



# Broward County

## Legislation Text

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File #: 21-1704, Version: 1

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### **Broward County Commission Regular Meeting**

**Director's Name:** Bertha Henry

**Department:** County Administration

### **Information**

#### **Requested Action**

**MOTION TO APPROVE** Second Amendment to the Broward County Convention Center Expansion and Headquarters Hotel Master Development Agreement ("Master Development Agreement") between Broward County and Matthews Holdings Southwest, Inc. ("MSW") (RFP No. N1337414R3) for the Convention Center Expansion and Headquarters Hotel Project (Project), in substantially the form of Exhibit 1, and authorizing the Mayor to execute the contract amendment on behalf of Broward County provided it has been reviewed and approved as to legal sufficiency by the Office of the County Attorney.

#### **Why Action is Necessary**

Provides a mechanism for MSW to deliver the expanded Convention Center in time for the Fort Lauderdale International Boat Show (FLIBS).

#### **What Action Accomplishes**

Provides an extension of time for the delivery of specific Project items (that were delayed by weather and other impacts) which are not necessary for FLIBS and allows MSW to deliver the areas necessary of the Convention Center West Expansion in time for FLIBS.

#### **Is this Action Goal Related**

Yes

#### **Previous Action Taken**

April 26, 2016 Regular Meeting (Item No. 35), May 10, 2016 Regular Meeting (Item No. 35), August 16, 2016 Regular Meeting (Item No. 95), November 1, 2016 Regular Meeting (Item No. 34), April 4, 2017 Regular Meeting (Item No. 43), October 3, 2017 Regular Meeting (Item No. 32), February 27, 2018 Regular Meeting (Item No. 61), August 14, 2018 Regular Meeting (Item No. 102), January 8, 2019 Regular Meeting (Item No. 56), April 16, 2019 Regular Meeting (Item No. 36), June 11, 2019 Regular Meeting (Item No. 78), August 27, 2019 Regular Meeting (Item No. 44), November 5, 2019 Regular Meeting (Item No. 77), June 16, 2020 Regular Meeting (Item No. 80), October 20, 2020 Regular Meeting (Item No. 58), November 10, 2020 Regular Meeting (Item No. 89), April 6, 2021 Regular Meeting (Items No. 47 & 48), June 1, 2021 Regular Meeting (Item No. 92), June 15, 2021 Regular Meeting (Items No. 72, 105, & 120).

#### **Summary Explanation/Background**

This agenda item supports the Board's goal of increased economic strength and impact of revenue generating County enterprises balancing economic, environmental and community needs.

The Second Amendment provides for time extensions of specific Project items that originally were to be completed as part of the Substantial Completion of Guaranteed Maximum Price (GMP) 2. Due to weather delays, other non-weather delays and additional scope being added to GMP 2, several items in the Master Project Schedule for GMP 2 were substantially impacted. By separating out these impacted items and additional scope from the work necessary for the occupation and use of the Convention Center by the FLIBS, MSW can make the Substantial Completion date of October 15, 2021 and thereby obtain a Temporary/Partial Certificate of Occupancy in time to accommodate the FLIBS.

The weather delays were due to abnormal weather conditions with excessive rain at the Project site during 2020 and 2021 that resulted in a loss of 31 workdays [all delay claims are vetted and approved/rejected by the Owner's Representative (Weitz) and the Contract Administrator]. The existing MDA allows the Developer a non-compensable contract time extension for each approved weather delay day. Had the Developer exercised this right, the County would not have met the October 15, 2021 FLIBS deadline. The Developer took steps to accelerate their work to catch up on the weather delay days to the greatest extent possible. The County project management (PM) team (comprised of Contract Administrator and Assistant County Administrator) also worked with the Developer on a mutually beneficial solution that held the Developer harmless from liquidated damages for specific Project items delineated in Exhibit 1, while enabling Developer to deliver the necessary portions of the CC West on time for the FLIBS.

In addition to the weather delays there were several non-weather project delay claims. At least one delay related to an incorrect installation is clearly the responsibility of the Developer. There is a disagreement as to who is responsible for the other delays (i.e. FPL vault completion).

The County also added scope to the Project, primarily related to mold remediation/restoration and the re-roofing of the existing Convention Center (CC). The roof problems were discovered by the MSW team. In addition to the mold remediation/restoration and re-roof project, MSW agreed to take on over a dozen additional new scope items related to unknown conditions in the existing facility that arose during construction and were not part of the GMP 2 original scope, such as replacement of the electrical floor box components in the original Convention Center. Some of these items are impacting other aspects of the Project and are also the cause of delays.

In light of the fact that 1) the focus is on delivering the CC West on time for the FLIBS, 2) MSW took on significant additional project scope that is the primary reason for the additional contract time, 3) the MSW team, including their General Contractor Balfour Beatty, has been a collaborative working partner on the Project, and 4) the County will be working with them for the next four years, the PM team believes it was in the County's and MSW's best interests to pursue a mutually agreeable solution rather than pursuing liquidated damages and possible litigation for any of the non-weather delays.

The PM team held discussions with the MSW team and created four lists of items that will be included in the Second Amendment (outlined in the material terms), each with a different delivery date. Additional information related to the delayed items can be found in Exhibit 1 attached hereto,

which shows the new substantial completion date for each item, whether it was original scope or new scope and whether (for original scope items) its schedule was delayed by new scope.

All of the items in the four lists have liquidated damages (LDs) attached to them in the case they are not delivered on time. The first three lists include LDs of \$1,000 per day for the first seven days after the applicable Substantial Completion date, and then \$5000 per day for each day thereafter until achievement of Substantial Completion. The fourth list has LDs consistent with those of GMP 4. The work that is still required to be completed by the October 15, 2021 Substantial Completion date have LDs of \$600,000 the first day, \$15,000 per day for the next 10 days and \$25,000 per day for every day thereafter.

It was agreed that instead of creating a deadline for each individual item, one Substantial Completion date would be established for each of the new lists, determined by the item with the longest delivery time, rather than an individual date for each item. The MSW team provided their estimates of what the Substantial Completion dates should be, and after further discussion with the PM team the Substantial Completion dates of January 15, 2022 for the first list, March 15, 2022 for the second list and May 15, 2022 for the third list were agreed upon. The PM team did not have Weitz and its scheduling expert analyze these Substantial Completion dates against a precise critical path schedule review process but instead negotiated in good faith and arrived at mutually agreeable deadlines that were acceptable to the PM team and staff from both the Convention and Visitors Bureau and the Convention Center management team from ASM Global d/b/a SMG based on the upcoming CC event schedule. The material terms of the Second Amendment are:

- 1) The Developer is responsible for a partial delivery of the CC West, including obtaining a Partial/Temporary Certificate of Occupancy, by the Substantial Completion date of October 15, 2021. Failure to do so will result in liquidated damages pursuant to the MDA;
- 2) If the Developer delivers on or before the Substantial Completion date of October 15, 2021, a number of delay claims against the County and identified in the Second Amendment will be waived and released by Developer;
- 3) Developer shall, within 30 days after the October 15, 2021 Substantial Completion date, complete all items noted on the Substantial Completion Punch List for the partially completed portion of the Project, and request final inspection and final acceptance of those areas;
- 4) The following items have a new Substantial Completion date of January 15, 2022 with associated liquidated damages for failure to perform;  
Exhibit Hall Operable Partitions,  
Elevator Modernization, and  
Replacement of Existing Fans as part of the roof replacement.
- 5) The following items have a new Substantial Completion date of March 15, 2022 with associated liquidated damages for failure to perform;  
North Kitchen,  
Building Management Systems Controls,

Test and Balance,  
Final Commissioning,  
Work to Complete/Final Punch lists,  
Final Cleaning,  
Rework of Existing Telecommunications Closets,  
Installation of additional WiFi throughout existing building,  
125 additional Wireless Application Protocols for existing space, and  
Replacement of Existing Roof Membrane.

- 6) The following items have a new Substantial Completion date of May 15, 2022 with associated liquidated damages for failure to perform;  
Replacement of Existing Carpet in pre-function areas,  
Existing Building Remediation/Restoration, and  
East Expansion CC Piles.
- 7) The following items will be added to Substantial Completion requirements of GMP 4;  
Permanent road access to Grande Drive,  
Storm Water Exfiltration Trenches, and  
Change Order Civil Work from the 100% civil documents.
- 8) There shall be no increase in the amount of GMP No. 2 under this Second Amendment. There will be some limited costs related to construction oversight by the Owner's Representative which will be covered in a future agenda item.

It should be noted that the County Auditor's Office has made a series of recommendations for handling of the aforementioned changes to substantial completion dates, liquidated damages and delay claims (Exhibit 2). The PM team appreciates that the County has in the past dealt with unscrupulous parties and others who have not always had the County's best interests in mind, but this is not one of those times. Considering all factors and time limitations the proposed Second Amendment represents a reasonable and prudent way forward for the County and the MSW team. Further, an official response to the Auditor's comments will subsequently be provided for the record.

#### **Source of Additional Information**

Alan Cohen, Assistant County Administrator, 954-357-7364

#### **Fiscal Impact**

##### **Fiscal Impact/Cost Summary**

There is no fiscal impact to this amendment.