

FIFTH 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 Fifth Amendment to the Amended and Restated Agreement for Design Services ("Fifth Amendment") is made and entered into by and between Broward County, a political subdivision of the State of Florida ("County"), and Matthews 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"), 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).

B. The Board, acting as a Direct Procurement Authority, authorized County staff to enter 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 Pre-development Agreement hereinafter defined).

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

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

E. County approved an Amended and Restated Agreement for Design Services on May 8, 2018 (the "Amended and Restated Design Services Agreement"), which authorized programming and schematic design services for Project A and three (3) enabling projects ("Enabling Projects"), provided compensation for previously completed work, and increased the amounts for Optional Services fees and reimbursable expenses for certain on-site investigatory activities and other anticipated Developer activities.

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 that had been authorized pursuant to the Pre-development Agreement.

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

H. The Parties entered into a Master Development Agreement dated June 28, 2019 ("Master Development Agreement") that 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 Amended and Restated Design Services Agreement.

I. County approved a Third Amendment to the Amended and Restated Design Services Agreement on May 28, 2020 ("Third Amendment"), authorizing 1) continued design services for Projects A and B, and certain Enabling Projects; and 2) construction administration services for Project A and those Enabling Projects authorized under GMP Contract Amendment No. 1 to the Master Development Agreement and GMP Contract Amendment No. 2 to the Master Development Agreement.

J. County approved a Fourth Amendment to the Amended and Restated Design Services Agreement on May 10, 2022 ("Fourth Amendment", together with the First Amendment, Second Amendment, Third Amendment, and the Amended and Restated Design Services Agreement, are collectively the "Agreement") authorizing further continued design services through completion of one hundred percent (100%) of construction documents for Project A and Project B, and for construction administration services for Project A and Project B.

K. The Parties desire to further amend the Agreement to adjust the authority of the Contract Administrator to execute Work Authorizations and amendments thereto in an amount not to exceed Five Hundred Thousand Dollars (\$500,000) for each Work Authorization, to facilitate County's ability to authorize the performance of Optional Services in an efficient and timely manner.

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

1. The above recitals are true and correct and incorporated herein as if set forth in full hereunder.

2. All capitalized terms not expressly defined in this Fifth Amendment shall retain the meaning ascribed to such terms in the Agreement.

3. Unless otherwise stated, works and numbers in ~~struck through~~ type are deletions from existing text and words and numbers in underlined type (aside from previously included headings) are additions to existing text.

4. Section 6.4.1.1 of the Agreement is hereby amended as follows:

6.4.1.1 ~~Any~~ Work Authorizations that will cost County not more than Five Hundred Thousand Dollars (\$500,000.00) in the aggregate, including amendments to the Work Authorization, may be signed by Contract Administrator and Developer.

5. Except as set forth in this Fifth Amendment, all other terms, conditions, and covenants contained in the Agreement shall remain in full force and effect.

6. In the event of any conflict or ambiguity between this Fifth Amendment and the Agreement, the Parties agree that this Fifth Amendment shall control.

7. This Fifth Amendment may be executed in multiple originals, and may be executed in counterparts, whether signed physically or electronically, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Parties hereto have made and executed this Fifth Amendment to the Amended and Restated Agreement for Design Services: 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 _____, 2023, and MATHEWS HOLDINGS SOUTHWEST, INC., a Texas Corporation signing by and through its President or Vice President , duly authorized to execute the same.

COUNTY

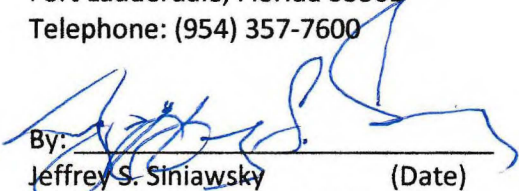
ATTEST:

BROWARD COUNTY, by and through
its Board of County Commissioners

By: _____
Broward County Administrator, as
ex officio Clerk of the Broward County
Board of County Commissioners

By: _____
Mayor
____ day of _____, 2023

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

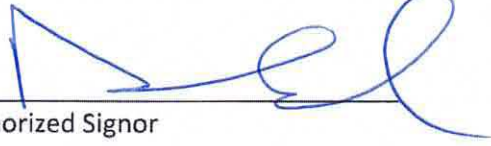
By:  11/29/2023
Jeffrey S. Siniawsky (Date)
Senior Assistant County Attorney

By:  11/29/2023
Michael J. Kerr (Date)
Deputy County Attorney

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COUNTY AND MATTHEWS HOLDINGS SOUTHWEST, INC. FOR DESIGN SERVICES FOR
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(RFP/RLI # N1337414R3)

DEVELOPER


MATTHEWS HOLDINGS SOUTHWEST, INC.

By: 
Authorized Signor

David Snell - Vice President
Print Name and Title

28th day of November, 2023

WITNESS/ATTEST:


Corporate Secretary or other witness