

**PROPOSED**

RESOLUTION NO.

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, GRANTING RENEWAL OF A NONEXCLUSIVE, UNRESTRICTED PORT EVERGLADES VESSEL SANITARY WASTEWATER REMOVAL SERVICES FRANCHISE TO CLIFF BERRY, INC., FOR A NEW FIVE-YEAR TERM; PROVIDING FOR FRANCHISE TERMS AND CONDITIONS; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

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

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

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

WHEREAS, on August 14, 2018, by Resolution No. 2018-367, the Board granted Cliff Berry, Inc. (“Cliff Berry”), a renewal of a nonexclusive Port Everglades vessel sanitary wastewater removal services franchise, with a five-year term commencing on August 22, 2018, and ending on August 21, 2023 (“Prior Franchise”);

WHEREAS, Cliff Berry recently submitted an application for renewal of its Prior Franchise so that it may continue providing vessel sanitary wastewater removal services at Port Everglades;

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

WHEREAS, on June 13, 2023, a public hearing was held to consider Cliff Berry's application; and

WHEREAS, based on the representations of Cliff Berry, and information presented by Broward County staff and the public, as applicable, the Board does hereby determine and establish that Cliff Berry 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 Cliff Berry's Prior Franchise so that it may continue providing vessel sanitary wastewater removal 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.

Cliff Berry is hereby granted renewal of its Prior Franchise so that it may continue to provide vessel sanitary wastewater removal 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 August 22, 2023, and ending August 21, 2028, 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, Cliff Berry 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. Cliff Berry 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, Cliff Berry shall appoint, at its sole cost, an independent auditor approved by the Broward County Auditor to (a) review Cliff

Berry'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 Cliff Berry shall be delivered to the person identified in the franchise application as having authority to bind Cliff Berry, 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](mailto: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 Cliff Berry setting forth the terms and conditions of the Franchise.

