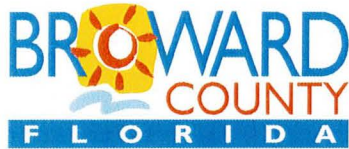


Item # 6

ADDITIONAL MATERIAL
Regular Meeting
November 16, 2021

SUBMITTED AT THE REQUEST OF
COUNTY ADMINISTRATION




BERTHA W. HENRY, County Administrator

115 S. Andrews Avenue, Room 409 • Fort Lauderdale, Florida 33301 • 954-357-7362 • FAX 954-357-7360

MEMORANDUM

DATE: November 15, 2021

TO: Board of County Commissioners

FROM: Alan Cohen, Assistant County Administrator 

SUBJECT: Convention Center Agenda Item (No. 6) for 11-16-21 meeting

Agenda Item No. 6 for the November 16, 2021, Regular Meeting included the original Final Guaranteed Maximum Price (GMP) proposals for GMP No. 4 and No. 5 provided to the County by Matthews Holdings Southwest, Inc., (MSW) for the Convention Center Expansion and Headquarters Hotel Project (Project). This memo outlines the changes that were made to the original proposals.

Also attached are drafts of the FGMP No. 4 Contract Amendment, the FGMP No. 5 Contract Amendment, and a summary list of Master Development Agreement (MDA) contract terms that need to be addressed in the Third Amendment to the MDA referenced in Motion C.

GMP 4 – The total for GMP No. 4 was reduced by a net amount of \$192,934. This was due to a reduction in costs, primarily related to CBE goals, and the addition of new costs, including the pricing of items identified in the 90% design documents that were not yet priced out and specific 'add-alternate' items deemed most important for the Project.

Cost increases included:

1. The creation of a \$12 million cost escalation allowance that will be controlled by the County and used to absorb unusual cost increases during the continuing volatility of the post-pandemic market.
2. The addition of \$4.4 million of repairs and upgrades to the Northport Parking Garage.
3. The addition of allowances for the Northport Parking Garage for upgrades to circuitry and the removal of cables-\$550K.

Cost reductions included:

1. The reduction in the CBE goal from 30% to 25%, resulting in a savings of \$16.4 million.
2. Reduction of redundant third-party services (construction reporting).
3. Reduction in General Conditions costs that should have been included in GMP 5.

GMP 5 – The total for GMP No. 5 was reduced by a net amount of \$139,350. This was also due to a reduction in costs and the addition of new costs, including the pricing of items identified in the 90% design documents that were not yet priced out and specific 'add-alternate' items deemed most important for the Project (most are related to revenue generation).

Cost increases included:

1. The creation of a \$16 million cost escalation allowance that will be controlled by the County and used to absorb unusual cost increases during the continuing volatility of the post-pandemic market.
2. The addition of \$2.5 million of Project enhancements, including additional rigging points in the ballroom, reconfiguration of one floor to add meeting room space, adding family/non-gender bathrooms, destination control technology for the elevators, and rooftop lounge upgrades.
3. Cost increases for sales tax that should have been included-\$300K.
4. Cost increases for General Conditions that should have been included-\$2.9 million.
5. Addition of a cost allowance for enhanced electrical testing and test and balance activity-\$500K.

Cost reductions included:

4. The reduction in the CBE goal from 30% to 25%, resulting in a savings of \$22.5 million.
5. Reduction of redundant third-party services (construction reporting) and office expenses.

Attachments:

FGMP No. 4 MDA contract amendment draft
FGMP No. 5 MDA contract amendment draft
List of contract terms to be addressed in Third Amendment to the MDA

cc: Bertha Henry, County Administrator
Monica Cepero, Deputy County Administrator
Andrew Meyers, County Attorney
Robert Melton, County Auditor
George Tablack, Chief Financial Officer
Norman Foster, Director of Management and Budget
Bruce Ferguson, Capital Program Administrator

**GMP CONTRACT AMENDMENT NO. 4
TO
MASTER DEVELOPMENT AGREEMENT
BROWARD COUNTY CONVENTION CENTER EXPANSION AND
HEADQUARTERS HOTEL PROJECT
(RFP/RLI # N1337414R3)**

THIS GMP AMENDMENT NO. 4 TO MASTER DEVELOPMENT AGREEMENT ("Amendment") is made and entered into on this ____ day of November, 2021, by and between BROWARD COUNTY, FLORIDA, a political subdivision of the State of Florida ("County") and MATTHEWS HOLDINGS SOUTHWEST, INC., a Texas corporation ("Developer").

RECITALS

- A. County and Developer ("Parties") entered into that Master Development Agreement with Contract Number RFP/RLI #N1337414R3 on the 28th day of June, 2019 (the "Agreement") wherein County engaged Developer to provide development and design-build services for the Broward County Convention Center Expansion and Headquarters Hotel Project, the terms and conditions of which are all incorporated by reference herein.
- B. County and Developer entered into that certain GMP Contract Amendment No. 1 to Master Development Agreement dated as of August 27, 2019 ("GMP Amendment No. 1"), pursuant to which County authorized Developer to commence construction of the Enabling Projects for the West Expansion Project for an FGMP equal to \$13,861,866 ("FGMP No. 1").
- C. County and Developer entered into that certain GMP Contract Amendment No. 2 to Master Development Agreement dated as of February 26, 2020 ("GMP Amendment No. 2"), pursuant to which County authorized Developer to complete construction of the West Expansion Project and certain Enabling Projects for the East Expansion Project, CVB Office, and Plaza Improvements for an FGMP equal to \$224,463,782 ("FGMP No. 2").
- D. County and Developer entered into that certain First Amendment to Master Development Agreement dated as of June 25, 2020 (the "First Amendment"), pursuant to which County suspended (i) Developer Services or Project Work for the Hotel Project, East Expansion, Plaza Improvements, and CVB Office (collectively, the "Suspended Projects" and each being a "Suspended Project") unless authorized under GMP Amendment No. 1 or GMP Amendment No. 2 and (ii) the Scheduled Dates of Substantial Completion and applicable Delay Liquidated Damages for the Suspended Projects until such time as a GMP Contract Amendment established a new Scheduled Date of Substantial Completion for the applicable Suspended Project.
- E. County and Developer entered into that certain GMP Contract Amendment No. 3 to Master Development Agreement dated as of June 15, 2021 ("GMP Amendment No. 3"), pursuant to which County authorized Developer to commence construction of certain Enabling Projects for the Hotel and certain Enabling Projects for the East Expansion Project, CVB Office, and Plaza Improvements for an FGMP equal to \$10,294,634 ("FGMP No. 3").
- F. Pursuant to Section 7.2.2 of the Agreement, Developer has submitted an FGMP to County for the Convention Center East Expansion, CVB Building and Plaza Project as described in the Enhanced Design Package referenced in Attachment A attached hereto (the "FGMP No. 4 Work", which shall be treated as Project Work for all purposes under the Agreement) that, after completion of Value Analysis, has been accepted by the Contract Administrator.

G. Pursuant to Section 7.2.2 of the Agreement, the Parties desire to enter into this Amendment to establish the FGMP and the Project Construction Schedule for the FGMP No. 4 Work, along with any allowances, clarifications, qualifications, assumptions, and exclusions expressly identified in Attachment A.

H. All capitalized terms herein shall have the same meaning as set forth in the Agreement.

NOW, THEREFORE, in consideration of the mutual promises, commitments and representations contained herein and in the Agreement, it is hereby agreed to amend the Agreement as follows:

I. Amendments.

1. FGMP No.4. In accordance with Article 7 of the Agreement, the Parties agree to a FGMP of Three Hundred Twenty-Nine Million Seven Hundred Twenty-Eight Thousand Eight Hundred and Ninety-One Dollars (\$329,728,891) ("FGMP No. 4") for the Developer Services and FGMP No. 4 Work to be performed by Developer and Design Builder as further described in the Elements of FGMP No. 4 attached hereto as Attachment A in connection with the Enhanced Design Package identified in Attachment A.
2. Substantial Completion Date. Developer shall cause Substantial Completion of the FGMP No. 4 Work for the East Expansion to occur on or before September 24, 2024 as described in the Project Construction Schedule attached hereto as Attachment A, subject to extensions as permitted in the Agreement, and Developer shall cause Substantial Completion of the CVB Building and Plaza to occur on or before March 31, 2025, as described in the Project Construction Schedule attached hereto as Attachment A, subject to extensions as permitted in the Agreement.
3. Insurance Requirements. Notwithstanding anything contained in Exhibit I to the Agreement to the contrary, attached hereto as Attachment C are modifications to the Insurance Requirements that shall be applicable for the FGMP 4 Work. If there are no modifications to Insurance Requirements, Attachment C shall state "None".
4. Revised Master Project Schedule. Attached hereto as Attachment B is the revised Master Project Schedule that has been accepted by the Contract Administrator. Developer hereby represents and warrants that the Scheduled Dates of Substantial Completion have not been modified and the revised Master Project Schedule attached hereto as Attachment B only revises certain interim Critical Path Items to advise the County of the progress of the Projects. The revised Master Project Schedule attached hereto supersedes all Master Project Schedules previously delivered to the County, including without limitation the Master Project Schedule attached to GMP Amendment No. 1, GMP Amendment No. 2, and GMP Amendment No. 3.
5. County Cost Escalation Allowance. FGMP 4 includes a category for County cost escalation allowance in the amount of Twelve Million Dollars (\$12,000,000) ("County Cost Escalation Allowance"). The County Cost Escalation Allowance may be used to pay for verified escalation in Project Development Costs that could not be reasonably included in FGMP 4, upon the Approval of the Contract Administrator and County Administrator and shall not be used for costs other than verified escalated Project Development Costs in excess of those Project Development Costs included in FGMP 4. Each use of County Cost Escalation Allowance shall be accomplished by CPEAM signed by the Contract

Administrator and the County Administrator. Developer may request use of a portion of the County Cost Escalation Allowance only after buy-out of subcontracts has occurred in accordance with the buy-out schedule set forth in Attachment. Any use of the County Cost Escalation Allowance can only occur after Developer's written request to County. County shall review each Developer request and endeavor to respond to the request within ten (10) Business Days after receipt of a written request. Failure by County to respond in writing to a request within such ten (10) period shall constitute a denial of the request. Any funds remaining in the County Cost Escalation Allowance at Final Completion of the FGMP 4 Work shall inure to the benefit and remain the sole property of County and shall not be shared with Developer or Design Builder.

6. Made in America. All steel used in or incorporated into the FGMP 4 Work shall be American sourced, Made in America, and qualify for federal Buy America requirements.
7. For the sole purpose of this Amendment, and with no application to, or force or effect on, any previous or subsequent GMP amendment entered into by the Parties pursuant to the Agreement, and the Agreement (except to the limited extent permitted by this Amendment), Section 15.3.2 of the Agreement is hereby amended as follows (indicated herein through strikethroughs to indicate deletions and underlining to indicate additions):

Developer shall, and shall cause Design Builder to, use Good Faith Efforts to utilize the CBE firms for ~~thirty~~ twenty-five percent (~~30~~ 25%) of total eligible subcontracting opportunities as Approved by the Director of OESBD in accordance with the CBE Ordinance (the "CBE Commitment").

- II. Special Exceptions. This Amendment addresses all aspects of the Developer Services and FGMP No. 4 Work added by this Amendment except as otherwise set forth in the clarifications, qualifications, assumptions, and exclusions included in Attachment A to this Amendment.
- III. Representations and Warranties. Subject to Article 5 of the Agreement, Developer expressly represents and warrants to County that: (i) the Drawings and Specifications listed in Attachment A to this Amendment meet or exceed all Legal Requirements, (ii) all materials, furnishings, and equipment utilized or procured in connection with this Amendment will be new unless otherwise specified in this Amendment, and (iii) that all the Project Work, and any FF&E and OS&E furnished in connection with this Amendment will be of good quality, free from faults and material defects and in conformance with the Development Documents. All Project Work not conforming to these requirements, including substitutions not Approved by the Contract Administrator in accordance with the terms hereof, may be considered defective by the Contract Administrator and subject to correction in accordance with Section 8.1 of the Agreement. If required by the Contract Administrator, Developer shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
- IV. Full and Final Satisfaction. Except as specifically described in this Amendment or as otherwise allowed under the Agreement, Developer accepts, as of the effective date hereof, the terms of this Amendment as full and final satisfaction to all submitted claims, adjustments, and contract revisions associated with the FGMP No. 4 Work, and acknowledges, subject to the foregoing, that no further adjustment to the Developer's compensation or time for performance shall be allowed in connection with this Amendment. For the avoidance of doubt, the Parties acknowledge and agree that the foregoing does not apply to any Claims, adjustments, and/or contract revisions

associated with FGMP No. 1, FGMP No. 2, or FGMP No. 3 for which each Party hereby reserves any and all rights, Claims, and defenses in connection therewith.

- V. Assumption of Risk. Developer assumes the risk of any Project Development Cost in excess of the FGMP established by this Amendment, as adjusted by County-Approved Change Orders, Construction Change Directive, or CPEAMs, to the extent such additional Project Development Costs should have been included in the FGMP in Developer's exercise of its Reasonable Best Efforts.
- VI. Evidence of Appropriation or Financing. By execution of this Amendment, pursuant to Section 11.1 of the Agreement, County has authorized Developer to incur Project Development Costs for the FGMP No. 4 Work in an amount not to exceed FGMP No. 4, subject to changes and modifications as permitted under Article 9 of the Agreement. Notwithstanding Section 11.1.2 of the Agreement, and as a modification of Section 11.1.2, solely with respect to this Amendment, (i) County represents and warrants that it has (i) appropriated sufficient funds, issued Bonds, or otherwise obtained the financing necessary to fully fund the FGMP No. 4 Work up to an amount not to exceed FGMP No. 4 (subject to changes and modifications as permitted under Article 9 of the Agreement), and (ii) provided reasonable evidence of the same to Developer.
- VII. Contemporaneously with the execution of this Amendment, Developer shall execute an amendment to the Design Build Agreement consistent with this Amendment.
- VIII. Except as hereby modified, amended, or changed herein, all of the terms and conditions of the Agreement and any amendments thereto shall remain in full force and effect.
- IX. This Amendment may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same amendment.
- X. The Agreement, as amended herein, incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein, and the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter hereof that are not contained in the Agreement, GMP Amendment No.1, GMP Amendment No. 2, GMPP Amendment No. 3, and this Amendment to the Agreement. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. Any and all Recital clauses stated above are true and correct and are incorporated in this Agreement by reference. The attached Attachments and Exhibits are incorporated into and made a part of this Agreement.
- XI. Preparation of this Amendment has been a joint effort of the Parties and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than any other.
- XII. XII. This Amendment is contingent upon, and shall not be of any force or effect until, the Parties execute an amendment to the Agreement in substantial conformity with the summary of terms attached hereto as Exhibit _.
- XIII. In the event of any conflict or ambiguity between this Amendment and the Agreement (including as previously amended), the Parties agree that this Amendment shall control.

IN WITNESS WHEREOF, the Parties hereto have made and executed this GMP Contract Amendment No. 4 on the respective dates under each signature: BROWARD COUNTY, through its BOARD OF COUNTY COMMISSIONERS, signing by and through its County Administrator, authorized to execute same by Board action on the ____ day of November, 2021, and MATTHEWS HOLDINGS SOUTHWEST, INC., a Texas corporation signing by and through its President or Vice-President, duly authorized to execute same.

COUNTY:

WITNESS:

BROWARD COUNTY, by and through its County Administrator

By: _____

By: _____

Bertha Henry
County Administrator

Name: _____

____ day of _____, 2021

By: _____

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

Name: _____

By: _____

Jeffrey S. Siniawsky
Senior Assistant County Attorney

Date: _____

By: _____

Michael J. Kerr
Deputy County Attorney

Date: _____

JSS/tb
GMP Contract Amendment No 4
11/15/2021

**GMP Contract Amendment No. 4 to Master Development Agreement Broward County Convention
Center Expansion and Headquarters Hotel Project**

DEVELOPER:

ATTEST:

MATTHEWS HOLDINGS SOUTHWEST, INC.,
a Texas corporation

By: _____
Adam Miller
Secretary

By: _____
John H. Matthews
President

CORPORATE SEAL

____ day of _____, 2021

ATTACHMENT A

ELEMENTS OF FGMP NO. 4

Schedule of Elements of FGMP No. 4

- A-1 FGMP No. 4 Project Budget
- A-2 Schedule of Values
- A-3 Project Construction Schedule
- A-4 List of Plans and Specifications
- A-5 List of Allowances, Exclusions, and Clarifications
- A-6 Intentionally Omitted
- A-7 Summary of FGMP No. 4 Work
- A-8 Construction Management Plan
- A-9 Staffing Plan and Organization Chart

EXHIBIT A-1

FGMP NO. 4 PROJECT BUDGET

[SEE ATTACHED]

EXHIBIT A-2

SCHEDULE OF VALUES

[SEE ATTACHED]

EXHIBIT A-3

PROJECT CONSTRUCTION SCHEDULE

[SEE ATTACHED]

EXHIBIT A-4

LIST OF PLANS AND SPECIFICATIONS

[SEE ATTACHED]

EXHIBIT A-5

LIST OF ALLOWANCES, EXCLUSIONS, AND CLARIFICATIONS

[SEE ATTACHED]

EXHIBIT A-6

INTENTIONALLY OMITTED

EXHIBIT A-7

SUMMARY OF FGMP NO. 4 WORK

[SEE ATTACHED]

EXHIBIT A-8
CONSTRUCTION MANAGEMENT PLAN
[SEE ATTACHED]

EXHIBIT A-9

STAFFING PLAN AND ORGANIZATION CHART

[SEE ATTACHED]

ATTACHMENT B

REVISED MASTER PROJECT SCHEDULE

[SEE ATTACHED]

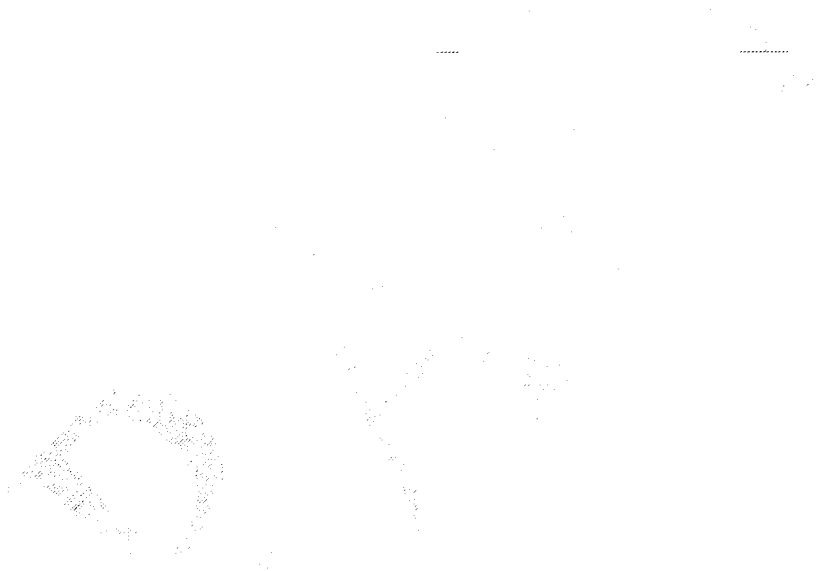
ATTACHMENT C

INSURANCE REQUIREMENTS

[NTD: UNDER REVIEW BY COUNTY INSURANCE CONSULTANT]

1. Sections 1, 2, 3, 4, and 5 of Attachment C to GMP Amendment No. 4 are incorporated by reference as if fully stated herein, inclusive of Attachment C-1 and Attachment C-2 to GMP Amendment No. 4.
2. Pursuant to Exhibit I to the Agreement, Developer's and Design Builder's approval of County's OCIP and Builder's Risk insurance policies covering the FGMP No. 4 Work ("**County's FGMP No. 3 Insurance**") is expressly and solely based on Developer's and Design Builder's reliance on the written representations of coverage from County's OCIP and Builder's Risk insurance carriers, which representations are attached hereto and incorporated by reference herein as Attachment C-1 ("**Carrier Coverage Representations**").
3. Except as hereby modified, amended, or changed herein, all terms and conditions of Exhibit I to the Agreement shall remain in full force and effect.

ATTACHMENT C-1
CARRIER COVERAGE REPRESENTATIONS



Summary of Terms to Third Amendment to Master Development Agreement

Amend Section 3.1 to provide for County right to assert latent defect and other contract claims after the expiration of the one (1) year warranty period.

Add a provision requiring that Developer will amend the assignment provision of the Design/Build Agreement to require the execution of appropriate subordination agreements, negative pledge covenants, intercreditor agreements, and other documents required by the Bond Trustee if the Design/Build Agreement is assigned.

Amend Liquidated Damages to clarify that caps and amounts are individual to each project (Hotel and Convention Center), increase amount and cap to conform to current market conditions and provide that the aggregate amount of the liquidated damages for delay under the Agreement and the Hotel Design/Build Agreement shall not exceed fifteen percent (15%) of the Cost of the Work.

Add a provision requiring Developer to reimburse County for each day of delay in an amount equal to the interest expense for such days on the Hotel Bonds and the Certificates of Obligation, and provide for County's right to deduct such expense from payments due Developer.

Provide for ability of payments to be made directly to Design/Builder and Developer by Bond Trustee, and Design/Builder's and Developer's agreement to accept such payments.

Add language regarding Trustee's rights to Notice, step-in, and cure.

Require an amendment to the Design/Build Agreement to include the Bond Trustee and lenders within the definition of "Developer Group" for indemnification purposes.

**GMP CONTRACT AMENDMENT NO. 5
TO
MASTER DEVELOPMENT AGREEMENT
BROWARD COUNTY CONVENTION CENTER EXPANSION AND
HEADQUARTERS HOTEL PROJECT
(RFP/RLI # N1337414R3)**

THIS GMP AMENDMENT NO. 5 TO MASTER DEVELOPMENT AGREEMENT ("Amendment") is made and entered into on this ____ day of November, 2021 by and between BROWARD COUNTY, FLORIDA, a political subdivision of the State of Florida ("County") and MATTHEWS HOLDINGS SOUTHWEST, INC., a Texas corporation ("Developer").

RECITALS

- A. County and Developer ("Parties") entered into that Master Development Agreement with Contract Number RFP/RLI #N1337414R3 on the 28th day of June, 2019 (the "Agreement") wherein County engaged Developer to provide development and design-build services for the Broward County Convention Center Expansion and Headquarters Hotel Project, the terms and conditions of which are all incorporated by reference herein.
- B. County and Developer entered into that certain GMP Contract Amendment No. 1 to Master Development Agreement dated as of August 27, 2019 ("GMP Amendment No. 1"), pursuant to which County authorized Developer to commence construction of the Enabling Projects for the West Expansion Project for an FGMP equal to \$13,861,866 ("FGMP No. 1").
- C. County and Developer entered into that certain GMP Contract Amendment No. 2 to Master Development Agreement dated as of February 26, 2020 ("GMP Amendment No. 2"), pursuant to which County authorized Developer to complete construction of the West Expansion Project and certain Enabling Projects for the East Expansion Project, CVB Office, and Plaza Improvements for an FGMP equal to \$224,463,782 ("FGMP No. 2").
- D. County and Developer entered into that certain First Amendment to Master Development Agreement dated as of June 25, 2020 (the "First Amendment"), pursuant to which County suspended (i) Developer Services or Project Work for the Hotel Project, East Expansion, Plaza Improvements, and CVB Office (collectively, the "Suspended Projects" and each being a "Suspended Project") unless authorized under GMP Amendment No. 1 or GMP Amendment No. 2 and (ii) the Scheduled Dates of Substantial Completion and applicable Delay Liquidated Damages for the Suspended Projects until such time as a GMP Contract Amendment established a new Scheduled Date of Substantial Completion for the applicable Suspended Project.
- E. County and Developer entered into that certain GMP Contract Amendment No. 3 to Master Development Agreement dated as of June 15, 2021 ("GMP Amendment No. 3"), pursuant to which County authorized Developer to commence construction of certain Enabling Projects for the Hotel and certain Enabling Projects for the East Expansion Project, CVB Office, and Plaza Improvements for an FGMP equal to \$10,294,634 ("FGMP No. 3").
- F. Contemporaneously with execution of this Amendment, the Parties entered into GMP Amendment No. 4 pursuant to which Developer was authorized to commence construction of the Convention Center East Expansion, the CVB Building, and the Plaza for an FGMP equal to \$329,728,891 ("FGMP No. 4") ("GMP Amendment No. 4").

- G. Pursuant to Section 7.2.2 of the Agreement, Developer has submitted an FGMP to County for the Headquarters Hotel and Plaza Restaurants Project as described in the Enhanced Design Package referenced in Attachment A attached hereto (the "FGMP No. 5 Work", which shall be treated as Project Work for all purposes under the Agreement) that, after completion of Value Analysis, has been accepted by the Contract Administrator.
- H. Pursuant to Section 7.2.2 of the Agreement, the Parties desire to enter into this Amendment to establish the FGMP and the Project Construction Schedule for the FGMP No. 5 Work, along with any allowances, clarifications, qualifications, assumptions, and exclusions expressly identified in Attachment A.
- I. All capitalized terms herein shall have the same meaning as set forth in the Agreement.

NOW, THEREFORE, in consideration of the mutual promises, commitments and representations contained herein and in the Agreement, it is hereby agreed to amend the Agreement as follows:

I. Amendments.

1. FGMP No. 5. In accordance with Article 7 of the Agreement, the Parties agree to a FGMP of Five Hundred Seventy Million Nine Hundred Eight-Six Thousand Five Hundred and One Dollars (\$570,986,501) ("FGMP No. 5") for the Developer Services and FGMP No. 5 Work to be performed by Developer and Design Builder as further described in the Elements of FGMP No. 5 attached hereto as Attachment A in connection with the Enhanced Design Package identified in Attachment A.
2. Substantial Completion Date. Developer shall cause Substantial Completion of the FGMP No. 5 Work to occur on or before March 31, 2025 as described in the Project Construction Schedule attached hereto as Attachment A, subject to extensions as permitted in the Agreement.
3. Insurance Requirements. Notwithstanding anything contained in Exhibit I to the Agreement to the contrary, attached hereto as Attachment C are modifications to the Insurance Requirements that shall be applicable for the FGMP 5 Work. If there are no modifications to Insurance Requirements, Attachment C shall state "None".
4. Revised Master Project Schedule. Attached hereto as Attachment B is the revised Master Project Schedule that has been accepted by the Contract Administrator. Developer hereby represents and warrants that the Scheduled Dates of Substantial Completion have not been modified and the revised Master Project Schedule attached hereto as Attachment B only revises certain interim Critical Path Items to advise the County of the progress of the Projects. The revised Master Project Schedule attached hereto supersedes all Master Project Schedules previously delivered to the County, including without limitation the Master Project Schedule attached to GMP Amendment No. 1, GMP Amendment No. 2, and GMP Amendment No. 3.
5. County Cost Escalation Allowance. FGMP 5 includes a category for County cost escalation allowance in the amount of Sixteen Million Dollars (\$16,000,000) ("County Cost Escalation Allowance"). The County Cost Escalation Allowance may be used to pay for verified escalation in Project Development Costs that could not be reasonably included in FGMP 5, upon the Approval of the Contract Administrator and County Administrator, and

shall not be used for costs other than verified escalated Project Development Costs in excess of those Project Development Costs included in FGMP 5. Each use of County Cost Escalation Allowance shall be accomplished by CPEAM signed by the Contract Administrator and the County Administrator. Developer may request use of a portion of the County Cost Escalation Allowance only after buy-out of subcontracts has occurred in accordance with the buy-out schedule set forth in **Attachment**. Any use of the County Cost Escalation Allowance can only occur after Developer's written request to County. County shall review each Developer request and endeavor to respond to the request within ten (10) Business Days after receipt of a written request. Failure by County to respond in writing to a request within such ten (10) period shall constitute a denial of the request. Any funds remaining in the County Cost Escalation Allowance at Final Completion of the FGMP 5 Work shall inure to the benefit and remain the sole property of County and shall not be shared with Developer or Design Builder.

6. Made in America. All steel used in or incorporated into the FGMP 5 Work shall be American sourced, Made in America, and qualify under federal Buy America requirements.

7. For the sole purpose of this Amendment, and with no application to, or force or effect on any previous or subsequent GMP amendment entered into by the Parties pursuant to the Agreement, and the Agreement (except to the limited extent permitted by this Amendment), Section 15.3.2 of the Agreement is hereby amended as follows (indicated through strikethroughs to indicate deletions and underlining to indicate additions):

Developer shall, and shall cause Design Builder to, use Good Faith Efforts to utilize the CBE firms for ~~thirty~~ twenty-five percent (~~30~~ 25%) of total eligible subcontracting opportunities as Approved by the Director of OESBD in accordance with the CBE Ordinance (the "CBE Commitment").

- II. Special Exceptions. This Amendment addresses all aspects of the Developer Services and FGMP No. 5 Work added by this Amendment except as otherwise set forth in the clarifications, qualifications, assumptions, and exclusions included in Attachment A to this Amendment.
- III. Representations and Warranties. Subject to Article 5 of the Agreement, Developer expressly represents and warrants to County that: (i) the Drawings and Specifications listed in Attachment A to this Amendment meet or exceed all Legal Requirements, (ii) all materials, furnishings, and equipment utilized or procured in connection with this Amendment will be new unless otherwise specified, and (iii) that all the Project Work, and any FF&E and OS&E furnished in connection with this Amendment will be of good quality, free from faults and material defects and in conformance with the Development Documents. All Project Work not conforming to these requirements, including substitutions not Approved by the Contract Administrator in accordance with the terms hereof, may be considered defective by the Contract Administrator and subject to correction in accordance with Section 8.1 of the Agreement. If required by the Contract Administrator, Developer shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
- IV. Full and Final Satisfaction. Except as specifically described in this Amendment, or as otherwise allowed under the Agreement, Developer accepts, as of the effective date hereof, the terms of this Amendment as full and final satisfaction to all submitted claims, adjustments, and contract revisions associated with the FGMP No. 5 Work, and acknowledges, subject to the foregoing, that

no further adjustment to the Developer's compensation or time for performance shall be allowed in connection with this Amendment. For the avoidance of doubt, the Parties acknowledge and agree that the foregoing does not apply to any Claims, adjustments, and/or contract revisions associated with FGMP No. 1, FGMP No. 2, or FGMP No. 3 for which each Party hereby reserves any and all rights, Claims, and defenses in connection therewith.

- V. Assumption of Risk. Developer assumes the risk of any Project Development Cost in excess of the FGMP established by this Amendment, as adjusted by County-Approved Change Orders, Construction Change Directive, or CPEAMs, to the extent such additional Project Development Costs should have been included in the FGMP in Developer's exercise of its Reasonable Best Efforts.
- VI. Evidence of Appropriation or Financing. By execution of this Amendment, pursuant to Section 11.1 of the Agreement, County has authorized Developer to incur Project Development Costs for the FGMP No. 5 Work in an amount not to exceed FGMP No. 5, subject to changes and modifications as permitted under Article 9 of the Agreement. Notwithstanding Section 11.1.2 of the Agreement, and as a modification of Section 11.1.2, solely with respect to this Amendment (i) County represents and warrants that it has (i) appropriated sufficient funds, issued Bonds or otherwise obtained the financing necessary to fully fund the FGMP No. 5 Work up to an amount not to exceed FGMP No. 5 (subject to changes and modifications as permitted under Article 9 of the Agreement), and (ii) provided reasonable evidence of the same to Developer.
- VII. Contemporaneously with the execution of this Amendment, Developer shall execute an amendment to the Design Build Agreement consistent with this Amendment.
- VIII. Except as hereby modified, amended, or changed herein, all of the terms and conditions of the Agreement and any amendments thereto shall remain in full force and effect.
- IX. This Amendment may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same amendment.
- X. The Agreement, as amended herein, incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein, and the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter hereof that are not contained in the Agreement, GMP Amendment No. 1, GMP Amendment No. 2, GMP Amendment No. 3, GMP Amendment No. 4, and this Amendment to the Agreement. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. Any and all Recital clauses stated above are true and correct and are incorporated in this Agreement by reference. The attached Attachments and Exhibits are incorporated into and made a part of this Agreement.
- XI. Preparation of this Amendment has been a joint effort of the Parties and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than any other.
- XII. This Amendment is contingent upon, and shall not be of any force or effect until the Parties execute an amendment to the Agreement in substantial conformity with the summary of terms attached hereto as Exhibit _.

- XIII. In the event of any conflict or ambiguity between this Amendment and the Agreement (as previously amended, the Parties agree that this Amendment shall control.

[Intentionally Left Blank; Signature Page to Follow]

IN WITNESS WHEREOF, the Parties hereto have made and executed this GMP Contract Amendment No. 5 on the respective dates under each signature: BROWARD COUNTY, through its BOARD OF COUNTY COMMISSIONERS, signing by and through its County Administrator, authorized to execute same by Board action on the ____ day of November, 2021, and MATTHEWS HOLDINGS SOUTHWEST, INC., a Texas corporation signing by and through its President or Vice-President, duly authorized to execute same.

COUNTY:

WITNESS:

BROWARD COUNTY, by and through its County Administrator

By: _____

By: _____

Bertha Henry
County Administrator

Name: _____

____ day of _____, 2021

By: _____

Approved as to form by

Andrew J. Meyers

Broward County Attorney

Governmental Center, Suite 423

115 South Andrews Avenue

Fort Lauderdale, Florida 33301

Telephone: (954) 357-7600

Telecopier: (954) 357-7641

Name: _____

By: _____

Jeffrey S. Siniawsky
Senior Assistant County Attorney

Date: _____

By: _____

Michael J. Kerr
Deputy County Attorney

Date: _____

JSS/tb
GMP Contract Amendment No 5
11/15/2021

**GMP Contract Amendment No. 5 to Master Development Agreement Broward County Convention
Center Expansion and Headquarters Hotel Project**

DEVELOPER:

ATTEST:

MATTHEWS HOLDINGS SOUTHWEST, INC.,
a Texas corporation

By: _____
Adam Miller
Secretary

By: _____
John H. Matthews
President

CORPORATE SEAL

____ day of _____, 2021

ATTACHMENT A

ELEMENTS OF FGMP NO. 5

Schedule of Elements of FGMP No. 5

- A-1 FGMP No. 4 Project Budget
- A-2 Schedule of Values
- A-3 Project Construction Schedule
- A-4 List of Plans and Specifications
- A-5 List of Allowances, Exclusions, and Clarifications
- A-6 Intentionally Omitted
- A-7 Summary of FGMP No. 5 Work
- A-8 Construction Management Plan
- A-9 Staffing Plan and Organization Chart

EXHIBIT A-1

FGMP NO. 5 PROJECT BUDGET

[SEE ATTACHED]

EXHIBIT A-2

SCHEDULE OF VALUES

[SEE ATTACHED]



EXHIBIT A-3

PROJECT CONSTRUCTION SCHEDULE

[SEE ATTACHED]

EXHIBIT A-4

LIST OF PLANS AND SPECIFICATIONS

[SEE ATTACHED]

EXHIBIT A-5

LIST OF ALLOWANCES, EXCLUSIONS, AND CLARIFICATIONS

[SEE ATTACHED]

EXHIBIT A-6

INTENTIONALLY OMITTED

EXHIBIT A-7

SUMMARY OF FGMP NO. 5 WORK

[SEE ATTACHED]

EXHIBIT A-8

CONSTRUCTION MANAGEMENT PLAN

[SEE ATTACHED]

EXHIBIT A-9

STAFFING PLAN AND ORGANIZATION CHART

[SEE ATTACHED]

ATTACHMENT B

REVISED MASTER PROJECT SCHEDULE

[SEE ATTACHED]

DRAFT

ATTACHMENT C

INSURANCE REQUIREMENTS

[NTD: UNDER REVIEW BY COUNTY INSURANCE CONSULTANT]

1. Sections 1, 2, 3, 4, and 5 of Attachment C to GMP Amendment No. 2 are incorporated by reference as if fully stated herein, inclusive of Attachment C-1 and Attachment C-2 to GMP Amendment No. 2.
2. Except as hereby modified, amended, or changed herein, all terms and conditions of Exhibit I to the Agreement shall remain in full force and effect.

ATTACHMENT C-1
CARRIER COVERAGE REPRESENTATIONS

DRAFT

Summary of Terms to Third Amendment to Master Development Agreement

Amend Section 3.1 to provide for County right to assert latent defect and other contract claims after the expiration of the one (1) year warranty period.

Add a provision requiring that Developer will amend the assignment provision of the Design/Build Agreement to require the execution of appropriate subordination agreements, negative pledge covenants, intercreditor agreements, and other documents required by the Bond Trustee if the Design/Build Agreement is assigned.

Amend Liquidated Damages to clarify that caps and amounts are individual to each project (Hotel and Convention Center), increase amount and cap to conform to current market conditions and provide that the aggregate amount of the liquidated damages for delay under the Agreement and the Hotel Design/Build Agreement shall not exceed fifteen percent (15%) of the Cost of the Work.

Add a provision requiring Developer to reimburse County for each day of delay in an amount equal to the interest expense for such days on the Hotel Bonds and the Certificates of Obligation and provide for County's right to deduct such expense from payments due Developer.

Provide for ability of payments to be made directly to Design/Builder and Developer by Bond Trustee, and Design/Builder's and Developer's agreement to accept such payments.

Add language regarding Trustee's rights to Notice, step-in, and cure.

Require an amendment to the Design/Build Agreement to include the Bond Trustee and lenders within the definition of "Developer Group" for indemnification purposes.