Memorandum

MIAMI-DADE COUNTY

Date:	July 1, 2008
To:	Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners
From:	George M. Burgess County Manager
Subject:	Settlement Agreement between Miami-Dade County and Ric-Man International Inc. for Contract No. S: 718-10-A: Relocation of Water and Sewer Mains along SW 8 Street between 132 and 139 Avenues, in the amount of $368,070.47

Agenda Item No. 8(R)(1)(C)

RECOMMENDATION

It is recommended that the Board approve the attached resolution authorizing the execution of a settlement agreement in the amount of $368,070.47 between Miami-Dade County, on behalf of the Miami-Dade Water and Sewer Department (WASD), and Ric-Man International (Ric-Man) for Contract No. S: 718-10-A: Relocation of Water and Sewer Mains along SW 8 Street between 132 and 139 Avenues. The settlement payment amount consists of $306,701.68 above the original contract amount of $1,027,674.20, plus other amounts due including retainage, for a total settlement amount of $368,070.47. This settlement agreement waives any liquidated damages associated with this contract.

This is part of an on-going effort by WASD to perform an internal review of its construction contracts and preparing change orders or settlement agreements as required with the intent of resolving all outstanding construction issues.

BACKGROUND

This settlement agreement resolves a claim in the amount of $437,310.34 filed by Ric-Man against the County five years ago in connection with this contract. Ric-Man was hired by WASD to relocate water and sewer mains along SW 8 Street between 132 and 139 Avenues, prior to the expansion of SW 8 Street by the Florida Department of Transportation (FDOT). WASD expected to complete this project before the start of the FDOT project. However, WASD issued the "Notice to Proceed" to Ric-Man six months late, and 30 days before the FDOT start date. This delay caused numerous project setbacks and generated additional costs for Ric-Man since its project was within FDOT's right-of-way.

FDOT's project terms prevailed over Ric-Man's, therefore Ric-Man was required to work under the direction of the FDOT contractor and adjust to FDOT's sequence of construction. This generated the following conflicts, which resulted in time delays and increased costs:

1. FDOT contractor's Maintenance-of-Traffic (MOT) Plan prevailed over Ric-Man's MOT.
2. Repeated mobilization and de-mobilization of equipment, and frequent work stoppage to accommodate the workload of the FDOT contractor.
3. Unanticipated Florida Power and Light's electrical lines causing water and sewer line relocations.
4. The purchase of different materials to install and restore the pipe in the trench sites.

This claim was negotiated by WASD with Ric-Man on April 9, 2008.

Assistant County Manager

MEMORANDUM
(Revised)

TO: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

DATE: July 1, 2008

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 8(R)(1)(C)

Please note any items checked.

_____ **"4-Day Rule" ("3-Day Rule" for committees) applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Bid waiver requiring County Manager's written recommendation**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **Housekeeping item (no policy decision required)**

✓ **No committee review**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(R)(1)(C)
7-1-08

RESOLUTION NO. _____

RESOLUTION AUTHORIZING EXECUTION OF A SETTLEMENT AGREEMENT BETWEEN RIC-MAN INTERNATIONAL INC. AND MIAMI-DADE COUNTY IN THE AMOUNT OF $368,070.47 TO SETTLE CLAIMS IN CONNECTION WITH COUNTY CONTRACT NO. S-718-10-A

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the execution of a Settlement Agreement between Ric-Man International, Inc. and Miami-Dade County in the amount of $368,070.47 to settle claims in connection with County Contract No. S-718-10-A; in substantially the form attached hereto and made a part hereof; and authorizes the County Mayor or his designee to execute same for and on behalf of Miami-Dade County.

The foregoing resolution was offered by Commissioner ,
who moved its adoption. The motion was seconded by Commissioner
and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman
Barbara J. Jordan, Vice-Chairwoman

Jose "Pepe" Diaz
Carlos A. Gimenez
Joe A. Martinez
Dorrin D. Rolle
Katy Sorenson
Sen. Javier D. Souto
Audrey M. Edmonson
Sally A. Heyman
Dennis C. Moss
Natacha Seijas
Rebeca Sosa

The Chairperson thereupon declared the resolution duly passed and adopted this 1st day of July, 2008. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Henry N. Gillman

SETTLEMENT AGREEMENT BETWEEN

RIC-MAN INTERNATIONAL, INC.

AND

MIAMI-DADE COUNTY

This Settlement Agreement is entered into on this _____ day of _____, 2008, by and between Miami-Dade County ("the County") and Ric-Man International, Inc. ("Ric-Man").

WHEREAS, the County and Ric-Man are party to a contract known as S-718-10-A ("the Contract"); and

WHEREAS, the contract required Ric-Man to supply all materials, labor, equipment, permitting, installation and start-up services to relocate existing water and sewer mains at culvert and canal crossings along S.W. 8th Street, in the vicinity of S.W. 132nd Avenue; and

WHEREAS, Ric-Man contends that it incurred additional costs due to delays beyond its control; and

WHEREAS, the County and Ric-Man desire to completely resolve and settle all issues arising from Ric-Man's p erformance of the contract, including all claims for damages, penalties, or costs of any nature incurred, including both direct and indirect costs incurred by Ric-Man relating to the Contract and the services, material and labor for the relocation of existing water and sewer mains at culvert and canal crossings along S.W. 8th Street, in the vicinity of S.W. 132nd Avenue.

5

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth below, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, Ric-Man and the County agree as follows:

1. Within twenty-one (21) days from the effective date of this Settlement Agreement and subject to the receipt of all documentation required by the contract including, but not limited to, certified payrolls, releases of lien, as-builts, atlases and contractor affidavits, the County shall pay to Ric-Man the amount of $368,070.47; payment of said amount to be final payment in connection with the Contract and all work relating to the relocation of existing water and sewer mains at culvert and canal crossings along S.W. 8th Street, in the vicinity of S.W. 132nd Avenue.

2. Payment of said sum of $368,070.47 shall constitute full accord and satisfaction of any and all claims of which Ric-Man or any of its subcontractors or material suppliers had knowledge of or reasonably should have had knowledge of in connection with any of the work performed or damages or cost incurred in connection with the Contract or the construction, including both direct, indirect and pass-through claims, damages, actions and causes of action.

3. Nothing in this settlement agreement constitutes an admission by any party of any wrongdoing or liability of any kind.

4. In consideration of the mutual covenants contained in this settlement agreement, Ric-Man hereby releases, discharges and acquits the County and its officials, employees and agents from any and all claims, disputes or causes of action it has or may have, whether known or unknown, against the County, and their officers, employees and agents arising out of or in connection with the Contract or the work performed under the

6

Contract, including, but not limited to any and all claims that could have been asserted in connection with the Contract, whether known or unknown.

5. The County hereby releases, discharges, and acquits Ric-Man, its subcontractors and material suppliers from any and all liquidated damages and other damages or costs arising out of or related to delays in connection with the Contract and the relocation of existing water and sewer mains at culvert and canal crossings along S.W. 8th Street, in the vicinity of S.W. 132nd Avenue. The County does not waive any claims it may have against Ric-Man as a result of latent defects in the work.

6. Ric-Man hereby expressly agrees to defend, hold harmless, and indemnify the County and its officials, employees, agents and representatives, from any and all claims arising out of or related to the Contract or the construction, of which Ric-Man or any of its subcontractors or material suppliers had knowledge or reasonably should have had knowledge, in connection with any of the work performed or damages or costs incurred during the construction. Ric-Man shall pay all claims and losses in connection therewith and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon.

7. This settlement agreement is complete and contains the full understanding of Ric-Man and the County. This agreement may not be modified without the express written consent of Ric-Man and the County. This agreement supersedes all other terms, provisions, or specifications of any prior documentation or agreement as may exist between Ric-Man and the County.

8. This settlement agreement shall be interpreted under Florida law. Venue for any litigation relating to this Agreement shall be had in Miami-Dade County, Florida.

9. This settlement agreement, and each and every provision herein, shall be subject to the express approval of the Miami-Dade County Board of County Commissioners. This agreement becomes effective eleven (11) days after approval by the Miami-Dade County Board of County Commissioners, unless vetoed by the Mayor. In the event the Mayor vetoes the Commission action, the Commission action shall not be effective in the absence of an override of the Mayor's veto at the next regularly scheduled meeting of the Board after the veto occurs. The actions of the Commission and the Mayor in connection with the approval or rejection of this agreement rests within their sole discretion.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement on the day and year first above written.

Witnesses:

RIC-MAN INTERNATIONAL, INC.

By: _____

Print Name: Rene L Castillo

Title: Corporate Secretary

Attest:
Harvey Ruvin, Clerk

MIAMI-DADE COUNTY
By Its Board of County Commissioners

By: _____
Deputy Clerk

By: _____
County Mayor

Approved as to form/
legal sufficiency:

8