

**OFFICE OF THE COUNTY AUDITOR**

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September 15, 2021

Advisory No. 215

To: Bertha Henry, County Administrator

From: Robert Melton, County Auditor

A handwritten signature in blue ink that reads "Bob Melton".

Subject: Pending Second Amendment to Broward County Convention Center Expansion and Headquarters Hotel Master Development Agreement (RFP/RLI No. N1337414R3)

The purpose of this memorandum is to advise you of potential concerns regarding the above captioned Second Amendment (Amendment) to the Master Developer Agreement (MDA) between Broward County and Matthews Holdings Southwest, Inc. The following recommendations are for consideration when finalizing the terms of the Amendment as well as ensuring project records are complete and provide transparency and support of all actions.

Recommendations:

We recommend, prior to the execution of the Amendment:

1. All reviews of root causes for delays or damages to property are completed prior granting any time extensions.
2. Any requested Developer Excused Delays due to weather conditions are reviewed by County, in accordance with the MDA. Approvals should be based upon evaluation of specific documentation regarding the number of days such weather conditions occurred, and documented inability to work on critical path items, supporting extensions as provided for in the final amendment.
3. The Developer is held responsible for any damage or delays they may have caused/failed to prevent in accordance with MDA and that such work is clearly identified.
4. If applicable, liquidated damages for failure to meet the established Substantial Completion date for the West Expansion Project should be assessed in accordance with the terms of the original MDA.
5. Any relief of such liquidated damages should be clearly evaluated, and decisions documented as part of project records.
6. If there are additional causes for delays (other than weather conditions) these should be recognized in the Amendment (as applicable) and documented as part of project records.

7. If any issues regarding causes for delays cannot be determined at this time, County should reserve all rights to future recourse and recovery.
8. County's Owner Representative should provide written review/concurrence of Developer Excused Delays, and recommendations regarding any other pertinent information for County's consideration related to the conditions of the Amendment.
9. The Amendment should include updated project schedules, which have been reviewed by County and determined acceptable to meet newly established completion dates.
10. The Amendment should acknowledge the amount of Design Builder Contingency available for acceleration cost, and any transfer of funds should be properly memorialized in accordance with the terms of the MDA (Section 11.4). Further, the actual need for use of funds for 'acceleration' of the project work is unclear given the limited portion of work required for Partial Certificate of Occupancy (PCO), and the extension of the Substantial Completion dates for several other portions of the work by six to eight months. Accordingly, the appropriate use of and approval of such funds should be clearly supported and documented in project files.

In the future, we recommend:

11. The Coordination Team resume regular meetings, on a monthly basis, or more frequently when critical issues require additional attention.
12. Any Developer Excused Delays are reviewed, approved/denied in a timely manner.

Discussion and Background:

The original Master Development Agreement includes the following terms/requirements:

- West Expansion Project Substantial Completion deadline established as October 15, 2021.
- Establishes \$600,000 liquidated damages lump sum payment to the County for failure to meet West Expansion Project Substantial Completion deadline, subject to additional adjustments dependent on the actual date of Substantial Completion (Section 12.5.2).
- Means for the Developer to request, and for County to review and evaluate, Developer Excused Delays, which may result from inability to work on critical path items due to abnormal weather conditions or other causes (Section 12.6.1) and may result in extensions of Substantial Completion dates for such reasonable periods of time.
- Means to formalize any changes to the project schedule or Final Guaranteed Maximum Price (FGMP) (Article 9).

According to the draft Second Amendment (Amendment) dated August 30, 2021, and copied to my Office on September 8, 2021, the following is noted:

- Due to Abnormal Weather Conditions during 2020, numerous critical path items were substantially impacted, constituting Developer Excused Delay under Section 12.6 of the MDA.
- County, Developer and Design Builder have developed a plan to mitigate the impacts of 2020 Extreme Weather to enable the Fort Lauderdale International Boat Show to take place in the new exhibit hall, with such plan requiring attainment of a Partial Certificate of Occupancy (PCO) by October 15, 2021 (previous Substantial Completion date for West Expansion) and extensions of time for other FGMP No. 2 work items.
- Modification of West Expansion Substantial Completion requirements to mean the date upon which the PCO is issued.
- Provides for an extension of time for Substantial Completion of various work elements for six months, until March 15, 2022. Items acknowledged as not complete include, but are not limited to, north kitchen, exhibit hall operable partitions, BMS Controls, test and balance, final commissioning, elevator modernization, rework of telecommunication closets, installation of additional wi-fi, and floor box wiring and device changes.
- Provides for an extension of time for Substantial Completion of various other work elements for eight months, until May 15, 2022. Items acknowledged as not complete include, but are not limited to, carpet replacement, existing building remediation, and replacement of roof.
- Provides for certain elements of FGMP No. 2 work to be Substantially Complete in conjunction with FGMP No. 4 work. This results in an as yet undefined completion schedule, as FGMP No. 4, to the knowledge of my Office, has not yet been negotiated.
- The Design Builder will use Design Builder Contingency for acceleration costs to meet the West Expansion Substantial Completion date of October 15, 2021.
- Establishes new liquidated damages amounts for failure to meet above dates for Substantial completion.
- There is no increase in the dollar amount of FGMP No. 2.

My Office has requested information and discussion regarding this proposed Amendment on September 9, 2021, and as of the date of this memorandum, no direct response was received. Further, over the past year there has been limited engagement of the 'Coordination Team.' At the last meeting of the Coordination Team on July 13, 2021, the group discussed additional work items requested by County, as well as the ongoing review of several work elements not yet complete, which may be due to Developer and/or Design Builder caused delays (water intrusion, mold remediation). This draft Amendment only acknowledges abnormal weather conditions as the cause for the time extensions.

Per the terms of the MDA, for the West Expansion Project work, the Developer is reimbursed up to 1.5% of Developer Managed Costs for project management services and also is entitled to fees of 3.2% of Developer Managed Costs, which are estimated as \$3,094,402 and \$6,700,411, respectively in the FGMP No.2 budget. This is a substantial amount of money, and the value of such project management services may be

questionable given the extensive delays being presented in this Amendment. According to the MDA, Section 2.5, the Developer “shall ensure the efficient administration of the projects and supervision of Developer Consultants and Design Builder in their performance of the required work and services and shall cause all work on the Projects to be performed in an expeditious and economical manner in accordance with the requirements of this Agreement and, in all respects, consistent with the best interests of County.” As such, the Developer should endeavor to proactively manage all future project activities to ensure timely completion.

Please be advised that the information presented herein is not considered an audit in accordance with Generally Accepted Governmental Auditing Standards. Had we conducted an audit, we may have identified additional findings and concerns.

I hope you find this information useful, feel free to contact me if you have any questions regarding this memorandum.

cc: Alan Cohen, Assistant County Administrator
Andrew Meyers, County Attorney
Michael Kerr, Deputy County Attorney
Jefferey Siniawsky, Senior Assistant County Attorney
George Tablack, Chief Financial Officer
Stephen Farmer, Finance Manager