

ITEM # 82

**ADDITIONAL MATERIAL
Public Hearing
AUGUST 14, 2018**

SUBMITTED AT THE REQUEST OF

**PORT EVERGLADES
DEPARTMENT**



PORT EVERGLADES DEPARTMENT – Chief Executive/Port Director's Office
1850 Eller Drive, Fort Lauderdale, Florida 33316
954-468-0140 FAX 954-523-8713

DATE: August 8, 2018

TO: Broward County Board of County Commissioners

FROM: Steven M. Cernak, Chief Executive/Port Director
Port Everglades Department 

RE: Agenda Item No. 82, August 14, 2018, Commission Meeting – Granting the Renewal of A Non-Exclusive Franchise to Cliff Berry, Inc., To Provide Vessel Sanitary Waste Water Removal Services At Port Everglades

Subsequent to the publication of the referenced agenda item, staff became aware of a potential conflict involving the CEO of franchisee Cliff Berry, Inc., Cliff Berry II. Mr. Berry currently serves as a member of the Broward County Marine Advisory Committee. Approval of this item would give rise to certain employment or contractual conflicts under Section 112.313(7)(a), Florida Statutes, which provides that “[n]o public officer . . . shall have or hold any employment or contractual relationship with any business entity . . . which is . . . doing business with [] an agency of which he or she is an officer or employee.” In accordance with Section 112.313(12), Florida Statutes, Board approval is required to waive any conflict arising under Section 112.313(7)(a), Florida Statutes. An effective waiver requires a two-thirds vote of the County Commission after full disclosure of the conflicting relationship. Form 4A (attached) constitutes full disclosure of any existing conflict.

To address this, staff recommends the addition and approval of the below new Motion B and the addition of the attached Form 4A as Exhibit 3 to the Agenda Item:

B. MOTION TO APPROVE waiver of conflict under Section 112.313(7)(a), Florida Statutes, concerning Broward County Marine Advisory Committee member, Cliff Berry II, and his employment or contractual relationship with an entity receiving funds for the performance of franchised services under this agenda item.

Please contact this office if additional information is required.

Attachment

cc: Bertha Henry, County Administrator
Monica Cepero, Deputy County Administrator
Gretchen Cassini, Assistant County Administrator
Andrew Meyers, County Attorney
Bob Melton, County Auditor

FORM 4A DISCLOSURE OF BUSINESS TRANSACTION, RELATIONSHIP OR INTEREST

LAST NAME - FIRST NAME - MIDDLE INITIAL <i>Berry, II. Cliff</i>			OFFICE / POSITION HELD <i>Committee Member</i>
MAILING ADDRESS <i>PO Box 13079</i>			AGENCY OR ADVISORY BOARD <i>Marine Advisory Committee</i>
CITY <i>Ft. Lauderdale</i>	ZIP <i>33316</i>	COUNTY <i>Broward</i>	ADDRESS OF AGENCY <i>950 NW 30th St. Oakland Park, FL 33309</i>

HOW TO COMPLETE AND FILE THIS FORM:

Parts A and B of this form serve two different purposes. Part A is for advisory board members who wish to use an exemption in the ethics laws that is applicable only to advisory board members. Part B is for public officers and employees who wish to use a separate exemption that is applicable when the business entity involved is the sole source of supply within the political subdivision. In order to complete and file this form:

- **Fill out** Part A or Part B, as applicable.
- **Sign** and date the form on the reverse side.
- **File Part A** with the appointing body or person that will be waiving the restrictions of 112.313(3) or (7), Fla. Stat., prior to the waiver.
- **File Part B** with the governing body of the political subdivision in which the reporting person is serving, prior to the transaction.

PART A - DISCLOSURE OF TRANSACTION OR RELATIONSHIP CONCERNING ADVISORY BOARD MEMBER

WHO MUST COMPLETE THIS PART:

Sections 112.313(3) and 112.313(7), Florida Statutes, prohibit certain business relationships on the part of public officers and employees, including persons serving on advisory boards. See Part III, Chapter 112, Florida Statutes, and/or the brochure entitled "A Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees" for more details on these prohibitions. However, Section 112.313(12), Florida Statutes, permits the appointing official or body to waive these requirements in a *particular instance* provided: (a) waiver by the appointing body must be upon a two-thirds affirmative vote of that body; or (b) waiver by the appointing person must be effected after a public hearing; and (c) in either case the advisory board member must fully disclose the transaction or relationship which would otherwise be prohibited by Subsections (3) of (7) of Section 112.313, Florida Statutes. This Part of Form 4A has been prescribed by the Commission on Ethics for such disclosure, *if and when applicable* to an advisory board member.

PLEASE COMPLETE THE FOLLOWING:

- The partnership, directorship, proprietorship, ownership of a material interest, position of officer, employment, or contractual relationship which would otherwise violate Subsection (3) or (7) of Section 112.313, Florida Statutes, is held by [please check applicable space(s)]:

- The reporting person:
- The spouse of the reporting person, whose name is _____; or
- A child of the reporting person, whose name is _____

- The particular transaction or relationship for which this waiver is sought involves [check applicable space]:

- Supplying the following realty, goods, and/or services: *Non-exclusive franchise for vessel sanitary waste removal*
- Regulation of the business entity by the governmental agency served by the advisory board member.

- The following business entity is doing business with or regulated by the governmental agency:

Cliff Berry, Inc.

- The relationship of the undersigned advisory board member, or spouse or child of the advisory board member, to the business entity transacting this business is [check applicable spaces]:

- Officer; Partner; Associate; Sole proprietor; Stockholder; Director; Owner of in excess of 5% of the assets of capital stock in such business entity; Employee; Contractual relationship with the business entity;
- Other, please describe:

PART B - DISCLOSURE OF INTEREST IN SOLE SOURCE OF SUPPLY

WHO MUST COMPLETE THIS PART:

Sections 112.313(3) and 112.313(7), Florida Statutes, prohibit certain employment and business relationships on the part of public officers and employees. See Part III, Chapter 112, Florida Statutes, and/or the brochure entitled "A Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees" for more details on these prohibitions. However, Section 112.313(12)(e), Florida Statutes, provides an exemption from the above-mentioned restrictions in the event that the business entity involved is the only source of supply within the political subdivision of the officer or employee. In such cases the officer's or employee's interest in the business entity must be fully disclosed to the governing body of the political subdivision. This Part of Form 4A has been prescribed by the Commission on Ethics for such disclosure, *if and when applicable*.

PLEASE COMPLETE THE FOLLOWING:


1. The partnership, directorship, proprietorship, ownership of a material interest, position of officer, employment, or contractual relationship which would otherwise violate Subsection (3) or (7) of Section 112.313, Florida Statutes, is held by [please check applicable space(s)]:

 The reporting person;
 The spouse of the reporting person, whose name is _____, or
 A child of the reporting person, whose name is _____
2. The following are the goods, realty, or services being supplied by a business entity with which the public officer or employee, or spouse or child of such officer or employee, is involved is:

3. The business entity which is the only source of supply of the goods, realty, or services within the political subdivision is:

(NAME OF ENTITY) (ADDRESS OF ENTITY)
4. The relationship of the undersigned public officer or employee, or spouse or child of such officer or employee, to the business entity named in Item 3 above is [check applicable spaces]:
 Officer; Partner; Associate; Sole proprietor; Stockholder; Director; Owner of in excess of 5% of the assets or capital stock in such business entity; Employee; Contractual relationship with the business entity;
 Other, please describe:

SIGNATURE

SIGNATURE	DATE SIGNED	DATE FILED
	8/6/18	

NOTICE UNDER PROVISIONS OF FLORIDA STATUTES s. 112.317 A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND OR A CIVIL PENALTY NOT TO EXCEED \$10,000