

**SECOND AMENDMENT TO TECHNICAL SERVICES AGREEMENT FOR CONSTRUCTION PHASE
AND PRE-OPENING SERVICES AMONG BROWARD COUNTY, MATTHEWS HOLDINGS
SOUTHWEST, INC., AND OMNI HOTELS MANAGEMENT CORPORATION**

This Second Amendment to the Technical Services Agreement (this "Second Amendment") is made and entered by and among Broward County, a political subdivision of the State of Florida ("County"), Matthews Holdings Southwest, Inc., a Texas corporation authorized to transact business in the State of Florida ("Developer"), and Omni Hotels Management Corporation, a Delaware corporation authorized to transact business in the State of Florida ("Manager") (sometimes individually referred to as a "Party" and collectively referred to as the "Parties").

RECITALS

A. County owns the real property located at and around 1850 S.E. 17th Street, Fort Lauderdale, Florida 33316 (the "Property"), on which site County is currently having constructed a convention center hotel (the "Hotel").

B. On or about November 14, 2018, County and Developer entered into a Design Services Agreement for the design, pre-development, and construction administration of the Hotel (as amended, the "DSA").

C. Manager has been selected to operate and manage the Hotel.

D. On February 12, 2019, the Parties entered into a Technical Services Agreement ("Agreement") to provide for design phase technical services for the Hotel.

E. The Parties entered into a First Amendment to the Agreement, dated on or about March 19, 2021 (the "First Amendment"), to provide for a maximum amount of Fifty Thousand Dollars (\$50,000) for Reimbursable Expenses.

F. The Agreement contemplated that the Parties would enter into a subsequent amendment to provide for construction phase technical services.

G. The Parties desire to enter into this Second Amendment to (i) extend the Term of the Agreement through the opening date of the Hotel, (ii) increase the maximum amount on Reimbursable Expenses, (iii) provide for construction phase technical services, and (iv) provide for pre-opening services and the fees therefore.

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

1. Section 2.1 of the Agreement is hereby amended by the addition of new Exhibits E, F, and G:

Exhibit E Scope of Services Construction Phase - Manager

Exhibit F Pre-Opening Scope of Services - Manager

Exhibit G Pre-Opening Scope of Services - Developer

2. Section 3.1 of the Agreement is hereby amended and restated in its entirety as follows:

3.1 Manager shall provide all Services as set forth in Exhibits A, E, and F including all necessary, incidental, and related activities required for full and complete performance of Manager’s obligations under this Agreement (the “Scope of Services”).

3. Section 3.2 of the Agreement is hereby amended and restated in its entirety as follows:

3.2 Developer shall provide all Developer Services as set forth in Exhibits A, B, and G, including all necessary, incidental, and related activities required for full and complete performance of its obligations under this Agreement.

4. Section 4.1 of the Agreement is hereby amended and restated in its entirety as follows:

The term of this Agreement shall begin on the Effective Date and end on the opening date of the Hotel, unless terminated earlier pursuant to this Agreement (“Term”).

5. Section 5.1.2 of the Agreement is hereby amended by the addition of a new Section 5.1.2.1

5.1.2.1 The fee for the construction phase technical services and pre-opening services is \$600,000, payable in accordance with the following payment schedule: \$200,000 shall be due and payable thirty (30) days from the date of full execution of this Second Amendment. The remaining balance of \$400,000 shall be payable in twenty-four consecutive monthly installments of \$16,666.67 beginning on the date that is twenty-four months from the Estimated Opening Date (as hereinafter defined). By way of example, if the Estimated Opening Date is October 1, 2025, the first \$16,666.67 payment shall be due October 1, 2023, and the last \$16,666.67 payment shall be due September 1, 2025.

6. Section 5.1.3 of the Agreement is hereby amended and restated in its entirety as follows:

County will reimburse authorized Reimbursable Expenses related to the construction phase technical services up to a maximum total amount of One Hundred Thousand Dollars (\$100,000.00) provided each is pre-approved in writing by the Contract Administrator. Reimbursable Subconsultant expenses must also comply with the requirements of this section. For the avoidance of doubt, the Reimbursable Expenses described in this paragraph for technical services are separate and apart from the reimbursable expenses included in the Pre-Opening Budget.

7. Section 5.4 of the Agreement is hereby amended by the addition of the following sentence:

Manager shall identify to County Subconsultants and subcontractors as part of pre-opening services and the Pre-Opening Budget review and approval process.

8. Section 5(c)(ii) of Exhibit A of the Agreement is hereby amended as follows:

Notwithstanding anything to the contrary in Section 5(c)(ii) of Exhibit A of the Agreement, Manager shall provide specifications for OS&E to Developer's procurement team for purchase by Developer's procurement team to ensure that such items conform to the requirements of the Brand Standards. Developer shall provide FF&E specifications and selection.

9. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.

10. 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 and this Second 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.

11. Preparation of this Second 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.

12. Except as modified herein, all terms and conditions of the Agreement shall remain in full force and effect.

13. This Second 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.

Intentionally Left Blank – Execution Pages to Follow

IN WITNESS WHEREOF, the Parties hereto have made and executed this Second Amendment to Technical Services Agreement: BROWARD COUNTY, signing by and through its County Administrator, authorized to execute same, MANAGER, signing by and through its _____, duly authorized to execute same, and DEVELOPER, signing by and through its _____, duly authorized to execute same.

COUNTY

BROWARD COUNTY, by and through
its County Administrator

By: _____
County Administrator

____ day of _____, 20__

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

By _____
Jeffrey S. Siniawsky (Date)
Senior Assistant County Attorney

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

MJK/jl
Second Amendment to TSA
06/01/2023

**SECOND AMENDMENT TO TECHNICAL SERVICES AGREEMENT AMONG BROWARD COUNTY,
MATTHEWS HOLDINGS SOUTHWEST, INC., AND OMNI HOTELS MANAGEMENT CORPORATION**

MANAGER

OMNI HOTELS MANAGEMENT CORPORATION

ATTEST:

By _____

Secretary

President/Vice President

(Typed Name of Secretary)

(Typed Name and Title)

CORPORATE SEAL

_____ day of _____, 2023.

**SECOND AMENDMENT TO TECHNICAL SERVICES AGREEMENT AMONG BROWARD COUNTY,
MATTHEWS HOLDINGS SOUTHWEST, INC., AND OMNI HOTELS MANAGEMENT CORPORATION**

DEVELOPER

MATTHEWS HOLDINGS SOUTHWEST, INC.

ATTEST:

By _____

Secretary

President/Vice President

(Typed Name of Secretary)

(Typed Name and Title)

CORPORATE SEAL

_____ day of _____, 2023.

EXHIBIT E
SCOPE OF CONSTRUCTION PHASE TECHNICAL SERVICES – MANAGER

1. Duration of Construction Phase Technical Services. The construction phase of the development of the Hotel shall begin upon the earlier of (a) the County's issuance of the Bonds or (b) the County's issuance of a notice to proceed to Developer for any vertical construction work on the Hotel project outside of the foundation and shall end upon the opening date of the Hotel.

2. General Scope of Manager's Construction Phase Technical Services. During the construction phase of the development of the Hotel, Manager will furnish Contract Administrator and Developer with assistance in connection with the items specified in this Scope of Services for the purpose of ensuring compliance with the Brand Standards. Among those construction phase technical services (the "Services"), Manager shall:
 - a. Provide input to Contract Administrator and Developer regarding construction of the Hotel in accordance with the Brand Standards.
 - b. Provide input to Contract Administrator and Developer regarding any value engineering questions related to the Hotel project that arise during the construction phase.
 - c. Provide technical assistance and advice on interior design and decoration; kitchen, bar, laundry, spa, gym, and valet equipment; management information systems; back of house equipment and operating supplies.
 - d. Provide FF&E procurement reviews with Manager's procurement specialists within Manager's technical service team.
 - e. Provide Telecom/IT reviews (including audio/visual equipment and digital signage and displays) with Manager's IT specialists within Manager's technical services team, including providing equipment lists and specifications for operational equipment and assistance with installation.
 - f. Assist Developer in providing OS&E procurement services, including assistance with OS&E lists, specifications, and installation to the extent not performed by Developer and/or Design/Builder.
 - g. Attend punchlist and final walk-throughs related to the completion of the Hotel and provide the Contract Administrator and Developer with timely recommendations related to the punchlist and final walk-through.

3. Limitation of Manager Liability. For the avoidance of doubt, except as modified by this Second Amendment, all terms and conditions of the Agreement, including the limitation of Manager's liability set forth in Article 11 of the Agreement, shall remain in full force and effect and apply to Manager's provision of the Services pursuant to this Second Amendment.

4. Site Visitations and Technical Services Meetings. It is anticipated that the bulk of the Services will be performed at Manager's headquarters in Dallas, Texas. However, at appropriate stages in development, Manager will make such technical assistance visits to the site and/or to the offices of Contract Administrator, Developer or their design/builder, architects, engineers, designers, contractors or manufacturers, as will be recommended by Manager and preapproved by Contract Administrator in its reasonable discretion, or upon the reasonable request of Contract Administrator. It is also anticipated that Manager will participate remotely (or in-person if approved by the Contract Administrator) in construction and design reviews on a quarterly basis during the first half of the construction phase and on a weekly basis during the second half of the construction phase through substantial completion.

EXHIBIT F
SCOPE OF PRE-OPENING SERVICES – MANAGER

1. Pre-Opening Services. During the pre-opening period, which shall commence upon the issuance of bonds for construction of the Hotel and continue until the Opening Date (the “Pre-Opening Period”), Manager shall provide the following services (collectively, the “Pre-Opening Services”):

- a. Employ, recruit, train, and direct an initial staff for the Hotel.
- b. Create, initiate and pursue a hotel-specific marketing program consisting of sales, advertising, promotion, publicity and public relations, designed to attract guests to the Hotel on and after the Opening Date, and contract for the rental of rooms at the Hotel to be occupied after the Opening Date.
- c. In cooperation with County and in County’s name, negotiate and after approval thereof by County, execute as agent for County, leases, licenses and concession agreements for stores, office space and lobby space at the Hotel; provided, however, that desk concessions shall not require the approval of County unless such desk concessions would have a direct negative impact on the County’s business, relationships or reputation.
- d. In cooperation with County apply for, process and take all necessary steps to procure on or before the Opening Date (in Manager’s name or County’s name or both as may be required by the issuing authority, except that the Hotel’s liquor license shall be in County’s name) all licenses and permits required for the operation of the Hotel and its related facilities, provided that it will be County’s obligation to pay for all such licenses and permits.
- e. Purchase all initial inventories of operating supplies with funds furnished by County, as provided for in the Pre-Opening Budget (as defined below). Initial inventories of food and beverages shall be purchased by Manager and paid for out of the Operating Account.
- f. Incorporate the Hotel in the Centralized Reservations System and other Centralized Services at such time prior to the Opening Date as Manager deems advisable. In addition, the Hotel shall be incorporated at County’s expense into the Integrated Property Management (“IPS”) System, Delphi System and such accounting and revenue management systems as are then being utilized by all Managed Hotels.
- g. In cooperation with Developer and Design/Builder, facilitate onsite training for the Hotel’s mechanical, electrical, and other building systems and otherwise transition the maintenance and operation program for such systems to employees or staff of Manager.
- h. Provide to County and Developer a line-item Pre-Opening Budget, hiring schedule, critical path checklist (updated monthly), operations policy and standards, vendor selection, and monthly report of pre-opening expenses versus forecast versus budget.
- i. Do all other things necessary for the proper opening of the Hotel, within the confines of the Pre-Opening Budget.

2. Defined Terms. Capitalized terms used in this exhibit to the Management Contract but undefined shall have the meanings attributed to them in the Management Contract.

3. Expenses. All expenses incurred by Manager or its Affiliates in performing the Pre-Opening Services in accordance with the Pre-Opening Budget to be approved by the Board, or otherwise approved by County in writing, shall be paid for by the County, including, without limitation, all out-of-pocket expenses incurred by Manager directly in connection with labor union negotiations (e.g. the labor peace agreement and collective bargaining agreement); pre-opening sales and administration offices; travel expenses; the costs of moving Senior Executive Personnel and other appropriate executive-level personnel, their families and their belongings to the area in which the Hotel is located at the commencement of their employment at the Hotel, in accordance with Omni's then current relocation practice and provided further that such costs may not exceed 12% of such executive's salary; salaries and benefits for Hotel Personnel (and pro-rata salaries and benefits for employees of Manager and its Affiliates involved in the Pre-Opening Services and based at other Managed Hotels) incurred prior to the Opening Date (other than executive employees of Manager or its Affiliates); costs and expenses (including, but not limited to, travel and living expenses) incurred in attending or participating in any sales, marketing, orientation, training or other programs conducted prior to the Opening Date; the cost of pre-opening sales, marketing, advertising, promotion and publicity; the cost of obtaining all necessary licenses and permits for operating the Hotel (specifically excluding liquor licenses and building or any other permits or licenses associated with the construction or equipping of the Hotel) including the fees of lawyers and other consultants incident thereto; and the fees payable for participation in the Omni reservations system and other centralized services, in accordance with Omni's then current practices. For the avoidance of doubt, pre-opening expenses shall exclude the allocation of salaries and benefits of Omni Hotels & Resorts corporate or regional staff to the Hotel.

4. Payment Schedule. County shall provide reasonable funds for the payment of such expenses and shall provide Manager with funds in advance for the costs of the Pre-Opening Services as agreed upon by County and Manager or pursuant to the Pre-Opening Budget (as defined below).

5. Pre-Opening Budget. The cost of Pre-Opening Services is reflected in the line-item pre-opening budget "Pre-Opening Budget" as submitted by Manager and to be approved by the Board. Reimbursable Expenses for pre-opening services shall be as included in the Pre-Opening Budget and not be subject to the cap on Reimbursable Expenses set forth in Section 5.1.3 of the Agreement. The funds for Pre-Opening Services shall be expended in accordance with the Pre-Opening Budget. Manager may exercise its reasonable judgment to make changes in the budget allocations without increasing the total Pre-Opening Budget based on changes in circumstances or for other reasons which, in Manager's reasonable judgment, warrant a reallocation of the budgeted funds. Manager shall submit all such changes (including the reasons therefor) to County for County's approval, not to be unreasonably withheld, conditioned, or delayed. Manager shall submit the Pre-Opening Budget for County's review and approval within 30 days of execution of this Second Amendment.

6. Additional Costs. County and Manager have estimated that the Hotel's Opening Date will be October 1, 2025 (the "Estimated Opening Date"). Manager will incur no costs for Pre-Opening Services in excess of the total sum set forth in the Pre-Opening Budget without the prior consent of County, provided, however, that in the event Manager anticipates a delay such that the Hotel will not be formally opened to the public on or before the Estimated Opening Date (as revised by County and Manager upon commencement of construction of the Hotel), Manager may request approval of an adjustment of the Pre-Opening Budget based on the additional expenses for Pre-Opening Services occasioned by the anticipated delay, which may include, without limitation, wages and other expenses relating to Hotel Personnel already employed, which approval shall not be unreasonably withheld or delayed. Manager shall not be required to provide any services for which such requests are not approved. The Parties acknowledge that the Pre-Opening Budget shall be prepared based on the Estimated Opening Date.

7. Opening Date. The Opening Date (the "Opening Date") shall be the date on which revenue paying guests are first admitted on an ongoing basis to Rentable Guest Rooms, and all other significant facilities at the Hotel are completed and fully operational on an ongoing basis. County and Manager shall agree in writing on such Opening Date and this shall mark the end of the Pre-Opening Period. If such date is not or cannot otherwise reasonably be determined, the Opening Date shall be deemed to be the date on which a permanent certificate of occupancy for the entire Hotel is issued by relevant governmental authorities.

EXHIBIT G
SCOPE OF PRE-OPENING SERVICES – DEVELOPER

The purpose of this Exhibit is to describe Developer's specific duties to work with Manager in connection with Manager's technical services during the construction phase of the development of the Hotel under the terms of the Agreement. This Exhibit does not in any way limit or expand Developer's duties or obligations to County under the DSA or that certain Master Development Agreement dated as of June 28, 2019 by and between Developer and the County (as amended, the "MDA"), but is intended to provide greater specificity regarding the manner in which Developer will coordinate the performance of its duties to County with the duties of Manager and County under this Agreement. To the extent the scope of services or obligations under the DSA or MDA and this Agreement conflict, the DSA or MDA, as applicable, shall control and supersede this Agreement. County and Developer agree, for the benefit of County and Manager, that:

1. Developer shall work in a commercially reasonable manner with Manager and Contract Administrator to ensure that the Hotel is designed, developed, and planned consistent with the Brand Standards and Four Diamond Standards.
2. During the construction phase of the Hotel, Developer shall concurrently submit to Contract Administrator and Manager any revisions to (i) the Design Documents developed and approved during the design phase of the Hotel, and (ii) any value engineering or substitution proposals, which are required to be approved by the Contract Administrator under the terms of the MDA and which deviate from the Brand Standards (collectively, "Submittals") and, in consultation with and approval of Contract Administrator, make revisions to same based on comments and recommendations from Manager. Manager acknowledges that it has approved the 90% construction drawings, as submitted, for the Hotel, and has waived any deviations from the Brand Standards and Four Diamond Standards to the extent shown therein. Manager's prior written approval shall be required for any revisions to the Submittals that are inconsistent with the Brand Standards, such approval not to be unreasonably withheld, conditioned, or delayed.
3. Developer shall designate to Manager and Contract Administrator a representative authorized to act on Developer's behalf, with respect to the Hotel. Developer hereby initially designates Terry Meistering as Developer's representative. Developer, or such authorized representative, shall review all comments and responses submitted by Manager and shall take all necessary actions required of Developer under the DSA and MDA to respond to Manager promptly to avoid unreasonable delays in the progress of the development and construction of the Hotel. Manager shall designate a single representative authorized to act on Manager's behalf with respect to the receipt of approvals under this Agreement. Manager hereby initially designates Amy Humble, Senior Design Manager, as Manager's representative. Manager's representative shall review all Submittals and shall provide responses to the same within fourteen (14) days of receipt by Manager in order to avoid unreasonable delays in the progress of the development and construction of the Hotel.

4. Developer shall use commercially reasonable efforts to ensure that all reasonably required information is furnished to Manager and shall promptly review comments provided by Manager on all revisions to Submittals in concert with Manager as necessary for the orderly progress of the Services. Developer shall provide Manager with access to project management software(s) utilized by the Developer's team for the purposes of retrieving and sharing information pertinent to Manager's services. Such access shall be limited at Developer's reasonable discretion to ensure access to current information pertinent to issues at hand and records of the Manager's interaction with the Developer and Contract Administrator.

5. Developer shall afford (and cause the Design/Builder to afford) Manager, and all applicable personnel hired by Manager or under the direction of Manager, reasonable access to information and documentation in the possession of Developer and Design/Builder, including the Design Documents, and reasonable access to the Hotel site and Developer's team, so that Manager may perform the Services.

6. On a monthly basis, Developer shall provide Manager a copy of the the full construction schedule for the Project and shall endeavor to provide Manager with written notice not less than six months prior to the the scheduled date of substantial completion if the scheduled date of substantial completion is anticipated to be delayed or accelerated. County, Developer, and Manager acknowledge that any changes to the opening date will impact Manager's ability to sell group business into the Hotel.

7. Developer shall use its best efforts to furnish (either directly or through Design/Builder) all necessary design and construction consultants, including, but not limited to: Design/Builder, architects, civil, structural, mechanical, electrical, plumbing, life safety, hazardous materials and geotechnical engineers, interior design consultants, FF&E and OS&E purchasing consultants, lighting consultants, kitchen and laundry equipment consultants, landscaping consultants, consultants in connection with waterproofing, roofing, pool and window washing equipment, cost estimator and other consultants when such services are required in connection with Manager performing the Services.

8. Developer shall promptly record, track and respond to Manager's review comments and responses concerning respective submittals of revisions to the Design Documents, and value engineering proposals, and to requests for information as may be submitted by Manager. These records and communications may be provided by Developer through the electronic media platform established by Developer for similar informational transactions and records pertaining to the Hotel project.

9. Developer shall advise Manager when on-site model rooms are available for review. Manager shall provide in writing its recommendations related to addressing any deficiencies with the model room and the Brand Standards within ten (10) business days of its review of the model room.

10. Developer shall provide Manager with the opportunity to attend any punchlist and final walk-throughs related to the completion of the Hotel. Manager shall provide the Contract

Administrator and Developer in writing with any recommendations related to the punchlist and final walk-through with regards to compliance with the Brand Standards within ten (10) business days of the date such walk-through occurs. Manager shall work in a commercially reasonable manner with Developer to permit Developer and/or Design/Builder to complete any punchlist items.