

RESOLUTION NUMBER 25-204

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A FIRST AMENDMENT TO THE CDBG-DR SUBRECIPIENT GRANT AGREEMENT DR10262 BETWEEN THE TOWN AND THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS TO CHANGE THE REFERENCED KEY PERSONNEL FOR THE NORTH ISLAND WATER TOWER PROJECT; AUTHORIZING THE EXECUTION OF THE FIRST AMENDMENT BY THE TOWN MANAGER; AND PROVIDING 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 (“Town”) 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, on November 20, 2023, the Town and Lee County Board of County Commissioners entered into a Subrecipient Agreement, which included Exhibit J in Section XVIII that identified the Town’s key personnel; and

WHEREAS, Exhibit J required the Town to notify Lee County of any changes in key personnel within 30 days; and

WHEREAS, it is necessary to amend Exhibit J to replace Andrew Hyatt, as Town Manager and Joe Onzick, as Financial Director, to be replaced with William McKannay; and

WHEREAS, the Town desires to complete and execute this First Amendment as soon as possible to be in compliance with the requirements of Exhibit J.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. The above recitals are true and correct and are hereby incorporated by reference as though fully set forth herein and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. The First Amendment to the Agreement attached hereto as “Exhibit A”, between Lee County and the Town of Fort Myers Beach is approved. The Town Manager is authorized to execute the First Amendment on behalf of the Town.

Section 3. This resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

The foregoing Resolution was by the Town Council upon a motion by Council Member King and seconded by Council Member Woodson, and upon being put to a vote, the result was as follows:

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

ADOPTED this 16th day of June 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers

Dan Allers (Jun 18, 2025 16:23 EDT)

Dan Allers, Mayor

ATTEST:

Jason Freeman

Jason Freeman, Town Clerk (Acting)

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

Nancy Luparich

Nancy Luparich (Jun 19, 2025 19:45 EDT)

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 20th day of June 2025.

**FIRST AMENDMENT TO CDBG-DR SUBRECIPIENT AGREEMENT
LEE COUNTY BOARD OF COUNTY COMMISSIONERS
CDBG-DR SUBRECIPIENT AGREEMENT**

THIS FIRST AMENDMENT is made and entered into this 16th day of June, 2025, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and Lee County Board of County Commissioners, hereinafter referred to as “Lee County”, to that certain CDBG-DR Grant Agreements , dated November 20, 2023 (“Agreement”) DR10262 – Critical Infrastructure North Island Water Tower.

WITNESSETH:

WHEREAS, on November 20, 2023, the Town and Lee County entered into a Subrecipient Agreement, which included Exhibit J in Section XVIII that named the Town’s key personnel involved in the project; and

WHEREAS, Exhibit J also required the Town to notify Lee County within 30 days in the event of a change in key personnel; and

WHEREAS, recently William McKannay was appointed to serve as the Town Manager and will also be assuming the role of Financial Director replacing Andrew Hyatt, as Town Manager and Joe Onzick, as Financial Director; and

WHEREAS, Section 119.0701, Florida Statutes, requires that certain public agency contracts must include certain statutorily required provisions concerning compliance with Florida’s Public Records Act; and

WHEREAS, Section 768.28, Florida Statutes, sets forth certain mandatory limitations on indemnification and liability for Florida public agencies, including municipalities; and

WHEREAS, Florida law requires that public agency contracts be subject to non-appropriation and thereby contingent upon appropriation during the public agency’s statutorily mandated annual budget approval process; and

WHEREAS, Section 448.095, Florida 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 286.101, Florida 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 Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity under significant control of such “foreign country of concern”. Any entity that does business with a state agency or political subdivision must disclose certain of their dealings with those “foreign countries of concern” to the Florida Department of Financial Services; and

WHEREAS, Sections 287.133 and 287.135, Florida Statutes provides restrictions on local governments contracting with companies that are on certain Scrutinized Companies lists or convicted vendor lists; and

WHEREAS, additional terms consistent with Sections 282.3185(5) and (6) related to data management and Section 287.05701, Florida Statutes related to social government and corporate activism are also added by virtue of this Amendment

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

1. Amendment. This Amendment hereby amends and supplements the terms of the Agreement. In the event of a conflict between the terms of the Agreement and terms of this Amendment, the terms of this Amendment shall prevail.

2. Public Records Compliance. Provider agrees that, to the extent that it may "act on behalf" of the Town within the meaning of Section 119.0701(1)(a), Florida Statutes in providing its services under this Agreement, it shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon 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 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 Provider 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 Provider or keep and maintain public records required by the public agency to perform the service. If the Provider transfers all public records to the public agency upon completion of the contract, the Provider shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Provider keeps and maintains public records upon completion of the contract, the Provider 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), Florida Statute, **IF THE PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PROVIDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS**

AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

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

3. Public Records Compliance Indemnification. Provider agrees to indemnify and hold the Town harmless against any and all claims, damage awards, and causes of action arising from the Provider's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by Provider's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Provider authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Provider in Lee County Circuit Court on an expedited basis to enforce the requirements of this section.

4. Compliance/Consistency with Section 768.28, Florida Statutes. Any indemnification or agreement to defend or hold harmless by the Town specified in the Agreement shall not be construed as a waiver of the Town's sovereign immunity, and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Florida Statutes and subject to the procedural requirements set forth therein. Any other purported indemnification by the Town in the Agreement in derogation hereof shall be void and of no force or effect.

5. Non-appropriation. The Town's performance and obligation to pay under this Agreement is contingent upon an appropriation during the Town's annual budget approval process. If funds are not appropriated for a fiscal year, then the Provider shall be notified as soon as is practical by memorandum from the Town Manager or designee that funds have not been appropriated for continuation of the Agreement, and the Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of the Agreement 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 Agreement was funded by appropriations.

6. E-Verify Compliance. By entering into this Agreement, the Provider is obligated to comply with the provisions of Section 448.095, Florida 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 Provider attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Provider agrees to maintain a copy of such affidavit for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, Florida Statutes, as amended and Provider will not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. Provider will also be liable for any additional costs to the Town

as a result of the termination of this Agreement in accordance with this paragraph. Provider affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Florida Statutes, Provider is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Provider requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that Provider is otherwise in compliance with Sections 448.09 and 448.095, Florida Statutes.

7. Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes. Section 287.135(2)(a), Florida 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, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida 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, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. Provider hereby certifies that Provider 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. Provider further hereby certifies that Provider is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. Provider understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject Provider to civil penalties, attorney's fees, and/or costs. Provider further understands that any contract with Town for goods or services of any amount may be terminated at the option of Town if Provider (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." Provider shall comply with the disclosure requirements set forth in section 286.101 (3) (a), Florida Statute, 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), Florida Statue: “In addition to any fine assessed under [section 286.101(7)(a), Florida Statue], 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, this Agreement and the parties’ actions under this Agreement 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 this Agreement, 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 this Agreement. Both parties waive the right to file any action, suit or proceeding in Federal Court, or remove any action, suit or proceeding to Federal Court.

10. Attorneys’ Fees and Costs. Notwithstanding any of other provision to the contrary, if litigation ensues regarding this Agreement, each party hereto shall bear its own attorneys’ fee and costs.

11. Public Entities Crime or Convicted Vendor List. Provider agrees and assumes a continuous duty to disclose to the Town if the Provider or any of its affiliates as defined by Section 287.133(1)(a), Florida 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. Provider 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 Sections 282.3185(5) & (6), Florida 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 Provider based on Provider’s social, political or ideological interest. Provider 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.

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.

16. Force Majeure. The Town reserves the right to suspend, modify or terminate this contract in the event of an act of god or act of man beyond the control of the parties, including but not limited to a hurricane, tropical storm, tornado, or other destructive weather event, flooding, pandemic, plague, war, armed conflict, domestic or foreign terrorism, riot, labor condition, state or federal governmental action, and catastrophic internet disturbance, making performance inadvisable, economically impracticable, illegal, or impossible.

17. Additional Terms. Notwithstanding any of other provision to the contrary, the parties agree as follows: None

IN WITNESS WHEREOF, the parties hereto have executed and delivered this instrument on the days and year indicated below and the signatories below to bind the parties set forth herein.

ATTEST:

Jason Freeman

Jason Freeman, Town Clerk (Acting)

Town of Fort Myers Beach

WB McKannay

WB McKannay (Jun 26, 2025 16:23 EDT)

William B. McKannay, Town Manager

APPROVED AS TO FORM & SUFFICIENCY

Mary Huparich

Mary Huparich (Jun 19, 2025 19:45 EDT)

Vose Law Firm, Town Attorney