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SECOND AMENDMENT

TO EMERGENCY AGREEMENT

SHIN INTERNATIONAL, INC.
COVA HOTEL

THIS **SECOND AMENDMENT TO EMERGENCY AGREEMENT** (this "***Amendment***"), dated as of March 1, 2022, for reference purposes, is entered into by and between Shin International, Inc., a California Corporation ("***Contractor***" or "***Hotel***"), and the City and County of San Francisco, a municipal corporation ("***City***"), acting by and through its Human Services Agency (the "***HSA***"), and with reference to the following facts and circumstances:

RECITALS

A. City and Contractor are parties to that certain Emergency Agreement, dated as of May 15, 2020 (the "***Emergency Agreement***"), pursuant to which Hotel granted City the right to use that certain real property and the improvements thereon consisting of a Ninety-Five (95) room hotel located at 655 Ellis Street, in the City and County of San Francisco, commonly known as the "Cova Hotel", to further the public health and safety in connection with City's response to the Local Emergency declared by Mayor London Breed on Tuesday, February 25, 2020.

B. The Emergency Agreement was amended pursuant to that certain First Amendment to Emergency Agreement by and between City and Hotel, dated as of March 22, 2021 (the "***First Amendment***", and together with the Emergency Agreement, the "***Agreement***").

C. Section 2 of the Forty-Fifth Supplement to the February 25, 2020 Mayoral Proclamation declaring the existence of a local emergency ("***Section 2 of the Forty-Fifth Supplement***") authorizes the Executive Director of the HSA to extend the term of the Agreement up to and including August 31, 2022.

D. City and Contractor now desire to enter into this Amendment to, among other things, (a) extend the Booking Period from February 28, 2022, to August 31, 2022, and (b) increase the Compensation by One Million Five Hundred Eighty-Eight Thousand, Fifty Eight Dollars ($1,588,058), from Six Million Nine Hundred Twenty-Six Thousand, Two Hundred Seventy-Two Dollars ($6,926,272)" to Eight Million, Five Hundred Fourteen Thousand, Three Hundred Thirty Dollars ($8,514,330), on the terms and conditions set forth herein.

AGREEMENT

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

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

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

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

"2.1 Term.

2.1.1. The term of this Agreement commenced on **May 26, 2020**, and will expire of its own accord on **August 31, 2022** (the "**Booking Period**"), unless earlier terminated as otherwise provided herein. In accordance with Section 8.1.1, City may terminate this Agreement by providing at least thirty (30) days' written notice to Hotel of such termination.

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2.1.2 On the conditions set forth below, City shall have the right to extend the Booking Period on a month to month basis by providing no less than thirty days' prior written notice to Hotel; provided, that (a) in no event shall any extension of the Booking Period extend beyond December 31, 2022, and (b) any extension of the Booking Period beyond August 31, 2022, shall require the Executive Director of HSA to first obtain the approval of the San Francisco Board of Supervisors by ordinance waiving any applicable restrictions in the Municipal Code."

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

"In no event shall the amount of this Agreement exceed **Eight Million, Five Hundred Fourteen Thousand, Three Hundred Thirty Dollars ($8,514,330)** as may be increased by mutual agreement by the Parties, subject to the approval of the Board of Supervisors in its sole and absolute discretion."

(c) Amendment of Section 3.3.3. *Section 3.3.3 is hereby amended and restated in its entirety, and shall hereinafter read as follows:*

"3.3.3. Last Month's Payment. Upon execution of this Agreement, the City shall pay to the Hotel the amount of ($232,655) (the "**Last Month's Payment**") by wire transfer or ACH to an account designated by the Hotel, which amount shall be applied to the Compensation payable for the last month of the Booking Period. If, at any time during or at the end of the Booking Period there is any damage (other than ordinary wear and tear) caused to the Property by the City or any of its Guests ("**Property Damage**"), Hotel shall repair such Property Damage following its submission of a written description and photographs of such Property Damage and invoices therefor, and the City shall promptly reimburse Hotel all undisputed amounts for the repair of such Property Damage, as such undisputed amounts are mutually agreed upon by the Parties, subject to the approval of the San Francisco Board of Supervisors acting in its sole discretion if required. Any remaining disputed amounts may be reserved by the Hotel in the Final Agreement Closeout and Release attached hereto as **Appendix F**. The Hotel hereby reserves all other rights and remedies available to it at law or in equity for any Property Damage. The Last Month's Payment will be held by the Hotel and may be commingled with other funds; any interest earned on the Last Month's Payment, if any, shall be the property of the Hotel."

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

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

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

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

(b) City shall have the option, with not less than thirty (30) days' written notice to Hotel, to terminate this Agreement for any reason. City may send the termination notice to Hotel at any time during the Booking Period. Within the notice, City will specify the

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termination date, which will be at least thirty (30) days after the effective date of the notice. For example, if City sends a termination notice to Hotel with an effective date of May 1, 2022, the Booking Period will terminate thirty (30) days thereafter (City's last night of occupancy would be no earlier than May 31, 2022).

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

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

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

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

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

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

Maximum Not-to-Exceed Amount of Agreement:

a.	**Total Not-to-Exceed Compensation:**	**$8,514,330.00**
b.	Not-to-Exceed Compensation without Reimbursable Amount: *(95x$79x827)*	$6,206,635.00
c.	Not-to-Exceed Reimbursable Amount: *(15% of b.)*	$930,995.00
d.	Not-to-Exceed Reimbursable Amount (Food Service in Appendix E) *(terminated 12/22/20)*	$1,376,700.00

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

Section 3. Effective Date. Each of the amendments set forth in Section 2 above shall be effective on and after March 1, 2022.

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

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

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

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

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

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

[SIGNATURES ON FOLLOWING PAGE]

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

CITY

Recommended by:

DocuSigned by:
Trent Rhorer
9753A8870BB74EE...

Trent Rhorer
Executive Director
Human Services Agency

Approved as to Form:

David Chiu
City Attorney

By: DocuSigned by:
Vincent L. Brown
5D88F562E4274BB...

Vincent L. Brown
Deputy City Attorney

HOTEL

SHIN INTERNATIONAL, INC.,
a California corporation

DocuSigned by:
6A8637B058CE4D8...

Simon Sin
GM & Owner
655 Ellis Street
San Francisco, CA 94109

Supplier ID: **0000043408**

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Exhibit A

APPENDIX F

FINAL AGREEMENT CLOSEOUT AND RELEASE OF CLAIMS

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

RECITALS

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

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

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

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

Agreement Closeout and Release

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

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

Payments to Date:	$XXXXX
Invoices to Date (*excluding Final Invoice*)	$XXXXX
Advance/Deposit (*if any*)	($XXXX)
Final Invoice Due	$XXXXX
FINAL PAYMENT DUE TO HOTEL:	**$XXXXX**

Original Agreement Sum:	$XXXXX
Total Payment (*Including Final Payment*)	$XXXXX
Agreement Balance	**$XXXXX**

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

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

DELETE PARAGRAPH 5 IF THERE ARE NO CLAIMS IN DISPUTE

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

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a. **XXXXXXXXXXXXXXXXX:** Hotel's demand for XXXXXXXXXXX.

b. **XXXXXXXXXXXXXXXXX:** Hotel's demand for XXXXXXXXXXX.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HOTEL	CITY
Signature: _____	Signature: _____
By: _____	By: _____
Title:_____	Title: _____
Date:_____	Date:_____

END OF DOCUMENT

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Attachment 1 to Final Agreement Closeout and Release Of Claims

Emergency Agreement and Amendments

(See attached)

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Exhibit B

APPENDIX G

HOTEL DISPUTE REVIEW BOARD PROTOCOL

1. Dispute

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

2. Intent

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

3. Dispute Review Board (DRB)

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

4. City and Hotel Site Administrators

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

5. DRB Protocol

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

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

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

6. Written Notice of Dispute Resolution Failure

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

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7. DRB Report

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

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

8. San Francisco Board of Supervisors Approval

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

9. Government Code Claim Filing Requirements

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

10. Compensation of the Dispute Review Board

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

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Exhibit C

Appendix E "Food Service By Hotel"

The Hotel and City previously developed and incorporated a food service programs, which ended on December 22, 2020. The compensation of $1,376,700 was previously paid and is included in Appendix B.

The parties acknowledge that the food service program is no longer in effect and is confirmed as terminated.