

**THIRD AMENDMENT TO THE
AMENDED AND RESTATED AGREEMENT BETWEEN BROWARD COUNTY AND MATTHEWS
HOLDINGS SOUTHWEST, INC.
FOR DESIGN SERVICES FOR BROWARD COUNTY CONVENTION CENTER EXPANSION AND
HEADQUARTERS HOTEL PROJECT
(RFP/RLI # N1337414R3)**

This Third Amendment to the Amended and Restated Agreement ("Third Amendment") is made and entered into by and between Broward County, a political subdivision of the State of Florida ("County") and Mathews Holdings Southwest, Inc., a Texas corporation ("Developer") (collectively referred to as the "Parties" and individually as a "Party").

RECITALS

A. Pursuant to County issuing Request for Letters of Interest No. N1337414R3 dated October 29, 2015 ("RLI"), the County sought and received a final proposal from Developer for the redevelopment of County-owned property with an expansion of the existing Convention Center and development and construction of a Headquarters Hotel (the "Project" as defined in the RLI and comprised of Project A, the Convention Center Expansion, and Project B, the Headquarters Hotel), and the Enabling Projects; and

B. The Broward County Commission ("Board"), acting as a Direct Procurement Authority ("DPA"), authorized County staff to enter into negotiations with Developer to implement the Project in accordance with the parameters set forth in the RLI process, including, without limitation, through entry into a Comprehensive Agreement (as defined in the Predevelopment Agreement (as hereinafter defined); and

C. County approved a Pre-Development Agreement on August 16, 2016 (the "Predevelopment Agreement") which authorized Developer to commence certain design activities and other tasks related to the Project; and

D. County approved a Design Services Agreement on November 21, 2017, as amended by that certain First Amendment dated February 26, 2018 (the "Design Services Agreement") which authorized Optional Services fees and Reimbursable expenses for certain on-site investigatory activities related to the Project; and

E. County approved an Amended and Restated Design Services Agreement on May 8, 2018 (the Amended and Restated Design Services Agreement"), which authorized programming and schematic design services for Project A and three enabling projects, provided compensation for previously completed work, and increased the Optional Services fees and reimbursable expenses for certain on-site investigatory activities and other anticipated Developer activities; and

F. County approved a First Amendment to the Amended and Restated Design Services Agreement on November 18, 2018 ("First Amendment"), which added schematic design

services for Project B to compensate Developer for prior completed work on Project B which was authorized pursuant to the Predevelopment Agreement; and

G. County approved a Second Amendment to the Amended and Restated Design Services Agreement on June 11, 2019 ("Second Amendment") (together with the First Amendment and the Amended and Restated Design Services Agreement, the "Agreement"), which added continuing design services for Projects A and B; and

H. The Parties entered into a Master Development Agreement dated June 28, 2019 ("Development Agreement"), which established the terms and conditions for Developer's development, construction, furnishing, and equipping of a fully completed Project to County, including the issuance of guaranteed maximum prices based on the design produced under the terms of the Agreement; and

I. The Parties desire to amend the Agreement to allow for further continued design services through completion of 100% of construction documents for Project A (West Expansion) and 90% of the construction documents for Project A (East Expansion), Project B, and certain Enabling Projects, and for construction administration services for Project A (West Expansion) and Enabling Project authorized under GMP Contract Amendment No. 1 and GMP Contract Amendment No. 2 to the Development Agreement.

IN CONSIDERATION of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, the Parties agree as follows:

1. The above Recitals are true and correct and are incorporated into this Third Amendment by reference.
2. Changes to the Agreement are indicated herein by use of strikethroughs to indicate deletions and bold or underlining to indicate additions. This Third Amendment shall be effective as of the date it is fully executed by the Parties.
3. Article 1 DEFINITIONS AND IDENTIFICATIONS is hereby amended by the addition of the following defined terms:

- 1.26 Development Agreement: The Master Development Agreement between Broward County and Developer dated June 28, 2019.
- 1.27 Design/Build Team: The combination of Design/Builder, Design Builder Subcontractors, and Design Consultant (including Design Subconsultants) as further defined below and as specified in the Master Development Agreement:
- 1.28 Design Builder: Balfour Beatty Construction, LLC or such other Qualified Design Builder as may be Approved by the County.

- 1.29 Design Builder Subcontractors: The consultants and Subcontractors of any tier engaged directly or indirectly by the Design Builder in connection with performing its obligations under the terms of the Design Build Agreement between Developer and Design Builder.
- 1.30 Design Consultant: (i) Nunzio Marc Desantis Architects (solely with respect to the Hotel Project, the CVB Building, and the restaurants to be included within the Plaza Improvements), (ii) Fentress Architects (solely with respect to the West Expansion Project and East Expansion Project), and (ii) Stantec Architecture, Inc.
- 1.31 Design Subconsultants: Any person, firm, partnership, corporation, association or other organization, or a combination of any of them, that has a direct contract with the Design Builder, the Design Consultants or other Design Sub-Consultant(s) to perform engineering, landscape architecture, interior design, LEED consulting, BIM services and/or other specialized design services for the Project.
- 1.32 Broward County's Representative: The Weitz Company, the firm providing construction project management and other support services to County for the Project.
- 1.33 FGMP and GMP: The Final Guaranteed Maximum Price and Guaranteed Maximum Price as defined and set forth in the Master Development Agreement.
- 1.34 GMP Contract Amendment: A Guaranteed Maximum Price amendment to the Master Development Agreement, as defined and described in the Master Development Agreement.
- 1.35 Master Project Schedule: The Master Project Schedule as defined in the Master Development Agreement, as the same may be modified with the approval of the Contract Administrator.

- 2 Exhibit A is amended to add a new Exhibit A.6, Scope of Services for Continued Design Services, attached hereto and made a part of this Third Amendment, providing for Developer's development and completion of one hundred percent (100%) construction documents for Project A (West Expansion) and 90% construction documents for Project A (East Expansion), Project B, and for the Enabling Projects, and for construction administration services for Project A (West Expansion) and Enabling Project authorized under GMP Contract Amendment No. 1 and GMP Contract Amendment No. 2 to the Master Development Agreement. The design services set forth on Exhibit A.6 must be completed no later than the time required by the Master Project Schedule.

3 Article 5, Sections 5.12, 5.14, and 5.15 of the Agreement are hereby amended as follows below. All other sections of Article 5 shall remain as previously stated.

5.12 Lump Sum Compensation. Compensation to Developer for the performance of all Basic Services identified in Exhibit A shall be on a "Lump Sum" basis, for the lump sum amounts indicated below for the following work elements:

Work Element	Lump Sum Fee
Exhibit A.1- Scope of Services For Project Concept Development & Schematic Design	\$2,928,922
Exhibit A.2- Scope of Services For Enabling Project Site Investigation &	\$1,590,166
Exhibit A.2- Scope of Services For Enabling Project No.1, Central Energy Plant	\$467,868
Exhibit A.2- Scope of Services For Enabling Project No. 2, Parking Facility	\$547,538
Exhibit A.2 - Scope of Services For Enabling Project No.3, 13th Street Modifications	\$97,424
Exhibit A.4- Scope of Services For Schematic Design of Project B	\$3,406,941
Exhibit A.5- Scope of Services For Design Continuation	16,577,455
<u>Exhibit A.6 Continues Design Services and Construction Administration</u>	<u>\$12,158,841</u>
Total Lump Sum Fee	<u>\$37,775,155</u>

5.1.4 Optional Services. County has established an amount of ~~\$4,805,376~~ \$5,413,318 for potential Optional Services which may be utilized pursuant to Article 6 ("Optional Services Contingency Fund"). Unused amounts of the Optional Services Contingency Fund shall be retained by County. A Work Authorization for Optional Services shall specify the method of payment (Maximum Amount Not-To-Exceed, Lump Sum, or combination thereof) applicable to that Work Authorization. Provided, however, the Developer shall be under no obligation to perform Optional Services which could cause the Optional Services Contingency Fund to be exceeded unless the County provides documentation to the Developer evidencing the Board's or County Administrator's approval of a

commensurate increase in the Optional Services Contingency Fund in accordance with applicable law and the County's rules of governance.

5.1.5 Reimbursable Expenses. County has established a maximum amount not-to-exceed amount of ~~\$3,085,773~~ \$5,258,125 for potential reimbursable expenses which may be utilized pursuant to Section 5.3, a schedule of which is attached hereto as Exhibit C. Unused amounts of those monies established for reimbursable expenses shall be retained by County and the Contract Administrator may reallocate between line items listed on Exhibit C at the Contract Administrator's discretion.

4 Section 5.1.7 of the Agreement is hereby amended as follows:

5.1.7 Phased Payments. Payments for Basic Services shall be made pursuant to the project phasing specified in Exhibit A and in accordance with the percentage amount set forth below. The retainage amount set forth in Section 5.5 shall be applied to the percentage amount for each phase stated herein.

Exhibit A.1 - Scope of Services

For Project Concept Development & Schematic Design

Project Phase	Fee %	Fee Amount/Phase
Programming Phase	13.2%	\$385,728
Conceptual Design Phase	12.1%	\$354,099
Schematic Design Phase	74.7%	\$2,189,094
Total Lump Sum Fee	100%	\$2,928,922

Exhibit A.2 - Scope of Services

For Enabling Project Site Investigation & Documentation

Project Phase	Fee %	Fee Amount/Phase
Site Investigation	45.3%	\$720,245
Programming, Conceptual & SD	3.6%	\$57,166
DRC Submittal	37.1%	\$590,579
Traffic Study	14.0%	\$222,061
Total Lump Sum Fee	100%	\$1,590,051

Exhibit A.2 - Scope of Services

For Enabling Project No. 1, Central Energy Plant Design

Project Phase	Fee %	Fee Amount/Phase
Project Development Conference	0.0%	\$0
Schematic Design Phase	100.0%	\$467,868
Total Lump Sum Fee	100%	\$467,868

Exhibit A.2 - Scope of Services

For Enabling Project No. 2, Parking Facility Modifications

Project Phase	Fee %	Fee Amount/Phase
Project Development Conference	0.0%	\$0
Schematic Design Phase	100.0%	\$547,538
Total Lump Sum Fee	100%	\$547,538

**Exhibit A.2 - Scope of Services
For Enabling Project No. 3, 18th Street Modifications**

Project Phase	Fee %	Fee Amount/Phase
Project Development Conference	0.0%	\$0
Schematic Design Phase	100.0%	\$97,424
Total Lump Sum Fee	100%	\$97,424

**Exhibit A.4 - Scope of Services
For Schematic Design of Headquarters Hotel**

Project Phase	Fee %	Fee Amount/Phase
Schematic Design Phase	100.0%	\$3,406,941
Total Lump Sum Fee	100%	\$3,406,941

**Exhibit A.5 - Scope of Services
For Design Continuation**

Project Phase	Fee %	Fee Amount/Phase
Design Development Phase	100.0%	\$16,577,455
Total Lump Sum Fee	100%	\$16,577,455

**Exhibit A.6 Design Continuation
and Construction Administration**

Project Phase	Fee %	Fee Amount/Phase
Construction Documents Phase/Construction Documents Phase	100%	\$12,158,841
Total Lum Sum Fee	100%	\$12,158,841

- 5 Exhibit B to the Agreement is hereby deleted in its entirety and replaced with the "Exhibit B" contained in Schedule 1 attached hereto.
- 6 The Parties agree that if any conflict or ambiguity exists between this Third Amendment and the Agreement, this Third Amendment shall control.
- 7 Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.
- 8 This Third Amendment 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 this Second Amendment or 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.

- 9 Preparation of this Third Amendment has been a joint effort of the Parties and the resulting documents shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than any other.
- 10 Except as modified herein, all terms and conditions of the Agreement shall remain in full force and effect.
- 11 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.

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IN WITNESS WHEREOF, the Parties hereto have made and executed this Second Amendment to the Agreement: 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 _____, 2020, and MATHEWS SOUTHWEST HOLDINGS, INC., a Texas

Corporation signing by and through its President or Vice President , duly authorized to execute the same.

COUNTY

WITNESS:

BROWARD COUNTY, by and through
its Board of County Commissioners

By: _____
Bertha Henry, County Administrator

By: _____ day of _____, 2020

Name: _____

By: _____

Name: _____

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 (Date)
Senior Assistant County Attorney

By: _____
Michael J. Kerr (Date)
Deputy County Attorney

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DEVELOPER

WITNESSES:

MATHEWS SOUTHWEST HOLDINGS, INC.

Signature

By: _____
Authorized Signor

Print Name of Witness above

Print Name and Title

Signature

_____ day of _____, 20__

Print Name of Witness above

ATTEST:

Corporate Secretary or other person
authorized to attest

(CORPORATE SEAL OR NOTARY)