

ITEM #56

Exhibit 1 – Technical Services Agreement

ADDITIONAL MATERIAL

Regular Meeting

JANUARY 8, 2019

SUBMITTED AT THE REQUEST OF

COUNTY ADMINISTRATION



**TECHNICAL SERVICES AGREEMENT FOR DESIGN PHASE SERVICES BETWEEN
BROWARD COUNTY, MATTHEWS HOLDINGS SOUTHWEST, INC., AND OMNI HOTELS
MANAGEMENT CORPORATION**

This Agreement ("Agreement") is made and entered by and between 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 intends to have constructed a convention center hotel (the "Hotel").

B. On or about November 14, 2018, County and Developer entered into a Design Services Agreement ("DSA") for the development of the Hotel.

C. Developer has selected Balfour Beatty Construction LLC ("Design/Builder") for the design and construction of the Hotel.

D. Manager is knowledgeable about and experienced in the planning, designing, equipping, decorating, and furnishing of hotels and related facilities and amenities, and in advising third parties in connection with such activities.

E. While, this Agreement addresses only the design phase of services, County, Developer, and Manager will endeavor to negotiate and enter into (1) a subsequent amendment to this Agreement to provide for construction phase technical services, pre-opening and operations phases of the development and construction of the Hotel, and (2) an agreement between County and Manager for the management and operation of the Hotel by Manager, all of which are subject to separate approval by the Board.

F. The Hotel is intended to meet all standards and requirements established by the American Automobile Association "Four Diamond" first-class convention center hotel ("4 Diamond Standards").

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

ARTICLE 1. DEFINITIONS

1.1 **Board** means the Board of County Commissioners of Broward County, Florida, which is the governing body of the Broward County government created by the Broward County Charter.

1.2 **Brand** means the Omni hotel brand.

1.3 **Brand Standards** means those certain guidelines attached hereto as Exhibit D, which include and describe, among other things, certain of the criteria, standards, and requirements of Manager for the design, development, construction, furnishing, fixturing, equipping, and completion of the Hotel. Brand Standards shall meet, at a minimum, the Four Diamond Standards.

1.4 **Contract Administrator** means the individual designated by the County Administrator in writing. The Contract Administrator is the representative of County concerning the performance of this Agreement.

1.5 **Design Documents** means the plans, layouts, specifications, drawings and designs for the Hotel, including without limitation: development design drawings and specifications, interior drawings and specifications, FF&E drawings and specifications, and other design documents produced by Developer at phased intervals (which may include schematic design, design development and construction document phases) culminating in construction contract documents for the Hotel, together with any substantial changes or departures from same.

1.6 **Developer Services** means the work described in Exhibit A specifying obligations of Developer and such work described in Exhibit B, Developer Services.

1.7 **Effective Date** means the date of delivery of this Agreement to all other Parties following execution of this Agreement by the last Party to execute. **FF&E** means furnishings, fixtures, and equipment.

1.8 **Four Diamond Standards** means the standards established by the American Automobile Association which must be met by a place of lodging to achieve a Four Diamond rating.

1.9 **OS&E** means operating supplies and equipment.

1.10 **Purchasing Director** means County's Director of Purchasing.

1.11 **Reimbursable Expenses** means reasonable out-of-pocket expenses incurred by Manager directly in connection with the Services and pre-approved in writing by Contract Administrator. For reimbursement of any travel costs, travel-related expenses, or other direct non-salary expenses directly attributable to the Services permitted under this Agreement, Manager agrees to adhere to Section 112.061, Florida Statutes.

1.12 **Services** means the work described in Exhibit A, Scope of Services to be performed by Manager and by Developer.

1.13 **Subconsultant** means an entity or individual providing services to County through Manager for all or any portion of the work under this Agreement. The term "Subconsultant" shall include all subcontractors.

ARTICLE 2. EXHIBITS AND RECITALS

2.1 The following exhibits are attached hereto and incorporated into this Agreement:

Exhibit A **Scope of Services – Manager and Developer**

Exhibit B	Scope of Services – Developer Services
Exhibit C	Minimum Insurance Coverages
Exhibit D	Brand Standards

2.2 The Recitals to this Agreement are incorporated into and shall constitute a part of this Agreement.

ARTICLE 3. SCOPE OF SERVICES

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

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

3.3 This Agreement does not delineate every detail and minor work task required to be performed by Manager to complete the Services. During the course of the performance of the Services included in this Agreement, if Manager determines that work should be performed to complete the Services and, in Manager’s opinion, that work is outside the level of effort originally anticipated, whether or not the Scope of Services identifies the work items, Manager shall notify Contract Administrator in writing in a timely manner before proceeding with the work. If Manager proceeds with such work without notifying the Contract Administrator, the work shall be deemed to be within the original level of effort, whether or not specifically addressed in the Scope of Services. Notice to Contract Administrator does not constitute authorization or approval by County to Manager to perform the work. Performance of work by Manager outside the originally anticipated level of effort without prior written County approval shall be at no additional cost to County.

3.4 Exhibits A and B identify the Services to be provided by Manager and Developer relating to the design phases of the Hotel development and additional negotiations and agreements may be required for other, subsequent phases or additional services, including, without limitation, as described in Recital E. As between County and Manager, they may negotiate additional services, compensation, time of performance, and other related matters. Notwithstanding the foregoing and subject to the County’s obligations pursuant to Recital E, County shall have the right to terminate negotiations with Manager at any time at no cost to County and procure services from any other source. Nothing in this Agreement is intended to or shall in any way act to modify the separate services being provided by Developer to County under the DSA.

3.5 County and Developer shall assist Manager by placing at Manager’s disposal all information County and Developer have available pertinent to the Services. County shall arrange for access to, and make all provisions for, Manager to enter upon public and private property as required for Manager to perform its Services.

ARTICLE 4. TERM OF AGREEMENT, TIME FOR PERFORMANCE, DELAY

4.1 The term of this Agreement shall be for six hundred ten (610) calendar days after the Effective Date, unless terminated earlier pursuant to this Agreement (“Term”).

4.2 Manager and Developer shall each perform their respective Services within the time periods specified in Exhibit A. All time periods shall commence from the Effective Date.

ARTICLE 5. COMPENSATION AND METHOD OF PAYMENT

5.1 Amount and Method of Compensation. The amounts set forth in this Article 5 are the total compensation payable to Manager and constitute a limitation upon County’s obligation to compensate Manager for Services under this Agreement, but do not constitute a limitation of any sort upon Manager’s obligation to perform all Services required under this Agreement.

5.1.1 Developer will not receive any compensation for services or work rendered pursuant to this Agreement. Developer's full compensation is set forth in the DSA, and other agreements between Developer and County. Compensation to Manager for the performance of all Services is payable on a lump sum basis and shall not be more than Four Hundred Thousand Dollars (\$400,000.00) payable as set forth in Section 5.1.2.

5.1.2 The sum of One Hundred Thousand Dollars (\$100,000.00) shall be payable each calendar month during the first two months of the Term, and the sum of Twenty Thousand Dollars (\$20,000.00) shall be payable each calendar month for months five (5) through fourteen (14) of the Term. Manager shall not receive any compensation during months three (3) and four (4) of the Term. The One Hundred Thousand Dollars (\$100,000.00) each month for Services during months one (1) and two (2) of the Term is the total compensation due Manager for Services during the schematic design phase, while the remaining Two Hundred Thousand Dollars (\$200,000.00) is for all other design and related Services provided after the schematic design phase.

5.1.3 Reimbursable Expenses. County will reimburse authorized Reimbursable Expenses provided each are pre-approved in writing by the Contract Administrator. Reimbursable Subconsultant expenses must also comply with the requirements of this section.

5.2 Method of Payment.

5.2.1 Manager shall invoice County in writing on a monthly basis for the fees described in Section 5.1.1 above.

5.2.2 County shall pay Manager within thirty (30) days after receipt of Manager’s proper invoice, as defined by County’s Prompt Payment Ordinance, minus any deductions permitted by this Agreement.

5.2.3 Payment will be made to Manager at the address set forth in Section 12.10 of this Agreement.

5.3 Fiscal Year. The continuation of this Agreement beyond the end of any County fiscal year is subject to both the appropriation and the availability of funds in accordance with Chapter 129, Florida Statutes.

5.4 Subconsultants. Manager is solely responsible for payment to Subconsultants or subcontractors. County shall have no liability or responsibility for payment to any Subconsultant or subcontractor performing Services by, through, or under Manager.

**ARTICLE 6. ADDITIONAL SERVICES;
CHANGES IN SCOPE OF SERVICES OF MANAGER OR DEVELOPER**

6.1 County, Developer, or Manager may request changes that would increase, decrease, or otherwise modify the Services and/or Developer Services to be provided under this Agreement. Unless otherwise expressly permitted herein, such changes must be made in accordance with the provisions of the Broward County Procurement Code and must be contained in a written amendment, executed by the Parties hereto, with the same formality and of equal dignity herewith.

6.2 In the event a dispute between the Contract Administrator and Manager and/or Developer arises over whether any work requested by County is within the definition of Services, Contract Administrator, Developer, and Manager shall work in good faith to resolve the dispute in a timely manner.

ARTICLE 7. REPRESENTATIONS AND WARRANTIES

7.1 Representation of Authority. Manager represents and warrants that this Agreement constitutes the legal, valid, binding, and enforceable obligation of Manager, and that neither the execution nor performance of this Agreement constitutes a breach of any agreement that Manager has with any third party or violates any law, rule, regulation, or duty arising in law or equity applicable to Manager. Manager further represents and warrants that execution of this Agreement is within Manager's legal powers, and each individual executing this Agreement on behalf of Manager is duly authorized by all necessary and appropriate action to do so on behalf of Manager and does so with full legal authority. Developer represents and warrants that this Agreement constitutes the legal, valid, binding, and enforceable obligation of Developer, and that neither the execution nor performance of this Agreement constitutes a breach of any agreement that Manager has with any third party or violates any law, rule, regulation, or duty arising in law or equity applicable to Developer. Developer further represents and warrants that execution of this Agreement is within Developer's legal powers, and each individual executing this Agreement on behalf of Developer is duly authorized by all necessary and appropriate action to do so on behalf of Developer and does so with full legal authority.

7.2 Contingency Fee. Manager represents that it has not paid or agreed to pay any person or entity, other than a bona fide employee working solely for Manager, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

7.3 Truth-In-Negotiation Representation. Manager's compensation under this Agreement is based upon its representations to County, and Manager certifies that the wage rates, factual unit

costs, and other information supplied to substantiate Manager's compensation, including, without limitation, in the negotiation of this Agreement, are accurate, complete, and current as of the date Manager executes this Agreement.

7.4 Public Entity Crime Act. Manager represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that Act. Manager further represents that there has been no determination that it committed a "public entity crime" as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Manager has been placed on the convicted vendor list.

7.5 Discriminatory Vendor and Scrutinized Companies Lists. Manager represents that it has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes. Manager further represents that it is not ineligible to contract with County on any of the grounds stated in Section 287.135, Florida Statutes.

7.6 Warranty of Performance. Manager represents and warrants that it possesses the knowledge, skill, experience, and financial capability required to perform and provide all required and optional Services under this Agreement, and that each person and entity that will provide Services under this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and is sufficiently experienced and skilled in the area(s) for which such person or entity will render Services. Manager represents and warrants that the Services under this Agreement shall be performed in a skillful and respectful manner, and that the quality of all such services shall equal or exceed prevailing industry standards for the provision of such services.

7.7 Domestic Partnership Requirement. Unless this Agreement is exempt from the provisions of the Broward County Domestic Partnership Act, Section 16½-157, Broward County Code of Ordinances, Manager certifies and represents that it will comply with the provisions of Section 16½-157 for the duration of this Agreement, and the contract language referenced in Section 16½-157 is deemed incorporated in this Agreement as though fully set forth in this section.

7.8 Breach of Representations. In entering into this Agreement, Manager acknowledges that County is materially relying on the representations and warranties of Manager stated in this article. County shall be entitled to recover any damages it incurs to the extent any such representation or warranty is untrue. In addition, if any such representation or warranty is false, County shall have the right, at its sole discretion, to terminate this Agreement without any further liability to Manager, to deduct from the compensation due Manager under this Agreement the full amount of any value paid in violation of a representation or warranty, or to recover all sums paid to Manager under this Agreement. Furthermore, a false representation may result in debarment from County's competitive procurement activities.

ARTICLE 8. TERMINATION/DEFAULT

8.1 Termination. This Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within ten (10) days after receipt of written notice

from the aggrieved party identifying the breach. This Agreement may also be terminated for convenience by County. Termination for convenience by County shall be effective on the termination date stated in written notice provided by County, which termination date shall be not less than thirty (30) days after the date of such written notice. If this Agreement was entered into on behalf of County by someone other than the Board, termination by County may be by action of the County Administrator or County representative (including his or her successor) who entered in this Agreement on behalf of County. This Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances in the event the County Administrator determines that termination is necessary to protect the public health, safety, or welfare. If County erroneously, improperly, or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience and shall be effective thirty (30) days after such notice of termination for cause is provided.

8.2 Subject to the notice and cure provisions in Section 8.1 above, this Agreement may be terminated for cause by County for reasons including, but not limited to, any of the following:

8.2.1 Manager's or Developer's failure to suitably perform the work, failure to continuously perform the Services in a manner calculated to meet or accomplish the objectives in this Agreement, or repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices;

8.2.2 If Manager is a "scrutinized company" pursuant to Section 215.473, Florida Statutes, if Manager is placed on a "discriminatory vendor list" pursuant to Section 287.134, Florida Statutes, or if Manager provides a false certification submitted pursuant to Section 287.135, Florida Statutes; or,

8.2.3 For any fraud, misrepresentation, or material misstatement by Manager in the award or performance of this Agreement.

8.3 Any default or breach by Developer of its obligations in this Agreement, or any fraud, misrepresentation, or material misstatement by Developer shall also constitute a material breach of the DSA. County shall have the right to terminate this Agreement for cause arising from Developer's default, breach, fraud, misrepresentation, or material misstatement if the Developer has not corrected the breach within ten (10) days after receipt of written notice from the County identifying the breach. Additionally, County shall have the right to terminate the DSA for cause and shall also have all remedies at law or in equity.

8.4 Manager may terminate this Agreement without cause if County and Manager have not reached agreement on an operating and management contract for the Hotel by June 1, 2019. This date can be extended by mutual agreement of the Parties set forth in an amendment to this Agreement.

8.5 Notice of termination shall be provided in accordance with Section 12.10 of this Agreement except that notice of termination by the County Administrator to protect the public health, safety, or welfare may be oral notice that shall be promptly confirmed in writing.

8.6 In the event this Agreement is terminated pursuant to this Section 8, Manager shall be paid on a pro rata basis for the monthly period through the termination date specified in the written notice of termination, subject to any right of County to retain any sums otherwise due and payable. Manager acknowledges and agrees that it has received good, valuable, and sufficient consideration from County, the receipt and adequacy of which are acknowledged by Manager, for County's right to terminate this Agreement for convenience. In the event County terminates the Agreement prior to the end of the schematic design phase, Manager shall return any compensation paid to Manager in excess of Two Hundred Thousand Dollars (\$200,000.00) to County within five (5) business days after the date of termination specified in the written notice of termination.

ARTICLE 9. INSURANCE

9.1 For the duration of the Agreement, Manager shall, at its sole expense, maintain the minimum insurance coverages stated in Exhibit C in accordance with the terms and conditions of this article. Manager shall maintain insurance coverage against claims relating to any act or omission by Manager, its agents, representatives, employees, or Subconsultants in connection with this Agreement. County reserves the right at any time to review and adjust the limits and types of coverage required under this article.

9.2 Manager shall ensure that "Broward County" is listed and endorsed as an additional insured as stated in Exhibit C on all policies required under this article.

9.3 On or before the date this Agreement is fully executed or at least fifteen (15) days prior to commencement of Services, Manager shall provide County with a copy of all Certificates of Insurance or other documentation sufficient to demonstrate the insurance coverage required in this article. If and to the extent requested by County, Manager shall provide complete, certified copies of all required insurance policies and all required endorsements within thirty (30) days after County's request.

9.4 Manager shall ensure that all insurance coverages required by this article shall remain in full force and effect for the duration of this Agreement and until all performance required by Manager has been completed, as determined by Contract Administrator. Manager or its insurer shall provide notice to County of any cancellation or modification of any required policy at least thirty (30) days prior to the effective date of cancellation or modification, and at least ten (10) days prior to the effective date of any cancellation due to nonpayment, and shall concurrently provide County with a copy of its updated Certificates of Insurance evidencing continuation of the required coverage(s). Manager shall ensure that there is no lapse of coverage at any time during the time period for which coverage is required by this article.

9.5 Manager shall ensure that all required insurance policies are issued by insurers: (1) assigned an A. M. Best rating of at least "A-" with a Financial Size Category of at least Class VII; (2) authorized to transact insurance in the State of Florida; or (3) a qualified eligible surplus lines insurer pursuant to Section 626.917 or 626.918, Florida Statutes, with approval by County's Risk Management Division.

9.6 If Manager maintains broader coverage or higher limits than the minimum insurance requirements stated in Exhibit C, County shall be entitled to any such broader coverage and

higher limits maintained by Manager. All required insurance coverages under this article shall provide primary coverage and shall not require contribution from any County insurance, self-insurance or otherwise, which shall be in excess of and shall not contribute to the insurance required and provided by Manager.

9.7 Manager shall declare in writing any self-insured retentions or deductibles over the limit(s) prescribed in Exhibit C and submit to County for approval at least fifteen (15) days prior to the date this Agreement is fully executed or commencement of Services. Manager shall be solely responsible for and shall pay any deductible or self-insured retention applicable to any claim against County. County may, at any time, require Manager to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. Manager agrees that any deductible or self-insured retention may be satisfied by either the named insured or County, if so elected by County, and Manager agrees to obtain same in endorsements to the required policies.

9.8 Unless prohibited by the applicable policy, Manager waives any right to subrogation that any of Manager's insurer may acquire against County, and agrees to obtain same in an endorsement of Manager's insurance policies.

9.9 Manager shall require that each Subconsultant maintains insurance coverage that adequately covers the Services provided by that Subconsultant on substantially the same insurance terms and conditions required of Manager under this article. Manager shall ensure that all such Subconsultants comply with these requirements and that "Broward County" is named as an additional insured under the Subconsultants' applicable insurance policies.

9.10 In the event Manager or any Subconsultant fails to maintain the insurance required by this Agreement, County may pay any costs of premiums necessary to maintain the required coverage and deduct such costs from any payment otherwise due to Manager. Manager shall not permit any Subconsultant to provide Services under this Agreement unless and until the requirements of this article are satisfied. If requested by County, Manager shall provide, within one (1) business day, evidence of each Subconsultant's compliance with this section

9.11 If any of the policies required under this article provide claims-made coverage: (1) any retroactive date must be prior to the date this Agreement is fully executed; (2) the required coverage must be maintained after termination or expiration of the Agreement for at least the duration stated in Exhibit C, and (3) if coverage is canceled or nonrenewed and is not replaced with another claims-made policy form with a retroactive date prior to the date this Agreement is fully executed, Manager must obtain and maintain "extended reporting" coverage that applies after termination or expiration of the Agreement for at least the duration stated in Exhibit C.

ARTICLE 10. EQUAL EMPLOYMENT OPPORTUNITY

No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. Manager shall include the foregoing or similar language in its contracts with any Subconsultants, except that any project assisted by the U.S. Department of Transportation funds shall comply with the nondiscrimination requirements in 49 C.F.R. Parts 23 and 26.

ARTICLE 11. LIMITATION OF MANAGER LIABILITY

11.1 Manager is responsible only for the duties that it has specifically undertaken in this Agreement, and no additional duties or responsibilities may be implied on the part of the Manager. Manager does not (i) provide any engineering or construction services or any other services that may require a professional license or registration; (ii) review or comment on any designs, plans, or specifications for technical accuracy, completeness, integrity, structural soundness, or other design or engineering requirements, (iii) determine compliance of the Hotel with laws and regulations or fire and life safety requirements; (iv) inspect the Hotel to discover any defects, or (v) engage any person to do any of the foregoing. Neither County, its affiliates nor outside consultants may rely on any Manager advice or approval as confirmation that (1) there are no errors in the plans and specifications for the Hotel, (2) there are no defects in the design or construction of the Hotel or installation of any building systems or FF&E (as defined in Exhibit A) therein, or (3) the plans, specifications, construction and installation work will comply with all legal requirements, including legal requirements regarding for individuals with disabilities.

11.2 Manager shall not be held responsible for the errors and obligations of any third parties in the construction works, and it is Developer's responsibility to ensure that the construction and use of the Hotel conform to all applicable laws and regulations. Any approvals and comments given by Manager shall address only the operational effectiveness and functions of the Hotel to be built or its aesthetic aspects. Manager shall not be liable to County or any third party regarding any defects in the construction or design or fit out of the Hotel and any non-compliance with legal and/or safety regulations or any defects in the drawings and works of other consultants and third parties.

11.3 Manager will not be responsible for errors in design of the project or for construction defects. In no event shall manager or any of its representatives be liable under this Agreement to County or any third party for consequential, indirect, incidental, special, exemplary, punitive or enhanced damages, lost profits or revenues or diminution in value, arising out of, or relating to, and/or in connection with any breach of this Agreement, regardless of (a) whether such damages were foreseeable, (b) whether or not County was advised of the possibility of such damages and (c) the legal or equitable theory (contract, tort or otherwise) upon which the claim is based. Further, in no event shall Manager's aggregate liability arising out of or related to this Agreement, whether arising out of or related to breach of contract, tort (including negligence) or otherwise, exceed the total of the amounts paid to Manager pursuant to this Agreement.

ARTICLE 12. MISCELLANEOUS

12.1 Contract Administrator Authority. Unless expressly stated otherwise in this Agreement or otherwise set forth in an applicable provision of the Broward County Procurement Code, Broward County Code of Ordinances, or Broward County Administrative Code, the Contract Administrator may act on behalf of County under this Agreement, and all Parties may rely upon instructions or determinations made by the Contract Administrator provided that such instructions and determinations do not change the Scope of Services or Developer Services. The Contract Administrator may designate one or more County employees with authority pertaining to day-

to-day management of the Services and Developer Services. Manager shall notify Contract Administrator in writing of Manager's representative(s) to whom matters involving the Services shall be addressed.

12.2 Rights in Documents and Work. Any and all reports, photographs, surveys, and documents created by Manager exclusively in connection with performing Services under this Agreement shall be owned by County and shall be deemed works for hire by Manager and its agents; in the event the Services are determined not to be a work for hire, Manager hereby assigns all right, title, and interest, including any copyright or other intellectual property rights in or to the work, to County, but excluding Manager's names, logos, trademarks, service marks, and symbols (collectively, "Manager's Marks"). In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents created by Manager, whether finished or unfinished, shall become the property of County and shall be delivered by Manager to the Contract Administrator within seven (7) days after termination of this Agreement. Any compensation due to Manager may be withheld until all documents are received as provided in this Agreement. Manager shall ensure that the requirements of this section are included in all agreements with its Subconsultant(s).

12.3 Ownership of Documents. All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, specifications and reports prepared or provided by Manager exclusively in connection with this Agreement, excluding Manager's Marks, shall become the property of County, whether the Services for which they were made is completed or not, and shall be delivered by Manager to Contract Administrator within fifteen (15) days of the receipt of the written notice of termination. If applicable, County may withhold any payments then due to Manager until Manager complies with the provisions of this section.

12.4 Public Records. To the extent Manager is acting on behalf of County as stated in Section 119.0701, Florida Statutes, Manager shall:

12.4.1 Keep and maintain public records required by County to perform the services under this Agreement;

12.4.2 Upon request from County, provide County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

12.4.3 Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion or termination of this Agreement if the records are not transferred to County; and

12.4.4 Upon completion or termination of this Agreement, transfer to County, at no cost, all public records in possession of Manager or keep and maintain public records required by County to perform the services. If Manager transfers the records to County, Manager shall destroy any duplicate public records that are exempt or confidential and exempt. If Manager keeps and maintains the public records, Manager shall meet all applicable requirements for retaining public records. All records stored electronically must be

provided to County upon request in a format that is compatible with the information technology systems of County.

A request for public records regarding this Agreement must be made directly to County, who will be responsible for responding to any such public records requests. Manager will provide any requested records to County to enable County to respond to the public records request.

Any material submitted to County that Manager contends constitutes or contains trade secrets or is otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) ("Trade Secret Materials") must be separately submitted and conspicuously labeled "EXEMPT FROM PUBLIC RECORD PRODUCT – TRADE SECRET." In addition, Manager must, simultaneous with the submission of any Trade Secret Materials, provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under Section 812.081, Florida Statutes, and stating the factual basis for same. In the event that a third party submits a request to County for records designated by Manager as Trade Secret Materials, County shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by Manager. Manager shall indemnify and defend County and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments, and liabilities of any kind, including attorneys' fees, litigation expenses, and court costs, relating to the nondisclosure of any Trade Secret Materials in response to a records request by a third party.

IF MANAGER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO MANAGER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954) _____, ____@BROWARD.ORG, 115 S. ANDREWS AVE., SUITE ____, FORT LAUDERDALE, FLORIDA 33301.

12.5 Audit Rights and Retention of Records. Manager shall preserve all Contract Records (as defined below) for a minimum period of three (3) years after expiration or termination of this Agreement or until resolution of any audit findings, whichever is longer. Contract Records shall, upon reasonable notice, be open to County inspection and subject to audit and reproduction during normal business hours. County audits and inspections pursuant to this section may be performed by any County representative (including any outside representative engaged by County). County may conduct audits or inspections at any time during the term of this Agreement and for a period of three (3) years after the expiration or termination of this Agreement (or longer if required by law). County may, without limitation, verify information, payroll distribution, and amounts through interviews, written affirmations, and on-site inspection with Manager's employees, Subconsultants, vendors, or other labor.

Contract Records include any and all information, materials and data of every kind and character, including, without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, drawings, receipts, vouchers, memoranda, and any and all other documents that pertain to rights, duties, obligations, or performance under this Agreement. Contract Records include hard copy and electronic records, written policies and procedures, time sheets, payroll records

and registers, cancelled payroll checks, estimating work sheets, correspondence, invoices and related payment documentation, general ledgers, insurance rebates, and dividends, and any other records pertaining to rights, duties, obligations, or performance under this Agreement, whether by Manager or Subconsultants.

County shall have the right to audit, review, examine, inspect, analyze, and make copies of all Contract Records at a location within Broward County. Manager hereby grants County the right to conduct such audit or review at Manager's place of business, if deemed appropriate by County, with seventy-two (72) hours' advance notice. Manager agrees to provide adequate and appropriate work space. Manager shall provide County with reasonable access to Manager's facilities, and County shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Agreement.

Manager shall, by written contract, require its Subconsultants to agree to the requirements and obligations of this section.

Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County's disallowance and recovery of any payment upon such entry. If an audit or inspection in accordance with this section discloses overpricing or overcharges to County of any nature by Manager or its Subconsultants in excess of five percent (5%) of the total contract billings reviewed by County, the reasonable actual cost of County's audit shall be reimbursed to County by Manager in addition to making adjustments for the overcharges. Any adjustments or payments due as a result of such audit or inspection shall be made within thirty (30) days after presentation of County's findings to Manager.

12.6 Assignment. Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by Manager or Developer without the written consent of County. Any assignment, transfer, or encumbrance in violation of this section will be null and ineffective. If Manager or Developer violate this provision, County shall have the right, in addition to any other remedies set forth in this Agreement, at law, or in equity, to immediately terminate this Agreement.

12.7 Indemnification of County. Manager and Developer, individually and jointly/collectively, shall indemnify and hold harmless County, its officers and employees from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the gross negligence, recklessness, or intentionally wrongful conduct of Manager or other persons employed or utilized by Manager in the performance of this Agreement. The provisions of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by Contract Administrator and County Attorney, any sums due Manager under this Agreement may be retained by County until all of County's claims subject to this indemnification obligation have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by County.

12.8 Prior Agreements Superseded. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein; and the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this

document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written. **NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS AGREEMENT SHALL IN ANY WAY ACT TO MODIFY THE DSA BETWEEN COUNTY AND DEVELOPER.**

12.9 Amendments. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

12.10 Notices. In order for a notice to a party to be effective under this Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via e-mail, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). The addresses for notice shall remain as set forth in this section unless and until changed by providing notice of such change in accordance with the provisions of this section.

FOR COUNTY:

Broward County _____
Attn: _____
Governmental Center, Room _____
115 South Andrews Avenue _____
Fort Lauderdale, Florida 33301 _____
E-mail address: _____

FOR MANAGER:

Omni Hotels Management Corporation
4001 Maple Avenue, Suite 600
Dallas, Texas 75219
Attention: General Counsel
E-mail address: pjorge@trtholdings.com

FOR DEVELOPER:

Matthews Holdings Southwest, Inc.
320 W Main Street
Lewisville, Texas 75057
Attention: David Snell
E-mail address: dsnell@matthewssouthwest.com

12.11 Interpretation. The titles and headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article as a whole, including all of the subsections of such section,

unless the reference is made to a particular subsection or subparagraph of such section or article. Any reference to "days" means calendar days, unless otherwise expressly stated.

12.12 Drug-Free Workplace. To the extent required under Section 21.31(a)(2), Broward County Administrative Code, or Section 287.087, Florida Statutes, Manager certifies that it has a drug-free workplace program and that it will maintain such drug-free workplace program for the duration of this Agreement.

12.13 Independent Contractor. Manager is an independent contractor under this Agreement, and nothing in this Agreement shall constitute or create a partnership, joint venture, or any other relationship between the Parties. In providing Services under this Agreement, neither Manager nor its agents shall act as officers, employees, or agents of County, except as authorized by the Contract Administrator for permitting, licensing, or other regulatory requirements. Manager shall not have the right to bind County to any obligation not expressly undertaken by County under this Agreement.

12.14 Regulatory Capacity. Notwithstanding the fact that County is a political subdivision with certain regulatory authority, County's performance under this Agreement is as a party to this Agreement and in the capacity as owner of the Property and Hotel. In the event County exercises its regulatory authority, the exercise of such authority and the enforcement of any rules, regulation, laws, and ordinances shall have occurred pursuant to County's regulatory authority as a governmental body separate and apart from this Agreement, and shall not be attributable in any manner to County as a party to this Agreement.

12.15 Sovereign Immunity. Except to the extent sovereign immunity may be deemed to be waived by entering into this Agreement, nothing herein is intended to serve as a waiver of sovereign immunity by County nor shall anything included herein be construed as consent by County to be sued by third parties in any matter arising out of this Agreement. County is a political subdivision as defined in Section 768.28, Florida Statutes, and shall be responsible for the negligent or wrongful acts or omissions of its employees pursuant to Section 768.28, Florida Statutes.

12.16 Third-Party Beneficiaries. Manager, Developer, and County each do not intend to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

12.17 Conflicts. Neither Manager, Developer, nor any of their respective employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Manager's loyal and conscientious exercise of judgment and care related to its performance under this Agreement. During the term of this Agreement, none of Manager's officers or employees shall serve as an expert witness against County in any legal or administrative proceeding in which he, she, or Manager is not a party, unless compelled by court process. Further, such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion that is adverse or prejudicial to the interests of County in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Manager or any persons in any way from representing themselves, including giving expert

testimony in support of such representation, in any action or in any administrative or legal proceeding. In the event Manager is permitted pursuant to this Agreement to utilize Subconsultants to perform any Services required by this Agreement, Manager shall require such Subconsultants, by written contract, to comply with the provisions of this section to the same extent as Manager.

12.18 Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth in this Agreement was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement, and each is, therefore, a material term of this Agreement. County's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement. To be effective, any waiver must be in writing signed by an authorized signatory of the waiving Party.

12.19 Compliance with Laws. Manager and the Services must comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations including, without limitation, American with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and any related federal, state, or local laws, rules, and regulations.

12.20 Severability. In the event any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

12.21 Joint Preparation. This Agreement has been jointly prepared by the Parties, and shall not be construed more strictly against either Party.

12.22 Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached to, referenced by, or incorporated in this Agreement and any provision of Articles 1 through 12 of this Agreement, the provisions contained in Articles 1 through 12 shall prevail and be given effect.

12.23 Law, Jurisdiction, Venue, Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. Each Party hereby waives any claim or defense that venue in Broward County is an inconvenient forum. **BY ENTERING INTO THIS AGREEMENT, MANAGER, DEVELOPER, AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN**

CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.

12.24 Reuse. County may, at its option, reuse (in whole or in part) the resulting end-product or deliverables resulting from the Services (including, but not limited to, drawings, specifications, other documents, and services as described herein and in Exhibit A); and Manager agrees to such reuse without any additional compensation or payment from County.

12.25 Payable Interest.

12.25.1 Payment of Interest. County shall not be liable to pay any interest to Manager for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Manager waives, rejects, disclaims, and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim arising from, related to, or in connection with this Agreement. This subsection shall not apply to any claim for interest, including for post-judgment interest, if such application would be contrary to applicable law.

12.25.2 Rate of Interest. If the preceding subsection is inapplicable or is determined to be invalid or unenforceable by a court of competent jurisdiction, the annual rate of interest payable by County under this Agreement, whether as prejudgment interest or for any other purpose, shall be, to the full extent permissible under applicable law, one quarter of one percent (0.25%) simple interest (uncompounded).

12.26 Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated in this Agreement by reference. The attached Exhibits are incorporated into and made a part of this Agreement.

12.27 Counterparts and Multiple Originals. This Agreement 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 agreement.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: BROWARD COUNTY, signing by and through its County Administrator, authorized to execute same by Board action on the _____ day of _____, 20____, **MANAGER**, signing by and through its _____, duly authorized to execute same, and DEVELOPER, signing by and through its _____, duly authorized to execute same.

COUNTY

WITNESS:

(Signature)

(Print Name of Witness)

(Signature)

(Print Name of Witness)

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
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

Insurance requirements approved by Broward
County Risk Management Division:

By: _____

Name: _____

Title: _____

By: _____ (Date)
Assistant County Attorney

By: _____ (Date)
Deputy County Attorney

ABC/wp
BCF 202
06/01/2018
#_____

**TECHNICAL SERVICES AGREEMENT FOR DESIGN PHASE SERVICES BETWEEN
BROWARD COUNTY, MATTHEWS HOLDINGS SOUTHWEST, INC., AND OMNI HOTELS
MANAGEMENT CORPORATION**

Manager

OMNI HOTELS MANAGEMENT
CORPORATION

ATTEST:

Secretary

By _____
President/Vice President

(Typed Name of Secretary)

(Typed Name and Title)

CORPORATE SEAL

___ day of _____, 20__.

Developer

MATTHEWS HOLDINGS SOUTHWEST, INC.

ATTEST:

Secretary

By _____
President/Vice President

(Typed Name of Secretary)

(Typed Name and Title)

CORPORATE SEAL

___ day of _____, 20__.

EXHIBIT A
SCOPE OF SERVICES – MANAGER AND DEVELOPER

1. General Scope of Manager's Design Phase Services. 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 services, Manager shall:

- a. Provide input to assist Contract Administrator and Developer in the creation of the Design Documents and shall make recommendations for improvement.
- b. Review construction cost estimates and provide guidance where cost estimates exceed the proposed budgets.
- c. Provide technical assistance and advice on interior design and decoration; kitchen, bar, laundry and valet equipment; management information systems; back of house equipment and operating supplies.

2. Site Visitations and Technical Services Meetings. It is anticipated that the bulk of the Services will be performed at Manager's or Developer's headquarters in Dallas, Texas. However, at appropriate stages in design and 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.

3. Initial Technical Services Conference.

a. As soon as reasonably possible following execution of this Agreement, but in no event later than thirty (30) calendar days after the Effective Date, Contract Administrator shall arrange with Manager and Developer a meeting of key personnel involved with the Hotel at Contract Administrator's offices in Fort Lauderdale, Florida. The key personnel shall include, but will not be limited to: Contract Administrator and its designated project manager, staff and external consultants for the Hotel, Developer's Vice President of Construction & Design, and Manager's Vice President of Development. The purpose of this conference shall be to review the status of the Hotel design process, establish design phase submittal schedules, review established and forecasted budgets and schedules for the Hotel, review the Brand Standards, and for Manager to provide preliminary guidance as to the application of the Brand Standards to the Hotel site in a general sense.

b. Not later than 5 business days prior to the conference:

i. Contract Administrator, Manager and Developer shall prepare and exchange organization and communication charts as applicable to the Hotel and Services; and

ii. Developer shall submit to Manager and Contract Administrator Developer's most current modified/updated conceptual design documents which shall consist of at least a site plan and floors plans of all typical and non-typical floors illustrating development of design based on the Brand Standards and Four Diamond Standards. Developer shall also submit its most current preliminary

Hotel development and construction budget and project schedule for design and construction activities related to the Hotel.

4. Preliminary Information Phase. Manager shall provide to Contract Administrator and Developer:

a. The Brand Standards and other materials and information that will give detailed guidance on area tabulations for all square footage of all types and numbers of hotel rooms, room bay size, circulation, restaurants, bars, kitchens, ballrooms, meeting rooms, pre-function space, public spaces, recreational spaces, electrical, mechanical and technology rooms, spaces and shafts, back-of-the-house spaces, laundry, office spaces and any other space that will be required to construct and operate the Hotel in accordance with the Brand Standards and Four Diamond Standards.

b. Examples of Manager's forms and documents used in connection with the design and construction of hotels similar to the Hotel managed or operated by Manager or its affiliates.

c. Manager's personnel staffing guide for use by Contract Administrator and Developer's architects and consultants in development of space utilization at the Hotel.

5. Design Guidance.

a. Initial Design Guidance. Manager shall (a) provide assistance to Contract Administrator in preparing a list of the facilities to be included in the Hotel, which list shall include a specification of (i) the number of each type of hotel guest room, (ii) the number and type of food and beverage facilities and banquet and meeting facilities, indicating the seating capacity of each, and (iii) the number and type of recreation areas, back of house areas, administrative areas and retail areas and certain other facilities and amenities, including common areas, shared facilities, signs, landscaping, parking areas and entry and exit to the premises and other improvements on the real property on which the Hotel is located (the "Hotel Facilities List"); (b) based on the Hotel Facilities List, prepare and submit to Contract Administrator a program specifying the recommended size of all Hotel facilities in square feet or square meters (the "Hotel Space Allocation"); and (c) provide to Contract Administrator the Design Guide for use in conceptual plan development.

b. Design Process Assistance. Manager, upon request of Contract Administrator, shall provide information, advice and guidance to Contract Administrator and Developer concerning critical in-process design issues and questions as may occasionally arise between submittals of the Design Documents; said issues being vital to the accurate and timely completion of a Design Document submittal by Developer. While it is the Contract Administrator and Developer's intent to conduct these informational transactions via e-mail and other electronic platforms, Manager may be asked to attend, via phone or video conference, periodic design progress meetings with Contract Administrator and Developer for the purposes of receiving and providing feedback on such design issues.

c. Manager Review and Approval of Design Documents

i. Submission of Design Documents. Developer shall concurrently submit to Manager and Contract Administrator schematic design, design development and construction documents phase Design Documents at intervals established at the Initial Technical Services Conference or in incremental phases as may otherwise be developed and agreed to by Contract Administrator and Developer in the interest of accelerating the design and construction process.

ii. Review and Approval of Design Documents. Subject to the limitations set forth in Section 11 of the Agreement, Manager shall (a) review the Design Documents to determine whether they conform to the requirements of the Brand Standards and Four Diamond Standards and to assess the appropriateness and acceptability to Manager of any deviations therefrom; (b) advise Contract Administrator and Developer in writing of the acceptability to Manager of the submitted Design Documents and make recommendations for improvement to the extent Manager deems appropriate; and (c) provide Contract Administrator and Developer with written approval the Design Documents, when acceptable, as to whether they conform with the Brand Standards and Four Diamond Standards.

1. Schematic Design: Developer shall submit to Manager and County the Schematic Design Documents which shall consist of at least the following: (a) site plan; and (b) floors plans of all typical and non-typical floors illustrating development of design based on the Brand Standards and AAA 4-Diamond Standards
2. Design Development/Final Design Documents: Developer shall submit to Manager and County the Design Development and Final Design Documents which shall consist of at least the following: (a) a final set of architectural plans and specifications for the Hotel, site and all related facilities and services, including, but not limited to, architectural, interior design, exterior environment and recreations; (b) interior designer's plans, furniture layouts, reflected ceiling plans, interior elevations, wall sections, materials, lighting and color schemes; (c) interior designer's and mechanical engineer's design of HVAC distribution; (d) interior designer's and electrical engineer's coordination of lighting and emergency lighting and alarm systems; (e) review of lighting layouts for such areas including specific fixture selection in catalog reference or design form, and recommendations on and specifications of dimmer equipment; (f) engineering drawings indicating locations and sizes of necessary mechanical connections for kitchen, bar and laundry equipment; (g) interior designer's working drawings for all interiors; (h) final lighting layouts for guest rooms, restaurants, bars, ballrooms, private dining rooms, lobbies, façade and outdoor landscaped areas, including fixture selection in catalog reference or design form and specifications for dimmer equipment, (i) final plans and specifications for all Mechanical, Plumbing and Electrical Installations as prepared by mechanical consultants; (j)

specifications for all items of furniture, fixtures, equipment, systems and supplies; (k) interior and graphic design regarding design work and art work for interior and exterior signage (including the crest/logo/mark/symbol for the Hotel), flatware, china, crystal, linens, and uniforms; (l) layouts for kitchen, bar and laundry equipment with specifications thereon (said layouts to be in a form suitable for Developer to receive bids); and (m) purchasing specifications for office equipment, material handling equipment, cleaning equipment, engineering equipment, shelving and lockers, dining room wagons, vehicles, engineering tools, kitchen utensils, dining room utensils, uniforms, housekeeping tools, china, silver, glass, linen and glassware, including specifications or catalog data and proposed quantities.

3. Construction Documents: Developer shall submit to Manager and County a final and full set of Construction Documents for final approval of design intent.

iii. Manager Notice of Approval or Disapproval. After being provided Design Documents (or any proposed revisions to Design Documents already approved by Manager), Manager shall provide notice to Contract Administrator and Developer as to Manager's written approval or disapproval thereof within fifteen (15) business days after Manager's receipt. To the extent that Manager has comments, recommendations, or proposed changes of the submitted Design Documents, Manager shall clearly delineate whether such items are optional, because they are not required to meet the Brand Standards or Four Diamond Standards, and those that are mandatory, because they are required to meet those criteria. The initial approval of Design Documents shall be deemed to have been obtained if Manager does not provide Contract Administrator and Developer with written objections or disapproval (which objections or disapproval shall set forth the reasons with specificity) within such fifteen (15) business day period, provided that the Contract Administrator has notified Manager in writing of the expired approval or disapproval period and Manager fails to provide written approval or disapproval within five (5) business days from receipt of notice from the Contract Administrator. Once approved, Manager may not, for any reason whatsoever, require changes to the Design Documents that are inconsistent with those elements of the Design Documents previously approved by Manager (unless change orders subsequently made by Design/Builder and approved by Developer and Contract Administrator necessitate a change in the approvals previously given or treated as given by Manager) unless Manager accepts sole financial responsibility for the changes to the Design Documents and with Contract Administrator's prior written approval to the changes.

iv. Manager Approval Standard. Manager acknowledges and agrees that notwithstanding anything in this Agreement to the contrary, Manager's approval rights regarding Design Documents shall be exercised in Manager's reasonable opinion based solely on whether the Design Documents and the Hotel to be

constructed in accordance with the Design Documents meet the Brand Standards and Four Diamond Standards.

6. Budgets.

a. Manager will prepare and provide to Contract Administrator and Developer a preliminary FF&E and OS&E budgets for the Hotel. Manager shall review and update those FF&E and OS&E budgets and shall submit same to Contract Administrator with Manager's review comments for each design phase (Schematic Design, Design Development, and Construction documents or other alternative phasing as may be established for the Hotel project). FF&E is defined as furniture, fixtures, equipment used in the operation of the Hotel, including, without limitation, interior and exterior signs, furniture and furnishings, including computer systems, telephone systems, televisions, public address and audio-visual systems, office equipment and property management equipment as reasonably necessary. OS&E is defined as operating supplies and equipment needed for the operation of the Hotel, including, without limitation: employee uniforms, tools, cooking implements, mattresses, bathroom and closet amenities, utensils, china, glassware, linens, small hotel room appliances such as hairdryers and irons, hangers, towels and the like.

b. Manager shall, upon the request of Contract Administrator, review and provide comments on any preliminary budgets prepared for the development, construction or operation of the Hotel in connection with the development and construction of the Hotel. To the extent that such budgets are not adequately itemized, Manager shall assist Contract Administrator and Developer in further itemization and provide advice regarding the adequacy of selected portions of the Budget as are within Manager's knowledge and experience.

7. Interior Design and Decoration.

a. Manager will provide to Contract Administrator and Developer:

i. Advice and assistance in selecting an interior designer and in defining the content and manner or presentation of the interior design submittals to be prepared by the interior designer; and

ii. Advice and technical recommendation to the interior designer on functional layout of guest rooms, corridors, all public areas, food and beverage facilities, ballroom and function spaces.

iii. Advice and technical recommendation to the interior designer on specifications for carpet, furniture, draperies and wall coverings, assist interior designers in the review of purchase specifications for furniture and other furnishings, and provide interior designers with all available interior finish guidelines (e.g. millwork) and other applied finishes during the Design Development/ Final Design Documents phase.

b. Developer shall submit to Manager and Contract Administrator a preliminary interior design and decoration presentation consisting of at least the room layouts with indication of their type and location. Manager will review the preliminary interior design and decoration presentation and make recommendations for improvement to the extent Manager deems appropriate.

c. Developer shall submit to Manager and Contract Administrator a final interior design and decoration presentation consisting of at least the following:

- i. Room layouts including furniture;
- ii. Elevations and reflected ceiling plans;
- iii. Lighting plans;
- iv. Samples, specifications of all floor, wall and ceiling treatment of all furniture and furnishing materials to be used;
- v. Detail drawings of specially designed furniture, lighting fixtures and Accessories;
- vi. Photographs of furnishing prototypes;
- vii. Drawing and specifications of guest room mock-ups; and,
- viii. Graphics and artwork.

d. Manager will review the final interior design and decoration presentation and make recommendation for improvement to the extent Manager deems appropriate.

8. Kitchen, Bar, Laundry, Spa, Fitness and Valet Design Guidance. Manager will provide the kitchen, bar, laundry and valet consultant retained by Developer or Contract Administrator, if applicable:

- a. A copy of Manager's technical requirements related to kitchen, bar, laundry and valet equipment.
- b. Comments on layouts and detailed design of kitchen, bar, laundries and valet facilities.
- c. Recommendations for food and beverage operating concepts within the Hotel.
- d. Recommendations for spa and fitness operating concepts within the Hotel.

9. Management Information System. Manager will assist in determining the extent to which automation should be used in the Hotel, based on operational considerations, specifically with respect to the implementation of the following systems:

- a. Reservation Systems;
- b. Property Management Systems (PMS);
- c. Point of Sale Systems (POS);
- d. Inventory Control Systems;

- e. Engineering Management Systems;
- f. Energy Management Systems;
- g. Guest Information Systems;
- h. Parking Management Systems;
- i. Telecommunications; and,
- j. Electronic Locking and Security Systems.

10. Assistance Relating to Back of the House Equipment and Operating Supplies.

a. Manager will provide Contract Administrator and Developer a list of all required back of the house equipment and operating supplies prior to preparation of the initial budgets for the operations of the Hotel. The list will be based on final plans and specifications for the Hotel as approved by Manager, the current list of facilities to be included in the Hotel, including a specification of the number of each type of guest room, the number and type of food and beverage facilities and banquet and meeting facilities, indicating the seating capacity of each of the number and type of facilities, back of the house areas, and retail areas, and the estimated operational requirements of the Hotel for such items and will be revised at such times as Manager will consider appropriate to reflect changes in the said estimated requirements.

b. Manager will provide advice and assistance to the purchasing agent selected by Developer with respect to material specification, quality, quantity and potential sources for back of the house equipment and operating supplies.

EXHIBIT B
Developer Services

The purpose of this Exhibit is to describe Developer's specific duties to work with Manager in connection with Manager's technical services during each of the design phases of the development of the Hotel. This Exhibit does not in any way limit or expand Developer's duties or obligations to County under the DSA, 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. In addition to the Developer obligations set forth in Exhibit A, County and Developer agree, for the benefit of County and Manager, that:

1. Developer shall work 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 design phase of the Hotel, Developer shall concurrently submit to Contract Administrator and Manager the Design Documents developed for each respective design phase of the Hotel (and any proposed revisions thereto) and, in consultation with and approval of Contract Administrator, make revisions to same based on comments and recommendations from Manager.
3. Developer shall designate to Manager and Contract Administrator a representative authorized to act on Developer's behalf, with respect to the Hotel. Developer, or such authorized representative, shall review all comments and responses submitted by Manager and shall take all necessary actions required of Developer to respond to Manager promptly 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 Design Documents and work in concert with Manager as necessary for the orderly progress of the Services. Developer shall provide Manager with access to on-line 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 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 so that Manager may perform the Services.
6. If at any time during the Term, Developer has actual knowledge that the proposed design of the Hotel does not conform with Brand Standards or Four Diamond Standards, then Developer shall inform Contract Administrator and Manager of the same in writing within five (5) days after Developer acquires such knowledge.
7. Developer shall use its best efforts to furnish (either directly or through Design/Builder) all necessary design and pre-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 record, track and respond to Manager's review comments and responses concerning respective submittals of the Design Documents and to requests for information as may be submitted by the respective parties. 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.

EXHIBIT C
Minimum Insurance Requirements
[Use form provided by Risk, not Consultant.]

EXHIBIT D
Brand Standards