

**RESOLUTION NUMBER 25-54**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A SECOND AMENDMENT TO THE AGREEMENT BETWEEN THE TOWN AND EARTHVIEW, LLC FOR STORMWATER MAINTENANCE AND REPAIRS TO ADD 1) GROUND PENETRATING RADAR SERVICES IN A NOT-TO-EXCEED AMOUNT OF \$130,000.00; AND 2) STANDARD CONTRACT CLAUSES; AUTHORIZING THE EXECUTION OF THE SECOND 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**, pursuant to a competitive procurement process in compliance with state law and Town Code – RFP-23-03-UT “Stormwater Maintenance and Repair”- in February of 2023 the Town and the (“Firm”), entered into a Service Provider Agreement for Stormwater Maintenance and Repair (“Agreement”), which was amended on the 20<sup>th</sup> day of June 2023 by Resolution 23-69, and

**WHEREAS**, the Town and the Firm desire to further amend the Agreement to include Ground Penetrating Radar services for utility locates in a not-to-exceed amount of **\$130,000.00** retroactive to June 1, 2024.

**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 Second Amendment to the Agreement attached hereto as “Exhibit A between the Firm and the Town of Fort Myers Beach is approved. The Town Manager is authorized to execute the Second Amendment on behalf of the Town and is authorized to take all necessary steps to implement this Second Amendment to the Agreement.

Section 3. This resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach, and shall be retroactive to June 1, 2024.

The foregoing Resolution was by the Town Council upon a motion by Vice Mayor Atterholt and seconded by Mayor Allers, and upon being put to a roll call 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 3<sup>rd</sup> day of February 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

*Dan Allers*

Dan Allers (Apr 14, 2025 12:57 EDT)

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Dan Allers, Mayor

ATTEST:

*Amy Baker*

Amy Baker (Apr 22, 2025 09:09 EDT)

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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 SOLELY:

*Nancy Stuparich*

Nancy Stuparich (Apr 15, 2025 18:46 EDT)

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Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 14<sup>th</sup> day of April 2025.

**SECOND AMENDMENT TO SERVICE PROVIDER AGREEMENT  
EARTH VIEW LLC – STORMWATER MAINTENCE AND REPAIR**

**THIS SECOND AMENDMENT** is made and entered into this 3<sup>rd</sup> day of February 2025, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and Earthview, LLC hereinafter referred to as “Contractor”, to that certain Service Provider Agreement, dated January 9, 2023 (“Agreement”) for stormwater maintenance and repair.

**WITNESSETH:**

**WHEREAS**, the services provided by Contractor to date have been beneficial to the Town, and as a result, the parties desire to amend the Agreement to include Ground Penetrating Radar services for utility locates in a not-to-exceed amount of \$130,000.00 retroactive to June 1, 2024; and

**WHEREAS**, the parties further desire to include and/or modify existing terms and conditions in the initial Agreement as provided herein; and

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

**WHEREAS**, Section 768.28, Fla. Statutes, sets forth certain mandatory limitations on indemnification and liability for Florida public agencies; 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, 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 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” and 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 contain restrictions on local governments contracting with companies that are considered “Scrutinized Companies” or who appear on convicted vendor lists; and

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

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

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

**2. 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), 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 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 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 AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

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

**3. Public Records Compliance Indemnification.** Contractor agrees to indemnify and hold the Town harmless against any and all claims, damage awards, and causes of action arising from the contractor's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by contractor'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. Contractor authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Contractor in Lee County Circuit Court on an expedited basis to enforce the requirements of this section.

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

**5. Non-appropriation.** 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 Contractor 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 Contractor 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 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 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 Contractor will not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. Contractor 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. Contractor affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Florida Statutes, Contractor 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, Contractor 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 Contractor 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. 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, Florida 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.

Moreover, Contractor shall comply with the disclosure requirements set forth in section 286.101 (3) (a), F.S., 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), F.S.: “In addition to any fine assessed under [section 286.101(7)(a), F.S.], 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.”

**8. 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: i) 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; and ii) agrees to waive the right to file any action, suit or proceeding in, or remove any action, suit or proceeding to, any Federal Court.

**9. 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.

**10. 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), Florida Statutes are placed on the Convicted Vendor List or the Antitrust Violator Vendor List maintained by the Florida Department of Management Services.

**11. 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 Sections 282.3185(5) & (6), Florida Statutes in the event of a data breach.

**12. Environmental and Social Government and Corporate Activism.** The Town has not given preference or requested documentation from the Contractor based on the 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.

**13. 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.

**14. Additional Terms.** Notwithstanding any other provision to the contrary, the parties agree to amend the Scope of Services in the Agreement as provided in Exhibit A to this Amendment and the Town's Payment Obligation as provided in Exhibit B to this Amendment.

**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.

**Contractor:**

\_\_\_\_\_

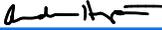
**Print Name:** \_\_\_\_\_

**Company:** Earthview, LLC

**ATTEST:**

  
Amy Baker (Apr 22, 2025 09:09 EDT)  
\_\_\_\_\_  
**Amy Baker, Town Clerk**

**Town of Fort Myers Beach**

  
Andrew Hyatt (Apr 14, 2025 10:51 EDT)  
\_\_\_\_\_  
**Andrew Hyatt, Town Manager**

**APPROVED AS TO FORM & SUFFICIENCY**

  
Nancy Stuparich (Apr 15, 2025 13:46 EDT)  
\_\_\_\_\_  
**Vose Law Firm, Town Attorney**

## **EXHIBIT A ADDENDUM**

TO RESOLUTION 25-xx OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A SECOND AMENDMENT TO THE AGREEMENT BETWEEN THE TOWN AND EARTHVIEW, LLC (PROVIDER) DATED THIS 3RD day of FEBRUARY 2025.

1. **SCOPE OF SERVICES:** The Provider will perform the following services under this Agreement as directed by the TOWN's representative through Work Order Tickets:

Provider shall locate utilities using Ground Penetrating Radar (GPR) and Radio Detection, and paint and flag findings.

**The DELIVERABLES shall include the cost of:**

1. Locating utilities using Ground Penetrating Radar (GPR) and Radio Detection, and the paint and flags to indicate the findings.

## **EXHIBIT B ADDENDUM**

TO RESOLUTION 25-xx OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A SECOND AMENDMENT TO THE AGREEMENT BETWEEN THE TOWN AND EARTHVIEW, LLC (PROVIDER) DATED THIS 3RD day of FEBRUARY 2025.

1. **PAYMENT OBLIGATION**: The Town will pay the Provider as follows for all services listed in each Work Order Ticket:

1. The Provider will provide utility locate services at the rate of **\$165.00/hr.**

The not-to-exceed amount of this contract amendment will

# 25-54, Earthview Second Amendment Final for signatures

Final Audit Report

2025-04-22

Created:	2025-04-14
By:	Amy Baker (AMY@FMBGOV.COM)
Status:	Signed
Transaction ID:	CBJCHBCAABAAIkM_hx8J_K0Phadq0r-d-dqEz3s_ika8

## "25-54, Earthview Second Amendment Final for signatures" History

-  Document created by Amy Baker (AMY@FMBGOV.COM)  
2025-04-14 - 2:48:05 PM GMT
-  Document emailed to Dan Allers (allersd@fmbgov.com) for signature  
2025-04-14 - 2:48:10 PM GMT
-  Document emailed to Nancy Stuparich (nstuparich@voselaw.com) for signature  
2025-04-14 - 2:48:10 PM GMT
-  Document emailed to Andrew Hyatt (andyhyatt@fmbgov.com) for signature  
2025-04-14 - 2:48:11 PM GMT
-  Document emailed to Amy Baker (AMY@FMBGOV.COM) for signature  
2025-04-14 - 2:48:11 PM GMT
-  Email viewed by Andrew Hyatt (andyhyatt@fmbgov.com)  
2025-04-14 - 2:51:32 PM GMT
-  Document e-signed by Andrew Hyatt (andyhyatt@fmbgov.com)  
Signature Date: 2025-04-14 - 2:51:46 PM GMT - Time Source: server
-  Email viewed by Dan Allers (allersd@fmbgov.com)  
2025-04-14 - 4:56:45 PM GMT
-  Document e-signed by Dan Allers (allersd@fmbgov.com)  
Signature Date: 2025-04-14 - 4:57:02 PM GMT - Time Source: server
-  Email viewed by Nancy Stuparich (nstuparich@voselaw.com)  
2025-04-15 - 10:46:27 PM GMT

 Document e-signed by Nancy Stuparich (nstuparich@voselaw.com)

Signature Date: 2025-04-15 - 10:46:56 PM GMT - Time Source: server

 Document e-signed by Amy Baker (AMY@FMBGOV.COM)

Signature Date: 2025-04-22 - 1:09:59 PM GMT - Time Source: server

 Agreement completed.

2025-04-22 - 1:09:59 PM GMT