

BOARD OF COUNTY COMMISSIONERS
BROWARD COUNTY, FLORIDA

PORT EVERGLADES FRANCHISE AGREEMENT

CLIFF BERRY, INC. ("Franchisee"), is hereby franchised to provide vessel sanitary waste water removal services within Port Everglades under the terms and conditions provided herein.

1. The Board of County Commissioners of Broward County, Florida ("County"), hereby grants Franchisee a nonexclusive franchise to provide vessel sanitary waste water removal services within Port Everglades.
2. This franchise shall be for a period of one (1) year, commencing on August 22, 2017, and ending on August 21, 2018, unless sooner terminated in accordance with the Broward County Administrative Code, Chapter 32, Section 32.29, as amended from time to time. County may revoke, suspend, or place this franchise on probation after reasonable written notice to the Franchisee, and opportunity for the Franchisee to be heard at a duly-noticed public hearing conducted by County as provided in Chapter 32 of the Broward County Administrative Code, as amended from time to time.
3. By accepting and executing this nonexclusive Franchise Agreement, Franchisee agrees that it will comply with and be governed by the terms and conditions of this Franchise Agreement and all applicable federal, state, and local laws, codes, ordinances, Chapter 32 of the Broward County Administrative Code (as amended from time to time), rules, directives, and regulations including, but not limited to, Port Everglades Tariff No. 12 (amendments thereto and reissues thereof), in performing its duties, responsibilities, reporting requirements, and obligations related to this Franchise Agreement, provided, however, that the imposition and enforcement of such laws, codes, ordinances, rules, directives, and regulations shall operate uniformly with respect to all persons, firms, or corporations holding similar franchises within Port Everglades.
4. Franchisee shall strictly adhere to all applicable laws, rules, and regulations governing the deposit of wastes into Broward County's infrastructure at Port Everglades.
5. By accepting and executing this nonexclusive Franchise Agreement, Franchisee shall affirmatively comply with all applicable provisions of the Americans With Disabilities Act (ADA) including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. Franchisee shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Franchise Agreement. In addition, Franchisee shall take affirmative steps to ensure nondiscrimination in employment against

disabled persons. Franchisee shall not engage in or commit any discriminatory practice in violation of the Broward County Human Rights Act (Chapter 16½, Broward County Code of Ordinances) in performing any services pursuant to this Franchise Agreement.

6. If requested by the County Auditor, Franchisee shall appoint and pay for an independent auditor approved by the County Auditor to certify Franchisee's ongoing compliance with the terms and conditions of this Franchise Agreement.
7. Franchisee understands that it is bound by the statements, representations, and conditions made during the issuance process and the information filed with the County as fully as if these statements, representations, and conditions were set forth herein.
8. County shall have the right to audit the books, records, and accounts of Franchisee that are related to this Franchise Agreement. Franchisee shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Franchise Agreement. Franchisee shall preserve and make available, at reasonable times for examination and audit by County, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum of five (5) years after termination or expiration of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or five (5) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by County to be applicable to Franchisee's records, Franchisee shall comply with all requirements thereof; however, no confidentiality or nondisclosure requirement of either federal or state law shall be violated by Franchisee.
9. Franchisee shall provide, pay for, and maintain in full force and effect at all times during the term of this Franchise Agreement, all insurance policies in such amounts and under such terms and conditions as required by County's Division of Risk Management. Franchisee acknowledges and agrees that it has informed itself of the requisite insurance requirements by its execution of this Franchise Agreement.
10. By execution of this Franchise Agreement, Franchisee represents that it has not been placed on the discriminatory vendor list (as provided in Section 287.134, Florida Statutes). County hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle County to terminate this Franchise Agreement in accordance with Section 32.29 of the Broward County Administrative Code, as may be amended.
11. This Franchise Agreement shall be governed by the laws of the state of Florida, both as to interpretation and performance, where not preempted by applicable

federal laws, rules, and regulations and any controversies, legal problems, or litigation arising hereunder, and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State Courts of the Seventeenth Judicial Circuit of Broward County, Florida, the venue situs. The Franchisee irrevocably subjects itself to the jurisdiction of said Court. This provision shall not apply to 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). In the latter case, either County or Franchisee may choose to bring any such matter upon the FMC. Any action or proceeding commenced in federal court, shall be submitted to the jurisdiction of the United States District Court for the Southern District of Florida. **To encourage prompt and equitable resolution of any litigation that may arise hereunder, each party hereto waives any rights it may have to a trial by jury of any such litigation.**

12. This Franchise Agreement shall not be assigned by Franchisee without the prior written consent of County, by and through its Board of County Commissioners. For the purposes of this section, "Assignment" shall mean any transfer, pledge, or encumbrance of this Franchise Agreement. The factors upon which County may base its decision on whether to grant such consent shall include, but not be limited to, (i) an assessment of whether the proposed assignee meets County's standards of creditworthiness, and (ii) an assessment of the proposed assignee's ability to perform the Franchisee's obligations hereunder.

In the event of an Assignment, the assignee shall be required, at County's option, to execute a written assumption agreement, agreeing to abide by all terms and conditions of this Franchise Agreement. The assumption agreement must be in a form acceptable to County.

13. Any notices required by this Franchise Agreement or by law shall be given in writing and shall be sent by registered or certified mail by depositing the same in the United States Mail in the continental United States, postage prepaid, or by hand delivery or by overnight courier. Any such notice mailed as provided hereunder shall be deemed effective and served as of the date of the mailing. Any notice given by hand delivery or overnight courier shall be deemed to have been given upon receipt. Either party shall have the right, by giving written notice to the other, to change the address to which its notices are to be received. Until any such change is made, notices to County shall be delivered as follows:

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

With a copy to:

Broward County Administrator
Governmental Center
115 S. Andrews Avenue
Fort Lauderdale, Florida 33301

Until any such change is made, notices to Franchisee shall be delivered as follows:

Cliff Berry, Inc.
851 Eller Drive
Fort Lauderdale, Florida 33316
Attn: Cliff Berry, II, Chief Executive Officer

14. In the event a portion of this Franchise Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless County or Franchisee elects to terminate this Franchise Agreement. An election to terminate this Franchise Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.
15. No waiver by County of any default on the part of Franchisee in performance of any of the terms, covenants, or conditions hereof to be performed, kept, or observed by Franchisee shall be construed to be a waiver by County of any other or subsequent default in performance of any of the said terms, covenants, and conditions.
16. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Franchise Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless set forth in writing.

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FRANCHISE AGREEMENT BETWEEN BROWARD COUNTY AND CLIFF BERRY, INC., TO PROVIDE VESSEL SANITARY WASTE WATER REMOVAL SERVICES WITHIN PORT EVERGLADES

COUNTY

ATTEST:

BROWARD COUNTY, through its
Board of County Commissioners

Broward County Administrator, as
Ex-officio Clerk of the Broward County
Board of County Commissioners

By _____ Mayor
____ day of _____, 2017.

Insurance requirements
approved by Broward County
Risk Management Division

Approved as to form by
Joni Armstrong Coffey
Broward County Attorney
Port Everglades Department
1850 Eller Drive, Suite 502
Fort Lauderdale, Florida 33316
Telephone: (954) 523-3404
Facsimile: (954) 468-3690

By:  5-17-17
Signature (Date)
CARLOS DE LA GUERRA
RISK MANAGEMENT & CONT'
BUSINESS ADMINISTRATION DIVISION

Print Name and Title above

By:  5/17/17
Signature (Date)
Russell J. Morrison
Senior Assistant County Attorney

FRANCHISEE:

WITNESSES:

CLIFF BERRY, INC., a Florida corporation


Signature
Ira Nassi

By: 
(Signature)

Print Name

Signature
Kelly Brandenburg

Print Name

Clifford L. Berry, II - Chief Executive Officer
(Print Name and Title)
16th day of May, 2017.

RJM:dh
05/10/17
Cliff Berry-sanitarywaste-_FA
#17-3025.03