

RESOLUTION NO. 2018-16a

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING A SECOND AMENDMENT TO CONTRACT BETWEEN THE VILLAGE OF KEY BISCAYNE AND ASHBRIIT, INC. FOR EMERGENCY DISASTER DEBRIS REMOVAL AND RESPONSE SERVICES; PROVIDING FOR AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, on May 12, 2017, the Village of Key Biscayne (“Village”) issued a Request for Proposals (“RFP No. 2017-05-12-DR”) for Emergency Disaster Debris Removal and Emergency Response Services to select a contractor for the removal and disposal of storm-generated debris within the Village (“Project”); and

WHEREAS, on June 12, 2017, the Village Council awarded and authorized the execution of a contract for the Project with Ashbriit, Inc. (“Ashbriit”), which contract was executed on August 31, 2017 (the “Contract”); and

WHEREAS, the Village and Ashbriit entered into a First Amendment to the Contract in September, 2017; and

WHEREAS, the Village desires to further amend the Contract to provide for additional performance standards as set forth in the Second Amendment to Contract attached hereto as Exhibit “A” (the “Second Amendment”); and

WHEREAS, the Village Council finds that this Resolution is in the best interest and welfare of the citizens of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA AS FOLLOWS:

Section 1. **Recitals.** Each of the above-stated recitals are hereby adopted, confirmed, and incorporated herein.

Section 2. Approval. The Village Council hereby approves the Second Amendment with Ashbritt.

Section 3. Authorization. The Village Council hereby authorizes the Village Manager to execute the Second Amendment with Ashbritt, in substantially the form attached hereto as Exhibit "A," subject to approval by the Village Attorney as to form, content, and legal sufficiency, and to take any action which is reasonably necessary to implement the purpose of this Resolution.

Section 4. Effective Date. This Resolution shall be effective immediately upon adoption.

PASSED and ADOPTED this 24th day of April, 2018.



MAYOR MAYRA PEÑA LINDSAY

ATTEST:



JENNIFER MEDINA, CMC
VILLAGE CLERK



APPROVED AS TO FORM AND LEGAL SUFFICIENCY



VILLAGE ATTORNEY

**SECOND AMENDMENT TO CONTRACT
BETWEEN
THE VILLAGE OF KEY BISCAIYNE
AND
ASHBRITT, INC.
FOR
DISASTER RECOVERY SERVICES**

THIS SECOND AMENDMENT to Contract (the "Second Amendment") is made and entered into as of this 24th day of April, 2018, by and between the Village of Key Biscayne, a Florida municipal corporation (the "Village"), and AshBritt, Inc., a Florida corporation (the "Contractor"), collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, the Village and the Contractor entered into a Pre-Event Contract for Disaster Recovery Services (the "Contract") dated August 31, 2017; and

WHEREAS, in September, 2017, the Parties entered into a First Amendment to Contract (the "First Amendment"); and

WHEREAS, the circumstances that led to the First Amendment have concluded and the Parties have agreed that the terms of the First Amendment are no longer applicable to the Contract and therefore the First Amendment should be rendered null and void; and

WHEREAS, the Parties desire to amend the Contract to provide for additional performance standards as set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the mutual covenants and agreements hereinafter set forth, the Village and Contractor agree as follows: ¹

1. The above recitals are true and correct, and are hereby incorporated by reference.
2. Any capitalized term not otherwise defined herein, shall have the meaning ascribed thereto in the Contract.
3. The First Amendment has been terminated and all provisions contained therein are hereby rendered null and void.

¹ Additions to the text are shown in underline. Deletions from the text are shown in ~~strikethrough~~.

4. **Amendment of Section 4.3 of the Contract.** Section 4.3 of the Contract is amended as follows:

4.3 Time to Complete:

The Contractor shall complete all directed work as set out in Section 1.0 of this Contract in the timeframe(s) provided in the Notice to Proceed and/or work authorization issued by the Village Manager. The Village Manager may extend the time to complete directed work, within 180 working days from delivery of the Notice to Proceed and in accordance with Section 6.8 of this Contract unless extended by the Village. However, in no case shall the work be completed beyond 180 days from any applicable federal declaration of a state of emergency, unless extended by the Village Manager.

The Contractor shall be responsible for removal of all Debris up to the point where remaining debris can only be described as storm litter, and additional collection can only be accomplished by the use of hand labor.

5. **Amendment of Section 5.6 of the Contract.** Section 5.6 of the Contract is amended as follows:

5.6 Other Contractor(s):

The Contractor shall acknowledge the presence of other Contractors involved in disaster response and recovery activities by the federal, state and local government and of any private utility, and shall not interfere with their work. Village shall have the right to not, however, contract with any other Contractor or subcontractor for the contracted services or Additional Support Services provided herein, unless the Contractor consents in writing.

6. **Amendment of Section 5.7 of the Contract.** Section 5.7 of the Contract is amended as follows:

5.7 Ownership of Debris:

All debris actually collected by the Contractor pursuant to a Notice to Proceed and/or work authorization shall become the property of the Contractor for removal and lawful disposal. The Debris will consist of, but not be limited to vegetative, construction and demolition, white goods and household solid waste.

7. **Amendment of Section 6.3 of the Contract.** Section 6.3 of the Contract is amended as follows:

6.3 Minimum Amount and Operation of Equipment:

The Contractor shall provide a minimum of 10 trucks to respond to a disaster event. The type of trucks shall be selected by the Village Manager at the time of issuance of a Notice to Proceed. In addition, the Village Manager may increase or decrease the minimum number of trucks upon mutual agreement at the time of issuance of a Notice to Proceed and/or work authorization to correspond to an

event activation. The Contractor shall operate all trucks, trailers and all other equipment in compliance with any/all applicable federal, state and local laws, rules and regulations. Equipment shall be in good working condition. All loading equipment shall be operated from the road, street or ROW using buckets and/or boom and grapple devices to collect and load Debris. No equipment shall be allowed behind the curb or outside of the public ROW unless otherwise directed by the Village. Should operation of equipment be required outside of the public ROW, the Village will provide a Right-of-Entry Agreement, as set out in Section 6.1 of this Contract.

8. **Amendment of Section 15.0 of the Contract.** Section 15.0 of the Contract is amended as follows:

15.0 Entire Agreement/Modification/Amendment

15.1 This writing contains the entire Agreement of the parties and supercedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein. The Village's Request for Proposals No. 2017-05-12 (the "RFP"), including the Super Circular Law & Appendices, and the Contractor's Response to the RFP are specifically incorporated herein.

15.2 No agent, employee, or other representative of either party is empowered to modify or amend the terms of the Agreement, unless executed with the same formality as this document.

15.3 Contractor represents that it is an entity validly existing and in good standing under the laws of Florida. The execution, delivery and performance of this Agreement by Contractor have been duly authorized, and this Agreement is binding on Contractor and enforceable against Contractor in accordance with its terms. No consent of any other person or entity to such execution, delivery and performance is required.

9. **Amendment of Section 20.0 of the Contract.** Section 20.0 of the Contract is amended as follows:

20.0 Liquidated Damages Remedies:

The Village and Contractor agree that the parties may, without limitation, seek and pursue any and all rights and remedies available for breach of this Contract. Should the Contractor fail to complete requirements set forth in this scope of work, the Village will suffer damage. The amount of damage suffered by the Village is difficult, if not impossible to determine at this time. Therefore, the Contractor shall pay the Village, as liquidated damages, the following:

~~20.1.1 The Contractor shall pay the Village, as liquidated damages, \$500 per calendar day of delay to mobilize in the Village with the resources required to begin debris removal operations, within seventy-two (72) hours of being issued Notice to Proceed.~~

~~20.1.2 The Contractor shall pay the Village, as liquidated damages, \$500 per load of disaster debris collected in the Village that is not disposed of at a Village approved DMS or Village approved Final Disposal Site and/or any associated fines levied by a third party. Application of liquidated damages does not release the Contractor of all liability associated with hauling and depositing material to an unauthorized location.~~

~~20.1.3 The Contractor shall pay the Village, as liquidated damages, \$500 per incident where the Contractor fails to repair damages that are caused by the Contractor or subcontractor(s). Application of liquidated damages does not release the Contractor from the responsibility of resolving or repairing damages.~~

~~The amounts specified above are mutually agreed upon as reasonable and proper amount of damage the Village should suffer by failure of the Contractor to complete requirements set forth in the scope of work.~~

10. **Addition of Section 26.0 to the Contract.** The Contract is amended to add Section 26.0 as follows:

26.0 Bonding

The Contractor shall furnish to the Village, within 72 hours of the issuance of a Notice to Proceed, a Performance and Payment Bond executed by the Contractor, and surety company authorized to do business in the State of Florida, in an amount equal to the value established (including any contingency amounts) within an issued Notice to Proceed and/or work authorization, which bond shall be conditioned upon:

- (i) the successful completion of all work, labor, services, materials to be provided and furnished;
- (ii) the payment of all subcontractors, materials and laborers; and
- (iii) paying Village all loss, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Village sustains because of a default by Contractor under the Agreement.

If the value of the contracted work increases, the Contractor shall be required to provide an updated Performance and Payment Bond in an amount equal to the new value. The Village will only accept a Performance and Payment bond issued by a firm with an A.M. Best rating of "A-" (Excellent) or better. The Contractor

shall provide a letter from Contractor's bonding company that verifies Contractor can comply with this requirement and is capable of having a bond issued in an amount equal to or exceeding \$10,000,000.00.

Contractor's failure to provide and maintain the payment and performance bond required by this Contract shall be grounds for termination, and Contractor shall be liable for all losses, damages, costs and expenses associated with the failure to maintain the required bond.

11. In the event of any conflict between this Second Amendment and the Contract, the terms of this Second Amendment shall prevail and govern.





12. All other terms, covenants, and conditions of the Contract not otherwise amended are hereby confirmed and ratified.

13. This Second Amendment may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument. A facsimile copy of this Second Amendment and any signatures herein shall be considered for all purposes as originals.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have made and executed this Second Amendment on the respective dates under each signature.

Village of Key Biscayne, through its Village Manager, who is authorized to execute this Amendment and AshBritt, Inc. who is authorized to execute same, through John Noble, COO.

Village of Key Biscayne, FL	AshBritt, Inc.
 Village Manager Village of Key Biscayne Date: <u>7/23/18</u>	 John Noble <i>DOE KNIGHT</i> Chief Operating Officer <i>SR. VICE PRESIDENT</i> Date: <u>7/17/2018</u>
Attest:  Jennifer Medina, Village Clerk Village of Key Biscayne	Attest:  Witness Print Name: <u>KELLY BECKMANN</u>