

RESOLUTION NUMBER 25-270

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A THIRD AMENDMENT TO THE AGREEMENT BETWEEN THE TOWN OF FORT MYERS BEACH AND EARTHVIEW, LLC FOR STORMWATER MAINTENANCE AND REPAIRS TO: 1) INCREASE FUNDS AVAILABLE FOR ADDITIONAL GROUND PENETRATING RADAR SERVICES IN AN AMOUNT NOT-TO-EXCEED \$130,000.00 AND 2) INCLUDE ADDITIONAL STANDARD CONTRACT TERMS AND CONDITIONS; AUTHORIZING THE EXECUTION OF THE THIRD 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 Earthview LLC (“the Firm”) entered into a Service Provider Agreement for Stormwater Maintenance and Repair (“Agreement”), which was first amended on the 20th day of June 2023 by Resolution 23- 69, and amended again by approval of Resolution 25-54 on February 3, 2025; and

WHEREAS, the Town and the Firm desire to approve a third amendment to the Agreement to include Ground Penetrating Radar services for utility locates in a not-to-exceed amount of \$130,000.00 retroactive to August 1, 2025 and to add additional standard contract terms and conditions since the Second Amendment was approved.

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 Town Manager is authorized to execute a third amendment to the Agreement, which shall be retroactive to August 1, 2025.

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 adopted by the Town Council upon a motion by Council Member King and seconded by Council Member Safford 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 11th day of September 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH



Dan Allers (Nov 26, 2025 16:37:56 EST)
Dan Allers, Mayor

ATTEST:



Amy Baker (Dec 1, 2025 15:28:06 EST)
Amy Baker, Town Clerk

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



Nancy St. Patrick (Nov 26, 2025 20:47:39 EST)
Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on: Dec 1, 2025.

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

THIS THIRD AMENDMENT is made and entered into this 11th day of September 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 retroactive to June 1, 2024.

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 provide for the continuation of Ground Penetrating Radar services for utility locates in a not-to-exceed amount of \$130,000.00 retroactive to August 1, 2025; and

WHEREAS, the parties further desire to include additional standard terms and conditions since approval of the Second Amendment to the Agreement; and

WHEREAS, approval of this Third Amendment is in the best interest of the Town and its residents, and/or modify existing terms and conditions in the initial Agreement as provided herein.

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

1. Amendment. This Amendment amends and supplements the terms of the Agreement as amended to increase the Town’s Payment Obligation as provided in Exhibit B to the Second Amendment not to exceed an additional \$130,000.00. 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. Term. This Amendment shall be retroactive to August 1, 2025.

3. 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.

4. 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.

5. Conflicts. By entering into this agreement, the Contractor represents that it currently is not providing professional services to any third party person or entity on any project or development for which project or development approval is currently pending or proposed or for which an application is being prepared for submittal to the Town of Fort Myers Beach for review or approval and further agrees that during the term of this agreement, the Contractor will not provide professional services to any third party person or entity as to any project or development for which development or project approval is pending or proposed or for which an application is being prepared for submittal to the Town of Fort Myers Beach for review or approval.

6. Breach during Emergency Recovery Period. Pursuant to Sec. 252.505, Fla. Stat., if vendor breaches this agreement during an emergency recovery period (1-year period beginning upon Governor's initial declaration of a natural emergency) Contractor shall pay a \$5,000 penalty and damages, which may be either actual and consequential damages or liquidated damages.

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 (Dec 1, 2025 15:28:06 EST)

Amy Baker, Town Clerk

Town of Fort Myers Beach



Will McKannay, Town Manager

APPROVED AS TO FORM & SUFFICIENCY


Nancy Spadulich (Nov 26, 2025 20:47:39 EST)
Vose Law Firm, Town Attorney