

RESOLUTION NO.

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, GRANTING RENEWAL OF A NONEXCLUSIVE FRANCHISE TO ELLER-I.T.O. STEVEDORING COMPANY, L.L.C., FOR A TEN-YEAR TERM TO PROVIDE STEVEDORE SERVICES AT PORT EVERGLADES; PROVIDING FOR FRANCHISE TERMS AND CONDITIONS; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

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

WHEREAS, on August 28, 2012, by Resolution No. 2012-485, the Board granted Eller-I.T.O. Stevedoring Company, L.L.C. ("Eller-I.T.O."), a renewal of a nonexclusive franchise to provide stevedore services at Port Everglades, with a ten-year term commencing on September 13, 2012, and ending on September 12, 2022 ("Prior Franchise");

WHEREAS, Eller-I.T.O. recently submitted an application for renewal of its Prior Franchise so that it may continue providing stevedore services at Port Everglades;

WHEREAS, the Board reviewed Eller-I.T.O.'s application pursuant to the requirements of Chapter 32 of the Administrative Code, and is relying on the representations made by Eller-I.T.O. in that application;

WHEREAS, on August 25, 2022, a public hearing was held, as required by Section 32.22 of the Administrative Code, to consider Eller-I.T.O.'s application; and

1 WHEREAS, based on the representations of Eller-I.T.O., and information
2 presented by Broward County staff and the public, as applicable, the Board does hereby
3 determine and establish that Eller-I.T.O. has met each of the factors set forth in the
4 applicable provisions of Chapter 32 of the Administrative Code for the granting of a
5 renewal of Eller-I.T.O.'s Prior Franchise so that it may continue providing stevedore
6 services at Port Everglades, and declares that the best interests of Broward County
7 dictate renewal of the Prior Franchise, NOW, THEREFORE,

8
9 BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF
10 BROWARD COUNTY, FLORIDA:

11
12 Section 1. The foregoing "WHEREAS" clauses are true and correct and are
13 hereby ratified by the Board.

14 Section 2. Renewal of Prior Franchise to Eller-I.T.O.

15 Eller-I.T.O. is hereby granted renewal of its Prior Franchise so that it may continue
16 to provide stevedore services at Port Everglades (the "Franchise"), subject to the terms
17 and conditions of this Resolution.

18 Section 3. Term.

19 The Franchise shall be for a period of ten (10) years, commencing
20 September 13, 2022, and ending September 12, 2032, unless sooner terminated in
21 accordance with Section 32.29 of the Administrative Code.

Section 4. Franchise Conditions.

By its execution of the franchise renewal application, Eller-I.T.O. agreed to be bound by and comply with all terms and conditions set forth in Section 32.24 of the Administrative Code.

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

The Franchise shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Except as provided herein, the exclusive venue for any lawsuit arising from, related to, or in connection with the Franchise shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. For matters that fall within the exclusive subject matter jurisdiction of the federal courts or those to which jurisdiction is confirmed by law upon the Federal Maritime Commission ("FMC"), the exclusive venue for any such lawsuit shall be in the United States District Court, the United States Bankruptcy Court for the Southern District of Florida, or the FMC, as applicable. Eller-I.T.O. irrevocably subjects itself to the jurisdiction of said courts. **EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THE FRANCHISE. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THE FRANCHISE AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

Section 6. Independent Auditor.

If requested by the Broward County Auditor, Eller-I.T.O. shall appoint, at its sole cost, an independent auditor approved by the Broward County Auditor to (a) review Eller-I.T.O.'s ongoing compliance with the terms and conditions of the Franchise; and (b) issue a compliance report to Broward County within thirty (30) calendar days after the appointment of the independent auditor.

Section 7. Notices.

In order for a notice to a party to be effective under the Franchise, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via e-mail, to the addresses stated below and shall be effective upon mailing or hand delivery (provided the contemporaneous e-mail is also sent). The addresses for notice shall remain as set forth in this section unless and until changed by providing notice of such change in accordance with the provisions of this section. Until any change is made, notices to Eller-I.T.O. shall be delivered to the person identified in the franchise application as having authority to bind Eller-I.T.O., and notices to Broward County shall be delivered to the following:

Broward County, Port Everglades Department
ATTN: Chief Executive/Port Director
1850 Eller Drive
Fort Lauderdale, Florida 33316
E-mail: jdaniels@broward.org

Section 8. Issuance of Certificate.

In accordance with Section 32.27 of the Administrative Code, the Port Everglades Department, Business Development Division, will issue a franchise certificate to Eller-I.T.O. setting forth the terms and conditions of the Franchise.

Section 9. Severability.

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

Section 10. Effective Date.

This Resolution is effective upon adoption.

ADOPTED this _____ day of _____, 2022.

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

By /s/ Carlos Rodriguez-Cabarrocas 05/17/2022
Carlos Rodriguez-Cabarrocas (date)
Senior Assistant County Attorney

CRC:dh
07/12/22
Eller-I.T.O. STV_R02_071222
#22-3600