



Broward County

Legislation Text

File #: 21-1525, Version: 1

Broward County Commission Regular Meeting

Director's Name: Jonathan Daniels

Department: Port Everglades

Division: Director's Office

Information

Requested Action

MOTION TO APPROVE waiver of the Minimum Guaranteed Payment shortfall totaling \$1,698,667 for Crowley Liner Services, Inc. for container shipmoves at Port Everglades for the period from April 2020 through April 2021 to account for COVID-19 pandemic-related impacts.

Why Action is Necessary

Action by the Broward County Board of County Commissioners is required to waive minimum guaranteed payment shortfalls in marine terminal lease and operating agreements.

What Action Accomplishes

Waives the shortfall in minimum guaranteed payments resulting from the impacts of COVID-19 on Crowley's Latin America container services.

Is this Action Goal Related

Yes

Previous Action Taken

None

Summary Explanation/Background

THE PORT EVERGLADES DEPARTMENT RECOMMENDS APPROVAL.

This action supports the Broward County Board of County Commissioners' ("Board") Value of "Ensuring economic opportunities for Broward's diverse population and businesses" and the Goal to "Increase the economic strength and impact of revenue-generating County enterprises balancing economic, environmental, and community needs."

Crowley Liner Services, Inc. ("Crowley"), has operated at Port Everglades since 1990. Crowley's most recent Marine Terminal Lease and Operating Agreement ("Agreement") was approved by the Board on June 14, 2016 (Item No. PH-5), for an initial term of ten years with two five-year options, with a retroactive commencement date of May 1, 2016. On November 2, 2017, the Port Everglades Chief Executive/Port Director executed the First Amendment to the Agreement, reducing the size of Crowley's leasehold to 78 acres and modifying the shipmove rates and Minimum Annual Guaranteed Shipmoves based upon the amount of acreage surrendered. On February 26, 2019 (Item No. 32), the Board approved the Second Amendment to the Agreement to provide for a revised description of the premises, modify the shipmove rates and Annual Minimum Guaranteed Payment ("MGP"), modify the

rent credit provision, and modify the early termination rights of Crowley related to possible delayed construction of the Southport Turning Notch Extension.

On March 26, 2020, the Port Everglades Acting Port Director received a letter from Crowley requesting a modification to the MGP based on a reduction of business activity stemming from the COVID-19 crisis (see Exhibit 1). This request was based on the Uncontrollable Forces provision in Article 36.S. of the Agreement, 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.” The request was acknowledged by the Acting Port Director on March 27, 2020, and Crowley was requested to provide documentation supporting Crowley’s COVID-19 impact claim.

On April 7, 2020 (Item No. 34), the Board authorized the County Administrator to defer payments owed by concessionaires and other businesses operating on Broward County property to provide short-term financial relief from payments otherwise owed to the County. Based on that authority, on June 10, 2020, the County Administrator approved a Payment Deferral Plan for Crowley to defer a portion of the April 2020 MGP payment (due to shortfalls in container throughput directly attributed to COVID-19 impacts to Crowley’s Latin America business lines) to the end of August 2020. Given the continuing impacts of COVID-19 on Crowley’s Latin America business, additional deferrals to portions of MGP payments due from April 2020 through February 2021 were approved by the County Administrator on September 11, 2020, December 1, 2020, March 16, 2021, and June 22, 2021, with the deferrals extending to September 30, 2021.

Based on a review of the documentation provided by Crowley, Port staff recommends approval of a waiver of \$1,698,667 of the MGP covering the period from April 1, 2020 through April 30, 2021 (“MGP Waiver”). The MGP Waiver covers the last month of Lease Year 4 and the entirety of Lease Year 5. This MGP Waiver is a reduction of approximately 14% from the \$12,286,062 MGP otherwise payable for that time period. Crowley continued to pay the remaining portion of the MGP due during such period and is current on all other payments to the County.

The MGP Waiver does not modify Crowley’s obligation to pay other fees required by the Agreement, including rent. Additionally, the annual adjustment of the MGP as required in Article 11 shall not be impacted by the MGP Waiver, and the annual adjustment of the MGP, if any, shall proceed as if the MGP Waiver had not occurred.

Crowley operates the largest container terminal in Port Everglades at 78 acres. In Fiscal Year 2019, before the COVID-19 pandemic, Crowley transported 283,493 TEUs (20-foot equivalent units) through the Port, handling more than 27% of the Port’s container cargo volume, providing \$11,890,599 in revenue. In Fiscal Year 2020, during the pandemic, Crowley transported 237,094 TEUs through the Port, handling more than 25% of the Port’s container cargo volume, providing \$13,021,403 in revenue. For the period of Fiscal Year 2021 extending from October 2020 through June 2021, Crowley has transported 205,696 TEUs (20-foot equivalent units) through the Port, handling more than 27% of the Port’s container cargo volume, providing \$9,571,635 in revenue.

Source of Additional Information

Glenn A. Wiltshire, Deputy Port Director, Port Everglades Department, (954) 468-3504

Fiscal Impact

Fiscal Impact/Cost Summary

The total waiver for the shortfall is \$1,698,667. The Port has set up an allowance for this shortfall.