

**ITEM #49**

**ADDITIONAL MATERIAL  
REGULAR MEETING**

**OCTOBER 19, 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:** October 15, 2021

**TO:** Board of County Commissioners

**FROM:** Alan Cohen, Assistant County Administrator

**SUBJECT:** **BOCC October 19, 2021 Regular Meeting Agenda Item No. 49 - Third Amendment to Weitz Contract for Owner's Representative**

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Please find attached the Third Amendment to the Weitz contract for Owner's Representative services. We are expecting the signature pages prior to the Commission meeting, and it will be noted on the Monday Night Memo.

Please call me at 954-357-7364 if you have any questions.

cc: Bertha Henry, County Administrator  
Monica Cepero, Deputy County Administrator  
Andrew Meyers, County Attorney  
Robert Melton, County Auditor  
Bruce Ferguson, Capital Program Administrator

**THIRD AMENDMENT TO PHASED AGREEMENT BETWEEN BROWARD COUNTY AND THE WEITZ COMPANY, LLC, FOR BROWARD COUNTY'S REPRESENTATIVE SERVICES FOR BROWARD COUNTY CONVENTION CENTER EXPANSION AND HEADQUARTERS HOTEL**

This Third Amendment to an agreement ("Third Amendment") between Broward County, a political subdivision of the State of Florida ("County"), and The Weitz Company, LLC, an Iowa limited liability company authorized to transact business in the State of Florida ("Broward County's Representative" or "BCR"), is entered into effective as of the date this Third Amendment is fully executed by the Parties (County and BCR are collectively referred to as "Parties" and individually as a "Party").

**RECITALS**

- A. County and BCR entered into an agreement dated September 22, 2015, for owner representative services for County's development of the Convention Center Headquarters Hotel ("Hotel") and expansion of the Broward County Convention Center (the "Agreement"), and establishing the Optional Services fee in the amount of One Million Eight Hundred Thousand Dollars (\$1,800,000) and an amount of Two Hundred Thousand Dollars (\$200,000) for potential Reimbursable Expenses.
- B. County and BCR entered into a First Amendment to the Agreement on June 11, 2019 ("First Amendment") to provide for Basic Services and a Basic Services lump sum fee of Six Million Eight Hundred Four Thousand Seven Hundred Thirty-Two Dollars (\$6,804,732), to increase the Optional Services fee by Three Million Five Hundred Thousand Dollars (\$3,500,000) from One Million Eight Hundred Thousand Dollars (\$1,800,000) to Five Million Three Hundred Thousand Dollars (\$5,300,000), and to increase the amount of potential Reimbursable Expenses by Two Hundred Thousand Dollars (\$200,000) from Two Hundred Thousand Dollars (\$200,000) to Four Hundred Thousand Dollars (\$400,000), and to update other terms and conditions of the Agreement.
- C. County and BCR entered into a Second Amendment to the Agreement on July 23, 2020 ("Second Amendment") to provide for Construction Phase Basic Services for the west expansion of the Broward County Convention Center ("GMP 2") and compensation in an amount not to exceed Five Million Nine Hundred Fifty-One Thousand Eight Hundred and Thirty Nine Dollars (\$5,951,839) for such services, thereby resulting in a total fee for Basic Services of Twelve Million Seven Hundred Fifty-Six Thousand Five Hundred Seventy-One Dollars (\$12,756,571), a fee for Optional Services in the amount of Five Million Three Hundred Thousand Dollars (\$5,300,000), an amount of Four Hundred Thousand Dollars (\$400,000) for potential Reimbursable Expenses, and to update other terms and conditions of the Agreement.

- D. County and BCR desire to amend the Agreement to provide for Construction Phase services for Basic Services related to the Hotel foundations ("GMP 3") and compensation in the amount of Two Hundred Forty Thousand Seven Hundred Fifty-Eight Dollars (\$240,758) for such services, and to provide for extended Construction Phase Basic Services in connection with GMP 2 and Construction Phase Basic Services for the east expansion of the Broward County Convention Center, and additional compensation in the amount of One Million Eighty Two Thousand and Seven Dollars (\$1,082,007) for those services, thereby resulting in a total fee for Basic Services in the amount of Fourteen Million Seventy-Nine Thousand Three Hundred Thirty-Six Dollars (\$14,079,336), a fee for Optional Services in the amount of Five Million Three Hundred Thousand Dollars (\$5,300,000), and an amount of Four Hundred Thousand Dollars (\$400,000) for potential Reimbursable Expenses.
- E. Amendments to the above-referenced amounts as stated in paragraph 2 below are indicated through strikethroughs to indicate deletions and underlining to indicate additions.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Exhibit A attached to the Agreement is hereby amended by the addition of Exhibit A-3 delineating Construction Phase Basic Services for the Hotel foundation work, and by the addition of Exhibit A-4 delineating Construction Phase Basic Services for the east expansion of the Broward County Convention Center. All references in the Agreement, as amended by the First Amendment and the Second Amendment, to Exhibits A, A-1, and A-2 shall include Exhibit A-3 and Exhibit A-4 and refer to the composite Exhibit A, Exhibit A-1, Exhibit A-2, Exhibit A-3, and A-4.
2. Section 5.1.1 of the Agreement is hereby amended as follows:
  - 5.1.1 Maximum Amount Not-To-Exceed Compensation. Compensation to Broward County's Representative for the performance of Services identified in composite Exhibit A-2 as payable on a "Maximum Amount Not-To-Exceed" basis, and as otherwise required by this Agreement, shall be based upon the Salary Costs as described in Section 5.2 up to a maximum amount not-to-exceed of Five Million Nine Hundred Fifty-One Thousand Eight Hundred and Thirty Nine Dollars (\$5,951,839). Compensation to Broward County's Representative for the performance of Basic Services identified in Exhibit A-3 shall be based upon the Salary Costs as described in Section 5.2 up to a maximum amount not-to-exceed Two Hundred Forty Thousand Seven Hundred Fifty Eight Dollars (\$240,758). Compensation to Broward County's Representative for the extended performance of Construction Phase Basic Services for GMP 2 and performance of Basic Services identified in Exhibit A-4 shall be based upon the Salary Costs as described in Section 5.2 up to a maximum amount not-to-exceed One Million Eighty Two

Thousand and Seven Dollars (\$1,082,007). Broward County's Representative shall perform all services designated as Maximum Amount Not-To-Exceed set forth herein for total compensation in the amount of or less than that stated above.

3. In the event of any conflict or ambiguity between this Third Amendment and the Agreement, or between this Third Amendment and the First Amendment or the Second Amendment, the Parties agree that this Third Amendment shall control.
4. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.
5. 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, the First Amendment, the Second Amendment, and this Third 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.
6. Preparation of this Third 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.
7. Except as modified herein, all terms and conditions of the Agreement, the First Amendment, and the Second Amendment shall remain in full force and effect.
8. This Third 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.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Parties hereto have made and executed this Third Amendment: BROWARD COUNTY, through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor, authorized to execute same by Board action on the \_\_\_\_ day of \_\_\_\_\_, 2021, and The Weitz Company, LLC, signing by and through its \_\_\_\_\_, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, by and through its Board of County Commissioners

\_\_\_\_\_  
Broward County Administrator, as ex officio Clerk of the Broward County Board of County Commissioners

By: \_\_\_\_\_  
Mayor  
\_\_\_\_ day of \_\_\_\_\_, 2021

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

By: \_\_\_\_\_  
Jeffrey S. Siniawsky  
Senior Assistant County Attorney

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Michael J. Kerr  
Deputy County Attorney

Date: \_\_\_\_\_

JSS/AMT:tb  
Weitz First Amendment

**THIRD AMENDMENT TO PHASED AGREEMENT BETWEEN BROWARD COUNTY AND THE WEITZ COMPANY, LLC, FOR BROWARD COUNTY'S REPRESENTATIVE SERVICES FOR BROWARD COUNTY CONVENTION CENTER EXPANSION AND HEADQUARTERS HOTEL**

The Weitz Company, LLC

WITNESSES:

The Weitz Company, LLC, an Iowa Limited Liability Company

\_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Authorized Signor

\_\_\_\_\_  
Print Name of Witness above

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Signature

\_\_\_\_\_ day of \_\_\_\_\_, 2021

\_\_\_\_\_  
Print Name of Witness above

ATTEST:

\_\_\_\_\_  
Corporate Secretary or other person authorized to attest

(Corporate Seal or Notary)

**EXHIBIT A-3**  
**SCOPE OF SERVICES**  
**BROWARD COUNTY CONVENTION CENTER EXPANSION**  
**AND HEADQUARTERS HOTEL**

**BASIC SERVICES**

1.01 BCR shall provide or cause to be provided the following additional Basic Services during the construction phases of:

A. The Headquarters Hotel Foundations (FGMP3);

1.02 ADMINISTRATIVE BASIC SERVICES

- A. ADMINISTRATION OF THE PROJECT. BCR will provide an on-site management team and locate the on-site management team in offices provided by the Developer/County to provide contract administration as a representative of County and to establish and implement coordination procedures between the Contract Administrator and Developer.
- B. CONTRACT ADMINISTRATION. BCR will upon request assist the Contract Administrator in preparation and initiation of NTP's. Assist the Contract Administrator in various provisions of information, access to facilities, decisions, responses, notice, services, and review of deliverables and/or documents identified in Developer's Agreement.
- C. SUBMITTAL PROCEDURES. BCR will establish and implement procedures with the Developer for submittals, change orders, payment requests and other procedures; and maintain logs, files, and other necessary documentation. As the Contract Administrator's representative at the job site, BCR will be the party through which change orders, payment requests, Submittals and information will be processed from Developer to Contract Administrator and from the Contract Administrator to the Developer.
- D. JOB SITE MEETINGS. BCR will attend weekly job-site progress meetings with the Developer and their Contractor, attend an overall coordination meeting with all Contractors, and will review and comment on all meeting minutes to all attendees, the Contract Administrator, the Developer, and all other appropriate parties within 7 days of receiving minutes from Developer.
- E. COORDINATION OF THRESHOLD INSPECTION. BCR will provide and coordinate the threshold inspections required for this scope of work up to the hours approved by the County. If additional hours are required due to re-inspections, additional Work Authorizations would be needed.



- F. CONSTRUCTION OBSERVATION. BCR will observe the progress of the Work and advise the Contract Administrator of any deviations, defects or deficiencies BCR observes in the Work. Construction Project Manager's observation duties shall include reasonable diligence to discover work that is not in compliance with the Contract Documents.
- G. CONFORMING WORK. BCR will, in conjunction with the Developer, make recommendations for corrective action on observed nonconforming work. BCR will make recommendations to the Contract Administrator and the Developer in instances where BCR observes work that, in its opinion, is defective or not in conformance with the Contract Documents.
- H. EXERCISE OF CONTRACT PREROGATIVES. When appropriate, BCR will advise the Contract Administrator and make recommendations to the Contract Administrator for exercising the Contract Administrator's contract prerogatives, such as giving the Contractor notice to accelerate the progress when the schedule goals are in jeopardy due to Developer failings, withholding payment for cause and other prerogatives when required in an effort to achieve contract compliance.
- I. MASTER SCHEDULE. BCR will continue to monitor the Master Schedule by reviewing all in-progress adjustments and will notify the Contract Administrator of concerns or schedule slippage within 72 hours after completion of Broward County Representatives schedule analysis.
- J. SCHEDULE OF VALUES. BCR will review and reconcile the Developer's Schedule of Values for each of the activities included in the Construction Schedule and will use this information as initial data and will initialize the progress payment schedule for the Construction Phase.
- K. CONSTRUCTION PROGRESS REVIEW. BCR will review the progress of construction with the Developer, observe work in place and properly stored materials on a monthly basis, and evaluate the percentage complete of each construction activity as indicated in the construction schedule.
- L. MONTHLY DEVELOPER PAYMENT. BCR will review and make recommendations pertaining to monthly payment to the Developer. This activity will be an integral part of the monthly progress report updates.
- M. MONTHLY CONSTRUCTION PAYMENT REPORTS. BCR will prepare and distribute the monthly construction payment reports which will be an integral function of the monthly schedule report. This report will reflect the total construction contract price, Developer's payment to date, current payment requested, retainage, and actual amounts owed for the current period. The final portion of this report will be a Certificate of Payment which will be executed by Construction Project Manager, Developer, and transmitted to the Contract Administrator for use in the Contract Administrator's internal accounting system and payment to the Contractor.
- N. RECOVERY SCHEDULE. BCR shall advise the Contract Administrator if the Developer needs to prepare a Recovery Schedule within 72 hours after completion of

Broward County Representatives schedule analysis. This Recovery Schedule will reflect the corrective action and extraordinary efforts to be undertaken by the Developer to recapture the lost time and complete the Work in accordance with the Completion Dates. This Recovery Schedule will be distributed by the Developer to the Contract Administrator, and other appropriate parties.

- O. SCHEDULE REVISION. BCR will review revisions to the Construction Schedule.
- P. EVALUATE PROPOSAL COST. BCR will evaluate the Developer's proposal cost and will make a formal recommendation to the Contract Administrator regarding acceptance of the proposal for a Change Order. In the event of major scope changes during the construction phase, BCR will, as an Additional Service, prepare an estimate for this change in scope in a Cost Model format.
- Q. NEGOTIATION OF CHANGE ORDER COSTS AND TIME EXTENSIONS. BCR will negotiate change order costs and time extensions on behalf of the Contract Administrator when appropriate. BCR will advise the Contract Administrator of acceptability of price and time extension prior to the execution of any change order.
- R. FORCE ACCOUNT RECORDS. In instances when the change order work is to be done on a time and material basis, and when approved by the Contract Administrator as an Additional Service, BCR will maintain force account records on a daily basis to determine the actual worth and time required for the work.
- S. CHANGE ORDER REPORTS. BCR shall prepare and distribute Change Order reports on a monthly basis throughout the Construction Phase. This report will provide Change Order information pertaining to proposed and executed Change Orders and their effect on the contract price as of the date of the report.
- T. PROJECT STATUS REPORTS. BCR will prepare and distribute a monthly Project Status Report which will include schedule maintenance and cost status reports. The schedule maintenance report will reflect actual progress against scheduled progress for the construction phase. The project summary cost status report will reflect actual current cost and projected project cost compared to budgeted Project cost.
- U. PROJECT LIAISON FOR THE CONVENTION CENTER. The BCR shall act as a liaison in matters that impact the ongoing work at the Convention Center. These might include noise complaints, phased access points, 'move in' scheduling and sequencing, etc.
- V. BUILDING INFORMATION MODELING. The BCR will monitor and report on all BIM Model Management by the Developer and assist the Contract Administrator in enforcement of the contract requirements and participate in Developers VDC coordination meetings and advise the Contract Administrator as to progress and issues through Federated Model Review, Coordination Report Reviews, and As-Built Model reviews. As-Built Laser Scanning will also be done throughout the construction phase for the accuracy and future maintenance use for the County.

**End of Exhibit A-3**

**EXHIBIT A-4**  
**SCOPE OF SERVICES**  
**BROWARD COUNTY CONVENTION CENTER EXPANSION**  
**AND HEADQUARTERS HOTEL**

**BASIC SERVICES**

1.01 BCR shall provide or cause to be provided the following additional Basic Services during the construction phases of:

- A. Western Expansion and East Expansion Work associated with the Convention Center (FGMP2);

1.02 ADMINISTRATIVE BASIC SERVICES

- A. ADMINISTRATION OF THE PROJECT. BCR will provide an on-site management team and locate the on-site management team in offices provided by the Developer/County to provide contract administration as a representative of the County and to establish and implement coordination procedures between the Contract Administrator and Developer.
- B. CONTRACT ADMINISTRATION. BCR will upon request assist the Contract Administrator in preparation and initiation of NTP's. Assist the Contract Administrator in various provisions of information, access to facilities, decisions, responses, notice, services, and review of deliverables and/or documents identified in Developer's agreement.
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**End of Exhibit A-4**