

RESOLUTION NUMBER 25-207

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A THIRD AMENDMENT TO THE AGREEMENT BETWEEN THE TOWN AND EARTHVIEW, LLC FOR STORMWATER MAINTENANCE AND REPAIRS TO INCREASE THE AMOUNT FOR THE PERFORMANCE OF GROUND PENETRATING RADAR SERVICES IN AN AMOUNT NOT-TO-EXCEED \$65,000.00; AMENDING CONTRACT TERMS TO INCLUDE A PROVISION CONCERNING FORCE MAJEURE AND COERCION; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE THIRD AMENDMENT 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 20th day of June 2023 by Resolution 23-69 and on the 3rd of February 2025 by Resolution 25-54, and

WHEREAS, the Town and the Firm desire to further amend the Agreement to include additional funds for Ground Penetrating Radar services for utility locates in an amount not-to-exceed **\$65,000.00** retroactive to April 1, 2025.

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 Third 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 Third Amendment on behalf of the Town and is authorized to take all necessary steps to implement this Third 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 April 1, 2025.

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 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 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 \(Jul 30, 2025 16:03:58 EDT\)](#)

Dan Allers, Mayor

ATTEST:

Amy Baker

[Amy Baker \(Jul 31, 2025 15:50:12 EDT\)](#)

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 \(Jul 30, 2025 17:08:01 EDT\)](#)

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on: Jul 31, 2025.

**THIRD AMENDMENT TO SERVICE PROVIDER AGREEMENT
EARTH VIEW LLC – STORMWATER MAINTENACE AND REPAIR**

THIS THIRD 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 Earthview, LLC hereinafter referred to as “Contractor”, to that certain Service Provider Agreement, dated January 9, 2023 (“Agreement”) for stormwater maintenance and repair as amended on June 20, 2023 and February 3, 2025

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 \$65,000.00 retroactive to April 1, 2025; and [there is no need to amend the agreement to add ground penetrating radar services since the second amendment included this service as part of the scope of service]

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

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.

1. 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.

2. No Coercion For Labor or Services The Proposer swears under penalty of perjury that the Proposer 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.

3. Town's Payment Obligation . The Town's Payment Obligation as provided in Exhibit B in the Agreement and amended by the Second Amendment is hereby increased by an additional \$65,000.00 for additional ground penetrating services.

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: Earthview, LLC



Print Name: Allison Murrell

ATTEST:



Amy Baker (Jul 31, 2025 15:50:12 EDT)
Amy Baker, Town Clerk

Town of Fort Myers Beach



William McKannay, Town Manager

APPROVED AS TO FORM & SUFFICIENCY



Nancy Stuparich (Jul 30, 2025 17:08:01 EDT)
Vose Law Firm, Town Attorney

EXHIBIT B

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

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

The not-to-exceed amount of the contract for ground penetrating services shall be increased \$65,000, for a total of the contract amount of \$195,000 for this service. will

25-207, Earthview, LLC - Third Amendment - Final For Signatures (1)

Final Audit Report

2025-07-31

Created:	2025-07-30
By:	Lizzette Roman (Lroman@fmbgov.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAXq4BE_W7oy3TMBAsWx9z3LqJLqODdVqA

"25-207, Earthview, LLC - Third Amendment - Final For Signatures (1)" History

-  Document created by Lizzette Roman (Lroman@fmbgov.com)
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 Document emailed to Amy Baker (AMY@FMBGOV.COM) for signature

2025-07-30 - 9:08:03 PM GMT

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

Signature Date: 2025-07-31 - 7:50:12 PM GMT - Time Source: server- Signature captured from device with phone number XXXXXX0014

 Agreement completed.

2025-07-31 - 7:50:12 PM GMT