

**RESOLUTION NO. 2019-002**

RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, AUTHORIZING THE MAYOR AND THE CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY TO EXECUTE AN AUTOMATED TELLER MACHINE CONCESSION AGREEMENT BETWEEN COMMUNITEL, INC., AND THE CITY OF HIALEAH, FLORIDA, IN SUBSTANTIAL CONFORMITY WITH THE AGREEMENT ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "1", TO PROVIDE ATM SERVICES TO THE PUBLIC AT DESIGNATED CITY-OWNED LOCATIONS; PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, pursuant to City of Hialeah Code Section 2-818, if advantageous to the City, the City may utilize bids that have been awarded or under contract by other governmental agencies, in which case competitive bidding will not be required;

**WHEREAS**, Palm Beach County issued a Request for Proposal No. PB-14-5 (June 16, 2014), with the intent to acquire services substantially similar to those required by the City, and after evaluating the responders' qualifications and competitive proposals, awarded the contract to the Communitel, Inc. to provide ATM services at the Palm Beach International Airport, and entered into an Automated Teller Machine Concession Agreement in furtherance thereof;

**WHEREAS**, the City desires to utilize the Palm Beach County's contract with Communitel, Inc., which was competitively procured through a process substantially similar as that set forth in Chapter 2, Article IV., entitled "Purchasing and Competitive Bidding" of the City of Hialeah Code of Ordinances, and it is advantageous and beneficial to the City of Hialeah and its residents;

**WHEREAS**, Communitel, Inc. has agreed to provide the City with ATM concession services, pursuant to the terms and conditions set forth in the Agreement attached hereto and incorporated herein in substantial form as Exhibit "1", whose terms and scope are substantially the same as those set forth by the Palm Beach County's Automated Teller Machine Concession Agreement with Communitel, Inc. and the Palm Beach County's RFP; and

**WHEREAS**, Communitel, Inc. has made representations to the City, and the City has relied on Communitel, Inc.'s representations about its experience, equipment, manpower, capacity, permits and licenses to perform all services required under the Agreement.

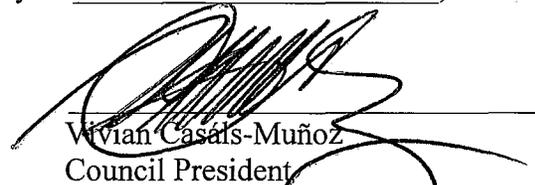
NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

**Section 1:** The foregoing facts and recitations contained in the preamble to this resolution are hereby incorporated and adopted by reference as if fully set forth herein.

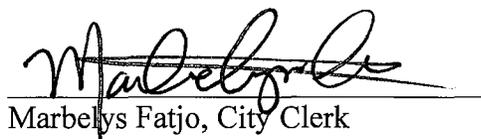
**Section 2:** The City of Hialeah, Florida authorizes the Mayor and the City Clerk, as attesting witness, on behalf of the City, to execute an Automated Teller Machine Concession Agreement between Communitel, Inc., and the City of Hialeah, Florida, in substantial conformity with the Agreement attached hereto and made a part hereof as Exhibit "1", to provide ATM services to the public at designated City-owned locations. All actions taken to date by officers of the City in furtherance of this Agreement is hereby approved, confirmed and ratified.

**Section 3:** This resolution shall become effective when approved by majority vote of the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED AND ADOPTED this 8 day of January, 2019.

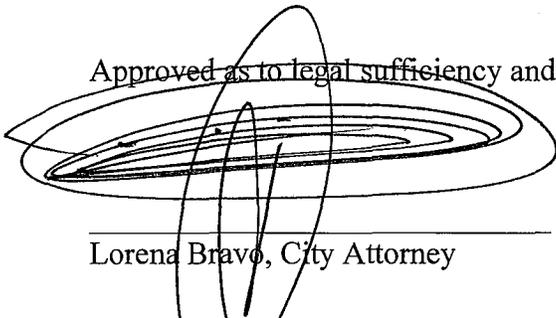
  
Vivian Casals-Muñoz  
Council President

Attest: Approved on this 17 day of January, 2019.

  
Marbelys Fatjo, City Clerk

  
Mayor Carlos Hernandez

Approved as to legal sufficiency and as to form:

  
Lorena Bravo, City Attorney

Resolution was adopted by a 5-0-2 vote with Councilmembers, Caragol, Zogby, Lozano, Casals-Munoz, and Hernandez voting "Yes", and with Garcia-Martinez and Cue-Fuente absent.

## AUTOMATED TELLER MACHINE CONCESSION AGREEMENT

This Automated Teller Machine Concession Agreement (this "Agreement") is made and entered into by and between **City of Hialeah**, a political subdivision of the State of Florida ("City"), and **Communitel, Inc.**, a Florida Corporation organized under the laws of the State of Florida, having its office and principal place of business at 6955 NW 77<sup>th</sup> Avenue, Suite 204, Miami, Florida 33166 ("Concessionaire").

### RECITALS

**WHEREAS**, Palm Beach County issued a Request for Proposal No. PB-14-5 (June 16, 2014), with the intent to acquire services substantially similar to those required by the City, and after evaluating the responders' qualifications and competitive proposals, awarded the contract to the Concessionaire to provide ATM services at the Palm Beach International Airport, and entered into an Automated Teller Machine Concession Agreement in furtherance thereof;

**WHEREAS**, pursuant to City of Hialeah Code Section 2-818, if advantageous to the City, the City may utilize bids that have been awarded or under contract by other governmental agencies, in which case competitive bidding will not be required;

**WHEREAS**, Palm Beach County has renewed the Automated Teller Machine Concession Agreement with Concessionaire, and the City has elected to purchase off the Palm Beach County Automated Teller Machine Concession Agreement with Concessionaire, subject to modifications including hereafter to address local needs and requirements;

**WHEREAS**, Concessionaire has made representations to the City, and the City has relied on Concessionaire's representations about its ability to properly finance, operate, and manage an ATM concession services, in accordance with the terms of this Agreement.

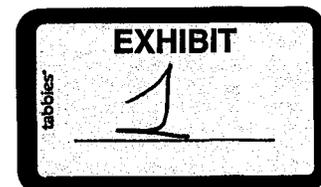
**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants herein contained, and for such other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, intending to be legally bound the parties hereto covenant and agree to the following terms and conditions:

### ARTICLE 1-VERIFICATION AND INCORPORATION OF RECITALS

The foregoing Recitals are true and correct and are incorporated by reference in their entirety as if fully set forth herein.

### ARTICLE 2- EFFECTIVE DATE AND TERMS

- 2.01 Effective Date. This Agreement is expressly contingent upon the approval of the City of Hialeah City Council ("Council"), and shall become effective when signed by all parties and approved by Council.
- 2.02 Term. The term of this Agreement shall be for a period commencing on March 1, 2018 ("Commencement Date"), and ending on, September 30, 2019 ("Initial Term"), unless sooner terminated as provided for herein.



### ARTICLE3-PRIVILEGES AND PREMISES

3.01 Description of Specific Privileges, Uses and Rights. Subject to the terms and conditions of this Agreement, Concessionaire shall have the nonexclusive right and obligation to provide ATM services to the public. Concessionaire shall install ATMs in the locations identified on the attached Exhibit "A" ("ATM Locations"), within fifteen (15) days of the Commencement Date, unless otherwise approved by City in writing. The parties acknowledge that it may be necessary to relocate, install or remove ATMs from the locations identified in the Exhibit "A" from time-to-time. Prior to installing, adding, removing, relocating or otherwise altering any ATMs, Concessionaire shall get an approval in writing by City. Concessionaire shall not install ATMs at any City location that has not been approved in writing by City. All costs and expenses associated with the installation, operation, relocation or removal of ATMs shall be paid entirely by Concessionaire.

3.02 Description of General Privileges, Uses and Rights. In addition to the specific privileges granted pursuant to Section 3.01, City hereby grants to Concessionaire, its employees, contractors, patrons, invitees, suppliers of service, and agents, the nonexclusive use of the Public Areas, including a right of ingress and egress, in connection with its operations as provided by this Agreement. For purposes of this Agreement, "Public Areas" means the public corridors, restrooms and other areas within the vicinity of the ATM Locations to which the general public has the right to access. Public Areas shall at all times be subject to the exclusive control and management of City. City shall have the full right and authority to make all rules and regulations as City may in its sole discretion deem proper, pertaining to the proper operation and maintenance of the Public Areas.

Nothing herein contained shall be construed to grant to Concessionaire, its employees, contractors, patrons, invitees, suppliers of service, or agents, the right to use or occupy any other space or area for any other purpose except as expressly set forth in Section 3.02(A) and (B) above. The general privileges, uses and rights granted in this Section 3.02 shall be subject to all other terms, conditions and covenants in this Agreement.

3.03 Condition of ATM Locations. City makes no representations or warranties whatsoever as to the condition of the ATM Locations, including, but not limited to, any equipment, utilities or fixtures currently installed at the ATM Locations, whether such equipment, utilities or fixtures are in compliance with applicable laws or the fitness of any such equipment or fixtures for a particular use or purpose. The ATM Locations, and any improvements thereto, are being provided for Concessionaire's use in their "AS IS CONDITION" and "WITH ALL FAULTS." Concessionaire shall not be entitled to any adjustment of any fees or charges payable hereunder on account of the condition of any improvements or any failure of any improvements to be in working order or because of any necessity of Concessionaire to repair or take corrective actions with respect to any improvements. The installation of

ATMs in the ATM Locations by Concessionaire, as provided for in this Agreement, shall be conclusive evidence that Concessionaire has examined the Locations and has found them to be in good and satisfactory condition and acceptable to Concessionaire in all respects.

- 3.04 Additional Services. Concessionaire shall not provide any services not specifically authorized herein ("Additional Services") or provide services at locations not specifically designated for such services by City, without the prior written consent of City, which may be granted or withheld in City's sole and absolute discretion for any reason or no reason at all. Such consent shall be in the form of an amendment to this Agreement, which shall: (1) designate the premises from or on which the Additional Services shall be provided, if any; (2) whether Concessionaire shall be required to make an additional capital expenditure; and (3) any additional fees that will be payable to City for Concessionaire's right and privilege to provide such Additional Services. City may require Concessionaire to cease providing the Additional Services at any time during the Term of this Agreement. Concessionaire shall cease such Additional Services upon thirty (30) days written notice from City.

#### **ARTICLE 4-COMMISSION**

- 4.01 Commission. Concessionaire shall pay City \$1.00 per withdrawal as detailed in the Monthly Transaction Report required under Section 4.06. The Commission shall be payable on the 20<sup>th</sup> of each month and shall be delivered together with the Monthly Transaction Report without demand, deduction, holdback or setoff.
- 4.02 Unpaid Fees. In the event Concessionaire fails to make payment of any fees or charges due and payable in accordance with the terms of this Agreement, Concessionaire shall pay interest at the rate of one and half percent (1.5%) per month on late payments from the date due until the date payment is received by the Department. Notwithstanding the foregoing, County shall not be prevented from terminating this Agreement for default in payment due to County pursuant to this Agreement or from exercising any other remedies containing herein or implied by law.
- 4.03 Form of Payment. All payments due under this Agreement shall be paid in lawful money of the United States of America, without offset or deduction or prior notice or demand. No payment by Concessionaire or receipt by City of a lesser amount than the payment due shall be deemed to be other than on account of the payment due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed to establish an accord and satisfaction, and City may accept such check or payment without prejudice to the City's right to recover the balance of said amount due or pursue any other remedy available under this Agreement.
- 4.04 Sales and Use Tax. Concessionaire shall pay all sales, use or other tax, or any, imposition in lieu thereof (excluding State and/or Federal Income Tax) now and hereinafter imposed upon the fees, use or occupancy of the ATM Locations, imposed by the United States of America, the State of Florida, or Miami-Dade

County, notwithstanding the fact that the statute, rule, ordinance or enactment imposing the same may endeavor to impose the tax on City.

- 4.05 Place of Payments. All payments required to be made by Concessionaire under this Agreement shall be made payable to "City of Hialeah," and shall be delivered to the Finance Director, Finance Department, 4<sup>th</sup> Floor, 501 Palm Avenue, Hialeah, FL 33010, or to such other office or address as may be substituted therefor.
- 4.06 Monthly Transaction Report. Within twenty (20) days after the end of each month throughout the Term of this Agreement, Concessionaire shall submit to City in a form and detail satisfactory to City, a monthly report that: (1) details the total number of ATM transactions for the preceding calendar month; (2) details the number of transactions by ATM; (3) details the Transaction Fees for the preceding month by transaction category; (4) details the total Transaction Fees by each ATM; (5) identifies the Commission for the preceding calendar month; (6) identifies the amount payable to City for the preceding calendar month; and (7) separately identifies any exclusions from Transaction Fees ("Monthly Transaction Report"). City may require the monthly report to be submitted electronically.
- 4.07 Recordkeeping; City's Right to Audit Records. Concessionaire shall keep, throughout the Term of this Agreement, all books of accounts and records customarily used in this type of operation, and as from time to time may be required by City, in accordance with Generally Accepted Accounting Principles prescribed by the American Institute of Certified Public Accountants or any successor agency thereto. Such books of accounts and records shall be retained and be available for three (3) years from the end of each Contract Year, including three (3) years following the expiration or termination of this Agreement. City shall have the right to audit and examine during normal business hours all such books of accounts and records relating to Concessionaire's operations hereunder. If the books of accounts and records are kept at locations other than the ATM Locations, Concessionaire shall, at its sole cost and expense, arrange for them to be brought to a location convenient to the auditors for City in order for City to conduct the audits and inspections as set forth in this Section 4.09. Failure to maintain books and accounts and records as required under this Section shall be deemed to be a material breach of this Agreement. City or its representative(s) shall make available to Concessionaire a copy of the audit report prepared by or on behalf of City. Concessionaire shall have thirty (30) days from receipt of the audit report from City or its representative(s) to provide a written response to City regarding the audit report. Concessionaire agrees that failure of Concessionaire to submit a written response to the audit report in accordance with the requirements of this Section shall constitute acceptance of the audit report as issued. The obligations arising under this Section shall survive the expiration or earlier termination of this Agreement.
- 4.08 Audit Requirements. Within ninety (90) days of the end of each Contract Year, Concessionaire shall provide to City and audit report on all payments required by this Agreement in accordance with the requirements of this Section 4.10. The Audit report shall cover the preceding Contract Year. The audit report shall be

prepared by an independent Certified Public Accountant not a regular employee of Concessionaire, in accordance with Generally Accepted Auditing Principles prescribed by the American Institute of Certified Public Accountants or any successor agency thereto. The audit report shall be in a form acceptable to City. The audit report shall include the following:

- A. Schedule of Transaction Fees by ATM and month.
- B. Schedule of Transaction Fees by transaction category, if more than one (1) type of Transaction Fee is charged.
- C. Schedule of payments to City.
- D. Calculation of total Concession Fee payable to City for the preceding Contract Year.
- E. The audit report shall include an opinion on the schedule of Transaction Fees by ATM and by month, the schedule of Transaction Fees by transaction category, the schedule of payment to City, and the calculation of total Concession Fee payable to City for the preceding Contract Year.

Failure to deliver and audit report containing a qualified opinion, and adverse opinion, or disclaimer of opinion, as defined by the American Institute of Certified Public Accounts or any successor agency thereto shall be deemed to be a material breach of this Agreement. If the audit report indicates that the Concession Fee (together with any sales taxes thereon) due and owing for any Contract Year is greater than the amount paid by Concessionaire to City during such Contract Year; Concessionaire shall pay the difference to City identified in the audit report. If the Concession Fee actually paid by Concessionaire to City during any Contract Year exceeds the Concession Fee due and owing for such Contract Year, the City shall credit the overpayment in the following order: (1) against any past due amounts owed to City by Concessionaire, including interest and late fees; (2) against future Concession Fee which will become due during the succeeding Contract Year; and (3) against any other sums payable by Concessionaire to City. Notwithstanding the foregoing in the event of an overpayment by Concessionaire during the last Contract Year, City shall credit the overpayment against any remaining amounts owed to City, including interest and late fees, and refund to Concessionaire any overpayment amount in excess of the credit.

- 4.09 Security for Payment. Prior to the Effective Date, Concessionaire shall post a security deposit ("Security Deposit") with City in an amount equal to ten thousand dollars (\$10,000.00). The Security Deposit shall serve as security for the payment of all sums due to City and shall also secure the performance or all obligations of Concessionaire hereunder. The Security Deposit shall be either in the form of a clean, irrevocable Letter of Credit ("Letter of Credit") or a Surety Bond ("Bond") in form and substance satisfactory to City. In the event of any failure by the Concessionaire to pay any fees, sums or charges to City when due

or upon any other failure to perform any of its obligations or other default under this Agreement, then, in addition to any other rights and remedies available to City at law or equity, City shall be entitled to draw on the Security Deposit and apply same to all amounts owed. Upon notice of any such draw, Concessionaire shall immediately replace the Security Deposit with a new Letter of Credit of Bond in the full amount of the Security Deposit required hereunder. A Security Deposit shall be kept in full force and effect throughout the Term of this Agreement and for a period of six (6) months after the termination of this Agreement. Not less than thirty (30) calendar days prior to any expiration date of a Letter of Credit or Bond, Concessionaire shall submit evidence in form satisfactory to City that such security instrument has been renewed. Failure to renew a Letter of Credit or Bond as required by this Section shall: (1) entitle City to draw the full amount of such Security Deposit, and (2) constitute a default of this Agreement entitling City to all available remedies. The Security Deposit shall not be returned to Concessionaire until all obligations under this Agreement are performed and satisfied. Prior to consent from City to any assignment of this Agreement by Concessionaire, Concessionaire's assignee shall be required to provide a Security Deposit to City in accordance with the terms and conditions of this Section. The obligations arising under this Section shall survive the expiration or earlier termination of this Agreement.

#### **ARTICLE 5-EQUIPMENT & SERVICE REQUIREMENTS**

##### **5.01 Minimum Equipment and Service Specifications:**

- A. Concessionaire shall ensure that each ATM supports cash withdrawals. Each ATM may support additional banking services, including, but not limited to, account balance inquiries, transfers and deposits. All transactions shall use United States currency and use Twenty Dollar (\$20.00) bills as primary denominations for withdrawals. Concessionaire may offer other lesser denominations as well (i.e. Ten Dollar (\$10.00) bills).
- B. ATMs shall meet all ADA regulations, including requirements to include approach height and reach.
- C. ATMs shall be fully tested and operational prior to implementation.
- D. Concessionaire shall routinely service each machine, so that they remain in a properly stocked, cleaned and operational condition at all times. ATMs shall be available for use at all times the ATM Locations are open to the public for business.
- E. ATMs shall have the capability of accepting transactions utilizing various credit, debit and ATM cards. ATMs shall access a minimum of two (2) national networks (i.e. Cirrus, Plus, etc.) as well as a major credit cards, including MasterCard and Visa.

- F. ATMs shall provide transaction receipts if desired by the ATM user.
- G. ATMs shall prominently display all written directions necessary to instruct customers in the operation of the ATM; provide a list of Transaction Fees, transaction surcharges, or any other fees charged; and to whom the Transaction Fees and/or charges apply.
- H. ATMs shall have the capability of being programmed and providing instructions in English and Spanish languages.
- I. Concessionaire shall provide trash receptacles adjacent to each ATM for refuse associated with ATM services and operation.
- J. Concessionaire acknowledges and agrees that City shall not be responsible in any way for any losses or expenses incurred by Concessionaire resulting from lost funds, theft, or vandalism, or from the repair or replacement of damaged or defective ATM equipment, fixtures or appurtenances. Security of currency, ATM equipment and associated supplies shall be at the sole responsibility of the Concessionaire.

5.02 Rates and Charges.

- A. Any modifications to Transaction Fees charged by Concessionaire during the Term of this Agreement shall be subject to prior written approval of City. Transaction Fees may not exceed: (1) charges assessed by Concessionaire's ATM units located within Miami-Dade County; (2) any maximum charge set by any regulatory agency having jurisdiction; or (3) the average transaction fees charged by financial institutions providing ATM services within Miami-Dade County.
- B. Concessionaire may not add any premise surcharge to the user's for the use of ATMs or services.

5.03 Customers Service Requirements.

- A. Concessionaire shall assure at all times the hiring of active, qualified, competent employees who are under the supervision, direction and control of Concessionaire. At a minimum, Concessionaire shall employ a manager who shall be responsible for coordinating orders for installation, removal, and repair of ATMs, addressing issues related to payments to City, reporting, and any and all other operational aspects of the Concession. Concessionaire shall provide to City, and keep current the contact information for its manager, including name, address, telephone number, and email address.
- B. All requests for repair, maintenance, and any other customer service requests shall be answered within twenty-four (24) hours from the time they

are reported to Concessionaire, at no cost to City.

- C. Concessionaire's customer service center shall handle complaints, credit adjustments, refunds, and provide assistance in an expedient and professional manner. The customer service telephone number(s) shall be: (1) toll-free; and (2) prominently posted on all ATMs.
- D. Concessionaire shall notify City of any complaint received. At the request of City, Concessionaire shall meet with City staff to review any complaints or concerns and to promptly correct any deficiencies.

#### **ARTICLE 6- INSTALLATION AND RELOCATION OF EQUIPMENT**

- 6.01 Installation of ATMs. Concessionaire shall install ATMs at locations approved by City in accordance with Section 3.01. At the end of the Initial Term of this Agreement, Concessionaire shall remove its ATMs from ATM Locations, unless the Agreement is renewed as provided for herein. All ATMs shall be removed, and the premises restored to their original condition, before the close of business on the last day Concessionaire is allowed to operate as provided by this Agreement.
- 6.02 Installation of Improvement or Equipment. All improvements to be installed or any alterations to existing equipment or improvements at the ATM Locations by Concessionaire shall be subject to the prior written approval of City. Prior to the construction of improvements or installation of equipment, Concessionaire shall submit associated plans and specifications and construction schedule to City for review and approval. Any and all construction or installation shall be: (1) at the sole risk of Concessionaire; (2) in accordance with all applicable Federal, State and local codes, laws, the construction standards established by City, and the approved plans and specifications; (3) shall be subject to inspection by City. At the discretion of City, any improvements that are constructed or equipment that has been installed by the Concessionaire that are in violation of this Article 6 shall be removed or constructed in accordance with the requirements of this Article 6 at Concessionaire's sole cost and expense.
- 6.03 Titles to Improvements. Except as otherwise provided for herein, all fixtures and improvements that are constructed or placed at the ATM Locations, excluding ATMs, furnishings, equipment and trade fixtures, shall become the absolute property of City upon the expiration or earlier termination of this Agreement and City shall have right, title, and interest therein, free and clear of any liens, mortgages or encumbrances. Upon the request of City, Concessionaire shall provide City with a bill of sale or other evidence of the transfer of ownership of improvements pursuant to this Section together with evidence satisfactory to City that the improvements are free from liens, mortgages or encumbrances. Notwithstanding the foregoing, City may require the removal of any or all improvements installed by Concessionaire at the ATM Locations upon the expiration or earlier termination of this Agreement.

- 6.04 No liens. Concessionaire covenants and agrees that nothing contained in this Agreement shall be construed as consent by City to subject the estate of City to Liability under the Construction Lien Law of the State of Florida, it being expressly understood that City's estate shall not be subject to such liability. Concessionaire shall notify any and all Persons performing work for Concessionaire at the ATM Locations or providing materials relating to any improvements made by Concessionaire to the ATM Locations of this provision of this Agreement. If so requested by City, Concessionaire shall file a notice satisfactory to City in the Public Records of Miami-Dade County, Florida, stating that City's interest shall not be subject to liens for improvements made by Concessionaire. In the event that a construction lien is filed against City properly in connection with any work performed by or on behalf of Concessionaire, Concessionaire shall satisfy such claim within thirty (30) days from the date of filing. In the event that Concessionaire fails to satisfy such claim within the thirty (30) day period, City may elect to satisfy the claim and thereafter charge Concessionaire, and Concessionaire shall promptly pay to City upon demand all costs incurred by City in connection with the satisfaction or transfer of such claim, including attorney's fees. Further, Concessionaire agrees to indemnify, defend, and save City harmless from and against any damage or loss incurred by City as a result of any such construction lien. The obligations set forth in this Section shall survive the expiration or earlier termination of this Agreement.
- 6.05 Construction Bonds. Concessionaires shall cause all improvements to be constructed to completion in accordance with the City approved plans and specifications and that all persons performing work or providing materials relating to such improvements including, but not limited to, all contractor, subcontractors, labors, materialmen, suppliers and professionals, are paid in full for such services and materials. Concessionaire, at its sole cost and expense, shall cause to be made, executed and delivered to City prior to commencement of any improvements to ATM Locations, a bond, in the total amount of the service fees and cost of materials, drawn in a form and issued by a company approved by City, guaranteeing compliance by Concessionaire of its obligations arising under this paragraph. City shall be named as a dual obligee on the bond(s).
- 6.06 Contractor Requirements. Concessionaire shall require contractors to furnish for the benefit of City a public construction bond as required under Section 255.05, Florida Statutes, in a form approved by City. Concessionaire shall require its contractors to name City as dual obligee on the bond(s). Concessionaires shall also require contractors to furnish satisfactory evidence of Statutory Worker's Compensation insurance, comprehensive general liability insurance, comprehensive auto insurance, and physical damage insurance on a Builder's Risk form with the interest of City endorsed thereon, in such amounts and in such manner as City's Risk Management Department may reasonably require. City's Risk Management Department may require additional insurance for any alterations or improvements approved hereunder, in such amounts as City's Risk Management Department reasonably determines to be necessary.

- 6.07 Relocation of Equipment. Concessionaire acknowledges that ATM Locations are a dynamic environment; therefore, it may be necessary to relocate ATMs due to certain demand. Relocation of any ATMs, at the discretion of City, shall be completed by Concessionaire within thirty (30) days of receipt of written notice to relocate. Concessionaire will be required to coordinate all construction, installation and relocation with the City. All costs associated with relocation of ATMs shall be at Concessionaire's sole cost and expense.

#### **ARTICLE 7-MAINTENANCE AND REPAIR OF EQUIPMENT**

- 7.01 Maintenance and Repair. Concessionaire shall be responsible for maintenance and repair of all ATM equipment, at Concessionaire's sole cost and expense, including, but not limited to, electrical data and telecommunication connections.
- 7.02 Equipment Repair.
- A. Concessionaire shall provide repair services for ATMs and equipment on a twenty-four (24) hour basis at no charge to City. All maintenance and repair services shall be completed within twenty-four (24) hours from the time the need for such service was reported to Concessionaire. Repair or replacement of equipment shall be at the expense of Concessionaire.
  - B. The repair or replacement of any defective or damaged equipment, fixtures, or appurtenances shall be completed by Concessionaire as soon as reasonably possible and, if applicable, in accordance with the directions of City.
- 7.03 Maintenance. All ATMs shall be maintained by Concessionaire in a clean and hygienic manner.

#### **ARTICLE 8-SIGNS, DISPLAYS AND ADVERTISING**

- 8.01 Displays. The following information and telephone numbers shall be all toll-free and shall be prominently displayed on all ATMs:
- A. Repair and customer service telephone numbers;
  - B. Concessionaire's business name and address;
  - C. The financial institution supplying ATM services; and
  - D. A list of all Transaction Fees and information regarding to whom the fees apply.
- 8.02 Signs. All signage identifying the location of ATM's must be recognizable for that purpose, and shall be approved by City prior to installation. Concessionaire shall be responsible to provide and maintain all signs, including those City has instructed Concessionaire to obtain.

- 8.03 Advertising. Concessionaire shall not install or place any advertising materials on the ATMs or at the ATM Locations without City's prior written approval. This advertising prohibition shall include, but shall not be limited to, stickers, electronic advertising or other information that may be affixed or otherwise placed on any ATMs. No third-party advertisement shall be permitted on the ATM.

#### ARTICLE 9 – UTILITIES

City will pay for electricity used or consumed by the ATMs installed by Concessionaire at the ATM Locations. Concessionaire will be responsible for all costs of installation of any necessary electrical connections.

#### ARTICLE 10 – INSURANCE

Concessionaire shall, at its sole expense, maintain in full force and effect at all times during the Term of this Agreement, the insurance limits, coverages and endorsements required herein. Neither the requirements contained in this Article 10 or City's review or acceptance of insurance shall in any manner limit or qualify the liabilities and obligations assumed by Concessionaire under this Agreement.

- 10.01 Commercial General Liability. Concessionaire shall maintain Commercial General Liability insurance with limits of liability of not less than \$1,000,000 Each Occurrence including coverage for, but not limited to, Premises/Operations, Products/completed Operations, Contractual Liability, Personal/Advertising Injury and Cross Liability. Coverage shall be provided on a primary basis.
- 10.02 Business Auto Liability. Concessionaire shall maintain Business Automobile Liability insurance with limits of liability of not less than \$1,000,000 for owned, non-owned and hired automobiles. In the event Concessionaire has no owned automobiles, Concessionaire shall only be required to maintain hired and non-owned auto liability insurance. This amended coverage may be satisfied by way of endorsement to the Commercial General Liability insurance or separate Business Auto Liability insurance. Coverage shall be provided on a primary basis.
- 10.03 Workers' Compensation & Employer's Liability. Concessionaire shall maintain Workers' Compensation and Employer's Liability insurance in accordance with applicable law. This coverage shall be provided on a primary basis. In the event concessionaire subcontracts any portion of the work or services required or permitted by this Agreement to another party, Concessionaire shall be responsible for ensuring the subcontractor maintains Workers' Compensation & Employer's Liability insurance, or Concessionaire shall provide coverage under its own Workers' Compensation & Employer's Liability policy on behalf of the subcontractor.
- 10.4 Additional Insured Endorsement. Concessionaire shall endorse City as an additional insured on each liability insurance policy required to be maintained by Concessionaire, except for Workers' Compensation and Business Auto Liability insurance policies. Concessionaire shall endorse City with a CG 2026 Additional

Insured – Designated Person or Organization endorsement, or its equivalent, to the Commercial General Liability policy. Other policies, when required, shall provide a standard additional insured endorsement offered by the insurer. The additional insured endorsements shall provide coverage on a primary basis. The additional insured endorsement shall read “City of Hialeah, a Political Subdivision of the State of Florida, 501 Palm Avenue, Hialeah, FL 33010”. City may modify the required Additional Insured endorsement from time-to-time on prior written notice to Concessionaire.

- 10.5 Certificate of Insurance. Concessionaire shall provide City or City’s designated contractor with a certificate of insurance evidencing limits, coverages and endorsements required herein. The certificate of insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage. In the event coverage cancels or non-renews during the Term of this Agreement, Concessionaire shall furnish a new certificate of insurance evidencing replacement coverage thirty (30) days prior to the expiration of such insurance.
- 10.6 Waiver of Subrogation. Concessionaire agrees by way of entering this Agreement in writing to a Waiver of Subrogation for each required policy providing coverage during the Term of this Agreement. When required by the insurer or should a policy condition not allow a pre-loss agreement to waive subrogation without an endorsement, Concessionaire shall notify its insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition prohibiting such an endorsement, or voiding coverage should Concessionaire enter into such an agreement on a pre-loss basis.
- 10.07 Deductibles, Co-insurance & Self-Insured Retention. Concessionaire shall be fully and solely responsible for any deductible, coinsurance penalty or self-insured retention, including any losses, damages or expenses not covered due to an exhaustion of limits or failure to comply with a policy.
- 10.08 Right to Review or Reject Insurance. City’s Risk Management Department may review, modify, reject or accept any required policies of insurance, including, but not limited to, limits, coverages or endorsements, required by this Article 10 from time to time throughout the Term of this Agreement. City may also reject any insurer or self-insurance plan providing coverage because of poor financial condition or failure to operate legally. In such event, City shall provide Concessionaire a written notice of rejection, and Concessionaire shall comply within thirty (30) days of receipt of the notice.
- 10.09 No Representation of Coverage Adequacy. Concessionaire acknowledges the limits, coverages, and endorsements required by this Article 10 are intended to minimize liability for City. Concessionaire agrees that it will not rely upon the requirements of this Article 10 when assessing the extent or determining appropriate types or limits of insurance coverage to protect Concessionaire against any loss exposures, whether as a result of this Agreement or otherwise.

## **ARTICLE 11 – RELATIONSHIP TO PARTIES**

Concessionaire, or any successor in interest to this Agreement, is and shall be deemed to be an independent contractor and operator and shall be solely responsible to all parties for its respective acts or omissions, and City shall in no way be responsible therefor.

## **ARTICLE 12 – INDEMNIFICATION**

Concessionaire, hereby waives, releases, covenants not to sue, forever discharges, agrees to defend, reimburse, indemnify and hold harmless the City, its officers, whether elected or appointed, directors, employees, representatives, attorneys and its agents (collectively referred to as “Released Parties”) at all times from and against any and all claims, liability, suits, causes of action, damages, expenses, losses, costs, fines and damages (including court costs and attorney’s fees at trial and appellate levels) and from any judgments, orders or decrees entered thereon or resulting therefrom, for any personal injury, loss of life, damage to property, or any other liability, loss, cost or expense of any kind (collectively referred to as “Claims”), arising out of, resulting from or relating to the City’s and Concessionaire’s respective performance or non-performance of this Agreement, incurred or sustained by any party hereto, or of any party acquiring any interest hereunder, and any third or other party whomsoever,; provided, however, Concessionaire shall not be responsible to City for damages resulting out of bodily injury (including death) or damages to property which are judicially determined to be solely attributable to the negligence of the Released Parties. Concessionaire further agrees to hold harmless and indemnify City for any fines, citations, court judgments, insurance claims, restoration costs or other liability resulting from or in any way arising out of or due to Concessionaire’s activities or operations or use of the ATM locations whether or not Concessionaire knew or should have known of any events precipitating a claim or judgment arising as a result of any situation involving the activities. This indemnification shall be expected to include all deliverers, suppliers, furnishers of material, or anyone acting for, on behalf of or at the request of Concessionaire. Concessionaire recognizes the broad nature of this indemnification and hold-harmless provision, and acknowledges that City would not enter into this Agreement without the inclusion of such clause. Concessionaire voluntarily makes this covenant and expressly acknowledges the receipt of good and valuable consideration provided by City in support of this indemnification in accordance with laws of the State of Florida. The obligations arising under this Article 12 shall be interpreted to the broadest extent allowed by law and shall survive the expiration or earlier termination of this Agreement.

THE PARTIES EXPRESSLY AGREE THAT UNER NO CIRCUMSTANCES SHALL CITY BE LIABLE FOR INDIRECT, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE, AND NUISANCE), SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE ON ANTICIPATED PROFITS.

## **ARTICLE 13 – EXPIRATION OF AGREEMENT, DEFAULT AND REMEDIES**

13.01 Expiration. This Agreement shall automatically terminate and expire at the end of the Initial Term, unless renewed in accordance with Section 2.03. In the event this Agreement is renewed by City in accordance with Section 2.03, this

Agreement shall automatically terminate and expire at the end of the Renewal Term.

13.02 Default. The occurrence of any one or more of the following events shall constitute a material default and breach of this Agreement by Concessionaire:

- A. The failure by Concessionaire to pay the Concession Fee in accordance with the requirements of Section \_\_\_ or make any other payment required to be made by Concessionaire hereunder, as and when due, where such failure continues for a period of five (5) days after written notice thereof from City to Concessionaire.
- B. The failure by Concessionaire to observe or perform any of the covenants, conditions or provisions of this Agreement to be observed or performed by Concessionaire, other than those described in paragraph A above, where such failure shall continue for a period of twenty (20) days after written notice from City to Concessionaire; provided, however, that if the nature of Concessionaire's default is such that more than twenty (20) days are reasonably required for its cure, then Concessionaire shall not be deemed to be in default if Concessionaire commenced such cure within such twenty (20) day period and thereafter diligently pursues such cure to completion.
- C. To the extent permitted by law, (1) the making by Concessionaire or any guarantor hereof of any general assignment, or general arrangement for the benefit of creditors; (2) the filing by or against Concessionaire of a petition to have Concessionaire adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy; (3) the appointment of a trustee or receiver to take possession of Concessionaire's assets located at the ATM Locations or of Concessionaire's interest in this Agreement, where possession is not restored to Concessionaire within thirty (30) days; or (4) the attachment, execution or other judicial seizure of Concessionaire's interest in this Agreement, where such seizure is not discharged within thirty (30) days.

13.03 Remedies. In the event of any such material default or breach by Concessionaire, City may, with or without notice or demand, pursue any available right or remedy at law or equity including the right, at its option, to immediately terminate this Agreement, by giving written notice to that effect. Such termination shall be without prejudice to City to any remedy for arrearages or payments due hereunder or breach of covenant or damages for the balance of the Concession Fee and other sums due hereunder, payable through the full Term of this Agreement, of any other damages or remedies whatsoever. Upon termination of this Agreement, City shall have the right to engage another Concessionaire to provide the services required hereunder for such period or periods at such fees and upon other terms and conditions as City may, in good faith, deem advisable.

13.04 Termination by Concessionaire. Concessionaire may terminate this Agreement if Concessionaire is not in default of this Agreement (including, but not limited to, its payments to City hereunder), by giving City sixty (60) days advance written

notice to be served as hereinafter provided, upon or after the happening of any one of the following events:

- A. Issuance by any court of competent jurisdiction of an injunction in any way preventing the use of the ATM Locations.
- B. The default by City in the performance of any covenant or agreement herein required to be performed by City and the failure of City to remedy such default for a period of thirty (30) consecutive days after receipt from Concessionaire of written notice to remedy same provided, however, that if the nature of City's obligations is such that more than thirty (30) days are required for performance then City shall not be in default if City commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. Notwithstanding the foregoing, a notice of cancellation shall not be of any force or effect if City has remedied the default prior to receipt of Concessionaire's notice of cancellation.

#### **ARTICLE 14 – ASSIGNMENT AND TRANSFER**

Concessionaire, shall not, in any manner, assign, transfer or otherwise convey an interest in this Agreement or any portion thereof ("Assignment"), without the prior written consent of City, which consent may be granted or withheld by City in its sole discretion. Any such attempted Assignment without City's approval shall be null and void. In the event City consents in writing to an Assignment, Concessionaire shall have the right to the extent permitted by City's consent to such Assignment. Any permitted Assignment shall be subject to the same conditions, obligations and terms as set forth herein and Concessionaire shall be fully responsible for the observance by its assignees of the terms and covenants contained in this Agreement. Notwithstanding any provision of this Agreement to the contrary, in the event of an approved Assignment, Concessionaire shall remain primarily liable to City for fulfilling all obligations, terms, and conditions of this Agreement, throughout the Term of this Agreement.

#### **ARTICLE 15 – LAWS, REGULATIONS, PERMITS AND TAXES**

##### 15.01 General.

Concessionaire agrees that throughout the Term of this Agreement Concessionaire shall at all times be and shall remain in full and complete compliance with all applicable Federal, State and local laws, statutes, regulations, rules, rulings, orders, ordinances and directives of any kind or nature without limitation, as now or hereafter amended.

- 15.02 Permits and Licenses Generally. Concessionaire shall, at its sole cost and expense, be strictly liable and responsible for obtaining, paying for, and maintaining current, and fully complying with, any and all permits, licenses and other governmental authorizations, however designated, as may be required at any time throughout the Term of this Agreement by and Federal, State or local governmental entity or any court of law having jurisdiction over Concessionaire or Concessionaire's operations and activities, for any activity of Concessionaire's conducted at the ATM Locations and for any and all operations conducted by

Concessionaire including ensuring that all legal requirements, permits, and licenses necessary for or resulting, directly or indirectly, from Concessionaire's operations and activities at the ATM Locations have been obtained and are in full legal compliance. Upon the written request of City, Concessionaire shall provide to City certified copies of any and all permits and licenses which City may request.

- 15.03 Safety Regulation. Concessionaire hereby agrees that neither Concessionaire, nor employee or contractor or any person working for or on behalf of Concessionaire, shall require any personnel engaged in the performance of Concessionaire's operations to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his or her health or safety, as determined by standards adopted pursuant to the Occupational Safety and Health Act of 1970, as same may be amended from time to time, as well as all State and local laws, regulations, and orders relative to occupational safety and health.

### ARTICLE 16 – NOTICES

All notices and elections (collectively, “notices”) to be given or delivered by or to any party hereunder, shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service or overnight mail, telecopied or faxed (provided in each case a receipt is obtained), or alternatively shall be sent by United States Certified Mail, with Return Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services or overnight mail, or on the date of transmission with confirmed answer back if by telecopier or fax if transmitted before 5:00 PM on a Business Day and on the next Business Day if transmitted after 5:00 PM or on a non-Business Day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designate the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

As to the City:

City of Hialeah  
Attn: Mayor's Office  
501 Palm Avenue, 4<sup>th</sup> floor  
Hialeah, FL 33010

As to Concessionaire:

Communitel, Inc.  
Attn: Pedro R. Pelaez, President  
6955 NW 77<sup>th</sup> Avenue, Suite 204  
Miami, FL 33166  
Phone: 305-888-4212  
Fax : 305-883-6701  
Email: [ppelaez@communitelusa.com](mailto:ppelaez@communitelusa.com)

With copy to:

City of Hialeah  
Attn: Law Department  
501 Palm Avenue, 4<sup>th</sup> Floor  
Hialeah, FL 33010

Either party may change the address to which notices under this Agreement shall be given, upon three (3) days prior written notice to the other party.

### **ARTICLE 17-NON-DISCRIMINATION**

Non-Discrimination in City Contracts. Concessionaire acknowledges that City is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Concessionaire is prohibited from discriminating against any employee, applicant, or client because of race, sex, color, religion, creed, ancestry, national origin, disability, familial status, sexual orientation, age, marital status, gender identity or expression, or genetic information.

### **ARTICLE 18-MISCELLANEOUS**

- 18.01 Waiver. The failure of City to insist on a strict performance of any of the agreements, terms, covenants and conditions hereof shall not be deemed a waiver of any rights or remedies that City may have for any subsequent breach, default, or non-performance, and City's right to insist on strict performance of this Agreement shall not be affected by any previous waiver or course of dealing.
- 18.02 City's Governmental Authority. Nothing in this Agreement shall be construed to waive or limit City's governmental authority as a political subdivision of the State of Florida to regulate Concessionaire or its operations. City's obligations under this Agreement are made in a proprietary capacity rather than in a governmental capacity and such agreements shall not be construed as limiting, prohibiting, or eliminating the obligation of the parties to comply with all applicable rules, regulations, ordinances, statutes and laws, nor alter or impair City's governmental functions, including , without limitation, City's right to lawfully exercise its regulatory authority over the development of Concessionaire's operations, nor as enabling, permitting, or creating any cause of action or claim arising out of the lawful exercise of City's governmental authority.
- 18.03 Rights Reserved to City. All rights not specifically granted to Concessionaire by this Agreement are reserved to City.
- 18.04 Invalidity of Clauses. The invalidity of any portion, article, paragraph, provision clause, or any portion thereof of this Agreement shall have no effect upon the validity of any other part or portion hereof.
- 18.05 Venue. To the extent allowed by law, the venue for any action arising from this Agreement shall be in Miami-Dade County, Florida.
- 18.06 Governing Law. This Agreement shall be governed by and in accordance with the laws of the State of Florida.
- 18.07 Remedies Cumulative. The rights and remedies of the parties with respect to any of the terms and conditions of the Agreement shall be cumulative and not exclusive and shall be in addition to all other rights and remedies of the parties.

- 18.08 Paragraph Headings. The headings of the various articles and sections of this Agreement, and its Table of Contents, 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 the Agreement or any part of this Agreement.
- 18.09 Binding Effect. The terms, conditions and covenants of this Agreement shall inure the benefit of and be binding upon the parties hereto and their successors and assigns. This provision shall not constitute a waiver of any conditions against assignment.
- 18.10 Performance. The parties expressly agree that time is of essence in this Agreement and the failure by Concessionaire to complete performance within the time specified or within a reasonable time if no time is specified herein, shall at the option of City without liability, in addition to any other rights or remedies, relieve City of any obligation to accept such performance.
- 18.11 Public Entity Crimes. As provided in Section 287.132-133, Florida Statutes, by entering into this Agreement or performing any work in furtherance hereof, Concessionaire certified that it, its affiliates, supplier, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the Effective Date. This notice is required by Section 287-133(3)(a), Florida Statutes.
- 18.12 Consent or Action. In the event this Agreement is silent as to the standard for any consent, approval, determination, or similar discretionary action, the standard shall be at the sole, absolute and unfettered discretion of City, rather than any implied standard of good, faith, fairness or reasonableness. Wherever this Agreement requires City's consent or approval or permits City to act, such consent, approval or action may be given or performed by the City Attorney. If Concessionaire requests City's consent or approval pursuant to any provision of the Agreement and City fails or refuses to give such consent, Concessionaire shall not be entitled to any damages as a result of such failure or refusal, whether or not unreasonable.
- 18.13 Excusable Delay. Any party in performing under this Agreement shall use reasonable efforts to remedy the cause or causes of an excusable delay. Excusable delays are those delays due to force majeure, acts of God, fire, flood, earthquake, explosion, riot, sabotage, windstorms, or labor dispute, and shall toll the time to perform under this Agreement.
- 18.14 Incorporation by References. All terms, conditions, specification of all exhibits attached hereto and reference herein shall be deemed to be incorporated in this Agreement by reference.
- 18.15 Entirety of Agreement. The parties agree that this Agreement sets forth the entire agreement between the parties, and there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained

in this Agreement may be added to, modified, superseded or otherwise altered except by written instrument executed by the parties hereto.

- 18.16 Construction. Neither party shall be considered the author of this Agreement. The terms of this Agreement shall not be strictly construed against one party as opposed to the other based upon who drafted it.
- 18.17 Inspections. The authorized employees and representatives of City and any applicable federal, state, and local governmental entity having jurisdiction hereof shall have the right to inspect the ATMs at all reasonable times for the purposes of compliance with the provision of this Agreement and/or applicable laws.
- 18.18 No Third Party Beneficiaries. No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement including but not limited to any citizen or employees of City and/or Concessionaire.
- 18.19 Radon. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from County's public health unit.

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IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

ATTEST

CITY:  
CITY OF HIALEAH, apolitical  
Subdivision of the State of Florida

By: \_\_\_\_\_  
Marbelys Fatjo, City Clerk

By: \_\_\_\_\_  
Carlos Hernandez, Mayor

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By: \_\_\_\_\_  
Lorena Bravo, City Attorney

Signed, sealed and delivered in the  
Presence of two witnesses for  
Concessionaire:

CONCESSIONAIRE: Communitel, Inc.

\_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signature

Aliet Guevara  
\_\_\_\_\_  
Print Name

Pedro R. Pelaez  
\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

President  
\_\_\_\_\_  
Title

Elisa Darna  
\_\_\_\_\_  
Print Name

Seal

EXHIBIT "A"  
ATM LOCATIONS

1. One ATM at City Hall; 501 Palm Avenue, 2<sup>nd</sup> Floor Lobby
2. One ATM at Public Works Department; 3700 West 4<sup>th</sup> Avenue, Lobby
3. One ATM at Hialeah Police Headquarters; 5555 East 8<sup>th</sup> Avenue, Lobby