

## Exhibit A

### **Expedited Arbitration Clause to be incorporated into Article 15 through Amendment No.2 of the Design/Build Agreement between the City of Miami Beach and Ric-Man Construction Florida, Inc.**

Underline denotes additions

~~Strikethrough~~ denotes deletions

## **ARTICLE 15 CLAIMS, DISPUTE AVOIDANCE AND RESOLUTION**

### **15.1. Claims.**

a. Claims must be initiated by written notice and, unless otherwise specified in Section 11.8 or otherwise in this Agreement, submitted to the other party within twenty-one (21) days of the event giving rise to such Claim or within 21 days after the claimant reasonably should have recognized the event or condition giving rise to the Claim, whichever is later. Such Claim shall include sufficient information to advise the other party of the circumstances giving rise to the Claim, the specific contractual adjustment or relief requested including, without limitation, the amounts and number of days of delay sought, and the basis of such request. The Claim must include all job records and other documentation supporting entitlement, the amounts and time sought. In the event additional time is sought, the Design/Builder shall include a time impact analysis to support such Claim. The City shall be entitled to request additional job records or documentation to evaluate the Claim. The Claim shall also include the Design/Builder's written notarized certification of the Claim in accordance with the False Claims Ordinance, Sections 70-300 et seq., of the City Code.

b. Claims not timely made or otherwise not submitted in strict accordance with the requirements of this Section 15 or other Contract Documents shall be deemed conclusively waived, the satisfaction of which shall be conditions precedent to entitlement.

Design/Builder assumes all risks for the following items, none of which shall be the subject of any Change Order or Claim and none of which shall be compensated for except as they may have been included in the Design/Builder's Contract Price as provided in the Contract Documents: Loss of any anticipated profits, loss of bonding capacity or capability losses, loss of business opportunities, loss of productivity on this or any other project, loss of interest income on funds not paid, inefficiencies, costs to prepare a bid, cost to prepare a quote for a change in the Work, costs to prepare, negotiate or prosecute Claims, and loss of projects not bid upon, or any other indirect and consequential costs not listed herein. No compensation shall be made for loss of anticipated profits from any deleted Work.

### **15.2. Dispute Avoidance and Resolution.**

a. Claims shall first be submitted to the City for initial recommendation for determination by the City at the time and in the manner specified in Section 15.1 herein unless

otherwise specified in this Agreement or other Contract Documents. The City shall render an initial recommendation for determination of such Claim, in writing, as soon as practicable, but not later than forty-five (45) days of receipt of such Claim, unless the parties mutually stipulate otherwise in writing or other circumstances warrant a time extension as determined by the City. Failure to render a written decision within the forty-five (45) days, or a later date if stipulated by the parties, shall be considered a denial of the Claim submitted by the claimant.

b. In order to preserve for review an initial recommendation for determination of the City at mediation, through an Expedited ADR (as defined below) and/or by a court of competent jurisdiction (as applicable), then the party seeking review shall notify the other party in writing within fifteen (15) days of such recommendation by the City or, if no recommendation, within fifteen (15) days of when the Claim is deemed denied as a result of inaction by the City. Failure to timely preserve review of the City's written recommendation or denial by inaction shall constitute a waiver of such Claim or entitlement to such objection and the recommendation of the City (whether by affirmative written recommendation or denial by inaction) shall be deemed final and binding, but subject to mediation and litigation (as applicable).

c. If the City agrees to pay a portion of the Claim, the Design/Builder may reserve the remaining portion of the Claim by executing a conditional release in a Change Order, which states the remaining amount and time sought and identifies the particular scope of Work to which the reservation applies. Unspecified amounts or time claimed will not preserve a Claim or right to a Claim. Each such Change Order shall contain a release and waiver of all Claims as of the date the Design/Builder executes the Change Order, except as specifically included in a reservation of Claims within the Change Order. The reservation of Claims shall, as to each reserved individual Claim, state the amount and time sought in the Claim and identify the scope of Work giving rise to the Claim. Any Claim not included in the reservation of Claims or that fails to specify the amount and/or time sought are deemed waived and abandoned.

d. In the event any Claims which have been timely preserved remain unresolved by Substantial Completion, then the parties shall participate in mediation within sixty (60) days, unless the City terminates the Agreement, which shall render such mediation moot. If the City determines, at its sole and absolute discretion, that it would be beneficial to mediate any particular Claims at any time prior to Substantial Completion, then any such Claims shall be submitted to mediation at the City's election. The parties shall mutually agree to the selection of a mediator, and mediation, which shall be confidential in the same manner as Court-ordered mediation, shall take place within the 60-day post-Substantial Completion time period, unless both parties mutually agree otherwise. The parties shall split the mediator's fees equally. Participation in mediation shall be a condition precedent to filing suit in a court of competent jurisdiction unless otherwise excused by the terms of this Article 15 or stipulated by both parties in writing.

e. In the event of a dispute arising after Substantial Completion, Final Progress Payment or Final Completion, mediation is encouraged but is not a condition precedent to litigation.

**15.2.1 Expedited ADR.** In lieu of waiting until Substantial Completion to mediate or litigate any Claims which have been timely preserved but remain unresolved, any or both of the Parties may compel one or more of such Claims to be submitted to expedited alternative dispute resolution ("Expedited ADR") under this Section 15.2.1. The Parties have mutually agreed to establish a panel ("Panel") of seven (7) arbitrators, to be selected by mutual agreement of the Parties from the list of active members of the Dispute Review Board for the Florida Department of Transportation, and agree to include as one of the members of the Panel the present Chairman of the Florida Department of Transportation State Arbitration Board, who shall act as Chairman of the Panel ("Chairman") and will serve as the coordinator for the Panel. The Parties shall exchange proposed Panel compositions within ten (10) days following the Effective Date and agree on the Panel within thirty (30) days following the Effective Date. In the event the Parties have not selected a Panel within such thirty (30) day period, then the first instance when a Party notifies the other Party in writing that it desires to submit a Claim to Expedited ADR, the Parties shall select the Panel in the manner described above within thirty (30) days of the notice.

Each Claim shall be heard by a single arbitrator, who is the Chairman, unless: (i) the Chairman is unavailable to resolve the Claim on an expedited basis as provided in this Section 15.2.1, in which case the Chairman shall appoint another Panel member after confirming said member's availability, or (ii) the Claim amount exceeds \$1,000,000, in which case the Claim shall be heard by a panel of three (3) arbitrators, with the Chairman acting as one (1) member and selecting the other two (2) Panel members (or, if the Chairman is unavailable to serve on the panel to resolve the Claim on an expedited basis as provided in this Section 15.2.1, the Chairman shall select three (3) Panel members). In all cases, the Chairman shall confirm potential Panel members' availability to meet the expedited schedule prior to appointing such member.

A Party who seeks to compel Expedited ADR pursuant to this Section 15.2.1 shall notify the Chairman and the other Party in writing of its desire to compel Expedited ADR, including a brief description of the Claim. Within five (5) business days, (a) if the Claim amount is equal to or less than \$1,000,000, the Chairman shall confirm his availability to resolve the Claim on an expedited basis or appoint another Panel member after confirming said member's availability or (b) if the Claim amount exceeds \$1,000,000, the Chairman shall designate the other two (2) Panel members (or all three (3) Panel members, if the Chairman is unavailable to resolve the Claim on an expedited basis as provided in this Section 15.2.1) to serve as the arbitrators for the Claim. In selecting Panel members to hear a particular Claim, the Chairman shall take into account all relevant factors including without limitation the amount of the Claim, the nature of the Claim, and the relevant experience and availability of the Panel members. Further, in addition to considering his schedule and availability to resolve the Claim on an expedited basis, the Chairman in his/her sole discretion may determine that a different Panel member has more relevant experience than he/she does for the Claim in question, in which case the Chairman may appoint such other Panel member to serve as the single arbitrator or as one of the three (3) arbitrators, as applicable.

Except as modified in this Section 15.2.1, the Panel shall apply the American Arbitration Association's Construction Industry Arbitration Rules to resolve Claims submitted to Expedited ADR. There shall be no discovery permitted with respect to any Expedited ADR other than requests for document production, and only if required by the Chairman. If so required, each Party

will, upon written request of the other Party and written instruction by the Chairman, promptly provide the other Party with copies of all relevant documents.

The Party who has compelled such Expedited ADR (in each instance, the “Compelling Party”) shall present its position with respect to the issue(s) to be determined by such Expedited ADR by submitting a written statement via e-mail to the Chairman, copying the other Party (in each instance, the “Defending Party”) The Defending Party shall then submit an opposing statement (which shall set forth any counter-claim or offset to the Claim) via e-mail to the Chairman, copying the Compelling Party, within ten (10) business days of submission of the Compelling Party’s written statement.

At the Chairman’s sole discretion, each of the Parties to such Expedited ADR may present its position with respect to the issue(s) to be determined by such Expedited ADR by an oral presentation to the Chairman or the three (3) arbitrators from the Panel, as applicable. Such oral presentation may be held in-person (at a location in Miami-Dade County, Florida selected by the Chairman) or virtually via remote technology (e.g., Zoom) at the Chairman’s sole discretion. Provided the Chairman or the three (3) arbitrators from the Panel, as applicable, is/are accompanied by representatives of both the City and the Design/Builder, the Chairman or the three (3) arbitrators from the Panel, as applicable, may, at his/her/their option, visit the applicable Project Site to make an independent review in connection with any Claim. If the Chairman or the three (3) arbitrators from the Panel, as applicable, in his/her/their sole discretion, elect(s) to hear oral presentations with regard to a particular Claim, then each Party shall be given the opportunity to hear and orally respond to the other Party’s presentations to the Chairman or the three (3) arbitrators from the Panel, as applicable, and to present documents to the Chairman or the three (3) arbitrators from the Panel, as applicable, in support of such Party’s position. The Chairman or the three (3) arbitrators from the Panel, as applicable, shall have the right to limit the documents presented to assure a prompt resolution of the issue(s) to be determined by the Chairman or the three (3) arbitrators from the Panel, as applicable, The Parties to such Expedited ADR may have their respective counsels present at such Expedited ADR, but there shall be no examination or cross-examination of witnesses other than as required or permitted by the Chairman or the three (3) arbitrators from the Panel, as applicable,

If a Party has compelled a Claim to be submitted to Expedited ADR, then the Parties shall use Expedited ADR exclusively, rather than mediation or litigation, as a means of resolving such Claim. The Expedited ADR will be scheduled so that it is completed and a decision is announced within ninety (90) days from the date the Claim is first submitted to the Chairman. If requested by the Parties, a written award shall be rendered within ten (10) business days of the announcement of the decision of the Chairman or the three (3) arbitrators from the Panel, as applicable. Time is of the essence for any Expedited ADR under this Section 15.2.1, and the Chairman shall ensure that members of the Panel shall agree to these limits prior to accepting appointment.

The written award by the Chairman or the three (3) arbitrators from the Panel, as applicable, shall be the binding, final determination on the merits of the Claim submitted for Expedited ADR and shall preclude any subsequent litigation or mediation on such merits. This Section 15.2.1 shall not be construed to either expand or restrict any rights, duties, obligations, or limitations set forth elsewhere in this Agreement or under applicable law. Any award in an Expedited ADR under this

Section 15.2.1 shall be limited to monetary compensation and/or an award of additional time, and shall include no injunction or direction to any party other than the direction to pay a monetary amount or to provide for additional time. The parties agree that any disputes that arise out of such an award shall be resolved exclusively by Expedited ADR pursuant to this Section 15.2.1, provided that the Parties may institute legal proceedings in any court of competent jurisdiction to enforce judgment upon an Expedited ADR award in accordance with applicable laws. Each Party shall bear its own attorneys' fees and costs relating to the Expedited ADR, but the fees and costs of the Chairman or the three (3) arbitrators from the Panel, as applicable, shall be borne equally by the Parties to the Expedited ADR.

**15.3. Duty to Continue Performance.** Pending resolution of any dispute, the Design/Builder shall proceed and shall cause its Subcontractors to proceed diligently with the performance of its duties and obligations under the Contract Documents and the City shall continue to make payments of undisputed amounts in accordance with the Contract Documents. The failure of the Design/Builder to continue prosecution of the Work in the event of a pending dispute shall be deemed a Default pursuant to Section 16.2 of this Agreement.

**15.4. Final Dispute Resolution.** In the event of a dispute arising after Final Progress Payment or Final Completion, or a dispute which arose prior to Substantial Completion, has been preserved and which was not successfully resolved at mediation or Expedited ADR, a court of competent jurisdiction in Miami-Dade County shall hear such disputes. The parties hereby waive a trial by jury, which requirement shall be included in each and every Subcontract, sub-consulting agreement and purchase order that Design/Builder executes, in connection with its Work on the Project.