

RESOLUTION NO. 2021-_____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING THE SETTLEMENT AGREEMENT BETWEEN CLARK CONSTRUCTION GROUP, LLC ("CLARK"), HILL INTERNATIONAL INC. ("HILL"), AND THE CITY OF MIAMI BEACH, FLORIDA ("SETTLEMENT AGREEMENT"), AS ATTACHED TO THE COMMISSION MEMORANDUM ACCOMPANYING THIS RESOLUTION, TO SETTLE THE LITIGATION STYLED AS CLARK CONSTRUCTION GROUP, LLC, VS. THE CITY OF MIAMI BEACH AND HILL INTERNATIONAL INC., ELEVENTH JUDICIAL CIRCUIT, CASE NO. 2020-002129 CA 01, IN CONNECTION WITH THE MIAMI BEACH CONVENTION CENTER RENOVATION AND EXPANSION PROJECT ("PROJECT"), AND AUTHORIZING THE CITY TO (1) RELEASE \$6,400,000 IN RETAINAGE WITHHELD, IN PAYMENT FOR WORK PERFORMED ON THE PROJECT; (2) APPROVE PAYMENT OF \$9,090,000 WITHHELD AS LIQUIDATED DAMAGES FROM CLARK ON THE PROJECT PAY APPLICATIONS TO ACCOUNT FOR PROJECT-RELATED SCHEDULE DELAYS, IN PAYMENT FOR WORK PERFORMED ON THE PROJECT; AND (3) APPROVE PAYMENT OF AN ADDITIONAL TOTAL AMOUNT OF \$18,010,000, IN FULL SATISFACTION OF ALL PROJECT-RELATED CLAIMS ASSERTED BY CLARK AGAINST THE CITY, INCLUDING, WITHOUT LIMITATION, EXTRA WORK AND CHANGE ORDERS, CLARK'S CLAIM FOR GENERAL CONDITIONS, AND SUBCONTRACTOR IMPACT CLAIMS; WITH THE TOTAL SETTLEMENT AMOUNTS TO BE PAID BY THE CITY IN THE FOLLOWING INSTALLMENT PAYMENTS TO CLARK: \$9,000,000 ON OR BEFORE OCTOBER 15, 2021; \$9,900,000 ON OR BEFORE DECEMBER 31, 2021; \$6,500,000 ON OR BEFORE THE OUTSIDE DATE OF MAY 15, 2022; \$6,500,000 ON OR BEFORE DECEMBER 31, 2022; AND \$1,600,000 IN PERFORMANCE BASED PAYMENTS TIED TO THE COMPLETION OF THE REMAINING WORK MILESTONES AS SET FORTH IN THE SETTLEMENT AGREEMENT; AND FURTHER, AUTHORIZING THE CITY MANAGER AND ACTING CITY ATTORNEY TO TAKE THE NECESSARY AND APPROPRIATE STEPS FOR THE IMPLEMENTATION OF THE SETTLEMENT AGREEMENT, AND AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE THOSE DOCUMENTS AND/OR AGREEMENTS NECESSARY TO EFFECTUATE THE SETTLEMENT AGREEMENT CONSISTENT WITH THIS RESOLUTION.

WHEREAS, on May 20, 2015, the Mayor and City Commission adopted Resolution No. 2015-29028, approving the Construction Manager at Risk Agreement ("CMaR Agreement") between the City and Clark Construction Group, LLC ("Clark"), authorizing pre-construction services for the Miami Beach Convention Center Renovation and Expansion Project ("Project") and specifying the terms and conditions for the development and negotiation of a Guaranteed Maximum Price ("GMP") for the construction phase services for the Project; and

WHEREAS, on October 21, 2015, the Mayor and City Commission adopted Resolution No. 2015-29188 authorizing the City to enter into a Construction Manager at Risk Agreement with Clark for the renovation and expansion of the Miami Beach Convention Center Project, with a Guaranteed Maximum Price ("GMP") in the amount of \$515,458,058; and

WHEREAS, on January 31, 2020, Clark filed a \$100 million+ lawsuit, *Clark Construction Group, LLC, vs. City Of Miami Beach And Hill International Inc.*, Eleventh Judicial Circuit Court Case No. 2020-002129 CA 01, against the City and Hill International Inc. ("Hill"), the City's owner's representative for the Project, seeking: (i) a declaration by the Court that it is entitled to significant time extensions, release of retainage and payment for work allegedly completed and within the scope of the contract; (ii) damages for breach of contract; and (iii) damages for Breach of Covenant of Good faith and Fair Dealing; and

WHEREAS, for the reasons as outlined in the accompanying Commission Memorandum, the Mayor and City Commission desire to resolve the matter and approve the Settlement Agreement.

NOW, THEREFORE, BE IT DULY RESOLVED THAT THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby approve the Settlement Agreement between Clark Construction Group, LLC ("Clark"), Hill International Inc. ("Hill"), and the City of Miami Beach, Florida ("Settlement Agreement"), as attached to the Commission Memorandum accompanying this Resolution, to settle the litigation styled as *Clark Construction Group, LLC, vs. the City Of Miami Beach and Hill International Inc.*, Eleventh Judicial Circuit, Case No. 2020-002129 CA 01, in connection with the Miami Beach Convention Center Renovation and Expansion Project ("Project"), and authorize the City to (1) release \$6,400,000 in retainage withheld, in payment for work performed on the Project; (2) approve payment of \$9,090,000 withheld as liquidated damages from Clark on the Project pay applications to account for Project-related schedule delays, in payment for work performed on the Project; and (3) approve payment of an additional total amount of \$18,010,000, in full satisfaction of all Project-related claims asserted by Clark against the City, including, without limitation, extra work and change orders, Clark's claim for general conditions, and subcontractor impact claims; with the total settlement amounts to be paid by the City in the following installment payments to Clark: \$9,000,000 on or before October 15, 2021; \$9,900,000 on or before December 31, 2021; \$6,500,000 on or before the outside date of May 15, 2022; \$6,500,000 on or before December 31, 2022; and \$1,600,000 in performance based payments tied to the completion of the remaining work milestones as set forth in the Settlement Agreement; and further, authorize the City Manager and Acting City Attorney to take the necessary and appropriate steps for the implementation of the Settlement Agreement, and authorize the City Manager and City Clerk to execute those documents and/or agreements necessary to effectuate the Settlement Agreement consistent with this Resolution.

PASSED and ADOPTED this _____ day of _____, 2021.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney
GA

9-28-21

Date