

Date: May 4, 2010

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

Agenda Item No. 8(A)(1)(C)

From: George M Burgess
County Manager

Resolution No. R-471-10

Subject: Resolution Relating to Permits in the County Airport System; Amending Resolution No. R-442-02 to Authorize an Opportunity Fee of up to 7.5% for All Permittees Where the Permittees Choose to Pass Through the Opportunity Fee to Their Customers; Approving Settlement of a Dispute with Sky Chefs, Inc., and Gate Gourmet, Inc., Arising Out of Their Food Catering Permits; Approving All-Inclusive Definition of "Gross Revenues" for All Permits

Recommendation

It is recommended that the Board (i) amend Resolution No. R-442-02 relating to opportunity fees for third-party vendors at County airports to provide for an opportunity fee of up to 7.5% for Permittees who pass through the opportunity fee to their customers, (ii) approve settlement of a dispute between the Miami-Dade Aviation Department (MDAD) and Sky Chefs, Inc. (Sky Chefs) and Gate Gourmet, Inc., (Gate Gourmet) by imposing, as of October 1, 2010, an opportunity fee of 9% rather than the standard 7%, with the 9% fee continuing until one-third of the disputed amount is paid by the difference between the 9% and the applicable permit fee, and (iii) approve an all-inclusive definition of "gross revenues" for permits in the County Airport System.

Scope

Miami International Airport (MIA) is located primarily within Commissioner Rebeca Sosa's District Six; however, the impact of this item is county-wide in nature as MIA is a regional asset.

Fiscal Impact/Funding Source

No County or MDAD revenues will be expended as a result of the attached resolution; rather, the resolution will recover disputed amounts under two particular food catering permits.

Track Record/Monitor

Gate Gourmet, formerly known as Dobbs International, has been an in-flight caterer at MIA for more than 30 years. Sky Chefs has been an in-flight caterer at MIA for more than 20 years. Together the companies have paid \$25,771,550 in opportunity fees to MDAD over the last five years. Underpayment of the opportunity fees under their permits has arisen because of a dispute between the companies and MDAD on whether the term "gross revenues" as defined in their permits includes the revenues received from their customers when the companies pass through the 7% opportunity fee to the customers. The dispute over whether the 7% opportunity fee applies to passed-through fees (known as the "7-on-7" issue) has been resolved by their agreement to pay one-third of the amount in question. This matter will be monitored by MDAD Division Director Gregory C. Owens.

Delegated Authority

The attached resolution delegates to the Mayor or the Mayor's designee the authority to apply the maximum 7.5% opportunity fee to a permittee's "gross revenues" where the permittee chooses to pass-through the 7% opportunity fee to its customers, so that MDAD ends up receiving a net permit fee of 7% of all gross revenues.

Background

The 7% Opportunity Fee for Food Catering Permits

All permits for companies desiring to do business at the County's airports require the permittee to pay MDAD an opportunity fee represented by a percentage of the permittee's gross revenues. The Board has approved the issuance of permits on County properties under the authority of Administrative Order 8-5. MDAD, in turn, has issued Operational Directive 99-01 entitled "Permit Agreements to Conduct Commercial Activity at Miami-Dade County Airports," under which the level of fees for all permits must follow the level of permit fees established by the Board of County Commissioners.

Under Resolution No. R-101-01, the Board established a permit fee of not less than 7% of gross revenues for vendors providing goods and services to tenants at MIA. Subsequently, the Board adopted Resolution R-442-02 revising the opportunity fee to such vendors to a maximum of 7% of gross revenues, but authorizing the County Manager or designee to negotiate opportunity fees in the range of 16-25% percent under permits for a concessionaire's sales of goods or services to members of the public. Because food catering permits involve goods and services to airline tenants, the maximum opportunity fee of 7% has applied to such permits.

The Audit

MDAD issued food catering permits effective January 1, 2000, to Sky Chefs and Dobbs. In April and September 2005, the County's Auditor issued its report finding that Sky Chefs and Gate Gourmet should have paid an additional \$1,281,174 and \$604,589 more, respectively, in opportunity fees. Both companies vigorously denied the finding. The additional fees represented 7% of the amounts that were passed through to their customers on a separate line-item basis, but had not been included in their calculation of "gross revenues" under their interpretation of "gross revenues."

MDAD has worked closely with the two companies and their attorneys, as well as the airlines, in an effort to resolve the dispute, and recommends that the dispute be resolved by both companies paying one-third of the amount reflected in the Auditor's report.

The Method of Resolving the Dispute

Whenever airport revenues are increased, the increased revenues have the possible benefit of reducing landing fees or at least reducing their rate of growth. By allowing for an increase in revenues through increased food catering permit fees, the airlines—who are the primary customers of the food catering companies and therefore will be paying the higher food catering bills—have requested that the timing of the increased food catering permit revenues occurs at the beginning of the fiscal year so that the landing fee calculation receives the maximum benefit from such anticipated increase in food catering permit revenues.

MDAD will issue new food catering permits to Sky Chefs and to Gate Gourmet, effective as of October 1, 2010. Each permit will require payment of an initial opportunity fee of 9%. For Sky Chefs, the 9% payment will continue until such time as Sky Chefs has paid MDAD \$577,629, representing one third of \$1,732,885 owed through December 31, 2006, such payment being made from the difference between the standard opportunity fee and the temporary 9% fee. No delinquency fee shall apply to the payment of the \$577,629.

As to Gate Gourmet, the 9% payment will continue until such time as Gate Gourmet has paid MDAD \$241,035, representing one third of \$723,103 owed through December 31, 2006, such payment being made from the difference between the standard opportunity fee and the temporary 9% fee. No delinquency fee shall apply to the payment of the \$241,035.

Each of their new permits will provide that, upon payment of the respective settlement amounts, the opportunity fees under their permits shall revert to the 7.5% rate (assuming they continue to pass through the opportunity fees to their customers).

There is no separate settlement agreement with the two companies. Both companies have agreed in principle to this method of settling the dispute, and the County has the regulatory power to increase the opportunity fee under their permits at any time. The Board's resolution in this case will establish the terms upon which the County will exercise its regulatory powers to resolve the dispute with the two companies.

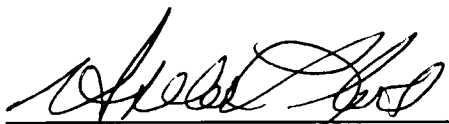
Any increase in permit revenues from companies other than food catering companies will go into effect immediately inasmuch as the airlines are not always the only customers for such companies. Any such revenue increases, however, will be taken into account for the calculation of the landing fees to go into effect as of October 1, 2010.

Clarification of the term "Gross Revenues"

While resolving the dispute with Sky Chefs and Gate Gourmet, MDAD reviewed the language of permits for commercial activities at MIA and determined that future misunderstandings of the sort involved in the Sky Chefs and Gate Gourmet matter could be avoided by clarifying the definition of "gross revenues" for permits at all of the County's airports. The new definition of "gross revenues" is based on an all-inclusive approach, and requires the permittee to pay MDAD the opportunity fee on every source of revenue from a customer, no matter how designated or structured. The current exclusions from "gross revenues" are amounts collected by a Permittee for taxes, and reduced revenues resulting from bankruptcy proceedings involving a permittee's customers. The new definition will add a third exclusion from "gross revenues," i.e., where the permittee chooses to pass through the opportunity fee to its customers on a separate line-item basis on its invoices to the customers, then (i) "gross revenues" will not include any such passed-through opportunity fee, and (ii) the opportunity fee percentage for that permittee shall be raised by one-half percent (0.5%) to 7.5% so as to capture on a net basis the 7% opportunity fee that is lost on the passed-through opportunity fees. If there is no separate pass-through of the opportunity fee, then the permit fee shall remain at its then-stated rate (7% for food catering companies) which will apply to "gross revenues" on an all-inclusive basis.

Airline's Acceptance of Resolution of Dispute

This resolution of the dispute has been discussed with the Airlines through the Miami Airlines Affairs Committee, which has approved the resolution in the manner proposed above. It is recommended that the Board approve the attached resolution.


Assistant County Manager



MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

DATE: May 4, 2010

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 8(A)(1)(C)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☐ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor

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Veto _____

Override _____

RESOLUTION NO. R-471-10

RESOLUTION RELATING TO PERMITS AT MIAMI INTERNATIONAL AIRPORT; AMENDING RESOLUTION NO. R-442-02 TO AUTHORIZE AN OPPORTUNITY FEE OF SEVEN AND ONE HALF PERCENT UNDER PERMITS FOR VENDORS PROVIDING GOODS AND SERVICES TO TENANTS AT MIAMI INTERNATIONAL AIRPORT WHERE THE PERMITTEES CHOOSE TO PASS-THROUGH THE STANDARD SEVEN PERCENT OPPORTUNITY FEE TO THEIR CUSTOMERS; APPROVING SETTLEMENT OF A DISPUTE WITH SKY CHEFS, INC. AND GATE GOURMET, INC. ARISING OUT OF THEIR FOOD CATERING PERMITS; APPROVING ALL-INCLUSIVE DEFINITION OF GROSS REVENUES FOR ALL PERMITS BUT PERMITTING EXCLUSION OF OPPORTUNITY FEES FROM THE TERM GROSS REVENUES WHERE PERMITTEES PASS THROUGH THE OPPORTUNITY FEES TO THEIR CUSTOMERS AND THE OPPORTUNITY FEE IS INCREASED UP TO SEVEN AND ONE HALF PERCENT FOR SUCH PERMITTEES

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum and documents, copies of which are incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby amends Resolution No. R-442-02 by authorizing an opportunity fee of seven and one-half percent (7 ½%) under permits for vendors providing goods and services to tenants at Miami International Airport where the permittees choose to pass-through the standard seven percent opportunity fee to their customers; approves the settlement of a dispute with Sky Chefs, Inc., and Gate Gourmet, Inc., arising out of their food catering permits at Miami International Airport by their payment of one-third of the amount identified by the County's Internal Auditor as being required under their food catering permits; and approves the definition of "gross revenues" on an all-inclusive basis so that such term applies to all revenues received by a permittee from its

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customers, less the current exclusions set forth in the standard permit forms and any identified passed-through opportunity fees where the permittee has chosen to pass such fees through to its customers and the opportunity fee under the permit is raised to seven and one-half percent (7 ½%) of gross revenues as newly defined to capture the 7% opportunity fee lost on the passed-through opportunity fee.

The foregoing resolution was offered by Commissioner **Audrey M. Edmonson**, who moved its adoption. The motion was seconded by Commissioner **Dorrin D. Rolle** and upon being put to a vote, the vote was as follows:

Dennis C. Moss, Chairman	aye		
Jose "Pepe" Diaz, Vice-Chairman	absent		
Bruno A. Barreiro	aye	Audrey M. Edmonson	aye
Carlos A. Gimenez	aye	Sally A. Heyman	absent
Barbara J. Jordan	aye	Joe A. Martinez	aye
Dorrin D. Rolle	aye	Natacha Seijas	absent
Katy Sorenson	aye	Rebeca Sosa	aye
Sen. Javier D. Souto	aye		

The Chairperson thereupon declared the resolution duly passed and adopted this 4th day of May, 2010. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.



MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: **DIANE COLLINS**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

A handwritten signature in cursive script, appearing to read "TPA", is written over a horizontal line.

Thomas P. Abbott