

1. Matthews Holdings Southwest, Inc., a Texas corporation (MSW), shall enter into a Development Agreement for development, permitting, design, construction, equipping, and furnishing of the Hotel and Convention Center Expansion with County. MSW may assign the Development Agreement to its affiliate, Matthews Southwest Hospitality, LLC, subject to execution by MSW of a parental guaranty of such affiliate's full performance.
2. Primary Design and Construction Agreements (contemplated to be Design/Build Agreements with Balfour Beatty Construction, LLC (the "DB Agreements")) shall be entered into between MSW and the design/builder or other contracting entity. No privity of contract exists between County and design/builder.
 - (a) County will be a third-party beneficiary of all primary design, construction, and procurement agreements, including the DB Agreements.
 - (b) County will review and may comment on/object to, in advance, all proposed commercial and legal terms to be included in the DB Agreements and other primary design, construction, or procurement contracts to ensure compliance with the terms of the Development Agreement.
3. MSW will owe County an express obligation to use Reasonable Best Efforts, which include acting in the best interests of County, with respect to its performance under the Development Agreement and causing its consultants and contractors to perform.
4. MSW will be compensated for its services as follows:
 - (a) Staff and general conditions
 - (i) County will be provided with a staff chart showing all proposed positions, identifying key individuals and providing their resumés. County will have a right to object to any of the key individuals. MSW provided staff billing rates, together with backup information, to justify those rates. Staff costs will be capped and reimbursed based upon salary plus fringe benefits, with the multiplier not exceeding 1.5 times direct salary to cover fringe benefits and other direct personnel expense. At an appropriate time, the fee for staff may be converted to a fixed monthly fee. The staff reimbursement component shall include no profit or home office overhead components, all of which shall be included in the fees.
 - (ii) Non-staff general condition items shall be reimbursed at a cost in an amount up to 1.5% of any guaranteed maximum price set for a component of the Projects. MSW shall provide a proposed listing of such items and budget (this is distinct from all general conditions to be provided through the design/builder).
 - (b) Fee for MSW and design builder Services

- (i) MSW shall be paid a base fee of 3.1% of Developer Managed Costs for the Hotel Project, 3.1% of Developer Managed Costs on the Convention Center East Expansion Project, and 3.2% of Developer Managed Costs on the Convention Center West Expansion Project. Managed Costs will consist of the amount of the Guaranteed Maximum Price ("GMP") set forth in the DB Agreements.
- (ii) Developer will be permitted to pay a fee to the Design Builder in connection with the Project Work performed under the DB Agreement equal to (i) 4.95% of Design Builder Managed Costs for the Hotel Project, (ii) 4.975% of Design Builder Managed Costs for the East Expansion Project, and (iii) 5.25% of Design Builder Managed Costs for the West Expansion Project.

5. Design Process

- (a) The current agreement for design services ("Design Services Agreement") between County and MSW was amended to include schematic design for the Hotel. All future obligations of MSW with respect to the design phase that are not set forth in the Design Services Agreement, or its amendments, are set forth in the Development Agreement.
- (b) County shall have review and approval rights with respect to design and changes thereto as currently set forth in the Design Services Agreement and the Development Agreement.

6. The GMP Process

- (a) MSW recognizes that project financing requires the establishment of separate GMP commitments for both the Convention Center and Hotel projects. Each GMP and GMP development process will include, at a minimum, the following elements:
 - (i) GMPs will be "open book," fully transparent and auditable. Although the GMPs will primarily be commitments from the design/builder that are passed through MSW, the GMPs offered by MSW may include additional elements, including responsibility for independent FF&E, OS&E, Technology and/or other packages.
 - (ii) The primary GMPs provided by the design/builder will include the design/builder's fee (profit and home office overhead), general conditions (including staff rates that reflect direct personnel expense without profit or home office overhead), Cost of the Work, and design/builder's contingency. All components of the GMPs will be discussed with the County and are subject to the County's advance written approval.

- (iii) The GMPs will be based upon a set of GMP documents containing elements to be agreed upon after consultation with MSW, County, and the design/builder. Conceptually, the documents will consist of enhanced Design Development documents.
- (iv) MSW will initiate and manage a "facilitated GMP" or "prose process" for developing the GMP. Among other things, the architects/engineers/design professionals will create a "prose statement" or narrative that accompanies the GMP documents and describes the qualities or quantities not yet shown in the documents. The design/builder's qualifications and assumptions shall be based upon the "prose statement." The parties will then meet in a facilitated session with relevant engineers, design assist contractors, and/or others to reconcile the GMP submission with the prose statement and obtain complete agreement and signoff on the reconciled GMP.

7. County Requirements

County contracting requirements set forth in the solicitation and ordinances are incorporated into the Development Agreement along with all design, construction, and related agreements as determined by County to be applicable.

8. Competitive Selection and Pricing

- (a) Balfour Beatty is preapproved as the design/builder.
- (b) Subcontractors to Balfour Beatty will be selected pursuant to a Contract Administrator approved subcontractor procurement plan that will incorporate a competitive/best qualified process.
 - (i) Subcontracts will be awarded to non-design assist subcontractors with the lowest responsive, responsible proposal.
 - (ii) Subcontracts will be awarded to design assist subcontractors based upon best qualified utilizing a target price selection method.

The subcontractor procurement plan will outline "good faith efforts" necessary to satisfy Developer's requirements with respect to the CBE goals for the Project. The GMP for the Enabling Work, design and engineering work, and FF&E and OS&E procurements shall not be required to comply with Agreement CBE requirements.

- (c) Procurement Agents for FF&E and OS&E will be engaged by MSW utilizing an RFP/RFQ process approved by County.

9. Co-Mingling of Funds

Funds shall be segregated and not be co-mingled between the Convention Center and Hotel projects.

10. Liquidated Damages

Hotel Project Delay Liquidated Damages. If Hotel Project Substantial Completion has not occurred by the Hotel Project Substantial Completion Deadline (as may be extended for Developer Excused Delays), then Developer shall pay to County (by direct payment or set off, at County's sole discretion) Delay Liquidated Damages subject to the LD Cap as follows:

- (a) Five Hundred Thousand Dollars (\$500,000) as a one-time lump sum payment on the day after the Hotel Project Substantial Completion Deadline if Hotel Project Substantial Completion has not been achieved; provided, however, that in the event Hotel Project Substantial Completion occurs within ten (10) days after the Hotel Project Substantial Completion Deadline, as adjusted, then the Delay Liquidated Damages shall be reduced by seventy-five percent (75%) to One Hundred Twenty-Five Thousand Dollars (\$125,000);
- (b) If Hotel Project Substantial Completion has not occurred by the Hotel Project Substantial Completion Deadline, then Developer shall pay (i) Fifteen Thousand Dollars (\$15,000) per day for each day after the Hotel Project Substantial Completion Deadline through the tenth (10th) day after the Hotel Project Substantial Completion Deadline, as adjusted; (ii) Twenty Five Thousand Dollars (\$25,000) per day for each day after the tenth (10th) day after the Hotel Project Substantial Completion Deadline, as adjusted, through the thirtieth (30th) day after the Hotel Project Substantial Completion Deadline, as adjusted; and (iii) Thirty Thousand Dollars (\$30,000) per day for each day after the thirtieth (30th) day after the Hotel Project Substantial Completion Deadline, as adjusted, through and including the date when Hotel Project Substantial Completion actually occurs;
- (c) If Hotel Project Substantial Completion has occurred by the Hotel Project Substantial Completion Deadline but there are Unfinished Floors, then Developer shall be required to cause Substantial Completion of the Unfinished Floors in accordance with the following schedule:

Fifteen (15) days after the date of Hotel Project Substantial Completion	At least one (1) Unfinished Floor
Thirty (30) days after the date of Hotel Project Substantial Completion	At least two (2) Unfinished Floors

Forty-five (45) days after the date of Hotel Project Substantial Completion	All Unfinished Floors
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In the event Developer fails to cause Substantial Completion of the Unfinished Floors, Developer shall pay an amount equal to Five Thousand Dollars (\$5,000) per Unfinished Floor per day for each day after the required delivery date, as such dates may be extended for Developer Excused Delay. By way of example and for clarification purposes only, in the event Developer achieves Hotel Project Substantial Completion and there are three (3) Unfinished Floors, then Developer shall be required to deliver the first Unfinished Floor within fifteen (15) days after the date of Hotel Project Substantial Completion, the second Unfinished Floor within thirty (30) days after the date of Hotel Project Substantial Completion, and the final Unfinished Floor within forty-five (45) days after the date of Hotel Project Substantial Completion; in the event Developer fails to timely achieve Substantial Completion of the first Unfinished Floor, then Developer will pay Five Thousand Dollars (\$5,000) per day for each day after the fifteenth (15th) day after the date of Hotel Project Substantial Completion until the first Unfinished Floor achieves Substantial Completion; in the event Developer fails to timely complete the first and second Unfinished Floor, then Developer will pay Ten Thousand Dollars (\$10,000) per day for each day after the thirtieth (30th) day after the date of Hotel Project Substantial Completion until the first Unfinished Floor achieves Substantial Completion at which point the liquidated damages will be reduced to Five Thousand Dollars (\$5,000) per day for the second Unfinished Floor until the second Unfinished Floor achieves Substantial Completion; in the event Developer fails to timely achieve Substantial Completion of the first, second, and third Unfinished Floor after the forty fifth (45th) day after the date of Hotel Project Substantial Completion, then Developer will pay Fifteen Thousand Dollars (\$15,000) per day for each day thereafter until the first Unfinished Floor achieves Substantial Completion, Ten Thousand Dollars (\$10,000) per day for each day thereafter until the second Unfinished Floor achieves Substantial Completion, and Five Thousand Dollars (\$5,000) per day for each thereafter until the final Unfinished Floor achieves Substantial Completion.

"Hotel Project Substantial Completion" means (i) at least fifteen (15) floors comprising in the Hotel Project are fully furnished, equipped, and ready to be occupied in accordance with the Brand Standards and are subject only to minor "punch list" items; (ii) all public spaces (i.e., public lobby, restaurants, retail, pool areas, meetings rooms, and other guest amenities) within the Hotel Project have been substantially completed, are fully furnished and equipped in accordance with the Brand Standards, and are ready to be occupied for their intended purpose and are subject only to minor "punch list" items; (iii) all back of house areas necessary to operate the Hotel Project for the number of floors that satisfy items (i) and (ii) above have been substantially completed, are fully furnished and equipped in accordance with the Brand Standards, and are subject only to minor "punch

list" items; (iv) a temporary certificate(s) of occupancy or equivalent permit for each floor satisfying items (i), (ii), and (iii) above have been issued by City permitting beneficial use of the same; and (v) the Hotel Project has otherwise achieved Substantial Completion.

"Unfinished Floor" means any floor of the Hotel Project in (i) all of the rooms on such floor are not fully furnished, equipped, and ready to be occupied in accordance with the Brand Standards or contain defective Project Work other than minor "punch list" items; (ii) all back of house areas necessary to operate such floor are not substantially completed, are fully equipped and furnished in accordance with the Brand Standards or contain defective Project Work other than minor "punch list" items; and/or (iii) has not received a temporary certificate of occupancy or equivalent permit permitting beneficial use and occupancy of such floor.

West Expansion Project Delay Liquidated Damages. If the date of Substantial Completion of the Project Work for the West Expansion Project occurs after the West Expansion Project Substantial Completion Deadline (as may be extended for Developer Excused Delays), then Developer shall pay to County (by direct payment or set off, at County's sole discretion) Delay Liquidated Damages subject to the LD Cap as follows:

Six Hundred Thousand Dollars (\$600,000) as a lump sum payment on the day after the West Expansion Project Substantial Completion Deadline; provided, however, that in the event the date of Substantial Completion of the Project Work for the West Expansion Project occurs within ten (10) days after the West Expansion Project Substantial Completion Deadline, then the Delay Liquidated Damages levied shall be reduced by seventy five percent (75%) to One Hundred Thousand Fifty Dollars (\$150,000); and provided, however, further, that in the event County does not deliver a Notice to Proceed to Developer the date set forth in the Master Project Schedule for the commencement of the Project Work for the West Expansion Project as a result of (A) the occurrence of a Developer Excused Delay prior to the delivery of such Notice to Proceed for the West Expansion Project, and (B) with respect to such Developer Excused Delay, (i) County provides written notice to Developer directing Developer to accelerate, at County's expense, any Critical Path Item necessary to achieve Substantial Completion of the West Expansion Project by the date set forth in the Master Project Schedule ("**County West Expansion Acceleration Notice**") and (ii) Developer delivers written notice to County that, after due inquiry and in exercising Reasonable Best Efforts to accommodate County's written request, Developer determines that such acceleration will not permit Substantial Completion of the West Expansion Project to occur the date set forth in the Master Project Schedule within ten (10) days of receipt of a County West Expansion Acceleration Notice (the "**Developer West Expansion Non-Acceleration Notice**"), then Developer shall have no obligation to make the lump sum payment set forth in this Section 10(c) and the GMP Contract Amendment for the West Expansion Project shall reflect a date of Substantial Completion Approved by County; provided, however, that in the event

the Developer does not deliver the West Expansion Non-Acceleration Notice after receipt of a County West Expansion Acceleration Notice within such ten (10) day period or accepts County's compensation for acceleration of the Project Construction Schedule, Developer shall have been deemed to have assumed the risk related to such Developer Excused Delay and the one-time payment shall remain in full force and effect; and

Fifteen Thousand Dollars (\$15,000) per day for each day after the West Expansion Project Substantial Completion Deadline, as adjusted, through the tenth (10th) day after the West Expansion Project Substantial Completion Deadline, that Substantial Completion of the Project Work for the West Expansion Project has not occurred; and

Twenty-Five Thousand Dollars (\$25,000) per day for each day after the tenth (10th) day after the West Expansion Project Substantial Completion Deadline through and including the date when Substantial Completion of the Project Work for the West Expansion Project actually occurs.

East Expansion Project Delay Liquidated Damages. If the date of Substantial Completion of the Project Work for the East Expansion Project occurs after the East Expansion Project Substantial Completion Deadline (as may be extended for Developer Excused Delays), then Developer shall pay to County (by direct payment or set off, at County's sole discretion) Delay Liquidated Damages in the amount of Twenty Thousand Dollars (\$20,000) per day for each day after the tenth (10th) day after the East Expansion Project Substantial Completion Deadline through and including the date when Substantial Completion of the Project Work for the East Expansion Project actually occurs, subject to the (including, without limitation, commissioning, furnishing, and equipping of a Project) (the "LD Cap") .

Plaza Improvements Delay Liquidated Damages. If the date of Substantial Completion of the Project Work for the Plaza Improvements does not occur on or before thirty (30) days after the date Hotel Project Substantial Completion has occurred (the "**Plaza Improvements Substantial Completion Deadline**"), then Developer shall pay to County (by direct payment or set off, at County's sole discretion) Delay Liquidated Damages in the amount of Five Thousand Dollars (\$5,000) per day for each day after the Plaza Improvements Substantial Completion Deadline through and including the date when Substantial Completion of the Project Work for the Plaza Improvements actually occurs, subject to the LD Cap.

No Delay Liquidated Damages for Enabling Projects or CVB Office. County and Developer agree that there shall be no Delay Liquidated Damages if the date of Substantial Completion of the Project Work for the Enabling Projects or the CVB Office occurs after the Scheduled Date of Substantial Completion as shown in the Master Project Schedule or any Project Construction Schedule for such Projects or portions thereof.

Delay Liquidated Damages Cap. All liquidated damages are collectively referred to herein as the "**Delay Liquidated Damages.**" The Delay Liquidated Damages shall be payable upon demand at the time they accrue. The Delay Liquidated Damages shall be County's sole remedy for delay, and shall not exceed (i) fifty percent (50%) of the Design Builder's Fee with respect to the permitting, design, and construction of a Project, and (ii) fifty percent (50%) of the Developer's Fee with respect to all other Developer's obligations hereunder for a Project except for permitting, design and construction (the "LD Cap"). Developer shall continue to exercise Reasonable Best Efforts to achieve Substantial Completion notwithstanding that Delay Liquidated Damages are no longer payable because the LD Cap has been reached.

MSW shall be responsible, in the first instance, to County for liquidated damages that are ultimately passed through by MSW to the design/builder and other primary design/construction/procurement contractors.

The DB agreement shall contain County's No Damages for Delay provision.

11. Duration of Development Agreement

- (a) The Term of the Development Agreement shall extend to a minimum of one (1) year after substantial completion of the Hotel and Convention Center components.
- (b) Among other things, MSW shall manage the "warranty walk-through" that will be scheduled to take place eleven (11) months after substantial completion of project components.
- (c) In the event the County terminates MSW for convenience, MSW shall be paid for costs and fees incurred through the date of termination, demobilization costs, and in the event MSW is being replaced with another developer or the County elects to directly enter into a construction contract for completion of the work, a termination fee equal to 10% of the unpaid and/or scheduled developer fees for the Project. The County's right to terminate for convenience shall expire once the Hotel and East Expansion each achieve 25% completion.

12. Developer and Design Builder Contingencies

Each Final GMP for a Project will include a category for Developer Contingency in the amount of two percent (2%) of Developer's managed costs, and a Design Builder's contingency in the amount of five percent (5%) of the Design Builder's Managed Costs. Each of these contingency amounts shall be reduced at certain milestones, e. g., completion of the building envelope. The milestones shall be defined in the Development and DB agreements.

13. Construction Schedule

Construction of the West Expansion is anticipated to begin on July 3, 2019, and be completed on October 15, 2021.

Construction of the Hotel is anticipated to begin on November 22, 2019, and be completed on May 1, 2023.

Construction of the East Expansion is anticipated to begin on November 22, 2019, and be completed on February 24, 2023.