



**CITY OF FORT LAUDERDALE
City Commission Agenda Memo
REGULAR MEETING**

#24-0667

TO: Honorable Mayor & Members of the
Fort Lauderdale City Commission

FROM: Susan Grant, City Manager

DATE: July 2, 2024

TITLE: Motion Approving a Settlement and Authorizing the City Manager to Sign the Joint Motions for Agreed Final Orders Between Broward County, City of Fort Lauderdale, and Ric-Man Construction Florida, Inc., for NOV24-0001 and NOV24-0002 and Authorizing a Settlement Payment of \$78,808 - **(Commission District 4)**

Recommendation

Staff recommends the City Commission approve a settlement and authorize the City Manager to sign the Joint Motions for Agreed Final Orders associated with the River Oaks Stormwater Improvement Project, in substantially the forms attached, and to make a settlement payment in the amount of \$78,808.

Background

The River Oaks Stormwater Improvement Project is a \$25M stormwater infrastructure project to reduce flooding for 40+ acres within the River Oaks neighborhood. The contractor, Ric-Man Construction Florida Inc. (Ric-Man) started in January 2022 with work substantially completed on February 13, 2024.

On February 24, 2023, the Broward County Environmental Permitting Division (BCEPD) issued a Notification of Potential Enforcement Action (NOPEA) for excessive turbidity associated with dewatering discharges into the Coconut Drive drainage canal. On March 21, 2023, BCEPD issued a second NOPEA for excessive turbidity associated with unauthorized discharges into the River Oaks Wetland Preserve. These NOPEAs were reported to the City Commission on April 5, 2023 (Exhibit 1, Memorandum 23-054).

On January 18, 2024, BCEPD issued Notice of Violation (NOV) 24-0001 for violations of the Broward County Code of Ordinances at the Coconut Drive drainage canal (Exhibit 2) and NOV 24-0002 for violations at the River Oaks Wetland Preserve (Exhibit 3).

The City and Ric-Man provided responses to each count contained within the NOVs, followed by settlement conferences with BCEPD on April 10, 2024, and May 29, 2024. Through negotiations, a proposed settlement was reached in the amount of \$175,450, subject to the approval of the City Commission. The settlement contains a civil penalty of \$12,400, with \$300 for administrative costs, for NOV 24-0001 and a civil penalty of \$162,450, with \$300 administrative costs, for NOV 24-0002. The Agreed Final Orders

(Exhibits 4 and 5) will resolve both NOV's without need of further hearings. This amount would be split between the City and Ric-Man, with the City paying \$78,808 and Ric-Man paying \$96,642.

Resource Impact

There is a fiscal impact to the City in the amount of \$78,808 for the settlement of the two NOV's. Funds for the resolution of the NOV's in the amount of \$78,808 are available in the FY 2024 – FY 2028 Community Investment Plan in the accounts listed below.

Funds available as of June 24, 2024					
ACCOUNT NUMBER	COST CENTER NAME (Program)	CHARACTER/ ACCOUNT NAME	AMENDED BUDGET (Character)	AVAILABLE BALANCE (Character)*	AMOUNT
10-470-7999-538-60-6550-P11419	River Oaks Stormwater Park	Capital Outlay/ Administration	\$4,004,691	\$311,140	\$78,808
TOTAL AMOUNT ►					\$78,808

Strategic Connections

This item is a 2024 *Commission Priority*, advancing the Infrastructure and Resilience initiative.

This item supports the *Press Play Fort Lauderdale 2029 Strategic Plan*, specifically advancing:

- The Infrastructure and Resilience Focus Area
- Goal 3: Be a sustainable and resilient community

This item advances the *Fast Forward Fort Lauderdale 2035 Vision Plan: We Are Ready*.

This item supports the *Advance Fort Lauderdale 2040 Comprehensive Plan* specifically advancing:

- The Infrastructure Focus Area
- The Sanitary Sewer, Water & Stormwater Element
- Goal 6: Ensure that all areas of the City are reasonably protected from flooding giving due consideration to the City's natural and built environment.

Attachments

Exhibit 1 – Memorandum 23-054, River Oaks Stormwater Project

Exhibit 2 – Broward County NOV 24-0001

Exhibit 3 – Broward County NOV 24-0002

Exhibit 4 – Joint Motion for Agreed Final Order and Agreed Final Order – NOV 24-0001

Exhibit 5 – Joint Motion for Agreed Final Order and Agreed Final Order – NOV 24-0002

Prepared by: Alan Dodd, PE, Director Public Works
Rhonda Montoya Hasan, Senior Assistant City Attorney

**BEFORE THE HEARING EXAMINER FOR THE BROWARD COUNTY
RESILIENT ENVIRONMENT DEPARTMENT
IN AND FOR BROWARD COUNTY, FLORIDA**

BROWARD COUNTY,

Petitioner,

vs.

NOTICE OF VIOLATION
NOV24-0002

CITY OF FORT LAUDERDALE and
RIC-MAN CONSTRUCTION FLORIDA, INC.,

Respondent.

_____ /

JOINT MOTION FOR AGREED FINAL ORDER

Petitioner, BROWARD COUNTY ("County"), by and through its Resilient Environment Department ("RED"), and Respondents, CITY OF FORT LAUDERDALE ("CITY") and RIC-MAN CONSTRUCTION FLORIDA, INC. ("RIC-MAN") (CITY and RIC-MAN are herein collectively referred to as the "Respondents"),¹ hereby file this Joint Motion for Agreed Final Order in the above-styled case pursuant to Subsection 27-21(d) of the Broward County Code of Ordinances ("Code") and state as follows:

1. This cause was set for hearing before a Hearing Examiner on June 27, 2024, on Notice of Violation NOV24-0002, which alleged seven Counts. Count 1 alleged Respondents violated Section 27-193(a) of the Code, which states:

It shall be unlawful for any person to discharge any substance in such quantities as may cause the receiving waters to be of quality less stringent than the water quality standards set forth in Section 27-195, or less stringent than allowed by effluent standards as established in Sections 27-196, or to cause pollution of water or a nuisance as defined in Section 27-4.

Counts 2, 4, and 5 alleged Respondents violated Section 27-27(a)(2) of the Code, which states:

(a) Violations: It shall be a violation of this chapter for any person: (2) To fail to obtain any license, environmental review approval, or any other approval required by this chapter or by rule or regulation, or to violate or fail to comply with any rule, regulation, order, license, certification,

¹ Petitioner and Respondent(s) are collectively referred to as the "Parties."

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RESPONDENTS: CITY OF FORT LAUDERDALE and RIC-MAN CONSTRUCTION
FLORIDA, INC.**

environmental review approval, or any other approval adopted or issued by RED pursuant to its lawful authority.

Count 3 alleged Respondents violated Section 27-333(a)(1) of the Code, which states:

No person shall cause, permit, suffer, allow, conduct or cause to be conducted impact, alteration, construction, demolition, dredging or filling in regulated aquatic or wetland resources, except in accordance with a currently valid environmental resource license issued by RED and all general and specific license conditions contained therein.

Count 6 alleged that City violated Section 27-27(a)(2) of the Code, which states:

(a) Violations: It shall be a violation of this chapter for any person: (2) To fail to obtain any license, environmental review approval, or any other approval required by this chapter or by rule or regulation, or to violate or fail to comply with any rule, regulation, order, license, certification, environmental review approval, or any other approval adopted or issued by RED pursuant to its lawful authority.

Count 7 alleged City violated Section 27-27(a)(7) of the Code, which states:

(a) Violations: It shall be a violation of this chapter for any person: ... (7) To fail to keep on site, maintain, make available, post or display records or documents required by a license or this chapter.

- 2. Notice of Violation NOV24-0002 alleged that at the River Oaks Stormwater Park and Preserve Folio numbers 504216000200; 504216000190; 504216460010; 504216000170; 504216000160; and 504216000141 and surrounding canals located at 2101 SW 19th Avenue, Fort Lauderdale, FL 33315 on or about January 30, 2022, to March 15, 2023, Respondents:**

(a) discharged into the River Oaks Stormwater Park and Preserve and surrounding canals causing the receiving waters to be of quality less stringent than the water quality standards for turbidity on or about March 2, 2022, through March 15, 2023, as set forth in Section 27-195, or to cause pollution of water or a nuisance as defined in Section 27-4;

(b) discharged from dewatering activities into the wetland preserve known as River Oaks Stormwater Park and Preserve from January 30, 2022, through March 15, 2023, without a valid license from RED and in violation of the Dewatering Plan approved December 17, 2021, for the River Oaks Stormwater Improvements Broward County Dewatering Project ID 21165042;

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(c) caused, permitted, suffered, allowed, conducted, or caused to be conducted impact, alteration, construction, and/or dredging by placing gravel fill in regulated aquatic or wetland resources without a valid Environmental Resource License issued by RED;

(d) failed to notify RED within eight (8) hours when exceedances of water quality standards for turbidity occurred during dewatering activities in violation of Broward County General Condition No. 3 of Environmental Resource Permit No. ERP 06-80003-P/Surface Water Management License No. SWM2018-081-5 (issued 11/24/2020) and in violation of Condition No. 5 of the Dewatering Plan approved December 17, 2021, for the River Oaks Stormwater Improvements Broward County Dewatering Project ID 21165042;

(e) failed to monitor dewatering effluent between November 19, 2022, and February 26, 2023, during dewatering activities in violation of Condition No. 5 of the Dewatering Plan approved December 17, 2021, for the River Oaks Stormwater Improvements Broward County Dewatering Project ID 21165042;

(f) failed to comply with Aquatic Wetland and Resources Program: Standard Condition C.2. (Mitigation Conditions) of Environmental Resource Permit No. 06-07241-P/Surface Water Management License No. SWM2015-091-0/ Environmental Resource License No. DF13-1113 (issued 12/18/2015) by failing to prohibit activities detrimental to drainage, flood control, water conservation, erosion control, or fish and wildlife habitat conservation, or preservation of the wetland mitigation area known as River Oaks Stormwater Park and Preserve; and

(g) failed to keep copies on site of Environmental Resource Permit No. ERP 06-80003-P/Surface Water Management License No. SWM2018-081-5/ Environmental Resource License No. DF21-1148 (issued 11/24/2020) including the Modification issued 5/26/2021, as required by Aquatic Wetland and Resources Program: F. which states "A COPY OF THIS LICENSE SHALL BE KEPT ON SITE DURING ALL PHASES OF LICENSED CONSTRUCTION."

3. To further resolve this cause without the need of a hearing, the Parties agree to the terms of the proposed Agreed Final Order attached hereto as Exhibit A.
4. The Parties acknowledge they had the opportunity to seek and receive whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations which attach by entry of the proposed Agreed Final Order.

WHEREFORE, the Parties request that the Hearing Examiner enter the proposed Agreed Final Order and promptly render it in the files of County.

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Respectfully submitted by the Parties on this _____ day of _____, 2024.

RESPONDENT
RIC-MAN CONSTRUCTION FLORIDA,
INC.

By: 
(Signature)

Print Name: Daniel Mascio

Title of Signatory: President

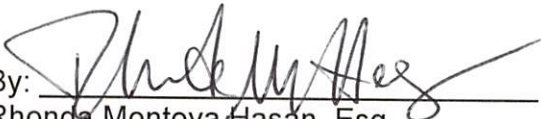
Company: Ric-Man Construction FL, Inc.

PETITIONER
BROWARD COUNTY

Andrew J. Meyers
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-6968

By: _____
Alexis Marrero Koratich, Esq.
Assistant County Attorney
Florida Bar No. 1010273
Primary Email: akoratich@broward.org
Secondary Email: gbusacca@broward.org
Counsel for Broward County

**APPROVED AS TO FORM AND
CORRECTNESS:**

By: 
Rhonda Montoya Hasan, Esq.
Senior Assistant City Attorney
Florida Bar No. 863890
Counsel for City of Fort Lauderdale

RESPONDENT
CITY OF FORT LAUDERDALE

By: _____
(Signature)

Print Name: _____

Title of Signatory: _____

CITY OF FORT LAUDERDALE, a municipal corporation of the State of Florida

By: 
SUSAN GRANT
Acting City Manager


Date: 7/18/24

ATTEST:

By: 
DAVID R. SOLOMAN
City Clerk



Approved as to Legal Form and Correctness:
THOMAS J. ANSBRO, City Attorney

By: 
RHONDA MONTOYA HASAN
Senior Assistant City Attorney

**BEFORE THE HEARING EXAMINER FOR THE BROWARD COUNTY
RESILIENT ENVIRONMENT DEPARTMENT
IN AND FOR BROWARD COUNTY, FLORIDA**

BROWARD COUNTY,

Petitioner,

vs.

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NOV24-0002

CITY OF FORT LAUDERDALE and
RIC-MAN CONSTRUCTION FLORIDA, INC.,

Respondent.

_____ /

AGREED FINAL ORDER

THIS CAUSE having come before the undersigned Hearing Examiner for the Broward County Resilient Environment Department ("Department"), on the joint motion of Petitioner, BROWARD COUNTY ("County"), and Respondents, CITY OF FORT LAUDERDALE ("CITY") and RIC-MAN CONSTRUCTION FLORIDA, INC. ("RIC-MAN") (CITY and RIC-MAN are herein collectively referred to as the "Respondents"),¹ and having been advised in the premises, the Joint Motion for Agreed Final Order is hereby GRANTED and the following is hereby ORDERED:

I. Penalties and Costs:

1. Respondents shall pay a civil penalty of \$162,450 and administrative costs of \$300, for a total of \$162,750, within thirty (30) days from the date this Agreed Final Order is rendered in the County's files.

II. Corrective Actions:

1. Cease all dewatering activities into the Preserve. Use only pre-authorized dewatering locations and monitor all discharges for compliance.
2. Apply for and obtain an Environmental Resource License to conduct a bathymetric survey, sediment testing/depth, vegetation habitat survey, survivorship analysis which shall also include a remediation plan of the wetland preserve known as River Oaks Stormwater Park and Preserve. The approved remediation plan shall be implemented within 120 days of license issuance.

¹ Petitioner and Respondent(s) are collectively referred to as the "Parties."

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RESPONDENTS: CITY OF FORT LAUDERDALE and RIC-MAN CONSTRUCTION
FLORIDA, INC.**

- 3. Cease causing, permitting, suffering, allowing, conducting, or causing to be conducted impacts in regulated aquatic or wetland resources without a currently valid environmental resource license issued by RED.**
- 4. Immediately notify the County in all circumstances when license/permit conditions cannot be met.**
- 5. Monitor dewatering effluent as required in Condition No. 5 of the Dewatering Plan approved December 17, 2021, for the River Oaks Stormwater Improvements Broward County Dewatering Project ID 21165042.**
- 6. Cease all activities detrimental to drainage, flood control, water conservation, erosion control, or fish and wildlife habitat conservation, or preservation of the wetland mitigation area.**
- 7. Maintain copies of all licenses/permits/approvals and required daily turbidity and dewatering logs on site including but not limited to posting near or around the area of activity.**

III. Other Terms and Conditions:

- 1. The Parties agree these amounts and corrective actions are reasonable and shall not contest them in any subsequent action, except that the County reserves the right to enforce the Agreed Final Order. Any extensions to the time frames identified in this Agreed Final Order must be approved by the County in writing.**
- 2. The Parties agreed to waive their rights to an administrative hearing in this cause as set forth in Section 27-32 of the Broward County Code of Ordinances ("Code"), except as to an action for enforcement of this Agreed Final Order.**
- 3. Entry of this Agreed Final Order does not relieve the Respondents of the need to comply with all applicable federal, state, or local laws, regulations, or ordinances. Respondents recognize their responsibility to take all reasonable measures necessary to prevent future violations of Chapter 27 of the Code. County hereby expressly reserves the right to initiate appropriate legal action to prevent or prohibit the future violation of applicable statutes or regulations, or to alleviate an immediate serious danger to the public health, safety, or welfare.**
- 4. Respondents acknowledge and agree that failure to comply with this Agreed Final Order may result in the denial, suspension, or revocation of any license, permit, or approval pending or held by Respondent that is issued by the Department, pursuant to the Code.**

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- 5. County does not waive the following provisions of the Code: Subsections 27-4(20), 27-55(d)(7), and 27-63(b)(6) regarding habitual violators; Subsection 27-22(a)(5) regarding history of noncompliance; and Subsection 27-38(d) regarding habitual citation violators. This Agreed Final Order is considered a settlement agreement for the purpose specified in Subsection 27-4(20) of the Code.

- 6. The Parties acknowledge they had the opportunity to seek and receive whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations which attach by entry of this Agreed Final Order. The terms and language agreed to express the Parties' mutual intent and this Agreed Final Order shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other because of such party's preparation of this Agreed Final Order.

DONE and ORDERED this _____ day of _____, 2024.

Renee Clark, Esq.
Hearing Examiner

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RESILIENT ENVIRONMENT DEPARTMENT
IN AND FOR BROWARD COUNTY, FLORIDA**

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I. **Penalties and Costs**

1. Respondent shall pay a civil penalty of \$162,450 and administrative costs of \$300, for a total of \$162,750, within thirty (30) days from the date this Agreed Final Order is rendered in the County's files.

II. **Corrective Actions**

1. Cease all dewatering activities into the Preserve. Use only pre-authorized dewatering locations and monitor all discharges for compliance.
2. Apply for and obtain an Environmental Resource License to conduct a bathymetric survey, sediment testing/depth, vegetation habitat survey, survivorship analysis which shall also include a remediation plan of the wetland preserve known as River Oaks Stormwater Park and Preserve. The approved remediation plan shall be implemented within 120 days of license issuance.

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3. Cease causing, permitting, suffering, allowing, conducting or causing to be conducted impacts in regulated aquatic or wetland resources without a currently valid environmental resource license issued by RED.
4. Immediately notify the County in all circumstances when license/permit conditions cannot be met.
5. Monitor dewatering effluent as required in Condition No. 5 of the Dewatering Plan approved December 17, 2021, for the River Oaks Stormwater Improvements Broward County Dewatering Project ID 21165042.
6. Cease all activities detrimental to drainage, flood control, water conservation, erosion control or fish and wildlife habitat conservation or preservation of the wetland mitigation area.
7. Maintain copies of all licenses/permits/approvals and required daily turbidity and dewatering logs on site including but not limited to posting near or around the area of activity.

III. Other Terms and Conditions

1. The Parties agree these amounts and corrective actions are reasonable and shall not contest them in any subsequent action, except that the County reserves the right to enforce the Agreed Final Order. Any extensions to the time frames identified in this Agreed Final Order must be approved by the County in writing.
2. The Parties agreed to waive their rights to an administrative hearing in this cause as set forth in Section 27-32 of the Broward County Code of Ordinances ("Code"), except as to an action for enforcement of this Agreed Final Order.
3. Entry of this Agreed Final Order does not relieve the Respondents of the need to comply with all applicable federal, state, or local laws, regulations, or ordinances. Respondents recognize their responsibility to take all reasonable measures necessary to prevent future violations of Chapter 27 of the Code. County hereby expressly reserves the right to initiate appropriate legal action to prevent or prohibit the future violation of applicable statutes or regulations, or to alleviate an immediate serious danger to the public health, safety, or welfare.
4. Respondents acknowledge and agree that failure to comply with this Agreed Final Order may result in the denial, suspension, or revocation of any license, permit, or approval pending or held by Respondent that is issued by the Department, pursuant to the Code.

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RESPONDENTS: CITY OF FORT LAUDERDALE and RIC-MAN CONSTRUCTION
FLORIDA, INC.

5. County does not waive the following provisions of the Code: Subsections 27-4(20), 27-55(d)(7), and 27-63(b)(6) regarding habitual violators; Subsection 27-22(a)(5) regarding history of noncompliance; and Subsection 27-38(d) regarding habitual citation violators. This Agreed Final Order is considered a settlement agreement for the purpose specified in Subsection 27-4(20) of the Code.
6. The Parties acknowledge they had the opportunity to seek and receive whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations which attach by entry of this Agreed Final Order. The terms and language agreed to express the Parties' mutual intent and this Agreed Final Order shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other because of such party's preparation of this Agreed Final Order.

DONE and ORDERED this _____ day of _____, 2024.

Renee Clark, Esq.
Hearing Examiner



COMMISSION AGENDA ITEM
DOCUMENT ROUTING FORM

2C

Today's Date: July 16, 2024

DOCUMENT TITLE: JOINT MOTION FOR AGREED FINAL ORDER BETWEEN BROWARD COUNTY, COFL AND RIC-MAN CONSTRUCTION FLORIDA, INC.

COMM. MTG. DATE: 7/2/2024 CAM #: 24-0667 ITEM #: CM-8 CAM attached: YES NO

Routing Origin: CAO Router Name/Ext: Glynis B/x5091 Action Summary attached: YES NO

CIP FUNDED: YES NO

Capital Investment / Community Improvement Projects defined as having a life of at least 10 years and a cost of at least \$50,000 and shall mean improvements to real property (land, buildings, or fixtures) that add value and/or extend useful life, including major repairs such as roof replacement, etc. Term "Real Property" include: land, real estate, realty, or real.

1) Dept: _____ Router Name/Ext: _____ # of originals routed: _____ Date to CAO: _____

2) City Attorney's Office: Documents to be signed/routed? YES NO # of originals attached: 2

Is attached Granicus document Final? YES NO Approved as to Form: YES NO

Date to CCO: 7/16/24 Rhonda Montoya Hasan
Attorney's Name Initials [Signature]

3) City Clerk's Office: # of originals: 2 Routed to: Donna V./Amber C./CMO Date: 07/17/24

4) City Manager's Office: CMO LOG #: JULY 4 Document received from: 7/17/24
Assigned to: SUSAN GRANT (Acting City Manager) ANTHONY FAJARDO (Assistant City Manager)
LAURA REECE (Acting Assistant City Manager) BEN ROGERS (Acting Assistant City Manager)
SUSAN GRANT as Acting CRA Executive Director

APPROVED FOR S. GRANT'S SIGNATURE N/A FOR S. GRANT TO SIGN

PER ACM: Anthony Fajardo _____ (Initial/Date)
PER AACM: Laura Reece _____ (Initial/Date) Ben Rogers _____ (Initial/Date)

PENDING APPROVAL (See comments below)
Comments/Questions: _____

Forward 2 originals to Mayor CCO Date: 7/18/24

5) Mayor/CRA Chairman: Please sign as indicated.
Forward _____ originals to CCO for attestation/City seal (as applicable) Date: _____

6) City Clerk: Scan original and forwards 2 originals to: Stacey MISCISIN x/6/24/2

Attach _____ certified Reso # YES NO Original Route form to Glynis Burney/CAO

JM #24-0405