



Budget Amendment Form

Posted 6/7/24  
BA0000332

Reso 2024-034

Department : Utilities Administration	Date : 5/14/2024
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Fund(s) to be changed: Enterprise Fund

GL Account	GL Line Item	Project:	Transfer to:	Transfer from:
<a href="#">430.30.533.4900</a>	Miscellaneous Expense	EMS24-01	\$ 50,000	
<a href="#">430.00.389.3890</a>	Appropriation of Fund Balance			\$ 50,000
<b>TOTAL (Columns must be equal)</b>			<b>\$ 50,000</b>	<b>\$ 50,000</b>

Description:

Transfer Enterprise Fund Balance to Miscellaneous Expense for Sandbags - Project#EMS24-01

## Mayte Gamiotea

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**From:** Angela Atkinson  
**Sent:** Tuesday, June 4, 2024 6:12 AM  
**To:** Alba L. Chang, CMC  
**Cc:** Ralph Rosado; Haydee Sera; Mayte Gamiotea; Annabelle Rodriguez  
**Subject:** Corrected Sandbag Budget Amendment 05.14.24  
**Attachments:** Corrected Budget Amendment Form- EMS Sandbags 05.14.24.pdf

Good morning,

Please see attached for the requested increase to \$50,000 for Sandbags from the May 14<sup>th</sup> meeting. If you have any questions, please let me know.

Thank you,

Angela



## Angela Atkinson

CHIEF FINANCIAL OFFICER

Phone: (305) 756-7171  
Mobile:  
Email: [aatkinson@nbvillage.com](mailto:aatkinson@nbvillage.com)  
Website: [northbayvillage-fl.gov](http://northbayvillage-fl.gov)  
Address: 1666 Kennedy Causeway Suite 300  
North Bay Village, FL.33141



PLEASE NOTE: Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.



EXHIBIT "B"

Budget Amendment Form

*Reso #2024-034*

Department : Utilities Administration Date : 5/14/2024

Fund(s) to be changed: Enterprise Fund

GL Account	GL Line Item	Project:	Transfer to:	Transfer from:
<u>430.30.533.4900</u>	Miscellaneous Expense	EMS24-01	\$ 50,000	
<u>430.00.389.3890</u>	Appropriation of Fund Balance			\$ 50,000
<b>TOTAL (Columns must be equal)</b>			<b>\$ 50,000</b>	<b>\$ 50,000</b>

Description:

Transfer Enterprise Fund Balance to Miscellaneous Expense for Sandbags - Project#EMS24-01



**RESOLUTION NO. 2024-034**

**A RESOLUTION OF THE MAYOR AND COMMISSION OF NORTH BAY VILLAGE, FLORIDA, APPROVING AN AGREEMENT WITH ESR, LLC FOR EMERGENCY SANDBAGS SERVICES UTILIZING A CONTRACT COMPETITIVELY BID BY THE CITY OF WEST MIAMI; AMENDING THE BUDGET FOR FISCAL YEAR 2023-2024; PROVIDING FOR AUTHORIZATION; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, North Bay Village (the "Village") is in need of emergency sandbag services (the "Services") to be distributed to the Village in case of emergency conditions; and

**WHEREAS**, the Services required by the Village have been competitively bid by the City of West Miami, Florida ("West Miami") which issued Request for Proposal No. 2023-03282023 (the "RFP") for the Services and competitively awarded a contract to ESR, LLC (the "Contractor") pursuant to the RFP, which contract is dated March 27, 2023, as amended (the "West Miami Contract"); and

**WHEREAS**, Section 36.25(J) of the Village Code of Ordinances (the "Code") provides that a contract may be awarded without sealed bidding upon a determination by the Village Manager that the purchase meets acceptability criteria and the supplier has been selected in a competitive process within the last 36-month period by another governmental entity or public agency; and

**WHEREAS**, pursuant to Section 36.25(J) of the Village Code, the Village Commission desires to approve an agreement with the Contractor for the Services, in substantially the form attached hereto as Exhibit "A" (the "Agreement") based on the terms of the West Miami Contract in an amount not to exceed budgeted funds, and authorize the Village Manager to execute the Agreement, subject to the final approval of the Village Attorney as to form, content, and legal sufficiency; and

**WHEREAS**, on September 28, 2023, the Village Commission adopted Resolution No. 2023-109 approving the budget for fiscal year 2023-2024 (the "Budget"); and

**WHEREAS**, pursuant to Section 166.241, Florida Statutes, the Village Commission may amend a budget at any time within a fiscal year; and



**WHEREAS**, pursuant to Section 35.21 of the Village Code of Ordinances and Florida Law, the Village Commission desires to amend the Budget consistent with the staff memorandum accompanying this Resolution, by authorizing the line-item transfers as further provided in Exhibit "B" attached hereto and incorporated herein; and

**WHEREAS**, the Village Commission finds that this Resolution is in the best interest and welfare of the residents of the Village.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COMMISSION OF NORTH BAY VILLAGE, FLORIDA, AS FOLLOWS:**

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

**Section 2. Approval.** That the Village Commission hereby approves the Agreement with the Contractor to perform the Services in an amount not to exceed budgeted funds pursuant to Section 36.25(J) of the Village Code.

**Section 3. Authorization.** That the Village Commission hereby authorizes the Village Manager to execute the Agreement, in substantially the form attached hereto as Exhibit "A," subject to the final approval of the Village Attorney as to form, content, and legal sufficiency.

**Section 4. Amending Budget.** That the Village Commission hereby approves an amendment to the budget by authorizing the line-item transfers as further provided in Exhibit "B" attached hereto and incorporated herein.

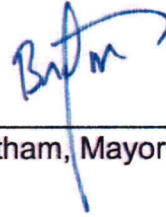
**Section 5. Implementation.** That the Village Commission hereby authorizes the Village Manager to execute any purchase order or required documentation for the Services described in this Resolution, subject to approval by the Village Attorney as to form, content and legal sufficiency, and to take any action which is reasonably necessary to implement the purpose of this Resolution, including the expenditure of budgeted funds.

**Section 6. Effective Date.** That this Resolution shall be effective immediately upon adoption.

The foregoing Resolution was offered by Vice Mayor Chervony who moved its adoption. The motion was seconded by Mayor Latham and upon being put to a vote, the vote was as follows:

Mayor Brent Latham	<u>Yes</u>
Vice Mayor Richard Chervony	<u>Yes</u>
Commissioner Goran Cuk	<u>Yes</u>
Commissioner Andy Rotondaro	<u>Yes</u>
Commissioner Rachel Streitfeld	<u>Yes</u>

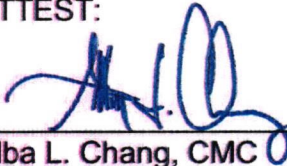
**PASSED AND ADOPTED** on this 14<sup>th</sup> day of May, 2024.



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Brent Latham, Mayor

ATTEST:

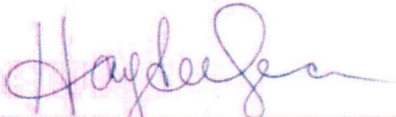


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Alba L. Chang, CMC  
Village Clerk



APPROVED AS TO FORM AND LEGAL SUFFICIENCY:



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Weiss Serota Helfman Cole & Bierman, PL  
Village Attorney



EXHIBIT "A"

**EMERGENCY SANDBAG SERVICES AGREEMENT**

**BETWEEN**

**NORTH BAY VILLAGE**

**AND**

**ESR, LLC**

**THIS AGREEMENT** (this "Agreement") is made effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2024 (the "Effective Date"), by and between **NORTH BAY VILLAGE, FLORIDA**, a Florida municipal corporation, (the "Village") and **ESR, LLC**, a Florida limited liability company (hereinafter, the "Contractor"). Collectively, the Village and the Contractor are referred to as "Parties."

**WHEREAS**, the Village is in need of emergency sandbag services (the "Services") to be distributed to the Village in case of emergency conditions; and

**WHEREAS**, the City of West Miami, Florida ("West Miami") issued Request for Proposal No. 2023-03282023 (the "RFP") for the Services and competitively awarded a contract to ESR, LLC (the "Contractor") pursuant to the RFP, which contract, as amended, is attached hereto as Exhibit "A" (the "West Miami Contract"); and

**WHEREAS**, the Parties wish to incorporate the terms and conditions of the West Miami Contract in this Agreement, except as otherwise modified or amended herein; and

**WHEREAS**, Section 36.25(J) of the Village Code of Ordinances (the "Code") provides that a contract may be awarded without sealed bidding upon a determination by the Village Manager that the purchase meets acceptability criteria and the supplier has been selected in a competitive process within the last 36-month period by another governmental entity or public agency; and

**WHEREAS**, pursuant to Section 36.25(J) of the Village Code, the Village desires to engage the Contractor to perform the Services and provide the deliverables as specified below.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the Village and the Contractor agree as follows:

1. **Incorporation of Contract.** The terms and conditions of the West Miami Contract (Exhibit A hereto) is incorporated as though fully set forth herein. Except as otherwise specifically set forth or modified herein, all terms in the West Miami Contract are hereby ratified and affirmed and shall remain unmodified and in full force and effect in accordance with its terms.
2. **Conflicts.** In the event of any conflict or ambiguity between the terms and provisions of this Agreement and the terms and provisions of the West Miami Contract, the terms and provisions of this Agreement shall control.



3. **Defined Terms.** All initial capitalized terms used in this Agreement shall have the same meaning as set forth in the West Miami Contract unless otherwise provided in this Agreement. All references to West Miami shall be replaced with North Bay Village where applicable.
4. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.
5. **Term/Commencement Date.**
  - 5.1. The term of this Agreement shall be from the Effective Date through September 30, 2024, unless earlier terminated in accordance with Paragraph 10. Additionally, the Village Manager may renew this Agreement for up to 4 additional 1 year periods on the same terms as set forth herein upon written notice to the Contractor.
  - 5.2. Contractor agrees that time is of the essence and Contractor shall complete the Services within the term of this Agreement, unless extended by the Village Manager.
6. **Subconsultants.**
  - 6.1. The Contractor shall be responsible for all payments to any subconsultants and shall maintain responsibility for all work related to the Services.
  - 6.2. Contractor may only utilize the services of a particular subconsultant with the prior written approval of the Village Manager, which approval may be granted or withheld in the Village Manager's sole and absolute discretion.
7. **Village's Responsibilities.**
  - 7.1. Village shall make available any maps, plans, existing studies, reports, staff and representatives, and other data pertinent to the Services and in possession of the Village, and provide criteria requested by Contractor to assist Contractor in performing the Services.
  - 7.2. Upon Contractor's request, Village shall reasonably cooperate in arranging access to public information that may be required for Contractor to perform the Services.
8. **Contractor's Responsibilities; Representations and Warranties.**
  - 8.1. The Contractor shall exercise the same degree of care, skill and diligence in the performance of the Services as is ordinarily provided by a Contractor under similar circumstances. If at any time during the term of this Agreement or within two (2) years from the completion of this Agreement, it is determined that the Contractor's Deliverables or Services are incorrect, not properly rendered, defective, or fail to



conform to Village requests, the Contractor shall at Contractor's sole expense, immediately correct its Deliverables or Services.

8.2. The Contractor hereby warrants and represents that at all times during the term of this Agreement it shall maintain in good standing all required licenses, certifications and permits required under Federal, State and local laws applicable to and necessary to perform the Services for Village as an independent contractor of the Village. Contractor further warrants and represents that it has the required knowledge, expertise, and experience to perform the Services and carry out its obligations under this Agreement in a professional and first class manner.

8.3. The Contractor represents that 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. Conflict of Interest.**

9.1. To avoid any conflict of interest or any appearance thereof, Contractor shall not, for the term of this Agreement, provide any consulting services to any private sector entities (developers, corporations, real estate investors, etc.), with any current, or foreseeable, adversarial issues in the Village.

#### **10. Termination.**

10.1. The Village Manager, without cause, may terminate this Agreement upon five (5) calendar days' written notice to the Contractor, or immediately with cause.

10.2. Upon receipt of the Village's written notice of termination, Contractor shall immediately stop work on the project unless directed otherwise by the Village Manager.

10.3. In the event of termination by the Village, the Contractor shall be paid for all work accepted by the Village Manager up to the date of termination.

10.4. The Contractor shall transfer all books, records, reports, working drafts, documents, maps, and data pertaining to the Services and the project to the Village, in a hard copy and electronic format within fourteen (14) days from the date of the written notice of termination or the date of expiration of this Agreement.

#### **11. Insurance.**

11.1. Contractor shall secure and maintain throughout the duration of this agreement insurance of such types and in such amounts not less than those specified below as satisfactory to Village, naming the Village as an Additional Insured, underwritten by a firm rated A-X or better by A.M. Best and qualified to



do business in the State of Florida. The insurance coverage shall be primary insurance with respect to the Village, its officials, employees, agents, and volunteers naming the Village as additional insured. Any insurance maintained by the Village shall be in excess of the Contractor's insurance and shall not contribute to the Contractor's insurance. The insurance coverages shall include at a minimum the amounts set forth in this section and may be increased by the Village as it deems necessary or prudent.

**11.1.1.** Commercial General Liability coverage with limits of liability of not less than a \$1,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. This Liability Insurance shall also include Completed Operations and Product Liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor. The General Aggregate Liability limit and the Products/Completed Operations Liability Aggregate limit shall be in the amount of \$2,000,000 each.

**11.1.2.** Workers Compensation and Employer's Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of the Contractor shall be allowed to provide Services pursuant to this Agreement who is not covered by Worker's Compensation insurance. In order for this requirement to be waived, Contractor must provide proof of exemption from such laws. Information regarding eligibility for an exemption from the State of Florida Workers' Compensation Law is available at:

<https://www.myfloridacfo.com/Division/wc/PublicationsFormsManualsReports/Brochures/Key-Coverage-and-Eligibility.pdf>.

Exemptions may be applied for online through the Florida Department of Financial Services, Division of Workers' Compensation at:

<https://www.myfloridacfo.com/Division/wc/Employer/Exemptions/default.htm>.

**11.1.3.** Business Automobile Liability with minimum limits of \$1,000,000 per occurrence, combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Service Office, and must include Owned, Hired, and Non-Owned Vehicles.

**11.1.4.** Professional Liability Insurance in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence, single limit. If Professional Liability Insurance is required, the Village shall select this box: .

**11.2. Certificate of Insurance.** Certificates of Insurance shall be provided to the Village, reflecting the Village as an Additional Insured (except with respect to



Professional Liability Insurance and Worker's Compensation Insurance), no later than ten (10) days after award of this Agreement and prior to the execution of this Agreement by Village and prior to commencing Services. Each certificate shall include no less than (30) thirty-day advance written notice to Village prior to cancellation, termination, or material alteration of said policies or insurance. The Contractor shall be responsible for assuring that the insurance certificates required by this Section remain in full force and effect for the duration of this Agreement, including any extensions or renewals that may be granted by the Village. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Agreement and shall state that such insurance is as required by this Agreement. The Village reserves the right to inspect and return a certified copy of such policies, upon written request by the Village. If a policy is due to expire prior to the completion of the Services, renewal Certificates of Insurance shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the Village before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the Village.

11.3. **Additional Insured.** Except with respect to Professional Liability Insurance and Worker's Compensation Insurance, the Village is to be specifically included as an Additional Insured for the liability of the Village resulting from Services performed by or on behalf of the Contractor in performance of this Agreement. The Contractor's insurance, including that applicable to the Village as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the Village shall be in excess of and shall not contribute to the Contractor's insurance. The Contractor's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured (for applicable policies) in the same manner as if separate policies had been issued to each.

11.4. **Deductibles.** All deductibles or self-insured retentions must be declared to and be reasonably approved by the Village. The Contractor shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.

11.5. The provisions of this section shall survive termination of this Agreement.

12. **Nondiscrimination.** During the term of this Agreement, Contractor shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and will abide by all Federal and State laws regarding nondiscrimination.

13. **Attorneys Fees and Waiver of Jury Trial.**

13.1. In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees



and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

13.2. IN THE EVENT OF ANY LITIGATION ARISING OUT OF THIS AGREEMENT, EACH PARTY HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY.

**14. Indemnification.**

14.1. Contractor shall indemnify and hold harmless the Village, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising from Contractor's performance or non-performance of any provision of this Agreement, including, but not limited to, liabilities arising from contracts between the Contractor and third parties made pursuant to this Agreement. Contractor shall reimburse the Village for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising from Contractor's performance or non-performance of this Agreement.

14.2. Nothing herein is intended to serve as a waiver of sovereign immunity by the Village nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. The Village is subject to section 768.28, Florida Statutes, as may be amended from time to time.

14.3. The provisions of this section shall survive termination of this Agreement.

15. **Notices/Authorized Representatives.** Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the addresses listed on the signature page of this Agreement or such other address as the party may have designated by proper notice.

16. **Governing Law and Venue.** This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any proceedings arising out of this Agreement shall be proper exclusively in Miami-Dade County, Florida.

**17. Entire Agreement/Modification/Amendment.**

17.1. This writing contains the entire Agreement of the parties and supersedes 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.



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

**18. Ownership and Access to Records and Audits.**

- 18.1. Contractor acknowledges that all inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports, compiled information, and all similar or related information (whether patentable or not) which relate to Services to the Village which are conceived, developed or made by Contractor during the term of this Agreement ("Work Product") belong to the Village. Contractor shall promptly disclose such Work Product to the Village and perform all actions reasonably requested by the Village (whether during or after the term of this Agreement) to establish and confirm such ownership (including, without limitation, assignments, powers of attorney and other instruments).
- 18.2. Contractor agrees to keep and maintain public records in Contractor's possession or control in connection with Contractor's performance under this Agreement. The Village Manager or her designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any records of the Contractor involving transactions related to this Agreement. Contractor additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the Village.
- 18.3. Upon request from the Village's custodian of public records, Contractor shall provide the Village with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.
- 18.4. Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Village.
- 18.5. Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Contractor shall be delivered by the Contractor to the Village Manager, at no cost to the Village, within seven (7) days. All such records stored electronically by Contractor shall be delivered to the Village in a format that is compatible with the Village's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the Contractor shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.



- 18.6. Any compensation due to Contractor shall be withheld until all records are received as provided herein.
- 18.7. Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Village.
- 18.8. **Notice Pursuant to Section 119.0701(2)(a), Florida Statutes.**  
**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS: ALBA L. CHANG, CMC, 1666 KENNEDY CAUSEWAY, SUITE 300, NORTH BAY VILLAGE, FL 33141, 305-756-7171, VILLAGECLERK@NBVILLAGE.COM.**
19. **Nonassignability.** This Agreement shall not be assignable by Contractor unless such assignment is first approved by the Village Manager. The Village is relying upon the apparent qualifications and expertise of the Contractor, and such firm's familiarity with the Village's area, circumstances and desires.
20. **Severability.** If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.
21. **Independent Contractor.** The Contractor and its employees, volunteers and agents shall be and remain an independent contractor and not an agent or employee of the Village with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.
22. **Compliance with Laws.** The Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities in carrying out Services under this Agreement, and in particular shall obtain all required permits from all jurisdictional agencies to perform the Services under this Agreement at its own expense.
23. **Waiver.** The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.
24. **Survival of Provisions.** Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the



Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

25. **Prohibition of Contingency Fees.** The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.
26. **Public Entity Crimes Affidavit.** Contractor shall comply with Section 287.133, Florida Statutes (Public Entity Crimes Statute), notification of which is hereby incorporated herein by reference, including execution of any required affidavit.
27. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.
28. **E-Verify Affidavit.** In accordance with Section 448.095, Florida Statutes, the Village requires all contractors doing business with the Village to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The Village will not enter into a contract unless each party to the contract registers with and uses the E-Verify system. The contracting entity must provide of its proof of enrollment in E-Verify. For instructions on how to provide proof of the contracting entity's participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>. By entering into this Agreement, the Contractor acknowledges that it has read Section 448.095, Florida Statutes; will comply with the E-Verify requirements imposed by Section 448.095, Florida Statutes, including but not limited to obtaining E-Verify affidavits from subcontractors; and has executed the required affidavit attached hereto and incorporated herein.
29. **Non-Exclusive Agreement.** The Village reserves the right to procure or acquire similar services from another provider while this Agreement is in full force and effect.
30. **Most Favored Nation.** If during the term of this Agreement, Contractor enters into an agreement with another municipality or county ("Other Governmental Entity"), the terms of which agreement include more favorable terms with the Other Governmental Entity than this Agreement, then upon written request of the Village, Contractor shall negotiate and enter into a new agreement with the Village which shall include the more favorable compensation terms extended to the Other Governmental Entity. Contractor shall notify the Village within 30 days if it enters into an agreement with an Other Governmental Entity that has more favorable terms than this Agreement and the Village shall have the right to receive the more favorable terms immediately.

**31. Termination Due To Lack of Funding.** This Agreement is subject to the condition precedents that: (i) Village funds are available, appropriated and budgeted, for the Services annually for each year of the Term; (ii) the Village secures and obtains any necessary proceeds, grants or loans for the accomplishment of the Services pursuant to any borrowing legislation adopted by the Village Commission relative to the Services; and (iii) the Village Commission enacts legislation or other necessary resolutions, which awards and authorizes the execution of this Agreement and the annual appropriation and budgeting for the Services. The Village represents to Contractor that the Village has adopted a resolution authorizing execution of this Agreement, if required by applicable law.

**[Remainder of page intentionally left blank. Signature page follows.]**





**E-VERIFY AFFIDAVIT**

In accordance with Section 448.095, Florida Statutes, the Village requires all contractors doing business with the Village to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The Village will not enter into a contract unless each party to the contract registers with and uses the E-Verify system.

**The contracting entity must provide of its proof of enrollment in E-Verify.** For instructions on how to provide proof of the contracting entity's participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>

By signing below, the contracting entity acknowledges that it has read Section 448.095, Florida Statutes and will comply with the E-Verify requirements imposed by it, including but not limited to obtaining E-Verify affidavits from subcontractors.

**Check here to confirm proof of enrollment in E-Verify has been attached to this Affidavit.**

In the presence of:

Signed, sealed and delivered by:

Witness #1 Print Name: \_\_\_\_\_

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

Witness #2 Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Entity Name: \_\_\_\_\_

**ACKNOWLEDGMENT**

State of Florida  
County of \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ (name of person) as \_\_\_\_\_ (type of authority) for \_\_\_\_\_ (name of party on behalf of whom instrument is executed).

\_\_\_\_\_  
Notary Public (Print, Stamp, or Type as Commissioned)

- \_\_\_\_\_ Personally known to me; or
- \_\_\_\_\_ Produced identification (Type of Identification: \_\_\_\_\_)
- \_\_\_\_\_ Did take an oath; or
- \_\_\_\_\_ Did not take an oath



**EXHIBIT A**  
**COPY OF THE WEST MIAMI CONTRACT AS AMENDED BY CITY OF WEST MIAMI**  
**RESOLUTION 2023-109**



**RESOLUTION # 2023-26**

**A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF WEST MIAMI APPROVING THE RECOMMENDATION OF THE CITY MANAGER TO AWARD A CONTRACT TO A SINGLE RESPONDENT, ESR, INC., FOR EMERGENCY SANDBAGS TO BE DISTRIBUTED TO CITIZENS WITHIN THE CITY OF WEST MIAMI IN CASE OF EMERGENCY CONDITIONS THAT MIGHT LEAD TO FLOODING AND OTHER CATASTROPHES, IN THE AMOUNT OF \$27,450.00; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, flooding is the most common natural disaster that can occur anywhere at any time; and

**WHEREAS**, traditional sandbags are an effective method to deflect water and help protect structures from flooding; and

**WHEREAS**, the City of West Miami advertised a Request for Proposal number 2023-03282023 to qualified entities to supply emergency sandbag service to the City in case of national disasters; and

**WHEREAS**, the submittal date for the Request for Proposal was March 28, 2023 at 2:00 p.m., with only one company, ESR, Inc., responding to the solicitation with a bid amount of \$27,450.00; and

**WHEREAS**, the City Manager has recommended the project be awarded to ESR, Inc., as the most responsive, responsible bidder; and

**NOW, THEREFORE, BE IT RESOLVED** by the City Commission of the City of West Miami as follows:

**Section 1.** The aforementioned statements are true and correct and adopted as is fully stated herein.

**Section 2.** The City Commission hereby accepts the recommendation of the City Manager to award the contract in amount of \$27,450.00 to ESR, Inc. as the most responsive, responsible bidder.



**Section 3.** This Resolution shall take effect immediately upon passage by the City Commission and signature of the Mayor.

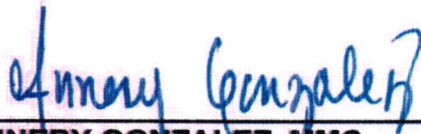
PASSED AND ADOPTED this 19<sup>th</sup> day of April, 2023.

APPROVED:



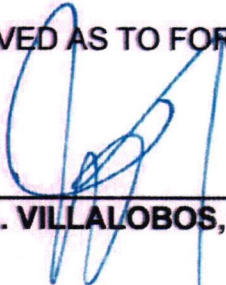
\_\_\_\_\_  
**ERIC DÍAZ-PADRON, MAYOR**

ATTEST:



\_\_\_\_\_  
**ANNERY GONZALEZ, MMC  
CITY CLERK**

APPROVED AS TO FORM AND SUFFICIENCY:



\_\_\_\_\_  
**JOSE A. VILLALOBOS, CITY ATTORNEY**

ROLL CALL VOTE:

This Resolution was offered by Vice-Mayor Blanes who moved its adoption. The motion was seconded by Commissioner Blanca. The vote was as follows:

<b>MAYOR ERIC DIAZ-PADRON</b>	<u>Y</u>
<b>VICE-MAYOR JUAN M. BLANES</b>	<u>Y</u>
<b>COMMISSIONER CANDIDA BLANCA</b>	<u>Y</u>
<b>COMMISSIONER IVAN CHAVEZ, JR.</b>	<u>Y</u>
<b>COMMISSIONER LUCIANO SUAREZ</b>	<u>Y</u>

## 4.0 Contract Agreement

THIS AGREEMENT, made this 27 day of March, 2023, by and between City of West Miami, hereinafter called "OWNER" and ESR, LLC, doing business as (an individual), or (a partnership), or (a corporation), hereinafter called "CONTRACTOR".

WITNESS TO: That for and in consideration of the payments and agreements hereinafter mentioned:

1. The CONTRACTOR will commence and complete the work described and shall supply all labor, transportation materials, and equipment necessary for the entire proper and substantial completion of this work, and be accountable for the safe, proper and responsible operation in accordance with State of Florida requirements as of June 1<sup>st</sup>, 2023 work per submitted CONTRACT BID and specifications of the City of West Miami.

2. The CONTRACTOR will furnish all of the material, supplies, tools, equipment, labor and other services necessary for the construction and completion of the PROJECT described herein.

3. The CONTRACTOR will commence the work required by the CONTRACT DOCUMENTS within twelve (12) hours notification by the City of West Miami, Office of the City Manager or his/her designee after an "Emergency Declaration" is made by the Office of the Governor and will complete the same within two (2) calendar days, unless the period for completion is extended otherwise by the Office of the City Manager.

4. The CONTRACTOR agrees to perform all of the WORK described in the Contract Solicitation DOCUMENTS and comply with the terms therein:

25 lbs per bag: Fifteen Dollars twenty-five cents. 40 lbs per bag: Twenty-four Dollars and Forty cents.  
30 lbs per bag: Eighteen Dollars thirty cents

5. The CONTRACTOR, by proffering this PROPOSAL, WARRANTS and CERTIFIES that the COST of complying with FLORIDA TRENCH SAFETY ACT is included and part or the TOTAL AMOUNT of BID under Article Four (4) of this Agreement.

6. The OWNER will pay to the CONTRACTOR in the manner and at such times as set forth in the GENERAL CONDITIONS such amounts as required by the CONTRACT DOCUMENTS.

7. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

8. Contractor shall provide adequate notice to the City of the number of crew members/workers providing services under this contract and shall supply the City with adequate assurance that all wages have been paid to individual workers or subcontractors. This Contract incorporates by reference all terms and conditions of the



solicitation documentation.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in (three copies) each of which shall be deemed an original on the date first above written.



OWNER: City of West Miami

BY: \_\_\_\_\_

Name: Yolanda Aguilar

Title: City Manager

ATTEST: \_\_\_\_\_

Name: \_\_\_\_\_

Annery Gonzalez  
ANNERY GONZALEZ

(Please type)

Title: \_\_\_\_\_

City Clerk 4/20/2023

(Seal)

Contractor: ESR, LLC

Name: Albert Sotero

(Please type)

Address: 14150 SW 129 St  
Miami, Fl. 33186

ATTEST: \_\_\_\_\_

[Signature]

Name: \_\_\_\_\_

Albert Sotero

(Please type)

Title: \_\_\_\_\_

President.

Contract #2023-03282023



[Signature]





**RESOLUTION # 2023-109**

**A RESOLUTION OF THE CITY OF WEST MIAMI AMENDING RESOLUTION # 2023-26 OF APRIL 19<sup>TH</sup>, 2023 WITH ESR, INC. PER SCHEDULE OF VALUES; PROVIDING THAT SAID AMOUNT SHALL BE ADJUSTED TO ANY LOWER AMOUNT CHARGED TO ANY OTHER PUBLIC INSTITUTION; AUTHORIZING THE CITY MANAGER TO EXECUTE A REVISED CONTRACT FOR A TERM OF THREE YEARS (3) ATTACHED HEREIN AS EXHIBIT A; PROVIDING FOR INSURANCE; PROVIDING FOR HOLD HARMLESS AGREEMENT AND PROVIDING FOR EFFECTIVE DATE.**

**WHEREAS**, flooding is the most common natural disaster that can occur anywhere at any time; and

**WHEREAS**, traditional sandbags are an effective method to deflect water and help protect structures from flooding; and

**WHEREAS**, the City of West Miami advertised a Request for Proposal number 2023-03282023 to qualified entities to supply emergency sandbag service to the City in case of national disasters; and

**WHEREAS**, the City Manager recommended the project be awarded to ESR, Inc., as the most responsive, responsible bidder.

**WHEREAS**, the City Commission desires to amend and restate the terms and conditions of Resolution # 2023-26 and original contract

**NOW, THEREFORE, BE IT RESOLVED** by the City Commission of the City of West Miami as follows:

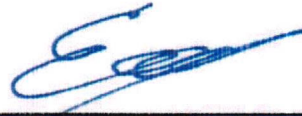
- Section 1.** The aforementioned statements are true and correct and adopted as is fully stated herein.
- Section 2.** The City Commission hereby accepts the recommendation of the City Manager to award the contract to ESR, Inc. for a term of Three (3) years, attached as Exhibit A.
- Section 3.** Notwithstanding the contract amount described herein above, the contractor will agree to amend this amount should a lower cost for these services is charged to other public institution.



**Section 4.** This Resolution shall take effect immediately upon passage by the City Commission and signature of the Mayor.

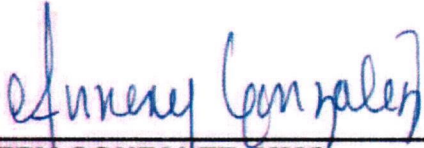
**PASSED** and **ADOPTED** this 29th day of November, 2023.

APPROVED:



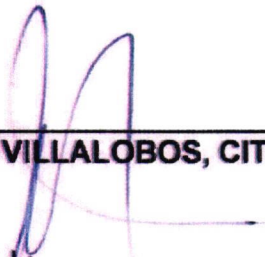
\_\_\_\_\_  
**ERIC DIAZ-PADRON, MAYOR**

ATTEST:



\_\_\_\_\_  
**ANNERY GONZALEZ, MMC  
CITY CLERK**

APPROVED AS TO FORM AND SUFFICIENCY:



\_\_\_\_\_  
**JOSE A. VILLALOBOS, CITY ATTORNEY**

ROLL CALL:

This Resolution was offered by Commissioner Chavez, who moved its adoption. The motion was seconded by Commissioner Vice-Mayor Blanes. The vote was as follows:

<b>MAYOR ERIC DIAZ-PADRON</b>	<u>Y</u>
<b>VICE -MAYOR JUAN M. BLANES</b>	<u>Y</u>
<b>COMMISSIONER CANDIDA BLANCA</b>	<u>Y</u>
<b>COMMISSIONER IVAN CHAVEZ, JR.</b>	<u>Y</u>
<b>COMMISSIONER LUCIANO L. SUAREZ</b>	<u>Y</u>