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Miami Dade Aviation Department

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**OPERATIONAL DIRECTIVE NO. 99 -01**

**Last Amended: March 14, 2008**

**Effective: February 10, 2011**

**SUBJECT: PERMIT AGREEMENTS TO CONDUCT COMMERCIAL ACTIVITY AT MIAMI-DADE COUNTY AIRPORTS**

**PURPOSE:** To establish uniform policy and procedures for the issuance and maintenance of permit agreements to conduct commercial activity at the Miami-Dade County System of Airports, including Miami International Airport (MIA), the Training and Transition Airport, and all general aviation airports.

**I. AUTHORITY:**

A. Chapter 21, Article IV, Section 21-29.1(a) of the Miami-Dade County Code states:

"It shall be unlawful for any person, firm, corporation or other legal entity to engage in any private business, commercial activity, or to undertake to provide any service for compensation, or to advertise or display merchandise, or to transact any business for profit, or to solicit business, on any property or facilities owned or operated by Miami-Dade County without first obtaining a permit, concession, lease, or other authorization in writing approved or authorized by the Board of County Commissioners. A County occupational license shall not authorize any person, firm, corporation, or other legal entity to engage in any of the prohibited activities on County property or facilities."

B. Chapter 25, Section 25-1.2(a) of the Miami-Dade County Code states:

"Any permission granted a person by the Board, Department or Director, directly or indirectly, expressly or by implication, to enter upon or use an Airport, or any part thereof, is conditioned upon compliance with these rules and regulations and Operational Directives and the payment of any fees or charges authorized by the Board, or, if authorized, by the Director, and payable to the County for use of an Airport or any facility located thereon including any such fees or charges established by the Director and payable to a lessee, management contractor, concessionaire, permittee or franchise holder of the County, or an approved authorized subcontract thereof, for services rendered to such persons; and entry upon or into an Airport by any person shall be deemed to constitute an agreement by such person to comply with such rules and regulations and to pay such fees and charges."

C. Chapter 25, Section 25-1.2(c) of the Miami-Dade County Code states that:

"The Department, through its Director, may from time to time cause to be issued Operational Directives applicable to any airport. If any such Operational Directive contains a requirement that fees or charges be paid for any operation on or use of an Airport as defined in the Operational Directive, such fees and charges shall be established in accordance with the provisions of subsection 25-1.2(a) hereof."

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- D. Chapter 10, Section 10-38 of the Miami-Dade County Code provides for the, "Debarment of Contractors from County Work."
- E. Miami-Dade County Administrative Order No. 8-5 provides for the procedures relating to Permission to Conduct Private Business on Public Property throughout the County, including the airport system.

**II. DEFINITIONS:** For the purpose of this Operational Directive (OD), the following terms shall mean:

- A. *Airport* – Any airport under the control of Miami-Dade County's Aviation Department (MDAD) including Miami International Airport, the Training and Transition Airport, and the general aviation airports.
- B. *Air Operations Area ("AOA")* – That part of any airport identified by the Aviation Department as constituting the AOA under Section 25-1.1 (3) of the Miami-Dade County Code.
- C. *Commercial Activity* - The exchange, trading, buying, hiring, or selling of commodities, goods, services, or property of any kind on the Airport. "Commercial Activity" excludes the exercise of aeronautical rights pursuant to federal law.
- D. *Commercial Activity Permits*—the permits that are required for the various activities described in IV (B).
- E. *Debarment* – An action taken by a Debarment Committee under Section 10-38 of the Miami-Dade County Code to exclude a permittee from commercial activity at any MDAD facility for a specified period of time.
- F. *Department or MDAD* – Miami-Dade County's Aviation Department.
- G. *Nonexclusive Basis Permit* – A written agreement in the form of a permit executed by the Permittee and approved by the Aviation Director that grants the Permittee the authority to conduct specified commercial activity at the Airport on a non-exclusive basis and potentially in competition with others engaged in the same or similar commercial activity.
- H. *Permit* – A written agreement executed by the Permittee and approved by the Aviation Director providing the terms and conditions under which the Permittee is allowed to conduct commercial activity on an Airport.

**III. POLICY:**

- A. It is the MDAD policy to encourage commercial activity consistent with the safe and efficient operation of the Miami-Dade County Airports.
- B. Commercial activities at any of the Airports other than "exempt commercial activities" as defined below shall require a written agreement in the form of (i) a permit issued by the Aviation Director under this Operational Directive 99-0, or (ii) a lease, management agreement, or concession

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agreement approved by the County Manager or by the Board of County Commissioners. Access to airport properties including, but not limited to, the terminal, commercial areas, ramps, pavement, roads, parking lots, and the AOA for commercial purposes shall be limited to individuals and firms holding such valid active commercial permits or agreements issued by the Aviation Director or by the County.

- C. Permittees shall pay all taxes, licenses, certifications, permits, fees and excises which may be assessed, levied, exacted or imposed by federal, state, or local law on their commercial operations at the Airport. Permittees shall also provide the Department with all reports, returns and records required by their Permit or other agreement in connection with such operation.
- D. Permits shall be issued on a non-exclusive basis, unless they are (1) specifically designated to be exclusive by the Aviation Director, (2) competitively bid or proposed, or (3) issued through by a waiver of the bid process as approved by the Board of County Commissioners.
- E. To the extent required or permitted by Administrative Order 8-5 and the provisions of the Permit, permits shall be issued for a specific time period, shall be extended at the discretion of the County, are not transferable, and may be revoked at any time at the discretion of the County's Aviation Director.
- F. MDAD tenants, management agreement holders, and concessionaires, (collectively the "tenants"), by virtue of the provisions of the lease, management, or concession agreement, are not required to have a separate permit agreement to engage in the commercial activity specified in the lease, management, or concession agreement. Commercial activity beyond the scope specified in the lease, management, or concession agreement shall require a separate permit or other suitable agreement.
- G. Exempt commercial activities that do not require a permit or other agreement to operate at any Airport include the following:
  - 1. Occasional lunch, sandwich, pizza, food, or bottled water deliveries not on a fixed weekly delivery schedule.
  - 2. Accounting, part-time office personnel, or administrative staffing services not on a fixed schedule and only occasional throughout the year.
  - 3. Mail and package delivery and pick-up services, (such as FedEx, UPS, DHL and the like), and messenger services.
  - 4. Local contractors providing maintenance and repair services for the tenants leased premises (but note that janitorial services do require a permit because of the frequency of their activities at a tenant's premises).
  - 5. Companies and contractors delivering goods and services to MIA Terminal concessionaires for general resale to the public.
  - 6. Companies providing routine office equipment maintenance and repair services to computers, copiers and other office equipment. (Companies providing "shop equipment" services, however, are required to obtain a permit, as required in Section IV(B)(5) below).

H. Permittees shall fully comply with the Terms and Conditions required by the particular permit.

IV. PERMIT CLASSIFICATIONS:

A. Primary support:

1. General Aeronautical Services Permits (GASPs) provide for companies other than airlines to engage in providing General Aeronautical Handling Services as well as goods and services consistent with the GASP agreement. Activities permitted include but are not limited to:
  - a. Aircraft Cleaning and Servicing
  - b. Baggage and Porter Services
  - c. Triturator Services
  - d. Pressure Chamber
2. GASPs allow airlines to provide general aeronautical handling services to other airlines under the provisions of the Board of County Commissioners Resolution R-1440-97. Activities permitted include but are not limited to:
  - a. Aircraft Cleaning and Servicing
  - b. Baggage and Porter Services
3. Fueling Permits allow for the provision of fuel and lubricants. Activities permitted under such Permits include:
  - a. Aviation and Jet Fuel
  - b. Lubricants

B. Commercial Activity Permits:

Commercial activity permits allow the permit holders to have airport access to **identified** tenants for the purposes of providing specified commercial services to businesses at the airport **on a continuing basis, and may include but not be limited to the following services:**

1. Vendors providing goods and/or services to tenants, federal agencies, county contractors and similar airport occupants for the purpose of maintaining their operational functions including those vendors subcontracting for the GASPs.
2. Vendors providing security services for a tenant's operation.
3. Vendors providing security and escort services of high valuable items within the airport.
4. Vendors providing line personnel required for the tenant to continue conducting its operations.

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5. Vendors providing scheduled accounting, payroll, or personnel services in support of the tenant's operations. Vendors providing food and beverage vending machine services to the tenants only.
6. Vendors and companies providing equipment maintenance and repair services.

**C. Contractors:**

MDAD contractors are authorized to engage in commercial activity with the Airport in accordance with their agreements with the County or MDAD. Such agreements identify the nature of the construction activity that is allowed, and may—in some cases—identify the tenant for whom the work is being performed. Any construction or commercial activity in the Airport not included in the agreements, or the provision of goods or services to any other business entity located on the Airport, requires a separate Contractor permit or agreement with the County. Activities permitted under any such separate Permit may include but are not limited to:

1. Construction and renovation;
2. Trades construction work, such as plumbing, electrical, or mechanical.

**V. PERMIT FEES:**

- A. Permit fees as referred to herein shall be established by resolution of the Board of County Commissioners. Permit fees for non-aeronautical services will generally be uniform among similarly-situated providers of goods and services but MDAD reserves the right to impose different permit fees to particular providers if circumstances warrant a difference in fees.
- B. A non-refundable application fee in an amount established annually or authorized by the Board shall be paid for each permit.
  1. The required application fee must be paid at the time of submitting the application to MDAD. If the applicant fails to complete the permit application process within 60 days of submitting its application to MDAD, the application fee shall be forfeited to MDAD and shall not be returnable to the applicant, unless MDAD determines that good cause is present for extending the application processing deadline for an additional 30 days. If at the conclusion of any such 30-day extension period, the applicant fails to complete the application process, the application fee shall be forfeited to MDAD and shall not be returnable to the applicant.
- C. The nature of the fees due under each permit shall be determined solely by MDAD and may include but not be limited to any of the following:
  1. Percentage of Gross Revenue derived from Airport and Airport related sales.
  2. The greater of a minimum guarantee or percentage of gross sales.

3. A renewal fee at the time of permit extension.

**VI. REGULATION OF PERMITS:**

- A. Because the nature of commercial activities at the Airports is so broad, MDAD reserves the right to determine whether an activity on the Airport is a "commercial activity" that requires a permit or whether the activity is "incidental" in nature which requires no Permit at that time and under the particular circumstances of the activities involved.
- B. Permits are issued to the applicant solely and are not transferable. Permits are exclusively the property of the Aviation Department. Permits may not be transferred, accessed, sold, traded, conveyed, assigned, assumed, subcontracted, granted, passed as bailment, collateral, be subject to lien, pawned, partitioned, or pledged. Any request or intention by one company to assume or acquire the responsibilities, services, or activities of a permittee will require the company to obtain its own permit.
- C. Permits are issued for a specified time only. All permits are void upon expiration of the time limit if not extended pursuant to Aviation Department action. There is no stated, implied, or inferred right to renewal.
- D. Permittees shall fully and accurately complete and submit to the Aviation Department an Application for Permit to Conduct Business on County Property in such form and format as MDAD shall specify. Permittees shall, at all times, keep the required information updated to accurately and completely reflect the current status of such information.
- E. As part of the application, permittees shall submit and maintain current copies of all permits, licenses, certificates and other documents required by law for the conduct of business set forth in the application. Thereafter, permittees shall maintain all such items for so long as they are required by the issuing governmental body. The responsibility for maintaining the required permits, licenses and certificates to conduct business shall rest with the permittee and not MDAD.
- F. As part of the application, the following shall be included in the submission as part of the application:
  1. Permittees shall submit a narrative description of the nature and extent of the business activity to be conducted on the airport.
  2. A table of organization identifying the employees and respective supervisors involved in business conducted on airport property and a listing of principals, officers and registered agents.
  3. Emergency contact information.

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4. A listing of customers, firms, or organizations serviced by the business activity at the airport.
  5. A listing of business hours.
  6. A copy of the contract with each airport tenant with whom the applicant will be doing business at the time the permit is submitted for execution by the County. Vendors providing security and escort services of high valuable items, listed under IV.B.2, will be required to provide a copy of the contract with their customer.
  7. The name or names of all employees of the permittee holding a position of management control for the Permittee for purposes of service of notices under VII. A.3., VII. C. 2 and the facsimile phone numbers where fax notices may be sent under VII. B. 2. Notices sent to such persons or fax numbers shall be valid unless the Permittee notifies MDAD in writing of a change in such name or names or a change in such fax number.
- G. A Permittee may only provide goods and/or services to the customers identified in the permit. The permit holder may not engage additional clients within the scope of its permit unless the contract between the Permittee and new clients is reviewed and specifically approved in writing by MDAD.
- H. The permit holder may only engage in the scope of activities set forth in the permit. Commercial activity beyond the scope specified in the permit, lease, management, or concession agreement shall require a separate permit.
- I. The County reserves the right not to approve the permit application and the right not to execute the permit.

**VII. SUSPENSION OR TERMINATION OF THE PERMIT; DEBARMENT OF A PERMITTEE:**

Failure to comply with the provisions of this OD, Chapter 25 of the Miami-Dade County Code, Miami-Dade Administrative Order No. 8-5, or the terms of the Permit may result in suspension or termination of the Permit. Suspension or termination may occur in accordance with the following procedures:

**A. Suspension:**

1. In the event the Permittee, its agents or employees violate any term of the Permit or any set forth in section A2(e) below, Federal or State statute or regulation applicable to its permitted operation at MDAD, then, in addition to any penalty provided by such County, State or Federal law or regulation, the Aviation Department may suspend Permit held by such Permittee.
2. Grounds for Suspension of Permit. The following shall be grounds for suspension of the Permit. The suspension shall be for as long as the condition continues:

- a. Cancellation or lapse of insurance coverage.
  - b. Cancellation or lapse of any required licenses.
  - c. Addition of new customers beyond the scope of the permit and/or the failure to advise the Aviation Department of such new customers.
  - d. Failure to report revenues and pay fees required hereunder, and such failure continues for 10 days after written demand for such payment has been made by the Aviation Department; provided, however, suspension for non-payment shall be held in abeyance for so long as Permittee maintains, in good faith, an action in court contesting Permittee's liability to pay the fees.
  - e. Any material violation of the Permit or any violation of Federal, State, or County law or requirements.
3. Suspension of a permit shall be imposed upon MDAD's discovery of any violation(s) of any permit term. The suspension shall be effective upon the date and time indicated in MDAD's suspension notice. The notice may be given in writing or may be orally given by an MDAD representative to any employee of the Permittee then in a position of management control for the Permittee. As an independent remedy, MDAD specifically reserves the right to suspend a Permittee's right to access the AOA, if AOA access is provided for in the Permit, in conjunction with MDAD's suspension or attempted suspension of the Permit itself. The suspension shall continue for so long as the violation continues. If the violation continues for an unreasonable period of time, MDAD shall have the right to cancel the Permittee's rights to use the Airport and to terminate the Permit.
4. MDAD shall not be required to use the remedy of suspending the permit if the grounds that are present justify the termination of the Permit. MDAD shall have the right to determine whether to suspend or terminate a permit, based on the circumstances of the default.
- C. Termination of the Permit:
1. Upon the decision of the Aviation Director or his designee that a violation of the terms of the Permit or a violation of applicable law warrants prompt termination of the Permit without a suspension occurring first, MDAD shall issue a Notice of Termination to the Permittee stating the date on which the termination of the Permit shall be effective.
  2. The Notice of Termination may be sent by (1) facsimile delivery, (2) e-mail delivery, (3) written letter, or (4) certified mail, return receipt requested. If notice is sent by facsimile or e-mail, confirmation of such notice of termination shall be sent by written letter or certified mail; provided, however, that failure to send a confirmation by written letter or certified mail shall not affect the validity of the notice sent by facsimile or e-mail if the notice is sent to the facsimile number or e-mail address shown on the permit, or to a number or address provided by the Permittee that amends the number or address shown on the Permit.

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3. The following shall be grounds for termination of the Permit:
  - a. Cancellation or lapse of required insurance coverage.
  - b. Cancellation or lapse of any required licenses.
  - c. Loss of authority to do business in Florida or in Miami-Dade County.
  - d. Cessation of business or no reported business activity at Miami-Dade County Airports for 90 days or more, except for those companies that have advised the Aviation Department in writing that they provide seasonal business activities.
  - e. Failure to report revenues and pay the fees required hereunder, and such failure continues for ten days after written demand for such payment has been made by the Aviation Department; provided, however, termination for non-payment shall be held in abeyance for so long as the Permittee maintains, in good faith, an action in court contesting Permittee's liability to pay the fees.
  - f. Loss of all or a material portion of the contract(s) for which the Permit was established.
  - g. Failure to maintain current MDAD ID Badges.
  - h. A material violation of the Permit or any violation of Federal, State, or County law or requirements.

**C. Administrative Hearing:**

1. If the Permit or applicable law requires that an Administrative Hearing be held prior to any suspension or termination of the Permit, then MDAD shall provide the Permittee with such a hearing in accordance with the procedures set forth in the Permit or applicable law. In the event the Permit or applicable law requires an Administrative Hearing, but does not provide for procedures relating to the holding of an Administrative Hearing, the procedures below shall apply.
2. MDAD shall notify the Permittee in writing of the proposed suspension or termination and, if applicable, that the Permittee is entitled to an Administrative Hearing. The notice shall include a date and time at which a hearing will be held to consider the matter. The hearing may be convened immediately upon oral notice given to the Permittee or to the person then managing the Permittee's operations under the Permit based on the occurrence of any condition or event which, in the Aviation Department's reasonable determination, presents an urgent condition requiring immediate action. If no such person is available or can be found, MDAD reserves the right to continue the immediate suspension of all rights of the Permittee under the permit, including any right of the Permittee to access the Airport, including the AOA, and to follow up such suspension with a termination of the Permit.
3. The notice may be sent in any of the manners set forth in B(2) above.
4. The hearing will be held in a designated location at MDAD's administrative offices, and will be held before an Aviation Department Business Management Representative or other

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Aviation Department designee. Any party may be represented by counsel at the hearing, and the Permittee may present witnesses, exhibits, and evidence in the Permittee's defense.

5. At the Administrative Hearing, if MDAD's representative is satisfied that the violation has occurred and has not been corrected to the reasonable satisfaction of MDAD, MDAD shall provide the Permittee through its representative with either an oral or written notice of suspension or termination. If MDAD provides only an oral notice of suspension or termination, MDAD shall promptly confirm such oral notice with a written notice whose terms and effective date comply with the terms of the Permit or this OD.
6. MDAD shall have no obligation to provide a permittee with an Administrative Hearing unless the permit or applicable law requires a hearing.

**D. Miscellaneous:**

1. The Aviation Department reserves the right to establish the specific dates of suspension or termination or to waive any condition or event which would otherwise result in a suspension or termination of the Permit when considering the safe and the efficient operation of Miami-Dade County Airports. Any such waiver shall not preclude the Aviation Department from subsequently suspending or terminating the permit based on any such condition or event occurring after the waived condition or event.
2. Upon termination of a Permit, the Aviation Department reserves the right to debar a Permittee in accordance with Section 10-38 of the Miami-Dade County Code, "Debarment of Contractors from County Work".
3. The procedures set forth in this Article VII shall apply only to the extent the Permit does not set forth procedures for the suspension or termination of the Permit. The procedures set forth above for an Administrative Hearing shall apply if (a) the Permit or applicable law requires an Administrative Hearing to suspend or terminate the Permit, and (b) the Permit or applicable laws do not provide procedures applicable to the holding of an Administrative Hearing.

**VIII. EFFECTIVE DATE:**

This OD shall become effective 15 days after filing with the Clerk of the Circuit Court as required by Sections 2-3 and 2-4 of the Miami-Dade County Code.

**IX. AMENDMENT:**

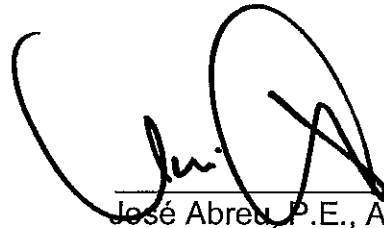
MDAD reserves the right to amend this OD at any time and from time to time, and notice of such amendment will be mailed to all affected parties who register with the Department. Any such amendment of this OD shall become effective 15 days after filing with the Clerk of the Circuit Court as required by Sections 2-3 and 2-4 of the Miami-Dade County Code.

**X. SEVERABILITY:**

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If any court of competent jurisdiction determines that any provision of this OD is illegal or void, the remainder of this OD shall continue in full force and effect. If such court rules that any charge, fee, or security deposit requirement is illegal or void, the Aviation Director is authorized and directed to impose a charge, fee, or security deposit requirement that complies with the Court Order or applicable provisions of law, which shall continue until confirmed or modified by the Board of County Commissioners.



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José Abreu, P.E., Aviation Director

Date: 1-14-11