

MEMORANDUM OF UNDERSTANDING

August 20, 2008

This memorandum of understanding (this "MOU") sets forth certain terms and provisions of agreements to be entered into by and between the City of Dallas (the "City") and Matthews Holdings Southwest, Inc. ("MSW").

Background

Upon execution of this MOU, the City and MSW will take certain actions which will enable MSW to develop a convention center hotel (the "Hotel") adjacent to the Dallas Convention Center (the "DCC") on the site commonly known as the Chavez site (the "Site"). The Hotel will be operated and managed by an operator selected by the City in collaboration with MSW. The current program for the Hotel provides for approximately 1,200 guest rooms, and will include an approximately 50,000 square foot senior ballroom, an approximately 30,000 square foot junior ballroom, and approximately an additional 20,000 square feet of meeting rooms, as well as structured parking for 720 vehicles. The Hotel will have restaurants, an exercise facility and pool and other supporting facilities consistent with a full-service four-star convention center hotel and the operator's brand standard for such facilities. The Hotel will be the key element of a larger project on the Site (the "Project") that is intended to include ancillary development in and around the Hotel and the DCC. The Hotel and the potential scope of the Project are described on **Exhibit A-1 - Design Brief and Performance Specifications**. The parties understand that the City's goal is the delivery of a signature, exciting and vibrant DCC Hotel that achieves the standards of design exemplified by Foster's portfolio of notable architectural buildings within the Hotel Development Budget, all as further described below. Further, the parties acknowledge the City's goal regarding joint ventures with local SBEs and the City's Good Faith Effort Plan for M/WBE Enterprises and the City's Letter of Assurance A, at levels outlined on **Exhibit B** attached.

The City initiated an RFP process relating to development of the Hotel in March 2008. The City has elected to proceed with a City-owned hotel and requested that the RFP respondents submit proposals to provide for a City-owned hotel to be located on the Site. In June 2008, the City selected MSW as its developer of choice to negotiate the terms under which a Hotel owned by the City or the LGC (as defined hereinbelow) will be developed on the Site.

The parties acknowledge that a great deal of work must be done, and an additional investment of time and internal and legal resources must be made by MSW and the City to achieve fully-negotiated binding agreements for the development of the Hotel. To facilitate the process, the City intends to create a Local Government Corporation (the "LGC") pursuant to the requirements of Subchapter D of Texas Transportation Code Chapter 431, to assist and act on behalf of the City in connection with design, financing, construction and ownership of the Hotel, to provide a mechanism for financing Hotel costs and to facilitate the development of the Project. To assure that the parties have a mutual understanding of the Hotel and the Project and their respective roles, and to induce the City and MSW to proceed, the parties have executed this MOU defining the Hotel and the process to be followed and outlining the basic arrangements

expected to be incorporated in the final documentation for the development of the Hotel and the Project.

Terms

The parties intend that, pursuant to the terms of a to-be-negotiated developer agreement (to be agreed upon) MSW will deliver the completed Hotel, on a turn-key basis, at a guaranteed maximum cost within the Hotel Development Budget and completion schedule (which will include an estimated opening date for the Hotel) (the "Developer Agreement"). MSW will be responsible for costs beyond the agreed-upon guaranteed maximum cost, except to the extent incurred at the request and with the prior written approval of the City. MSW also intends to deliver to the City a proposed Project concept plan regarding non-Hotel development on the Site and on additional lands in close proximity to the Hotel and DCC as shown on **Exhibit A-2** attached (the "Additional Project Lands").

Consistent with the foregoing, the City and MSW hereby agree as follows:

1. Pre-Development Agreement, Developer Agreement and Definitive Agreements

(a) Upon execution of this MOU, the City and MSW, with the assistance of their respective counsel, shall promptly commence the preparation and negotiation of a pre-development agreement (the "Pre-Development Agreement") that will serve to (i) further define the Hotel and the parties' responsibilities; (ii) provide MSW with sufficient control of the Site and assurance of Hotel funding to induce the parties to proceed with pre-development activities relating to the Hotel (and the related capital expenditures associated therewith); and (iii) define the specific development process to be followed by MSW and the City. MSW understands that, whichever alternative among those described on **Exhibit A-1** is selected, the Hotel Development Budget will be determined based upon, among other factors, projections of revenues and operating expenses, costs of financing, and the length of the construction schedule, and that the City will enter into the Pre-Development Agreement only if, based on those and the other relevant factors, the Hotel is projected to be financeable based on such projections of revenues and operating expenses. Further, the parties will negotiate and execute a series of definitive agreements related to the operation of the Hotel and the development of the Project and Additional Project Lands (as further described in Section 1(e) and including the Developer Agreement, the "Definitive Agreements"). It is acknowledged that not all of the Definitive Agreements will necessarily be finalized and/or executed at the same time (as finalization of certain of the Definitive Agreements may be dependent upon further project design, budgeting, financing, or other pre-development activities being carried out), and that MSW will not be a party to certain of the Definitive Agreements.

(b) In anticipation of the Pre-Development Agreement, the City will take steps to create the LGC pursuant to the requirements of Subchapter D of Texas Transportation Code Chapter 431, to assist and act on behalf of the City in connection with design, financing, construction and ownership of the Hotel, to provide a mechanism for financing Hotel costs and to facilitate the development of the Project. The City reserves the right to assign its rights, duties and obligations under this MOU and the Pre-Development Agreement to the LGC and MSW consents to this assignment. It is understood that the City will provide funding and staffing to

the LGC to enable the LGC to perform its obligations hereunder.

(c) The parties will use reasonable efforts to negotiate, prepare, and execute a Pre-Development Agreement between MSW and the City and/or the LGC no later than September 10, 2008, and a Developer Agreement between MSW and the LGC no later than December 17, 2008. Subsequent to the execution of the Developer Agreement, it is anticipated that MSW will enter into a guaranteed maximum price construction contract with the general contractor within the Hotel Development Budget as further described herein (the "GMP Construction Contract") and each of the other Definitive Agreements to which it is a party and that are necessary for the LGC to issue or cause to be issued the hotel revenue bonds anticipated to provide funds to finance the construction of the Hotel. It is understood by the parties that a GMP Construction Contract must be executed prior to the issuance of hotel revenue bonds. This MOU may be terminated by either of the parties, without liability, in the event the Pre-Development Agreement is not executed by the September 10, 2008 (the "Deadline").

(d) Pursuant to this MOU and in order to facilitate the execution of the Pre-Development Agreement by the Deadline, the City agrees, subject to the budgeted limits set forth below, to engage the services of certain consultants to perform soils and geotechnical investigations and a Phase 2 environmental investigation of the Site necessary to assist the City and MSW in the design and construction of the Hotel and planning of the Project, upon City Council appropriation of funding. The City's financial obligation to provide for the geotechnical investigation and Phase 2 environmental assessment and any other obligations under this MOU is limited to an amount not to exceed \$400,000 unless additional amounts are authorized by a subsequent resolution approved by the City Council. The City shall have full ownership and use of the studies and reports produced by the consultants pursuant to this MOU and shall provide MSW with copies of all such reports and investigations.

Pursuant to this MOU and in order to facilitate the execution of the Pre-Development Agreement, MSW agrees (i) to work with its consultants and develop plans to be able to present to the City at least one financeable alternative among those listed on **Exhibit A-1**, recognizing the City's goals as described above, (ii) to assist in the process to refine the Hotel scope and the Hotel Development Budget, (iii) to deliver to the City a proposed Project concept plan regarding the Hotel and non-Hotel development on the Site, (iv) as part of its efforts, to provide any required architectural and construction estimating services (estimated to be in excess of \$500,000), and (v) to negotiate with other parties to provide funding of pre-development activities and related capital expenditures.

(e) At the present time it is the assumption of the parties that in addition to the Developer Agreement the Definitive Agreements will include, but will not necessarily be limited to:

- (i) An asset management agreement;
- (ii) A hotel operator qualified management agreement;
- (iii) A technical services agreement;
- (iv) A pre-opening agreement;
- (v) One or more other agreements between the City and MSW (and other necessary parties, including the selected Hotel operator and other

- participants in the Project) as necessary;
- (vi) Development agreement(s) for Project and Additional Project Lands; and
- (vii) The GMP Construction Contract.

2. Corporate Action

This MOU has been approved by all necessary corporate and municipal action of MSW and the City, respectively, and is binding upon the parties in accordance with its terms. The Pre-Development Agreement, Developer Agreement and the Definitive Agreements are subject to the approval of the City Council of the City and the boards of directors of MSW and other appropriate or necessary parties. The Pre-Development Agreement, Developer Agreement and Definitive Agreements shall contain such agreements and closing conditions as shall be reasonably and mutually satisfactory to the parties and their respective counsel.

3. Memorandum of Understanding

(a) The parties hereby agree to negotiate in good faith toward a binding Pre-Development Agreement to be entered into and effective by the Deadline.

(b) MSW's response to the City's RFP was accompanied by \$1.5 million bid security as evidence of commitment to the success of the Hotel and as a guarantee that, if awarded a developer services agreement reflecting terms mutually agreed to by the City and MSW, MSW would (i) execute the agreement (ii) furnish to the City evidence that its general contractor will provide the payment and performance bonds specified in the agreement, and, (iii) furnish evidence of compliance with the insurance requirements and other required items specified in the agreement. Failure to execute the Developer Agreement reflecting terms mutually agreed to by the City and MSW in accordance with the terms and conditions set forth in the Pre-Development Agreement shall be cause to forfeit the bid security, which shall become the property of the City, not as a penalty but as liquidated damages sustained by the City attributable to, among other things, delays, added costs and risks of renegotiation with another developer, all of which are difficult to estimate.

(c) This MOU constitutes the entire agreement of the parties relating to the transactions contemplated by this MOU and supersedes all prior contracts, agreements or understandings with respect to those matters, whether oral or written.

(d) MSW shall not directly or indirectly assign, transfer, hypothecate, pledge or otherwise encumber, whether by operation of law or otherwise, all or any part of this MOU or any of its rights, interests or obligations hereunder (collectively, an "MOU Transfer"), without first obtaining the prior written consent of the City, which consent shall be within the City's sole discretion. Any attempted MOU Transfer without such prior written consent shall be void and shall confer no rights upon any third parties. There is no third party beneficiary to this MOU, and the provisions of this MOU shall not impart rights enforceable by any person or entity other than the parties.

(e) All notices, requests or consents provided for or permitted to be given under this

MOU must be in writing and are effective on actual receipt by the intended recipient or by delivery to the address or facsimile number for the recipient listed elsewhere in this MOU or such other address as that recipient may specify by notice to the other party.

(f) This MOU and the rights and duties of the parties arising out of this MOU shall be governed by and construed and enforced in accordance with the laws and court decisions of the State of Texas. Any action between the Parties arising out of this MOU may be brought, if at all, only in the courts of the State of Texas for Dallas County or the U.S. District Court for the Northern District of Texas, and not in any other court or tribunal. Each Party submits itself to the personal jurisdiction of the courts of the State of Texas for Dallas County or the U.S. District Court for the Northern District of Texas and appoints the Secretary of State of Texas as its agent for service of process in any action brought in those courts if at any relevant time it is not otherwise subject to service of process or does not have an agent on whom process may be served, in that action.

(g) Except as provided in this MOU, each party hereto will bear all costs, charges, and expenses incurred by such party (including, but not limited to, all fees and expenses of consultants, legal advisors, brokers and investment bankers) in connection with the developer selection process, preparation of this MOU, the Pre-Development Agreement, the Developer Agreement and the Definitive Agreements.

(h) MSW agrees to indemnify, defend and hold harmless the City and the LGC and their respective officers, employees and agents from any claims or liabilities of any third parties engaged or utilized by MSW in connection with its performance under this MOU and the negotiation and preparation of the Pre-Development Agreement.

4. Approval

The parties have indicated their approval of this MOU by signing this MOU for such purpose. This MOU may be executed in separate counterparts, each of which shall be deemed an original but all of which together shall be deemed to be one and the same instrument.

Executed to be effective on August 20, 2008, by the City acting through its City Manager, duly authorized by City Council Resolution No. 08-2197, passed on August 20, 2008, and by MSW, acting through its duly authorized officials.

CITY OF DALLAS

Mary K. Suhm
City Manager

By: _____
Assistant City Manager

Dallas City Hall
1500 Marilla, 4CN
Dallas, Texas 75201
Attention: AC Gonzalez

APPROVED AS TO FORM:

Thomas P. Perkins, Jr.
City Attorney

By: _____
Assistant City Attorney

with copy to:
Dallas City Hall
1500 Marilla, 7CN
Dallas, Texas 75201
Attention: Dallas City Attorney

MATTHEWS HOLDINGS SOUTHWEST, INC.

By: _____
John H. Matthews, President

1660 South Stemmons Fwy
Suite 100
Lewisville, Texas 75067
Attention: Kristian Teleki

EXHIBIT A-1

DESIGN BRIEF AND PERFORMANCE SPECIFICATIONS

(TO BE PREPARED BY MSW AND AGREED WITH CITY OF DALLAS)

1. Scope of Hotel*:

[ALTERNATIVE A, B, or C TO BE DETERMINED BEFORE SEPTEMBER 2ND, 2008]

A.

- a. Approximately* 1,200 rooms
- b. Approximately* 100,000 square feet of ballrooms and meeting space
- c. Approximately* 720 structured parking spaces
- d. 4-star quality as a minimum
- e. Meets selected operator Brand standards
- f. Restaurants [standard, quality and type to be agreed upon]
- g. All-weather connection to the DCC
- h. Engineered to result in structural elements having a useful life of at least 60 years

*adjusted to the extent required, and reasonably approved by the City, because of design constraints

B.

- a. Approximately* 1,100 rooms
- b. Approximately* 100,000 square feet of ballrooms and meeting space
- c. Approximately* 720 structured parking spaces
- d. 4-star quality as a minimum
- e. Meets selected operator Brand standards
- f. Restaurants [standard, quality and type to be agreed upon]
- g. All-weather connection to the DCC
- h. Engineered to result in structural elements having a useful life of at least 60 years
- i. Signature Foster + Partners design

*adjusted to the extent required, and reasonably approved by the City, because of design constraints

C.

- a. Approximately* 1,100 rooms
- b. Approximately* 75,000 square feet of ballrooms and meeting space
- c. Approximately* 720 structured parking spaces

- d. 4-star quality as a minimum
- e. Meets selected operator Brand standards
- f. Restaurants [standard, quality and type to be agreed upon]
- g. All-weather connection to the DCC
- h. Engineered to result in structural elements having a useful life of at least 60 years
- i. Signature Foster + Partners design

*adjusted to the extent required, and reasonably approved by the City, because of design constraints

EXHIBIT A-2 ADDITIONAL PROJECT LANDS

**EXHIBIT A-2
Additional Project Lands**

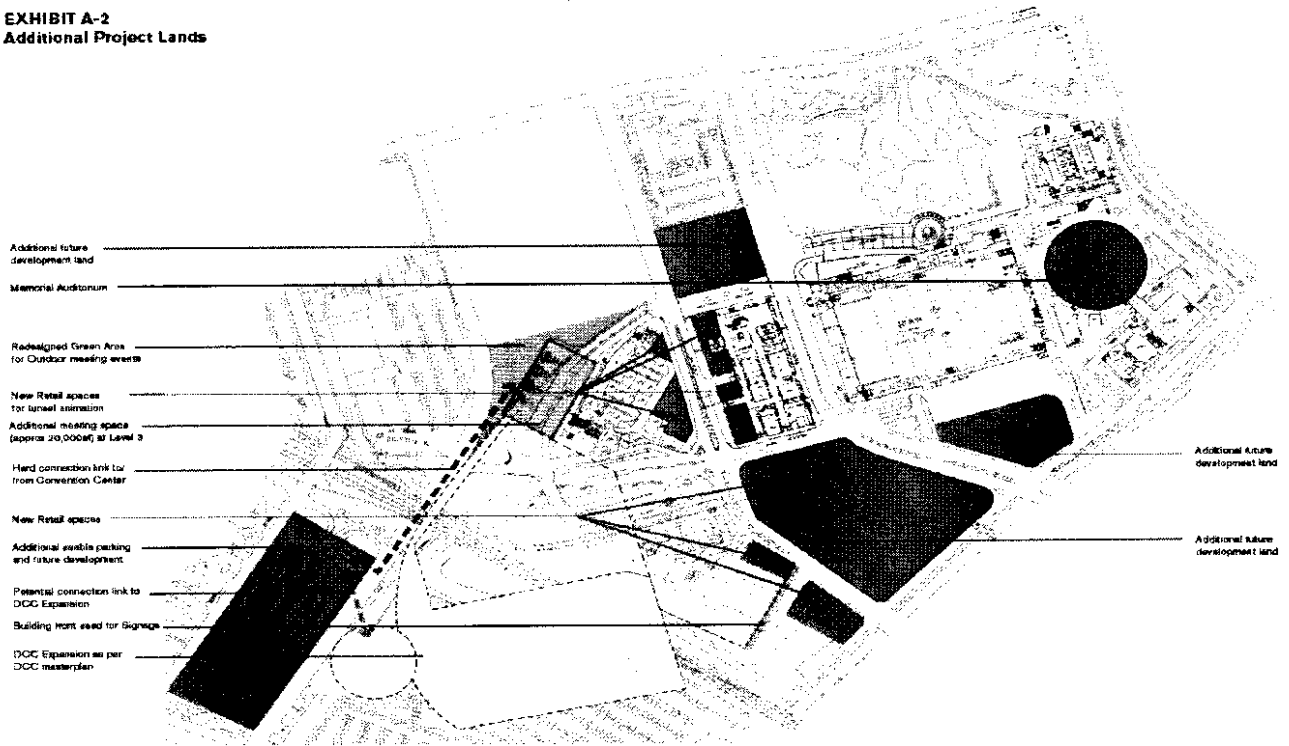


EXHIBIT B
LOCAL SBE JOINT VENTURES AND
GOOD FAITH EFFORT PLAN

The City has established goals for participation by Minority and Women-owned Business Enterprises (M/WBE) as established on May 14, 1997, by the City Council in Council Resolution #97-1605.

- A. These goals were adopted without consideration for ethnicity or gender.
1. Construction: 25.00%
 2. Architectural & Engineering: 25.66%
 3. Other Professional: 36.30%
 4. Other Services: 23.80%
 5. Goods: 18.00%
- B. The City reserves the right and will expect to make all M/WBE goals part of the Developer Agreement. Such goals may include, but will not be limited to: sub-contracting and consulting goals, joint venture agreements, ongoing procurement activities, and equal opportunity employment plans.
- C. MSW agrees to submit quarterly SBE and M/WBE utilization reports to City as well as attend quarterly meetings to discuss the contents of these reports with City staff at dates, times and places mutually agreeable.
- D. Upon execution of the Developer Agreement, MSW will conduct the following outreach initiatives to engage M/WBE participation: development of website with project information, contract opportunities and requirements; public meetings and presentations to provide information on the project, project schedule, upcoming contract opportunities, bid process and contract requirements; newsletters and marketing collateral regarding M/WBE opportunities.
- E. Upon execution of the Developer Agreement, MSW will develop a construction M/WBE plan outlining specific scopes for utilizing M/WBE firms in construction trades; advertise project and contract opportunities in M/WBE related news publications. While not credited to achievement of the participation goals, MSW will also establish 2nd Tier Subcontractor Plan to create additional opportunities to utilize M/WBE firms for 2nd and 3rd tier subcontracting and supplier work.
- F. MSW will work with the City to implement initiatives to ensure prompt payment and verify payments to M/WBE firms; develop initiatives to alleviate bonding and insurance barriers through such tools as an OCIP program, sub-guard program, extension of bonding and insurance coverage, breaking contracts into bondable sizes, and working with surety companies.