

PROPOSED

1 RESOLUTION NO.
2 A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD
3 COUNTY, FLORIDA, GRANTING RENEWAL OF A NONEXCLUSIVE, UNRESTRICTED
4 PORT EVERGLADES VESSEL OILY WASTE REMOVAL SERVICES FRANCHISE TO
5 CLIFF BERRY, INC., FOR A NEW FIVE-YEAR TERM; PROVIDING FOR FRANCHISE
6 TERMS AND CONDITIONS; AND PROVIDING FOR SEVERABILITY AND AN
7 EFFECTIVE DATE.

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

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

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

19 WHEREAS, on August 14, 2018, by Resolution No. 2018-366, the Board granted
20 Cliff Berry, Inc. (“Cliff Berry”), a renewal of a nonexclusive Port Everglades vessel oily
21 waste removal services franchise, with a five-year term commencing on August 22, 2018,
22 and ending on August 21, 2023 (“Prior Franchise”);

23 WHEREAS, Cliff Berry recently submitted an application for renewal of its Prior
24 Franchise so that it may continue providing vessel oily waste removal services at Port
25 Everglades;

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

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

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

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

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

41 Section 2. Renewal of Prior Franchise to Franchisee.

42 Cliff Berry is hereby granted renewal of its Prior Franchise so that it may continue
43 to provide vessel oily waste removal services at Port Everglades (the "Franchise"),
44 subject to the terms and conditions of this Resolution.

45

46 Section 3. Term.

47 The Franchise shall be for a period of five (5) years, commencing August 22, 2023,
48 and ending August 21, 2028, unless sooner terminated in accordance with Section 32.29
49 of the Administrative Code.

50 Section 4. Franchise Conditions.

51 By its execution of the franchise renewal application, Cliff Berry agreed to be bound
52 by and comply with all terms and conditions set forth in Section 32.24 of the Administrative
53 Code.

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

55 The Franchise shall be interpreted and construed in accordance with and governed
56 by the laws of the State of Florida. Except as provided herein, the exclusive venue for any
57 lawsuit arising from, related to, or in connection with the Franchise shall be in the state
58 courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. For matters
59 that fall within the exclusive subject matter jurisdiction of the federal courts or those to
60 which jurisdiction is confirmed by law upon the Federal Maritime Commission ("FMC"),
61 the exclusive venue for any such lawsuit shall be in the United States District Court, the
62 United States Bankruptcy Court for the Southern District of Florida, or the FMC, as
63 applicable. Cliff Berry irrevocably subjects itself to the jurisdiction of said courts. **EACH**
64 **PARTY HEREBY EXPRESSLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY**
65 **JURY OF ANY CIVIL LITIGATION RELATED TO THE FRANCHISE.**

66 Section 6. Independent Auditor.

67 If requested by the Broward County Auditor, Cliff Berry shall appoint, at its sole
68 cost, an independent auditor approved by the Broward County Auditor to (a) review Cliff

69 Berry's ongoing compliance with the terms and conditions of the Franchise; and (b) issue
70 a compliance report to Broward County within thirty (30) calendar days after the
71 appointment of the independent auditor.

72 Section 7. Notices.

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

82 Broward County, Port Everglades Department

83 ATTN: Chief Executive/Port Director

84 1850 Eller Drive

85 Fort Lauderdale, Florida 33316

86 E-mail: jdaniels@broward.org

87 Section 8. Issuance of Certificate.

88 In accordance with Section 32.27 of the Administrative Code, the Port Everglades
89 Department, Business Development Division, will issue a franchise certificate to Cliff
90 Berry setting forth the terms and conditions of the Franchise.

91 Section 9. Severability.

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

98 Section 10. Effective Date.

99 This Resolution is effective upon adoption.

ADOPTED this day of , 2023. **PROPOSED**

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

By: /s/ Carlos Rodriguez-Cabarrocas 04/17/2023
 Carlos Rodriguez-Cabarrocas (date)
 Senior Assistant County Attorney