

**RESOLUTION NUMBER 24-222**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN ADDENDUM TO THE CONTRACT BETWEEN THE TOWN OF FORT MYERS BEACH AND TURTLE TIME, INC., TO ADD ADDITIONAL TERMS AND CONDITIONS TO ALLOW THE USE OF FEDERAL EMERGENCY MANAGEMENT FUNDS FOR REIMBURSEMENT OF EXPENSES INCURRED BY THE TOWN AND TERMS AND CONDITIONS REQUIRED BY FLORIDA LAW; AUTHORIZING THE TOWN MANGER OR MAYOR TO SIGN THE ADDENDUM; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

**WHEREAS**, in the Spring of 2023, Turtle Time, Inc. submitted a proposal for marine turtle monitoring and relocation services as a sole source provider for the emergency berm project for \$45,000 (the “Proposal”); and

**WHEREAS**, on June 20, 2023, the Town Council authorized the Town Manager to acquire needed services from Turtle Time, Inc., which established a contractual relationship between the Town and Turtle Time, Inc. (the “Contract”); and

**WHEREAS**, the Town intended to seek reimbursement of funds paid to Turtle Time, Inc. for its services from funding available from the Federal Emergency Management Agency when it approved the Contract with Turtle Time, Inc. as a sole source provider; and

**WHEREAS**, the terms and conditions required by the Federal Emergency Management Agency and under Florida law were not formally included in the Contract when it was approved; and

**WHEREAS**, the Town Council has determined it is in the best interests of the Town of Fort Myers Beach and its residents and business owners to adopt this Resolution to amend the Contract to include the omitted terms and conditions by Addendum.

**NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:**

**Section 1.** The above recitals are true, correct, incorporated herein by this reference, and adopted as the legislative and administrative findings of the Town Council.

**Section 2.** The Town Council hereby approves the Addendum to the Contract between Turtle Time, Inc., and the Town of Fort Myers Beach. A copy of the Addendum to the Contract is attached to this Resolution as Exhibit “A.”

**Section 3.** The Mayor or Town Manager are authorized to execute the Addendum to the Contract and any other documents required to allow the Town to obtain reimbursement from FEMA for the services provided by Turtle Time, Inc.

**Section 4.** This Resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

This Resolution was adopted by the Town Council upon a motion by Council Member King and seconded by Council Member Safford, and upon being put to a vote, the result was as follows:

Dan Allers, Mayor	Aye
Jim Atterholt, Vice Mayor	Aye
Karen Woodson, Council Member	Aye
Scott Safford, Council Member	Aye
John R. King, Council Member	Aye

**ADOPTED** this 4<sup>th</sup> day of November 2024, by the Town Council of the Town of Fort Myers Beach, Florida.

## TOWN OF FORT MYERS BEACH

  
Dan Allers (Jan 17, 2025 12:35 EST)

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Dan Allers, Mayor

**ATTEST:**

  
Amy Baker (Jan 22, 2025 09:35 EST)

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Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

  
Nathan Vose (Jan 17, 2025 18:38 EST)

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Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 17<sup>th</sup> day of January 2025.

**ADDENDUM TO CONTRACT WITH TURTLE TIME, INC.  
FOR SEA TURTLE MONITORING SERVICES  
(EMERGENCY BERM PROJECT)**

**THIS ADDENDUM** (the "Addendum") is made by and between the TOWN OF FORT MYERS BEACH, a municipal corporation (the "Town"), and TURTLE TIME, INC., a Florida not for profit corporation (the "Contractor"), to a Proposal from Contractor for sea turtle monitoring services in the Town's Emergency Berm Project approved by the Town Council at the June 20, 2023, Town Council meeting ("the Contract").

**WITNESSETH:**

**WHEREAS**, since entering into the Contract, the Town has made payment to the Contractor for services, which have been provided pursuant to the terms of the Contract, a copy of which is attached as Exhibit A. The Town acknowledges that the Contractor has fully and satisfactorily performed all services for which it has received payment to date; and

**WHEREAS**, in order to seek reimbursement from the Federal Emergency Management Agency ("FEMA") of the payments made by the Town, which was intended at the time the Town approved the Contract, certain terms and conditions must be included in the Contract pursuant to 2 C.F.R. Part 200, Appendix II(B); and

**WHEREAS**, to be eligible for reimbursement from FEMA, 2 C.F.R. Part 200, Appendix II(B) requires that all contracts in excess of \$10,000, must include a term for termination for cause and for convenience; and

**WHEREAS**, Section 119.0701, Fla. Statutes requires that certain public agency contracts include statutorily required provisions related to the Contractor's compliance with the Florida Public Records Act; and

**WHEREAS**, Section 768.28, Fla. Statutes sets forth certain mandatory limitations on indemnification and liability for Florida public agencies, such as the Town; and

**WHEREAS**, Section 287.0582, Fla. Statutes requires that public agency contracts include a non-appropriation term and remain contingent upon an appropriation during the public agency's statutorily mandated annual budget approval process; and

**WHEREAS**, Section 448.095, Fla. Statutes imposes certain obligations on public agencies with regard to the use of the E-Verify system by their contractors and subcontractors; and

**WHEREAS**, Section 287.133 and 287.135, Fla. Statutes restricts local governments from contracting with companies that are on certain Scrutinized Companies lists or convicted vendor list; and

**WHEREAS**, additional terms consistent with Section 282.3185(5) and (6) related to data management and Section 287.05701 related to social government and corporate activism are also required contractual terms; and

**WHEREAS**, Section 286.101, Fla. Statutes contains a list of "foreign countries of concern" including, the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolas Maduro, or the Syrian Arab Republic, including any agency of or any other entity under significant control of such "foreign country of concern." Section 286.101, Fla. Statutes requires any entity that does business with a state agency or political subdivision must disclose their dealings with those "foreign countries of concern" to the Florida Department of Financial Services; and

**WHEREAS**, Section 787.06(13), Fla. Statutes provides that when a contract is executed, renewed, or extended between a nongovernmental entity and a governmental entity, the nongovernmental entity must provide the governmental entity with an affidavit signed by an officer or a representative of the nongovernmental entity under penalty of perjury attesting that the nongovernmental entity does not use coercion for labor or services as defined in such statute; and

**WHEREAS**, the parties agree to amend the Contract to include these additional terms and conditions and approval of this Addendum is in the best interest of the residents of the Town of Fort Myers Beach.

**NOW, THEREFORE**, in consideration of the covenants set forth herein, the parties agree as follows:

1. **Incorporation by Reference.** The above "Whereas" clauses are incorporated by reference as if fully stated herein.
2. **Amendment.** This Addendum hereby approves, amends and supplements the terms of the Contract as provided herein. In the event of a conflict between the terms of the Contract and the terms of this Addendum, the terms of this Addendum shall prevail.
3. **Termination.**
  - (a) Termination for Cause. The Contract may be terminated by either party for cause by providing written notice to the other party not less than 10 days prior to the date of termination; provided, however, that in such event, neither party will be relieved from its rights or obligations under the Contract through the date of the actual termination. Prior to any termination for cause, by either party, the breaching party shall be given written notice of its breach and an opportunity to cure such breach. Notice must be delivered by certified mail, return receipt requested, or in person with proof of delivery.
  - (b) Termination for Convenience. The Town may terminate the Contract in whole or in part at any time without cause by giving the Contractor a prior written notice not less than 30 days prior to the date of termination; provided, however, that in such event, neither party will be relieved from its rights or obligations under the Contract through the date of the actual termination and the Contractor

shall be entitled to payment of all sums owed it through the date of termination. Furthermore, in the event of termination, Contractor shall be entitled to retain all sums paid for services paid through the date of termination. Notice must be delivered by certified mail, return receipt requested, or in person with proof of delivery.

**4. Public Records Compliance.** Contractor agrees that, to the extent that it may "act on behalf" of the Town within the meaning of Section 119.0701(1)(a), Fla. Statutes in providing its services under the parties' Contract, it shall:

- (a) Keep and maintain public records required in writing by the public agency to perform the service.
- (b) Upon written request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost to be borne by the Town that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) 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 Contract term and following completion of the Contract if the contractor does not transfer the records to the public agency.
- (d) Upon completion of the Contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required in writing by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the Contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the Contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.
- (e) Pursuant to Section 119.0701(2)(a), Fla. Stat., **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 CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**TOWN HALL  
2731 OAK STREET  
FORT MYERS BEACH, FL. 33931  
(239)765-0202  
AMY@FMBGOV.COM**

**5. Non-appropriation.** Town's performance and obligation to pay under the Contract is contingent upon an appropriation during the Town's annual budget approval process. If funds are not appropriated for a fiscal year, then the Contractor shall be notified as soon as is practical (Last revised 10/2024)

by memorandum from the Town Manager or designee that funds have not been appropriated for continuation of the Contract, and the Contract shall expire at the end of the fiscal year for which funding has been appropriated. The termination of the Contract at fiscal year-end shall be without penalty or expense to the Town subject to the Town paying all invoices for services rendered during the period the Contract was funded by appropriations. Notwithstanding the foregoing, nothing contained herein shall impose any obligation on Contractor with respect to payments funded or made prior to the making of this Addendum.

**6. E-Verify Compliance.** By executing this Addendum, the Contractor is obligated to comply with the provisions of Section 448.095, Fla. Statutes "Employment Eligibility," as amended from time to time. This includes but is not limited to register with and use the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit to Contractor attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Contractor agrees to maintain a copy of such affidavit for the duration of the Contract. Failure to comply with this paragraph will result in the termination of the Contract as provided in Section 448.095, Fla. Statutes, as amended and Contractor will not be awarded a public contract for at least one **(1)** year after the date on which the Contract was terminated.

**7. Compliance/Consistency with Scrutinized Companies Provisions of Fla. Statutes.** Section 287.135(2)(a), Fla. Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Fla. Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Fla. Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to Section 215.473, Fla. Statutes, or the company is engaged in business operations in Cuba or Syria. Contractor hereby certifies that Contractor is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Contractor further hereby certifies that Contractor is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. Contractor understands that pursuant to Section 287.135, Fla. Statutes, the submission of a false certification may subject Contractor to civil penalties, attorney's fees, and/or costs. Contractor further understands that any contract with Town for goods or services of any amount may be terminated at the option of Town if Contractor (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of Town if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

**8. Disclosure Requirements for "Foreign Countries of Concern."** Contractor shall comply with the disclosure requirements set forth in Section 286.101(3)(a), Fla. Statutes, which requires "Any entity that applies to a state agency or political subdivision for a grant or

proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed. the applicable "foreign country of concern" and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services". Pursuant to Section 268.101(7), Fla. Statutes: "In addition to any fine assessed under [Section 286.101(7)(a), Fla. Statutes], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause."

**9. Venue and Jurisdiction.** Notwithstanding any of other provision to the contrary, the Contract, this Addendum, and the parties' actions under the same shall be governed by and construed under the laws of the State of Florida, without reference to conflict of law principles. As a material condition of the parties' Contract, each party hereby irrevocably and unconditionally consents to submit and does submit to the jurisdiction of the Circuit Court in and for Lee County, Florida for any actions, suits or proceedings arising out of or relating to the Contract or this Addendum.

**10. Attorneys' Fees and Costs.** Notwithstanding any of other provision to the contrary, if litigation ensues regarding the Contract or this Addendum, each party hereto shall bear its own attorneys' fees and costs.

**11. Public Entities Crime or Convicted Vendor List.** Contractor agrees and assumes a continuous duty to disclose to the Town if the Contractor or any of its affiliates as defined by Section 287.133(1)(a), Fla. Statutes are placed on the Convicted Vendor List or the Antitrust Violator Vendor List maintained by the Florida Department of Management Services.

**12. Data Management; Notice of Breach.** Contractor shall cooperate with the Town and provide timely incident reporting, response activities/fact gathering, public and agency notification, severity level assessment, after-action reports, etc., which the Town must report in accordance with Section 282.3185(5) and (6), Fla. Statutes in the event of a data breach.

**13. Environmental and Social Government and Corporate Activism.** The Town has not given preference or requested documentation from the Contractor based on Contractor's social, political or ideological interest. Contractor agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor's social, political or ideological interests.

**14. Taxes.** The Town shall not be liable for any taxes and assessments imposed by a federal, state or local governmental agency to the extent that the Town is exempt from same by Florida law, including but not limited to any sales or use tax.

(Last revised 10/2024)

15. **No coercion for labor or services.** The Contractor swears under penalty of perjury that the Contractor does not use coercion for labor or services as defined as follows:

"Coercion" means:

1. Using or threatening to use physical force against any person;
2. Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
3. Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;
4. Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
5. Causing or threatening to cause financial harm to any person;
6. Enticing or luring any person by fraud or deceit; or
7. Providing a controlled substance as outlined in Schedule I or Schedule II of Sec. 893.03, Fla. Stat. to any person for the purpose of exploitation of that person.

**IN WITNESS WHEREOF**, the parties hereto have executed and delivered this instrument on the month and day last signed below and the signatories below to bind the parties set forth herein.

Under penalties of perjury, and pursuant to Section 92.525, Fla. Statutes, Contractor declares that Contractor has read the foregoing Section 17 above and that the facts stated in it are true.

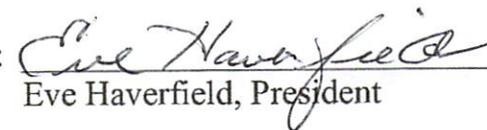
**ATTEST:**

  
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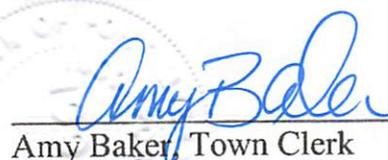
Print Name: JASON FREEMAN

Print Title: DEPUTY CLERK

**CONTRACTOR:**  
**TURTLE TIME, INC.**

By:   
\_\_\_\_\_  
Eve Haverfield, President

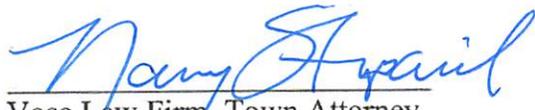
**ATTEST:**

  
\_\_\_\_\_  
Amy Baker, Town Clerk

**TOWN OF FORT MYERS BEACH**

  
\_\_\_\_\_  
Dan Allers, Town Mayor

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE  
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

  
\_\_\_\_\_  
Vose Law Firm, Town Attorney

**EXHIBIT "A"**



MARINE TURTLE MONITORING  
ESTERO ISLAND NOURISHMENT PROJECT  
AND FEMA BERM  
Submitted by  
Eve M. Havertield  
Turtle Time Inc.  
MTP 23 003A, STP 23 130A (Exp 1/31/2024)

**Ecological Services**

Permit-Required Marine Turtle Monitoring for Estero Island Nourishment Project (DEP Permit No. 0413684-~~620~~-JC) and FEMA Berm Construction First Year Sand Placement

Daily surveys of the project area and the concomitant reference area will commence on April 15, 2023, and end October 31, 2023, or when all nests have hatched - relocated nests and *in situ* nests. All reports, including escarpment surveys, stranding documentation, nesting obstruction, disorientation reports and all end-of-season nesting and hatching productivity reports will be submitted in electronic format to FWC Bureau of Imperiled Species Management, DEP and the Town of Fort Myers Beach by November 30, 2023. In addition, the required annual monitoring follow-up reports will be sent on a timely basis.

**Pay Request:**

- \$15,000 May 1, 2023
- \$15,000 November 30, 2023
- \$ 5,000 May 1, 2024 - First-Year Post-Construction
- \$ 5,000 May 1, 2025 - Second-Year Post-Construction
- \$ 5,000 May 1, 2026 - Third Year Post-Construction (if required by FWC)

Thank you,  
*Eve Havertield*  
Director

P.O. Box 2621 - Fort Myers Beach, FL 33902 - 339-651-5566  
www.turtletime.com