

DRAFT**SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

This Settlement Agreement and Mutual Release ("Agreement") is made and entered into this XX day of XX, 2020, by and between RIC-MAN INTERNATIONAL, INC., a Florida corporation, hereinafter "RMI") and the CITY OF MIAMI BEACH, FLORIDA, a political subdivision of the State of Florida (hereinafter, the "City"). RMI and the City may also be referred to individually as a "Party," and collectively as the "Parties."

RECITALS

WHEREAS, RMI and the City are parties to a Design-Build contract, dated September 10, 2014 (the "Contract"), for Neighborhood No. 8: Sunset Islands 3 & 4 Right-of-Way (ROW) Infrastructure Improvements, located in Miami Beach, Florida (hereinafter, the "Project");

WHEREAS,

WHEREAS,

WHEREAS,

WHEREAS, the Parties desire to settle all claims, disputes, past, present, or future regarding the Project, regardless of responsibility; and

WHEREAS, the Parties believe it would be in their best interests and the best interests of the citizens of the City to agree to the provisions of this Agreement.

NOW THEREFORE, in consideration for the exchange of promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows:

1. Recitals: The above Recitals are true and correct and are incorporated herein.
2. Settlement Terms: The City has identified tasks remaining for the Project that are required for the Contractor to reach Final Completion (the "Completion Tasks"). The tasks are attached hereto as Exhibit "A"
 - a. The City agrees to pay Contractor the sum of One Million Six Hundred and Fifty Thousand Dollars and No Cents (\$1,650,000.00) ("Settlement Sum"), which Settlement Sum shall be paid as follows:
 - i. The City shall pay Contractor \$300,000 within ten (10) days following the City's receipt of a time-line and schedule, in a form acceptable to the City, for the tasks outlined in Exhibit "A". Contractor shall submit the time-line and schedule for the Completion Tasks to the City within five (5) days following the execution of this agreement.
 - ii. The City shall pay the balance of the Settlement Sum (\$1,350,000.00) within thirty (30) days following the Contractor completing the tasks in strict accordance with the schedule and time-line approved by the City for the

tasks outlined in Exhibit "A" and achieving Final Completion (as defined in the agreement between the City and Contractor) for all disciplines consisting of: water system, sanitary system, stormwater system including the pump station structures, lighting system, franchise utility undergrounding system, hardscape, landscaping and irrigation; receiving final acceptance, and closeout of all the permits issued by City and outside agencies.

- b. In addition to the Settlement Sum, The City is currently holding Two Hundred Seventy-Seven Thousand One hundred and Eighty-Six Dollars and Eighty-One Cents (\$277,764.92) of retainage for the Project (the "Retainage"). In addition to the Settlement Sum, the City shall pay to the Contractor the balance of the Retainage within thirty (30) days following Contractor achieving Final Completion (including providing all releases and consent of surety) and in strict accordance with the schedule and time-line approved by the City of the tasks on Exhibit "A".
3. Releases: In further consideration of the execution of this Agreement, the Parties for themselves and their respective parent companies, subsidiaries, divisions, affiliates, unit owners, insurers, officers, directors, agents, employees, subcontractors, representatives, successors and assigns (the "City Releasers" or "RMI Releasers," as the case may be), hereby execute, subject to the conditions and exclusions set forth in this Agreement, the following Releases:
 - a. RMI Releasers' Release of City Releasers: Upon payment of the Final Payment by the City and clearance of said funds, the RMI Releasers hereby remise, release, acquit, satisfy and forever discharge the City Releasers, which throughout this Agreement includes, but is not limited to, its affiliates, Commissioners, insurers, sureties, directors, officers, employees, agents and attorneys, together with its heirs, executors, administrators, associates, representatives, successors and assigns, of and from any and all manner of past, present and future claims, action and actions, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, obligations, damages, judgments, costs, expenses, cause and causes of action, executions, claims, liabilities, and demands whatsoever, in law or in equity, whether for compensatory, punitive, or other damages (collectively referred to in this Paragraph as the "Claims"), which the RMI Releasers have held or now hold, ever had, now have, or which the RMI Releasers hereinafter can, shall or may have against the City Releasers, for any and all Claims, whether known or unknown, arising from, pertaining to and/or in any way relating to the Project.
 - b. City Releasers' Release of RMI Releasers: Except as provided and expressly subject to the limitations set forth in this Paragraph 3(b) and Paragraph 4 herein, which the Parties agree and acknowledge limits the scope of the City Releasers' release of the RMI Releasers to the RMI Claim, the City Releasers hereby remise, release, acquit, satisfy and forever discharge the RMI Releasers, which throughout this Agreement includes, but is not limited to, its affiliates; insurers, sureties, directors, officers, employees, agents and attorneys, together with its heirs, executors, administrators, associates, representatives, successors and assigns, of and from any and all manner of past, present and

future claims, action and actions, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, obligations, damages, judgments, costs, expenses, cause and causes of action, executions, claims and liabilities, and demands whatsoever, in law or in equity, whether for compensatory, punitive, or other damages (collectively referred to in this Paragraph as the "Claims"), which the City Releasors have held or now hold, ever had, now have, or which the City Releasors hereinafter can, shall or may have against the RMI Releasors, for any and all Claims, whether known or unknown, arising from, pertaining to and/or in any way relating to only the RMI Claim.

4. Latent Defects, Warranties and Third-Party Actions:

- a. The Parties agree that, in addition to all other contractual obligations of RMI pertaining to the Project, specifically excluded from any release or waiver by the Parties under this Agreement, are any demands, claims and causes of action arising from: (i) latent defects; (ii) warranty claims; or (iii) any third party actions for property damage, bodily injury, personal injury or death pertaining to the Project. The City shall not be precluded from bringing any action at law or equity arising from or relating to such matters.
 - b. RMI agrees that it shall honor and be responsible to the City for all warranties and guarantees as specified in the Contract and/or as otherwise provided, by law or in equity. RMI further acknowledges and agrees that nothing contained in this Agreement shall constitute a waiver of any right by the City to seek enforcement of those warranties and guarantees against RMI, its sureties, insurers, subcontractors and suppliers.
5. No Admission of Liability: It is understood and agreed that the claims which are the subject of this Agreement are disputed claims and that the execution of this Agreement by the Parties, and the exclusions set forth in this Agreement, are not intended to, and shall not in any way, constitute or be deemed an express or implied admission or acceptance of any negligence, misconduct, responsibility or liability by the Parties or an admission against interest by the Parties, and that the Parties expressly and specifically deny all such claims. Such consideration is being given to reduce the expense, uncertainties and hazards of litigation and to mitigate damages to each of the Parties. There shall not be any implication by any trier of fact or law of any admission or acceptance of liability or admission against interest by the Parties and it shall not be used against the City Releasors or the RMI Releasors in any attempt to prove any future liability claims.
6. Binding Effect: Subject to City Commission approval and execution by the Parties, this Agreement shall be binding upon the Parties and their respective successors and assigns. However, execution and notarization by all Parties shall be a condition precedent to the effectiveness of this Agreement as binding against any Party. If the City Commission does not issue the approval, the Agreement shall be null and void and of no force and effect
7. Attorney's Fees: If any legal action, proceeding, or hearing is brought by the City Releasors or the RMI Releasors to resolve a dispute regarding enforcement of the

terms of this Agreement, then the prevailing party as between the City Releasors and the RMI Releasors shall be entitled to recover reasonable attorney's fees and court costs incurred. The Parties shall bear their own fees and costs relating to the negotiation and execution of this Agreement to date.

8. Miscellaneous: The Parties further agree as follows:

- a. The Parties acknowledge and agree that this Agreement is fully and adequately supported by consideration and is fair and reasonable. The Parties further acknowledge and agree that: (i) each Party has had the opportunity to consult with, and has in fact consulted with, such professionals, experts and legal counsel of its choice as such Party may have desired with respect to all matters settled and resolved herein; (ii) each Party has participated fully in the negotiation and preparation of this Agreement; (iii) each Party has carefully reviewed this Agreement and is entering into same freely; and (iv) this Agreement is entered into in good faith and was not obtained by fraud, misrepresentation, or deceit. Accordingly, this Agreement shall not be more strictly construed against any Party.
- b. The Parties hereto understand and agree that this Agreement will not be binding on the Parties to this Agreement until such time as the City Commission of the City of Miami Beach has approved same, and the Agreement is fully executed by the Parties to the Agreement. City Commission approval is a material condition precedent to the execution and enforceability of this Agreement, without which the City does not agree to, and is not subject to, the terms and conditions contained herein.
- c. Each of the signatories hereto represents that he or she has authority to execute this Agreement and to bind the Party on whose behalf he or she has signed.
- d. This Agreement is being consummated in the State of Florida, and the performance by the Parties hereto is in the State of Florida. This Agreement shall be construed and governed in accordance with the laws of the State of Florida and the sole and exclusive venue for any lawsuit relating to this Agreement is Miami- Dade County, Florida. The Parties expressly agree to waive trial by jury in any action to enforce this Agreement.
- e. In construing this Agreement, the singular shall be held to include the plural, the plural shall be held to include the singular, the use of any gender shall be held to include every other and all genders, and captions and paragraph headings shall be disregarded.
- f. Time is of the essence in the performance of this Agreement.

9. Entire Agreement: This Agreement, together with any documents referenced herein, constitutes the full and entire agreement and understanding between the Parties as related to the Project, and there are no agreements, representations or warranties except as specifically set forth herein. This Agreement replaces any prior or

contemporaneous written or oral representation or understanding about the terms of this Agreement. All prior discussions, negotiations, letters, demands and writings of any kind are fully merged into this Agreement and are to be construed to be of no further force or effect, it being the intention of the Parties that this Agreement shall serve as the sole and entire expression of their agreement and understanding. This Agreement shall be binding on, and shall inure to the benefit of, the respective successors and assigns, if any, of each Party.

10. Modification No Waiver: This Agreement may only be modified in writing signed by both Parties. No waiver or modification of the Agreement or of any covenant, condition or limitation contained herein, shall be valid unless in writing and signed by all Parties to the Agreement, or their authorized counsel. If the City or RMI excuses or condones any breach or default by the other Party of any obligation under this Agreement, this shall not be a waiver of such obligation with respect to any continuing obligation or subsequent breach or default and no such waiver shall be implied.
11. Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together represent one instrument binding on the Parties, notwithstanding that all of the Parties are not signatories to the same counterpart. Each Party shall execute four (4) original copies of the Agreement.
12. Severability: If any provision of this Agreement is held or rendered illegal or unenforceable, it shall be considered separate and severable from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and bind the Parties as though the illegal or unenforceable provision had never been included in the Agreement.
13. Captions; References: The captions of this Agreement are for the purpose of convenience of reference only and in no way define, limit or describe the scope or intent of the Agreement or in any way affect the terms and conditions of this Agreement. All references in the Agreement to the terms "herein," "hereunder," "hereof" and words of similar import shall refer to this Agreement, as distinguished from the Paragraph, Section and/or Subsection within which such term is located.
14. Third Parties: Nothing express or implied in this Agreement is intended or should be construed to confer upon or give any person or entity, other than the City and RMI, any rights or remedies under, or by reason of, this Agreement.

IN WITNESS WHEREOF, the Parties have set their hands and seals on the day and date first written above:

. [Remainder of page intentionally left blank.]

Exhibit "A"

COMPLETION TASKS

The following remaining task represents the Completion Tasks. Within five (5) days following the execution of this agreement, Contractor shall provide the City, in a form acceptable to the City, a detailed time-line and schedule identifying completion dates for each of the tasks set forth below.

1. Final Approved Record Drawings for:
 - a. Water
 - b. Stormwater and the pump stations
 - c. Sanitary sewer
 - d. Streetlight conduits and control panel
 - e. Hardscape
 - f. Pavement Markings and Signage
 - g. Underground franchise utilities
 - h. Landscaping and irrigation
2. Final Approved Substantial Completion Forms for:
 - a. Sanitary sewer
 - b. Pavement Markings and Signage
 - c. Underground Franchise Utilities
 - d. Landscaping and irrigation
3. Acceptance of facilities by Franchised Utilities (FPL and ABB).
4. Resolve driveway at 2111 Lake Avenue.
5. Replace burned VFD at Island 3 pump station and add line reactors to both pump stations, Island 3 and Island 4.
6. Repair the water intrusions associated with the pump station #4 structures.
7. Close all open permits
 - a. DERM Class II Permit 20150032- evidence the permit has been closed
 - b. CMB Building Department
 - c. CMB Tree Removal Permit
 - d. NPDES Notice of Termination
 - e. MDC Traffic Engineering
8. Provide all Final Forms necessary for close-out:
 - a. Executed Final Completion form for all disciplines
 - b. Close out of all the permits
 - c. Final Release of Lien from Contractor, sub-contractors, and suppliers
 - d. Final Consent of Surety
 - e. Final Pay Application accompanied by Final Certificate of Payment.
 - f. Approved Operation and Maintenance Manuals for all equipment.

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