

1 RESOLUTION NO. 2020-

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3 A RESOLUTION OF THE BOARD OF COUNTY
4 COMMISSIONERS OF BROWARD COUNTY, FLORIDA,
5 GRANTING RENEWAL OF A NONEXCLUSIVE FRANCHISE
6 TO KIRBY INLAND MARINE, LP, FOR A FIVE-YEAR TERM
7 TO PROVIDE VESSEL BUNKERING SERVICES AT PORT
8 EVERGLADES; PROVIDING FOR FRANCHISE TERMS
9 AND CONDITIONS; AND PROVIDING FOR SEVERABILITY
10 AND AN EFFECTIVE DATE.

11 WHEREAS, the Broward County Board of County Commissioners (the "Board")
12 adopted Resolution No. 94-1302 creating Chapter 32 of the Broward County
13 Administrative Code, effective November 22, 1994, which provides, in part, for the
14 granting of franchises to businesses to conduct operations at Port Everglades;

15 WHEREAS, Kirby Inland Marine, LP, has submitted an application for renewal of
16 a nonexclusive franchise to provide vessel bunkering services at Port Everglades;

17 WHEREAS, the Board has reviewed the application in light of the requirements of
18 Chapter 32 of the Broward County Administrative Code and has relied on the
19 representations of Kirby Inland Marine, LP, contained in the application;

20 WHEREAS, a public hearing was held on September 22, 2020, as required under
21 Section 32.22 of the Broward County Administrative Code; and

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23 WHEREAS, based on the representations of Kirby Inland Marine, LP, and
24 information presented by Broward County staff and the public, the Board does hereby

1 determine and establish that Kirby Inland Marine, LP, has met each of the factors set forth
2 in Section 32.20.c.2 of the Broward County Administrative Code, and declares that the
3 best interests of Broward County dictate renewal of a nonexclusive franchise to Kirby
4 Inland Marine, LP, for vessel bunkering services, NOW, THEREFORE,

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6 BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF
7 BROWARD COUNTY, FLORIDA:

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9 Section 1. The foregoing "WHEREAS" clauses are true and correct and are
10 hereby ratified by the Board of County Commissioners.

11 Section 2. Renewal of Franchise to Kirby Inland Marine, LP.

12 Kirby Inland Marine, LP ("Franchisee"), is hereby granted renewal of a
13 nonexclusive franchise to provide vessel bunkering services at Port Everglades (the
14 "Franchise"), subject to the terms and conditions of Sections 3 through 8 of this
15 Resolution.

16 Section 3. Term.

17 The Franchise shall be for a period of five (5) years, from October 13, 2020,
18 through October 12, 2025, unless sooner terminated in accordance with Section 32.29 of
19 the Broward County Administrative Code.

20 Section 4. Franchise Conditions.

21 By its execution of the franchise renewal application, Franchisee has agreed that
22 it will be bound by and comply with all franchise conditions set forth in Section 32.24 of
23 the Broward County Administrative Code.

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1 Section 5. Law, Jurisdiction, Venue, and Waiver of Jury Trial.

2 The Franchise shall be interpreted and construed in accordance with and governed
3 by the laws of the state of Florida. The exclusive venue for any lawsuit arising from,
4 related to, or in connection with the Franchise shall be in the state court of the
5 Seventeenth Judicial Circuit in and for Broward County, Florida. Franchisee irrevocably
6 subjects itself to the jurisdiction of said Court. This provision shall not apply to matters
7 that fall within the exclusive subject matter jurisdiction of the federal courts or those to
8 which jurisdiction is confirmed by law upon the Federal Maritime Commission (FMC). In
9 the latter case, either Broward County or Franchisee may choose to bring any such matter
10 before the FMC. If any claim arising from, related to, or in connection with the Franchise
11 must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the
12 United States District Court or United States Bankruptcy Court for the Southern District
13 of Florida. **FRANCHISEE AND BROWARD COUNTY EXPRESSLY WAIVE ANY**
14 **RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL**
15 **LITIGATION RELATED TO THE FRANCHISE.**

16 Section 6. Independent Auditor.

17 If requested by the Broward County Auditor, Franchisee shall appoint at its sole
18 cost an independent auditor approved by the Broward County Auditor to review
19 Franchisee's ongoing compliance with the terms and conditions of the Franchise and
20 issue a compliance report to Broward County within thirty (30) calendar days after the
21 appointment of the independent auditor.

22 Section 7. Notices.

23 Any notices required under the Franchise or by law must be given in writing and
24 must be sent by registered or certified mail by depositing the same in the United States

1 Mail, postage prepaid, or by hand delivery, or by overnight courier. Any notice given by
2 United States Mail shall be deemed effective and served three (3) business days after the
3 date of the mailing. Any notice given by hand delivery or overnight courier shall be
4 deemed to have been given upon receipt. Broward County or Franchisee may, by giving
5 written notice to the other, change the address to which its notices are to be received.
6 Until any change is made, notices to Franchisee shall be delivered to the person identified
7 in the franchise renewal application as having authority to bind the Franchisee. Until any
8 change is made, notices to Broward County shall be delivered to the following:

9 Broward County, Port Everglades Department
10 ATTN: Chief Executive/Port Director
11 1850 Eller Drive
12 Fort Lauderdale, Florida 33316

13 Section 8. Issuance of Certificate.

14 In accordance with Section 32.27 of the Broward County Administrative Code, the
15 Port Everglades Department, Business Administration Division, will issue a franchise
16 certificate to Franchisee setting forth the terms and conditions of the Franchise.

17 Section 9. Severability.

18 If any portion of this Resolution is determined by any court to be invalid, the invalid
19 portion will be stricken, and such striking will not affect the validity of the remainder of this
20 Resolution. If any court determines that this Resolution, in whole or in part, cannot be
21 legally applied to any individual, group, entity, property, or circumstance, such
22 determination will not affect the applicability of this Resolution to any other individual,
23 group, entity, property, or circumstance.
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Section 10. Effective Date.

This Resolution is effective upon adoption.

ADOPTED this _____ day of _____, 2020.

Approved as to form and legal sufficiency:
Andrew J. Meyers, County Attorney

By /s/ Al A DiCalvo 08/14/2020
Al A DiCalvo (date)
Assistant County Attorney

By /s/ Russell J. Morrison 08/14/2020
Russell J. Morrison (date)
Sr. Assistant County Attorney

AAD:cr
08/14/20
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