

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING THE SETTLEMENT AGREEMENT AND RELEASE BETWEEN THE CITY OF MIAMI BEACH , FLORIDA (CITY) AND RIC-MAN INTERNATIONAL, INC. (RMI) IN THE AMOUNT OF \$950,000, WHICH SETTLEMENT SUMS ARE AVAILABLE IN THE PROJECT BUDGET, TO SETTLE ALL OUTSTANDING CLAIMS PERTAINING TO THE DESIGN/BUILD SERVICES ASSOCIATED WITH NEIGHBORHOOD NO. 8: CENTRAL BAYSHORE SOUTH RIGHT-OF-WAY INFRASTRUCTURE IMPROVEMENTS PROJECT AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE SETTLEMENT AGREEMENT.

WHEREAS, on April 13, 2016, the Mayor and City Commission adopted Resolution No. 2016-29363, pursuant to Request for Proposals No. 2015-133-YG, awarding design/build services to Ric-Man International, Inc. ("RMI" or the "Contractor") for the Neighborhood No. 8: Central Bayshore South Right-of-Way (ROW) Infrastructure Improvements project; and

WHEREAS, on June 10, 2016, a design-build contract (the "Design-Build Contract") was executed in the amount of \$18,061,646 plus \$1,300,000 owner's contingency for a total of \$19,361,645.95; and

WHEREAS, the Central Bayshore South Neighborhood project limits include the public rights-of-way bounded on the north by the south right-of-way line of 34th Street; on the east by the west right-of-way line of Pine Tree Drive; on the south by Dade Boulevard; and on the west by the Miami Beach Golf Course; and

WHEREAS, the scope of this Design-Build project consisted of the design and construction of new water mains, road raising/reconstruction, storm drainage, installation of stormwater pump station, stormwater outfalls, and concrete sidewalk repairs; 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; and

WHEREAS, on December 8, 2016, a Community meeting was held to kick-off the start of construction for water main installation and to present the 60% stormwater design including information about the road raising strategy; and

WHEREAS, following the meeting, the City received significant opposition from the Bayshore Neighborhood community regarding the proposed road elevation improvements;

WHEREAS, in February 2017, RMI began construction activities related to the water main scope of work, including sidewalk repairs, and road reconstruction from Dade Boulevard to 34th Street and milling, resurfacing and striping from Dade Boulevard to 28th Street; and

WHEREAS, the 60% level stormwater design encountered challenges in meeting the specified design criteria, as well as obtaining consensus from the community on the road raising strategy; and

WHEREAS, for several months the Administration and Design/Builder attempted to finalize the stormwater design, but these efforts proved unsuccessful; and

WHEREAS, on June 2, 2017 a stop work letter was issued to RMI for all design work related to the drainage and right-of-way infrastructure scope of work, until further direction by the City; and

WHEREAS, the City's Stormwater Management strategy was reviewed by the Urban Land Institute (ULI) and by the Columbia University Resilience Accelerator in 2018 and based on recommendations made by ULI, the Resilience Accelerator and other agencies, the Administration was to determine next steps in the stormwater program to better implement the projects; and

WHEREAS, on December 18, 2020 a Notice of Termination for Convenience for the Design-Build Contract for the Central Bayshore South Right-of-Way (ROW) Infrastructure Improvements project was sent to the Contractor, and as required by contract terms, the City requested a final termination payment proposal with substantiating documentation as a final settlement for all work performed on the project; and

WHEREAS, RMI submitted a claim letter on January 15, 2021 with a final termination payment proposal in the amount of \$3,898,305.25; and

WHEREAS, the Contractor claimed that the final termination payment proposal included the opportunity costs of maintaining the payment and performance bond active for an amount equal to the contract amount for a lengthy period of idle time, compromising their bonding capacity, and the overhead costs associated with management and accounting services to monitor the project and continuously assess the availability of resources to be prepared to proceed with the work upon notification by the City; and

WHEREAS, after numerous written communications and negotiation meetings, the City and the contractor agreed to a final termination payment in the amount of \$950,000 in full settlement of all claims pursuant to a settlement agreement, a copy of which is attached to the Memorandum accompanying this Resolution as **Attachment A** (the "Proposed Settlement Agreement"), said termination payment to account for the reduced bonding capacity and unabsorbed office overhead costs and expenses allegedly incurred by RMI, subject to City Commission approval of the Proposed Settlement Agreement; and

WHEREAS, the City will also be releasing the remaining retainage held for work previously completed in the amount of \$10,000; and

WHEREAS, the Administration recommends that the Mayor and City Commission approve the resolution.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA approving the settlement agreement and mutual release between the City of Miami Beach, Florida (city) and Ric-Man International, Inc. (RMI) in the amount of \$950,000, to settle all outstanding claims pertaining to the design/build services associated with Neighborhood No. 8: Central Bayshore South Right-of-way Infrastructure Improvements project and authorizing the City Manager and City Clerk to execute the settlement agreement, which settlement sums are available in the project budget.

PASSED and **ADOPTED** this _____ day of _____, 2023.

Dan Gelber, Mayor

ATTEST:

Rafael E. Granado, City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

1-17-23

Date