

PROPOSED

RESOLUTION NO.

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

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8 WHEREAS, Chapter 32, Part II, of the Broward County Administrative Code
9 (“Administrative Code”) sets forth criteria for the granting of franchises to businesses to
10 conduct certain operations at Port Everglades, including, but not limited to, vessel
11 bunkering services;

12 WHEREAS, Section 32.15 of the Administrative Code authorizes Broward County
13 (the “County”) to grant different types of franchises: exclusive or nonexclusive; and
14 restricted or unrestricted;

15 WHEREAS, Section 32.22 of the Administrative Code provides that franchises
16 shall be granted by the Broward County Board of County Commissioners (the “Board”)
17 by Resolution after public hearing;

18 WHEREAS, on September 22, 2020, by Resolution No. 2020-486, the Board
19 granted Kirby Inland Marine, LP (“Kirby”) a nonexclusive Port Everglades vessel
20 bunkering services franchise, with a five-year term commencing on October 13, 2020,
21 and ending on October 12, 2025 (“Prior Franchise”);

WHEREAS, Kirby recently submitted an application for renewal of the Prior Franchise so that it may continue providing vessel bunkering services at Port Everglades;

WHEREAS, the Board reviewed Kirby's application pursuant to the requirements of Chapter 32 of the Administrative Code, and is relying on the representations made by Kirby in that application;

WHEREAS, on October 7, 2025, a public hearing was held to consider Kirby's application; and

WHEREAS, based on the representations of Kirby, and information presented by Broward County staff and the public, as applicable, the Board does hereby determine and establish that Kirby has met each of the factors set forth in applicable provisions of Chapter 32 of the Administrative Code for the granting of a renewal of Kirby's Prior Franchise so that it may continue providing vessel bunkering services at Port Everglades, NOW, THEREFORE,

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

Section 1. The foregoing recitals are true and correct and are hereby ratified by the Board.

Section 2. Renewal of Prior Franchise to Franchisee.

Kirby is hereby granted renewal of its Prior Franchise so that it may continue to provide vessel bunkering services at Port Everglades (the "Franchise"), subject to the terms and conditions of this Resolution.

Section 3. Term.

The Franchise shall be for a period of five (5) years, commencing October 13, 2025, and ending October 12, 2030, unless sooner terminated in accordance with Section 32.29 of the Administrative Code.

Section 4. Franchise Conditions.

By its execution of the franchise renewal application, Kirby 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. Kirby 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.**

Section 6. Independent Auditor.

If requested by the Broward County Auditor, Kirby shall appoint, at its sole cost, an independent auditor approved by the Broward County Auditor to (a) review Kirby'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. Audit Rights and Retention of Records.

County shall have the right to audit the books, records, and accounts of Kirby and all subcontractors that are related to this Franchise. Kirby and all subcontractors shall keep such books, records, and accounts as may be necessary to record complete and correct entries related to this Franchise and performance under this Franchise. All such books, records, and accounts shall be kept in written form or in a form capable of conversion into written form within a reasonable time; upon request by County, Kirby and all subcontractors shall make same available to County in written form at no cost to County and allow County to make copies. Kirby shall provide County with reasonable access to Kirby's facilities, and County shall be allowed to interview all employees to discuss matters pertinent to the performance of this Franchise.

Kirby and all subcontractors shall preserve and make available, at reasonable times within Broward County, Florida, for examination and audit, all financial records, supporting documents, statistical records, and any other documents pertinent to this Franchise for at least three (3) years after expiration or termination of this Franchise or until resolution of any audit findings, whichever is longer. This section shall survive any dispute or litigation between County and Kirby, and Kirby expressly acknowledges and

87 agrees to be bound by this article throughout the course of any dispute or litigation with
88 County. Any audit or inspection pursuant to this section may be performed by any County
89 representative (including any outside representative engaged by County). Kirby hereby
90 grants County the right to conduct such audit or review at Kirby's place of business, if
91 deemed appropriate by County, with seventy-two (72) hours' advance notice. Kirby shall
92 make all such records and documents available electronically, in common file formats,
93 and/or via remote access, if and to the extent requested by County.

94 Kirby shall pay to County any underpaid amount identified as a result of an audit,
95 regardless of the amount of the underpayment. If an audit in accordance with this section
96 reveals underpayments to County of any nature by Kirby in excess of five percent (5%)
97 of the applicable contract billings reviewed by County, in addition to making adjustments
98 for the underpayments, Kirby shall pay the reasonable cost of County's audit. Any
99 adjustments or payments due as a result of such audit shall be made within thirty (30)
100 days after presentation of County's findings to Kirby.

101 Kirby shall ensure that the requirements of this section are included in all
102 agreements with all subcontractors.

103 Section 8. Notices.

104 In order for a notice to a party to be effective under the Franchise, notice must be
105 sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with
106 a contemporaneous copy via email, to the addresses stated below and shall be effective
107 upon mailing or hand delivery (provided the contemporaneous e-mail is also sent). A party
108 may change its notice address by giving notice of such change in accordance with this
109 section. Until any change is made, notices to Kirby shall be delivered to the person

identified in the franchise application as having authority to bind Kirby, 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: jmmorris@broward.org

Section 9. 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 Kirby setting forth the terms and conditions of the Franchise.

Section 10. 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 11. Effective Date.

This Resolution is effective upon adoption.

ADOPTED this day of , 2025. **PROPOSED**

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

By: /s/ Carlos Rodriguez-Cabarrocas 08/04/2025
 Carlos Rodriguez-Cabarrocas (date)
 Senior Assistant County Attorney