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] Regular

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Consent

Workshop

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

[X]

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Meeting Date: March 20, 2012

Department: Airports

Submitted By: Department of Airports

Submitted For:

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: First Amendment (Amendment) to the WiFi Advertising Concession Agreement (Agreement) with Cloud 9 Wireless, Inc. (R2011-1018), providing for the elimination of the minimum monthly guarantee.

Summary: This Amendment eliminates the provision in the Agreement that provided for payment of a minimum monthly guarantee of \$2,500 per month. Cloud 9 Wireless has determined that it is unable to guarantee monthly payments, b ut is willing to continue providing advertising sales services on a per campaign basis through the expiration of the Agreement on July 31, 2012. All other terms and conditions of the Agreement will remain the same for the remainder of the contract, including the provision for payment of advertising concession fees on a per campaign basis. Advertising campaigns have tended to be short term, making future revenues difficult to predict. The Agreement allows either party to terminate the Agreement for convenience. If this Amendment is not approved, Cloud 9 Wireless has indicated that it will terminate the Agreement. If approved, it is anticipated that the concession will continue to generate revenues to the County of approximately \$1,000 to \$1,500 per month. The Agreement was approved as a one-year pilot program. In the event the Department desires to continue to offer the concession opportunity after evaluating the results of the pilot program, a competitive solicitation will be issued. <u>Countywide</u> (AH)

Background and Justification: The Palm Beach International Airport currently offers free WiFi service in the terminal building as a passenger convenience. The Board previously approved the WiFi Advertising Concession Agreement on July 19, 2011, as a pilot program. The Agreement expires July 31, 2012. Placement of advertising on the WiFi portal allows the County to generate revenue to offset a portion of the costs of providing WiFi service without charging passengers for the use of the service.

Attachments:

1. WiFi Advertising Agreement First Amendment (3)

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Recommended By:	Jam Jelle,	2/22/12
· · · · · · · · · · · · · · · · · · ·	Department Director	Date
Approved By:	~ are	3/12/12
	County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>
Capital Expenditures				<u></u>	
Operating Costs				.	
Operating Revenues					
Program Income (County) In-Kind Match (County)					
m-Kind Match (County)					
NET FISCAL IMPACT	~ #- 5el	billow			
# ADDITIONAL FTE				<u> </u>	
POSITIONS (Cumulative)				<u></u>	
Is Item Included in Current B	udget? Yes	<u> </u>	lo		· •
Budget Account No: Fund		-	0_Unit <u>8430</u>	_ Object <u>44</u>	63
	Reporting Ca	tegory			

B. Recommended Sources of Funds/Summary of Fiscal Impact:

★ Approval of this item will eliminate the minimum monthly guarantee of \$2,500 for the period commencing March 1, 2012 through the expiration of the Agreement on July 31, 2012. It is anticipated that the County will continue to generate revenues on a per campaign basis of approximately \$1,000 to \$1,500 per month through the remainder of the Agreement.

C. Departmental Fiscal Review:

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

FME

B. Legal Sufficiency:

Assistant County Attorney

C. Other Department Review:

12112 and Cont

Department Director

CERTIFICATE (Corporation)

The undersigned hereby certifies that the following are true and correct statements:

1. That is the Secretary of Cloud 9 Wireless, Inc., a corporation organized and existing in good standing under the laws of the State of California, hereinafter referred to as the "Corporation", and that the following Resolutions are true and correct copies of certain Resolutions adopted by the Board of Directors of the Corporation as of the 24th day of April, 2010, in accordance with the laws of the State of California, the Articles of Incorporation and the By-laws of the Corporation:

RESOLVED, that the Corporation shall enter into that certain First Amendment to WIFI Advertising Concession Agreement between Palm Beach County, a political subdivision of the State of Florida and the Corporation (the "Agreement"), a copy of which is attached hereto; and be it

FURTHER RESOLVED, that , the , the of the Corporation, is hereby authorized and instructed to execute such Agreement and such other instruments as may be necessary and appropriate for the Corporation to fulfill its obligations under the Agreement.

2. That the foregoing resolutions have not been modified, amended, rescinded, revoked or otherwise changed and remain in full force and effect as of the date hereof.

3. That the Corporation is in good standing under the laws of the State of Florida, and has qualified, if legally required, to do business in the State of Florida and has the full power and authority to enter into such Agreement.

IN WITNESS WHEREOF, the undersigned has set his hand and affixed the Corporate Seal of the Corporation the 1^{5} day of 4 and 20^{1} .

Corporate Seal

[Signature] Cloud 9 Wireless, Inc.

, Secretary

(1 of 1)

A		ГП	=IC	ATE OF LIA	BIL		ISURA		DATE	OP ID: MF
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44	eet & Baker Ins. Brokers Inc Second Street			415-512-1115	PHONE (A/C, No	. Ext):		FAX (A/C, No)		
Sar For	rest Wittenmeier 512-2104				E-MAIL ADDRESS: PRODUCER CUSTOMER ID #: CLOUD-2					
								RDING COVERAGE		NAIC #
	JRED Cloud 9 Wireless, Inc. Attn: Sebastian Tonkin						rtford/ A X			
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								MED EXP (Any one person) PERSONAL & ADV INJURY	\$ \$	10,000
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A	AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE			57WECZX8259		06/22/11	06/22/12	LL. EACH ACCIDENT	\$	1,000,000
	OFFICER/MEMBER EXCLUDED?	N/A	/A					E.L. DISEASE - EA EMPLOYEE	<u> </u>	1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below							E.L. DISEASE - POLICY LIMIT		1,000,000
В	Errors & Ommission			ECN000067541101		07/21/11	07/21/12	Limit:		2,000,000
	Each Wrongful Act			PRIMARY POLICY				Retention		10,000
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Palm Beach County Board c/oDept of Airports					SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.					
1	846 Palm Beach Intri Airp West Palm Beach	ort		Γ	AUTHORIZED REPRESENTATIVE					
	West Palm Beach Florida, FL 33406						Mail	ta Fleming		
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A	C		-			-	-			DATE		
CERTIFICATE OF LIABILITY INSURANCE							05/18/11					
Ĩ	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONL CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND						Y AND CONFERS NO RIGHTS UPON THE CERTIFIC				ATE HOLDED THIS	
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For	rest	Wittenmeier 512-2104				ADDRESS: PRODUCER CUSTOMER ID #: CLOUD-2						
INSI	REC					INSURI	ERA: The Ha		KDING COVERABE		NAIC #	
		Attn: Sebastian Tonkin				INSUR	ER B : AXIS S	urplus Insu	Irance Company			
		PO Box 422032 San Francisco, CA 94142	,			INSUR	ERc:Lloyds	Underwrite	ers.			
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		CLAIMS-MADE X OCCUR							MED EXP (Any one person)	\$	10,000	
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FIRST AMENDMENT TO WIFI ADVERTISING CONCESSION AGREEMENT

THIS FIRST AMENDMENT TO WIFI ADVERTISING CONCESSION AGREEMENT (this "Amendment") is made and entered into as of _______ by and between Cloud 9 Wireless, Inc., a California corporation with offices at 520 Waller Street in San Francisco, CA 94177 ("C9W"), and Palm Beach County, a political subdivision of the State of Florida, with offices at 846 Palm Beach International Airport, West Palm Beach, Florida 33406 ("Provider") (each a "Party" and together, the "Parties").

WITNESSETH:

WHEREAS, the parties entered into that certain WIFI ADVERTISING CONCESSION AGREEMENT dated July 19, 2011 (R2011-1018) (the "Agreement"); and

WHEREAS, the parties desire to amend the Agreement as provided for herein.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, the parties agree to the following terms and conditions:

Section 1. <u>Amendment of Paragraph 14 Revenue and Payment.</u> Section 14(c), <u>Minimum</u> <u>Monthly Guarantee</u>, is hereby deleted in its entirety and replaced with the following:

c. **Revenue Payment**. C9W shall remit payment on or before the 20th day of each month for the previous month concurrent with submission of the written revenue statement.

Section 2. <u>Effective Date of Amendment.</u> This Amendment shall be considered effective March 1, 2012 when signed by all parties and approved by the Palm Beach County Board of County Commissioners.

Section 3. All other provisions of said Agreement, dated July 19, 2011, are hereby confirmed and, except as provided herein, are not otherwise altered or amended and shall remain in full force and effect.

(Remainder of page left blank intentionally.)

IN WITNESS WHEREOF, the parties hereto have duly executed this First Amendment, or have caused the same to be executed by their duly authorized representatives, as of the day and year first above written.

ATTEST:

SHARON R. BOCK **Clerk and Comptroller**

Deputy Clerk

PALM BEACH COUNTY, a political subdivision of the State of Florida by its **Board of County Commissioners**

Ву:_

Shelly Vana, Chair-Shelley Vana, Chair

(SEAL)

By:

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

U By: ane Assistant County Attorney

B١ Director, Department of Airports

Cloud 9 Wireless:

Signature Toutin la

Print Name

Title

(SEAL)

Cloud 9 Wireless: Signature end CAR Name

Signed, sealed and delivered in the

presence of two witnesses for

Signature

Uh Print Name

AND CONDITIONS

APPROVED AS TO TERMS