b> 415-723-1516
<b>STREET ADDRESS (including City, State and Zip Code)</b> 121 Seventh Street, San Francisco, CA 94103	<b>EMAIL</b> speruri@oxford-capital.com

6. CONTRACT		
<b>DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)</b>	<b>ORIGINAL BID/RFP NUMBER</b>	<b>FILE NUMBER (If applicable)</b> 211235
<b>DESCRIPTION OF AMOUNT OF CONTRACT</b> \$16,430,164		
<b>NATURE OF THE CONTRACT (Please describe)</b> Amendment to an Emergency Services contract to extend the booking period through October 9, 2022.		

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	Rutledge	John	Other Principal Officer
2	Broad Street Principal	Investment, LLC	Shareholder
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			

**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
20			
21			
22			
23			
24			
25			
26			
27			
28			
29			
30			
31			
32			
33			
34			
35			
36			
37			
38			

**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
39			
40			
41			
42			
43			
44			
45			
46			
47			
48			
49			
50			

☐ 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.**

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

**From:** [Conine-Nakano, Susanna \(MYR\)](#)  
**To:** [BOS Legislation, \(BOS\)](#)  
**Cc:** [Paulino, Tom \(MYR\)](#); [Walsh, Robert \(HSA\)](#)  
**Subject:** Mayor -- Resolution -- Americania Hotel  
**Date:** Tuesday, November 30, 2021 4:10:09 PM  
**Attachments:** [03. Americania - Second Amendment - Execution.pdf](#)  
[04. Americania Hotel First Amendment.pdf](#)  
[05. Americania Hotel P-250 HOTEL BOOKING CONTRACT - EMERGENCY \(JWR SIG\).pdf](#)  
[06. SFEC Form 126f4BOS Notification of Contract Approval.pdf](#)  
[01. Americania Resolution - For Approval.docx](#)  
[02. American Resolution - Signed.pdf](#)  
[02. American Resolution - Signed.pdf](#)

---

Hello Clerks,

Attached for introduction to the Board of Supervisors is a Resolution approving a third amendment to an emergency agreement between the Human Services Agency and SF Americania LLC, for the City's continued use of 143 hotel rooms and associated services; increasing the contract amount by \$6,670,714 for a total amount not to exceed \$16,430,164; and extending the booking period for a potential total term of March 24, 2020, to October 9, 2022.

Please let me know if you have any questions.

Sincerely,  
Susanna

**Susanna Conine-Nakano**

Office of Mayor London N. Breed  
City & County of San Francisco  
1 Dr. Carlton B. Goodlett Place, Room 200  
San Francisco, CA 94102  
415-554-6147