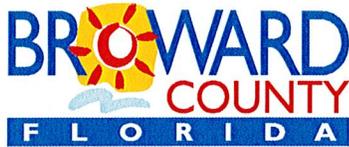


**ITEM #14**

**ADDITIONAL MATERIAL  
REGULAR MEETING**

**SEPTEMBER 21, 2021**

**SUBMITTED AT THE REQUEST OF  
PORT EVERGLADES DEPARTMENT**



PORT EVERGLADES DEPARTMENT – Chief Executive & Port Director’s Office  
1850 Eller Drive, Fort Lauderdale, Florida 33316  
954-468-3504 FAX 954-523-8713

DATE: September 20, 2021

TO: Mayor and Board of County Commissioners

FROM: Jonathan Daniels, Chief Executive & Port Director  
Port Everglades Department 

RE: Additional Material – Agenda Item No. 14 – September 21, 2021 Commission  
Agenda – Crowley Liner Services, Inc. – Minimum Guaranteed Payment  
Shortfall

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To ensure the MGP Waiver (as defined in the agenda item) is the totality of relief requested by Crowley Liner Services, Inc., staff, in collaboration with the Office of the County Attorney, obtained an executed letter from Crowley Liner Services, Inc., accepting certain terms and conditions for the MGP Waiver, including, but not limited to, a release. A copy of the executed letter is attached.

Please contact this office if additional information is required.

Attachment

CC: Bertha Henry, County Administrator  
Monica Cepero, Assistant County Administrator  
Kimm Campbell, Assistant County Administrator  
Glenn Wiltshire, Deputy Port Director  
J. David Anderton, Assistant Director of Port Everglades  
Carlos Rodriguez-Cabarrocas, Senior Assistant County Attorney



PORT EVERGLADES DEPARTMENT – Chief Executive & Port Director's Office  
1850 Eller Drive, Fort Lauderdale, Florida 33316  
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September 20, 2021

Mr. Patrick Collins, Vice President  
Crowley Liner Services, Inc.  
9487 Regency Square Blvd.  
Jacksonville, Florida 32203

RE: MGP Shortfall Waiver - Marine Terminal Lease and Operating Agreement, dated June 14, 2016, between Broward County and Crowley Liner Services, Inc.

Dear Mr. Collins:

Broward County (the "County") and Crowley Liner Services, Inc. ("Crowley"), entered into a Marine Terminal Lease and Operating Agreement, dated June 14, 2016, which was amended by a First Amendment, dated November 2, 2017, and a Second Amendment, dated February 26, 2019 (collectively, as amended, the "Agreement").

Pursuant to the Agreement, Crowley pays to the County a "per container (shipmoves)" rate as set forth in Exhibit B-1, attached to the Second Amendment. The per container (shipmoves) rate is in lieu of a separate payment by Crowley for container yard land rent charges, dockage, cargo and container unit wharfage charges, crane rental fees (to include crane startup, shutdown, and crane standby of up to one (1) hour), and harbormaster fees; however, Crowley must pay all other fees required by the Port Everglades Tariff and as otherwise required by the Agreement (including, but not limited to, rent for the leased premises). This paragraph is intended to describe the underlying Agreement, and not to modify it in any way.

Pursuant to the Agreement, Crowley guarantees a certain amount of container shipmoves per year and agrees to make annual guarantee payments to the County in twelve equal monthly payments (the "MGP(s)"), all as set forth in Exhibit D-1, attached to the Second Amendment. Any container shipmoves in excess of the guarantee are billed by the County at the rates set forth in Exhibit B-1, and in the event of any shortfall between the guarantee and the actual container shipmoves, the County is entitled to retain the MGPs to the full extent necessary to resolve the shortfall.

On March 26, 2020, Crowley sent a letter to the Port Everglades Department of Broward County stating that a "modification [of the Agreement] is justified due to the significant contraction of business activity stemming from the current [COVID-19] crisis[.]" and requested that the County "recognize this unprecedented event by waiving the Minimum Annual Guaranteed Shipmoves and Minimum Annual Guaranteed Payments" for Years 4 and 5 (May 1, 2019 – April 30, 2020 and May 1, 2020 – April 30, 2021) (mistakenly noted as Years 3 and 4 in the letter). Although not directly cited in Crowley's letter, the Agreement contains an Uncontrollable Forces provision in Article 36.S, which provides that Crowley shall not be in default of the Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, Crowley could not avoid. The definition of Uncontrollable Forces includes an "epidemic."

After much due diligence, the Port Everglades Department is prepared to submit an agenda item for consideration by the Broward County Board of County Commissioners (the "Board") at its meeting of September 21, 2021, to waive \$1,698,667 of the MGPs for the period of April 1, 2020 through April 30, 2021 only (the last month of Lease Year 4 and the entirety of Lease Year 5) (the "MGP Waiver"), which represents the total shortfall

Mr. Patrick Collins  
September 20, 2021  
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by Crowley during such period directly attributed by Crowley to the Uncontrollable Forces related to COVID-19 impacts, if Crowley agrees to the following as confirmed by its signature below:

1. Crowley agrees that the MGP Waiver, if approved by the Board, does not modify Crowley's obligation to make any payments required by the Agreement, except for the MGP addressed in the MGP Waiver; and
2. Crowley agrees that the annual adjustment of the All-in Bundled Shipmove Rate, Minimum Annual Guaranteed Container Shipmoves, Tier 1 Shipmoves, Tier 1 Shipmove Rate, Tier 2 Shipmoves, and Tier 2 Shipmove Rate, all as set forth in Exhibit B-1, and the All-in Bundled Shipmove Rate, Minimum Annual Guaranteed Container Shipmoves, and Minimum Annual Guaranteed Payment, all as set forth in Exhibit D-1, and any other fees (including, but not limited to, rental charges), shall not be impacted by the MGP Waiver, if approved by the Board, and the annual adjustments, as applicable, shall proceed as if the MGP Waiver had not occurred; and
3. **FULL AND COMPLETE RELEASE OF COUNTY:** In consideration of the MGP Waiver (if approved by the Board), Crowley hereby releases, acquits, and forever discharges the County, the Board, and any and all current, past, and future officers, agents, servants, employees, and their successors and assigns, heirs, executors, and administrators, from any and all actions, causes of action, claims, demands, damages, costs, loss of service, expenses, and compensation, which are now known, or may hereafter become known, on account of, or arising out of any matter or thing which has happened, developed, or occurred during the period April 1, 2020 through April 30, 2021, which in any way relate to, arise from, or result from the Agreement (the "Release"); and
4. Crowley agrees that if Crowley later seeks relief from the County in violation of the Release, the MGP Waiver shall be void.

Please note that the County shall in no way be bound by the MGP Waiver unless it is approved by the Board, and subject to the language in the corresponding agenda item.

Sincerely,



Jonathan T. Daniels  
Chief Executive & Port Director

Terms accepted by Crowley:

Title: VP, Operations  
Print name: Patrick Collins