

**SETTLEMENT AGREEMENT AND RELEASE**

THIS SETTLEMENT AGREEMENT AND RELEASE (this "Agreement") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2023 by and between RIC-MAN INTERNATIONAL, INC. (hereinafter referred to as "RMI"), and the CITY OF MIAMI BEACH, FLORIDA (hereinafter referred to as the "City"). The parties hereto (the "Parties") agree as follows:

**RECITALS**

**WHEREAS**, RMI and the City entered into that certain Design/Build Agreement pursuant to Request for Proposals No. 2015-133-YG, dated June 10, 2016 (the "DB Agreement") in the amount of \$18,061,646 plus \$1,300,000 owner's contingency for a total of \$19,361,645.95, pursuant to which RMI would provide design-build services for the project known as the "Neighborhood No. 8 Central Bayshore South Right-of-Way Infrastructure Improvement" (the "Project"); and

**WHEREAS**, on July 14, 2016, Notice to Proceed (NTP) No. 1 was issued directing RMI to start the pre-construction work including engineering design and permitting.

**WHEREAS**, In February 2017, RMI began construction activities related to water main scope of work, including sidewalk replacement, and road reconstruction from Dade Boulevard to 34<sup>th</sup> Street and milling and resurfacing and striping from Dade Boulevard to 28<sup>th</sup> Street; and

**WHEREAS**, the stormwater design reached a 60% level and encountered challenges in meeting the specified design criteria and consensus from the community on road raising; and

**WHEREAS**, on June 2, 2017, the City advised RMI that design work related to stormwater and right-of-way infrastructure scope of work of the Project should be suspended; and

**WHEREAS**, RMI was to proceed with all construction activities associated with the water main scope of work; and

**WHEREAS**, on December 10, 2020, the City exercised its right to terminate the Agreement for convenience pursuant to its terms; and

**WHEREAS**, RMI has made claims against the City for reduced bonding capacity and unabsorbed office overhead costs and expenses allegedly incurred by RMI during the period between the date of the suspension notice and the effective date of the termination for convenience; and

**WHEREAS**, the City has denied any liability to RMI for the alleged damages; and

**WHEREAS**, to avoid the costs and uncertainties of litigation, the Parties are desirous of resolving all claims and disputes between themselves, on the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in exchange for the good and valuable consideration more particularly set forth herein, but without admission of any liability, fault or wrongdoing, the Parties agree as follows:

1. **Recitals**. The above recitals are true and correct and are incorporated herein by this reference. Capitalized terms used herein and not otherwise defined shall have the meanings given to them in the DB Agreement.

2. **Representation**. This Agreement is entered into voluntarily by the Parties who stipulate and agree that they are under no duress or undue influence. The Parties represent that in the execution of this Agreement, they had the opportunity to consult legal counsel of their own selection with respect to the execution this Agreement.

3. **Settlement Payment**. Within thirty (30) days of the Effective Date of this Agreement, the City agrees to pay, and RMI agrees to accept, the total sum of Nine Hundred Fifty Thousand Dollars and Zero Cents (\$950,000.00) (the "Settlement Proceeds"), as a full and final settlement between the Parties of all claims raised, or that could have been raised, by RMI pursuant or in relation to the DB Agreement.

4. **Release**. RMI, for itself and on behalf of its Consultants, all Subcontractors, all Design Subconsultants and all material suppliers at every tier, hereby remise, release, acquit and forever discharges the City, its attorneys, representatives, officers, employees and agents from any past, present and future claims, actions, causes of action, demands, rights, damages, costs, losses, expenses, compensations and obligations which exist or which may hereafter accrue, whether known or unknown, whether foreseen or unforeseen, whether matured or not mature, whether discovered or undiscovered, and the consequences thereof, having resulted, resulting or to result from any or all of the following:

- a. RMI's performance of any work pursuant to the DB Agreement;
- b. the City's suspension of work pursuant to the DB Agreement;
- c. the City's termination of the DB Agreement; and
- d. any and all claims for attorney's fees (including paralegal fees) and costs in any way related to any of the foregoing.

5. **Warranty of No Assignment; Satisfaction of Third-Party Interests**. RMI represents, warrants, and certifies that it has not in any manner assigned, pledged or otherwise voluntarily or involuntarily disposed of or transferred to any person or entity any interest in any claim(s), actions, causes of action, suits, damages, losses, judgments, executions, demands, liabilities, obligations, responsibilities, liens, expenses, costs and attorney's fees raised by RMI and/or referenced in this Agreement (collectively, "Claims"), and if any person or entity has any interest in any such Claim, RMI will fully satisfy and discharge such person or entity's interests from the Settlement Proceeds payable by the City pursuant to this Agreement. RMI will hold harmless and indemnify the City from and for any and all actions, causes of action, damages and costs, including reasonable attorneys' fees, incurred in defense of or in settlement of all actions, causes of action, suit or suits, or demands, by any third party whose interest in any Claim is not fully satisfied and discharged by RMI.

6. **No Admission of Liability**. RMI acknowledges and agrees that any payment by the City pursuant to this Agreement, and/or any other act, representation, inaction or silence by

the City is not to be construed as an admission of liability but is made to protect the interest of the City and to avoid litigation and the expense thereof.

7. **Effective Date.** The Effective Date of this Agreement shall be the date upon which the second Party to sign has affixed the signature of its representative to the Agreement and delivered an executed copy to the other Party.

8. **Entire Agreement.** This Agreement constitutes the sole and entire agreement between the Parties and supersedes all prior and contemporaneous statements, promises, understandings or agreements, whether written or oral.

9. **Amendments.** This Agreement may be amended, modified or altered at any time upon the approval of the Parties; however, any such amendment must be in writing and signed by all Parties in order for such amendment to be of any force and effect.

10. **Partial Invalidity.** In the event that any provision of this Agreement is declared by any court of competent jurisdiction or any administrative judge to be void or otherwise invalid, all of the other terms, conditions and provisions of this Agreement shall remain in full force and effect to the same extent as if that part declared void or invalid had never been incorporated in the Agreement and in such form, the remainder of the Agreement shall continue to be binding upon the Parties.

11. **Applicable Law.** This Agreement shall be subject to and governed by the laws of the State of Florida, without regard to conflict of law rules.

12. **Counterparts.** This Agreement may be signed and executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one Agreement. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or email shall be effective as delivery of an originally executed counterpart of this Agreement.

13. **No Adverse Construction.** The Parties acknowledge that this Agreement has been prepared by each of them. In the event any part of this Agreement is found to be ambiguous, such ambiguity shall not be construed against either of the Parties.

14. **Further Acts.** In addition to the acts recited in this Agreement, the Parties agree to perform, or cause to be performed on the date of this Agreement, or thereafter, any and all such further acts as may be reasonably necessary to consummate the transactions contemplated hereby. Each of the Parties agrees that it will execute and deliver all such documents and instruments as may be necessary and appropriate to effectuate the terms of this Agreement.

**[BALANCE OF PAGE IS INTENTIONALLY BLANK.]**

15. **Authority.** Each person(s) executing this Agreement as an agent or in a representative capacity further warrants that he or she is duly authorized to do so.

The Parties have executed this Agreement as of the date set forth below.

**IN WITNESS WHEREOF**, the parties hereto have caused this Settlement Agreement to be executed in their names by their duly authorized officials as of the date first set forth above.

ATTEST:

**CITY OF MIAMI BEACH, FLORIDA**

\_\_\_\_\_  
Rafael E.  
Granado, City  
Clerk

\_\_\_\_\_  
Dan Gelber  
Mayor

ATTEST:

**RIC-MAN INTERNATIONAL, INC.**

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
President

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name