

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

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Meeting Date: June 15, 2021	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
	<input type="checkbox"/> Workshop	<input type="checkbox"/> Public Hearing

Submitted By: Department of Airports

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I. EXECUTIVE BRIEF

**Motion and Title: Staff recommends motion to approve:** First Amendment (Amendment) to Automated Teller Machine Concession Agreement with Communitel, Inc. (Communitel) at the Palm Beach International Airport (PBI) (R-2019-0950) (Agreement); abating the Minimum Annual Guarantee (MAG) of \$15,964 for the second contract year; adjusting the MAG for future contract years; providing for reconciliation of the MAG on a year-to-date basis; extending the submittal date for the first contract year audit report; and updating standard contract provisions.

**Summary:** Communitel operates automated teller machines (ATMs) at PBI. The first contract year commenced October 1, 2019. ATM usage has declined substantially as a result of the COVID-19 pandemic. The Agreement requires Communitel to pay a privilege fee equal to 60% of the annual ATM transaction fees (Privilege Fee) or the MAG. The MAG in the first contract year (FY2020) was \$15,000. For the second contract year (FY2021), the MAG adjusted to 85% of the first contract year's annual Privilege Fee, or \$15,964; however, current passenger demand doesn't support payment of this amount. As the Amendment abates the MAG for the second contract year, Communitel will pay only the annual Privilege Fee. Commencing October 1, 2021, the MAG will adjust annually to 85% of the annual Privilege Fee for the prior year or \$9,000.00, whichever is greater. The Amendment also adjusts the method of reconciliation of the MAG to allow Communitel to receive credit for payments made in excess of the MAG before year-end. An annual audit report is required. Communitel has requested to combine the audit report for the first contract year with the audit report for the second contract year. Based on the small dollar amount involved and the fact that Communitel has provided independent transaction data from its banking partner which supports Communitel's Privilege Fee payment for the first contract year, the Department supports this request. The Amendment also updates standard contract provisions, including scrutinized companies. Communitel is a certified Airport Concession Disadvantaged Business Enterprise (ACDBE), providing 100% ACDBE participation. Approval of this Amendment will ensure ATM services remain available at PBI as a passenger convenience while passenger traffic continues to stabilize.

**Countywide (AH)**

**Background and Justification:** The Amendment is in response to COVID-19 related impacts and is consistent with concession relief guidance from the Federal Aviation Administration. In the first contract year, the privilege fee exceeded the MAG by \$3,781 based primarily on activity occurring prior to April 1, 2020, which was prior to the onset of COVID-19. Unlike other concession agreements, this Agreement does not provide for abatement of the MAG based on threshold declines in passenger traffic. Communitel is currently averaging about 20 transactions per day, which is more than a 60% reduction to the average number of transactions in FY2019.

**Attachments:**  
First Amendment to Automated Teller Machine Concession Agreement (3)

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Recommended By:	<u><i>Laura Buba</i></u>	<u>5-4-21</u>
	Department Director	Date
Approved By:	<u><i>W. Baker</i></u>	<u>5/20/21</u>
	County Administrator	Date

**FIRST AMENDMENT TO  
AUTOMATED TELLER MACHINE CONCESSION AGREEMENT**

**THIS FIRST AMENDMENT TO AUTOMATED TELLER MACHINE CONCESSION AGREEMENT** (this "Amendment") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Palm Beach County, a political subdivision of the State of Florida ("County"), and Communitel, Inc., a Florida corporation, and having its office and principal place of business at 782 N.W. 42<sup>nd</sup> Avenue, Suite 429, Miami, Florida 33126 ("Concessionaire").

**WITNESSETH:**

**WHEREAS**, County, by and through its Department of Airports ("Department"), owns and operates the Palm Beach International Airport, located in Palm Beach County, Florida ("Airport"); and

**WHEREAS**, Concessionaire, under that certain Automated Teller Machine Concession Agreement between the parties dated July 2, 2019 (R-2019-0950) ("Agreement"), operates the ATM concession at the Airport; and

**WHEREAS**, Concessionaire has represented to County that it has experienced significant impacts to its business operations directly resulting from the COVID-19 pandemic; 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, and other good and valuable consideration, the receipt of which the parties hereby expressly acknowledge, the parties hereto covenant and agree to the following terms and conditions:

1. **Recitals.** The foregoing recitals are true and correct and are hereby incorporated herein by reference. Terms not defined herein shall have the meanings set forth in the Agreement.

2. **Warranties and Representations.** As a material inducement to County to enter into this Amendment, Concessionaire hereby acknowledges, represents and warrants to the County that the following acknowledgments, representations and warranties are true and correct as of the Effective Date of this Amendment: (a) Concessionaire has experienced significant impacts to its business operations directly resulting from decline in passenger traffic as a result of the COVID-19 pandemic; (b) Concessionaire is not entitled to, and has not submitted or made a claim under, any policies of insurance maintained by Concessionaire for recovery based on COVID-19 impacts to its business operations; and (c) the payment security in the form of Concessionaires Bond No. 106165275 issued by Travelers Casualty and Surety Company of America, in favor of Palm Beach County in the amount of \$7,500.00 is in full force and effect and has not been cancelled or otherwise modified.

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3. **Default.** The discovery by County that any of the warranties and representations made by Concessionaire herein as an inducement to enter into this Amendment were materially false shall constitute a material default of this Amendment by Concessionaire.

4. **Waiver.** Nothing in this Amendment shall be construed as waiving, reducing, abating or otherwise modifying any amounts due and payable to County under the Agreement. Furthermore, the failure of either party to insist on strict performance of any of the agreements, terms, covenants and conditions of this Amendment shall not be deemed a waiver of any rights or remedies that either party may have for any subsequent breach, default, or non-performance, and neither parties' right to insist on strict performance of this Amendment shall be affected by any previous waiver or course of dealing.

5. **Minimum Annual Guarantee.** Section 5.02(A) of the Agreement is hereby deleted in its entirety and replaced with the following Section 5.02(A):

A. The Minimum Annual Guarantee for each Contract Year shall be as follows:

Time Period	Minimum Annual Guarantee
First Contract Year (10/1/19 – 9/30/20)	Fifteen Thousand Dollars (\$15,000.00)
Second Contract Year (10/1/20 – 9/30/21)	No Minimum Annual Guarantee; Concessionaire shall be required to pay only the Annual ATM Privilege Fee.
Third Contract Year (10/1/21 – 9/30/22) and each Contract Year thereafter	Eighty-five percent (85%) of the Annual ATM Privilege Fee for the Preceding Contract Year, but in no event less than Nine Thousand Dollars (\$9,000.00).

6. Section 5.03, ATM Privilege Fee, of the Agreement is hereby deleted in its entirety and replaced with the following Section 5.03:

5.03 **Monthly Minimum Annual Guarantee Reconciliation.** Notwithstanding any provision of this Agreement otherwise, commencing October 1, 2021, Concession Fees shall be reconciled monthly, and Concession Fees shall be due and paid by Concessionaire to County as of the twentieth (20<sup>th</sup>) day of each month, for the preceding month, in the manner set forth herein. Within twenty (20) days after the close of each and every month throughout the Term of this Agreement, Concessionaire shall pay to County the difference between: (i) the greater of the Year-to-Date Minimum Annual Guarantee or the Year-to-Date ATM Privilege Fees; and (ii) the Year-to-Date Concession Payments. Concession Fees shall be reconciled on an annual basis in accordance with the provisions of Section 5.10 of this Agreement. For purposes of this provision, the terms “Year-to-Date Minimum Annual Guarantee”, “Year-to-Date ATM Privilege Fees” and “Year-to-Date Concession Payments” shall have the following meanings:

A. Year-to-Date Minimum Annual Guarantee shall mean one-twelfth (1/12) of the Minimum Annual Guarantee multiplied by the number of

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months that have accrued since the beginning of the then-current Contract Year (October thru September). The Year-to-Date Minimum Annual Guarantee as of the twentieth (20<sup>th</sup>) day of a given month shall include the monthly Minimum Annual Guarantee for the preceding calendar month. For example, as of February 20, four (4) monthly installments of the Minimum Annual Guarantee (October, November, December and January) would accrue from the start of the current Contract Year (October through January).

B. Year-to-Date ATM Privilege Fee shall be determined by totaling the monthly ATM Privilege Fees accruing from the start of the then-current Contract Year (October thru September). For example, as of February 20, the Year-to-Date ATM Privilege Fee would be the sum of the four (4) monthly ATM Privilege Fees accruing from the start of the current Contract Year (October, November, December and January).

C. Year-to-Date Concession Payments shall be the sum of Concession Fee payments made by Concessionaire, or amounts credited to Concessionaire for such, during the then-current Contract Year.

7. **Audit for the Contract Year Ending September 30, 2020.** The audit report pursuant to Section 5.10, Audit Requirements, of the Agreement, for the Contract Year ending September 30, 2020, shall be due to the Department no later than December 31, 2021, and may be included with the audit report for the Contract Year ending September 30, 2021.

8. **Scrutinized Companies.** Section 22.26 of the Agreement is hereby deleted in its entirety and replaced with the following Section 22.26:

22.26 Scrutinized Companies. As provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, Concessionaire certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725. Pursuant to F.S. 287.135(3)(b), if Concessionaire is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel, this Agreement may be terminated at the option of County. When Agreement value is greater than \$1 million, as provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, the Concessionaire certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473 or is engaged in business operations in Cuba or Syria. If County determines, using credible information available to the public, that a false certification has been submitted by Concessionaire, this Agreement may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Agreement shall be imposed, pursuant to F.S. 287.135. Said certification must also be submitted at the time of Agreement renewal, if applicable.

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9. **Ratification of Agreement.** Except as specifically modified herein, all of the terms and conditions of the Agreement shall remain unmodified and in full force and effect and are hereby ratified and confirmed by the parties hereto.

10. **Conflict.** In the event of a conflict between any provision of this Amendment and the provisions of the Agreement, or any other amendment thereto, the provisions of this Amendment shall control.

11. **Authorized Representatives.** The parties acknowledge that this Amendment has been executed by its duly authorized representatives. The parties declare and acknowledge that the terms of this Amendment have been completely read, fully understood, discussed with counsel, and voluntarily accepted by each party.

12. **Incorporation by Reference.** Exhibits attached hereto and referenced herein are hereby incorporated into made a part of this Amendment.

13. **Paragraph Headings.** The heading of the various sections of this Amendment are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this Amendment or the Agreement.

14. **Effective Date.** This Amendment shall become effective upon execution by the parties hereto ("Effective Date").

{Remainder of Page Intentionally Left Blank.}

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IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment as of the day and year first above written.

ATTEST:  
JOSEPH ABRUZZO,  
CLERK OF THE CIRCUIT COURT  
AND COMPTROLLER

By: \_\_\_\_\_  
Deputy Clerk

PALM BEACH COUNTY,  
A POLITICAL SUBDIVISION OF THE  
STATE OF FLORIDA, BY ITS BOARD  
OF COUNTY COMMISSIONERS

By: \_\_\_\_\_  
Dave Kerner, Mayor

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By: Anne Delgado  
County Attorney

APPROVED AS TO TERMS  
AND CONDITIONS

By: Lana Bube *RW*  
Director, Department of Airports

(Seal)

CONCESSIONAIRE:  
Communitel, Inc.

By: *[Signature]*  
Michael Rlaez  
Typed or Printed Name of Corporate Officer

Title: Chief Executive Officer

Signed, sealed and delivered in the  
presence of two witnesses:

*[Signature]*  
Witness Signature

Julio Eduardo Calz  
(Typed or Printed)

*[Signature]*  
Witness Signature

ALBERTO MENDOZA  
(Typed or Printed)