

1 RESOLUTION NO. 2018-

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3 A RESOLUTION OF THE BOARD OF COUNTY
4 COMMISSIONERS OF BROWARD COUNTY, FLORIDA,
5 GRANTING RENEWAL OF A NONEXCLUSIVE FRANCHISE
6 TO CLIFF BERRY, INC., FOR A FIVE-YEAR TERM TO
7 PROVIDE VESSEL SANITARY WASTE WATER REMOVAL
8 SERVICES AT PORT EVERGLADES; PROVIDING FOR
9 FRANCHISE TERMS AND CONDITIONS; AND PROVIDING
10 FOR SEVERABILITY AND AN EFFECTIVE DATE.

11 WHEREAS, the Broward County Board of County Commissioners (the "Board")
12 adopted Resolution No. 94-1302 creating Chapter 32 of the Broward County
13 Administrative Code, effective November 22, 1994, which provides, in part, for the
14 granting of franchises to businesses to conduct operations at Port Everglades; and

15 WHEREAS, Cliff Berry, Inc., has submitted an application for renewal of a
16 nonexclusive franchise to provide vessel sanitary waste water removal services at Port
17 Everglades; and

18 WHEREAS, the Board has reviewed the application in light of the requirements of
19 Chapter 32 of the Broward County Administrative Code and has relied on the
20 representations of Cliff Berry, Inc., contained in the application; and

21 WHEREAS, a public hearing was held on August 14, 2018, as required under
22 Section 32.22 of the Broward County Administrative Code; and

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1 WHEREAS, based on the representations of Cliff Berry, Inc., and information
2 presented by Broward County staff and the public, the Board does hereby determine and
3 establish that Cliff Berry, Inc., has met each of the factors set forth in Section 32.20.c.2
4 of the Broward County Administrative Code, and declares that the best interests of
5 Broward County dictate renewal of a nonexclusive franchise to Cliff Berry, Inc., for vessel
6 sanitary waste water removal services, NOW, THEREFORE,

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

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11 Section 1. The foregoing "WHEREAS" clauses are true and correct and are
12 hereby ratified by the Board of County Commissioners.

13 Section 2. RENEWAL OF FRANCHISE TO CLIFF BERRY, INC.

14 Cliff Berry, Inc. ("Franchisee"), is hereby granted renewal of a nonexclusive
15 franchise to provide vessel sanitary waste water removal services at Port Everglades (the
16 "Franchise"), subject to the terms and conditions of Sections 3 through 8 of this
17 Resolution.

18 Section 3. TERM.

19 The Franchise shall be for a period of five (5) years, from August 22, 2018, through
20 August 21, 2023, unless sooner terminated in accordance with Section 32.29 of the
21 Broward County Administrative Code.

1 Section 4. FRANCHISE CONDITIONS.

2 By its execution of the franchise renewal application, Franchisee has agreed that
3 it will be bound by and comply with all franchise conditions set forth in Section 32.24 of
4 the Broward County Administrative Code.

5 Section 5. LAW, JURISDICTION, VENUE, AND WAIVER OF JURY TRIAL.

6 The Franchise shall be interpreted and construed in accordance with and governed
7 by the laws of the state of Florida. The exclusive venue for any lawsuit arising from,
8 related to, or in connection with the Franchise shall be in the state court of the
9 Seventeenth Judicial Circuit in and for Broward County, Florida. Franchisee irrevocably
10 subjects itself to the jurisdiction of said Court. This provision shall not apply to matters
11 that fall within the exclusive subject matter jurisdiction of the federal courts or those to
12 which jurisdiction is confirmed by law upon the Federal Maritime Commission (FMC). In
13 the latter case, either Broward County or Franchisee may choose to bring any such matter
14 before the FMC. If any claim arising from, related to, or in connection with the Franchise
15 must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the
16 United States District Court or United States Bankruptcy Court for the Southern District
17 of Florida. **FRANCHISEE AND BROWARD COUNTY EXPRESSLY WAIVE ANY**
18 **RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL**
19 **LITIGATION RELATED TO THE FRANCHISE.**

20 Section 6. INDEPENDENT AUDITOR.

21 If requested by the Broward County Auditor, Franchisee shall appoint at its sole
22 cost an independent auditor approved by the Broward County Auditor to review
23 Franchisee's ongoing compliance with the terms and conditions of the Franchise and
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1 issue a compliance report to Broward County within thirty (30) calendar days after the
2 appointment of the independent auditor.

3 Section 7. NOTICES.

4 Any notices required under the Franchise or by law shall be given in writing and
5 shall be sent by registered or certified mail by depositing the same in the United States
6 Mail, postage prepaid, or by hand delivery, or by overnight courier. Any notice given by
7 United States Mail shall be deemed effective and served three (3) business days after the
8 date of the mailing. Any notice given by hand delivery or overnight courier shall be
9 deemed to have been given upon receipt. Broward County or Franchisee may, by giving
10 written notice to the other, change the address to which its notices are to be received.
11 Until any change is made, notices to Franchisee shall be delivered to the person identified
12 in the franchise renewal application as having authority to bind the Franchisee. Until any
13 such change is made, notices to Broward County shall be delivered as follows:

14 Broward County, Port Everglades Department
15 ATTN: Chief Executive/Port Director
16 1850 Eller Drive
Fort Lauderdale, Florida 33316

17 Section 8. ISSUANCE OF CERTIFICATE.

18 In accordance with Section 32.27 of the Broward County Administrative Code, the
19 Port Everglades Department Business Administration Division will issue a franchise
20 certificate to Franchisee setting forth the terms and conditions of the Franchise.

21 Section 9. SEVERABILITY.

22 If any portion of this Resolution is determined by any court to be invalid, the invalid
23 portion will be stricken, and such striking will not affect the validity of the remainder of this
24 Resolution. If any court determines that this Resolution, or any portion hereof, cannot be

1 legally applied to any individual, group, entity, property, or circumstance, such
2 determination will not affect the applicability hereof to any other individual, group, entity,
3 property, or circumstance.

4 Section 10. EFFECTIVE DATE.

5 This Resolution is effective upon adoption.

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8 ADOPTED this _____ day of _____, 2018.

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

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13 By /s/ Al A DiCalvo 07/02/18
14 Al A DiCalvo (date)
Assistant County Attorney

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16 By /s/ Russell J. Morrison 07/02/18
17 Russell J. Morrison (date)
Sr. Assistant County Attorney

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