

**A NON-CODE ORDINANCE OF THE HAINES BOROUGH ASSEMBLY APPROVING  
THE TELECOMMUNICATIONS TOWER LEASE AGREEMENT BETWEEN THE HAINES  
BOROUGH AND VERTICAL BRIDGE DEVELOPMENT LLC.**

BE IT ENACTED BY THE HAINES BOROUGH ASSEMBLY:

Section 1. Classification. This ordinance is for the specific purpose of approving a single agreement and shall not become a part of the Haines Borough Code.

Section 2. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held to be invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 3. Effective Date. This ordinance is effective upon adoption. The lease attached hereto is effective as of February 1, 2022.

Section 4. Purpose. This ordinance approves the terms of the Lease Agreement between the Haines Borough and Vertical Bridge Development LLC.

Section 5. Authority. This ordinance is adopted under the authority granted the Assembly to approve negotiated leases by HBC 14.16.160.

Section 6. Approval. The attached Lease Agreement is hereby approved. The Borough Manager is hereby authorized to take all such steps as may be necessary to finalize and sign the Lease on behalf of the Haines Borough.

ADOPTED BY A DULY CONSTITUTED QUORUM OF THE HAINES BOROUGH ASSEMBLY THIS 8<sup>th</sup> DAY OF FEBRUARY, 2022.

ATTEST:

  
Alekka Fullerton, CMC, Borough Clerk



  
Douglas Olerud, Mayor

Date Introduced:	12/22/21
Date of First Public Hearing:	01/11/22
Date of Second Public Hearing:	01/25/22
Date of Third Public Hearing:	02/08/22

## Lease Agreement

VERTICAL BRIDGE DEVELOPMENT, LLC  
And  
HAINES BOROUGH

THIS AGREEMENT is entered into between VERTICAL BRIDGE DEVELOPMENT, LLC as grantee ("Grantee"), and HAINES BOROUGH as grantor ("Grantor").

1. PREMISES. Grantor hereby grants to the Grantee and Grantee hereby accepts from Grantor, the right to exclusive use of 1,400 square feet of ground space at Lutak Dock in Haines, Alaska.
2. TERM. This agreement shall commence on February 1, 2022 and shall continue until January 31, 2023, with an option to extend until January 31, 2024 for the completion of engineering studies, permits, and construction. Thereafter, after construction, the lease period shall be 5 years from February 1, 2024 through January 31, 2029 unless otherwise terminated earlier pursuant to the provisions of Paragraph 5.
3. RENT. The annual rent shall be **\$11,200 per year** (\$8.00/SF). Rent shall be due and payable in advance on February 1<sup>st</sup> of each year in the amount of \$11,200 per year for the term February 1, 2022 through January 31, 2023 (or January 31, 2024). Similarly, the annual rent for the term February 1, 2024 through January 31, 2029 shall be \$ 11,200 per year, payable in advance on the 1<sup>st</sup> day of February. In the event of an increase in the size of the space to be occupied or an increase in the users (sublease to Grantee) Grantee and Grantor shall negotiate a revised rent fee schedule. Said rent will cover ground space of 1,400 square feet at Lutak Dock in Haines Alaska. Per HBC 14.16.180(B), the annual rental payable pursuant to this lease shall be subject to adjustment by the assembly on the fifth anniversary of the date of the lease and each anniversary date thereafter which is divisible by the number five. All adjusted rates shall be computed at 10 percent of the fair market value of the land and improvements owned by the borough and leased thereunder. Such value shall be determined by an appraisal made by the assessor or land manager or a certified appraiser hired by the borough and reviewed by the assembly, whose decision is final. The new rental amount shall be effective at the beginning of the five-year interval to which it applies.
4. ALLOWED USES. Grantee may install, replace, maintain and operate telecommunications equipment.
5. TERMINATION AND OPTION TO EXTEND. Either party may terminate this agreement for cause, where the other party fails in any material way to perform its obligation under this Agreement. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate stating with reasonable specificity the grounds therefore, and the other

party fails to cure the default within thirty (30) days after receiving the written notice.

Grantor agrees that the Grantee shall have the option to renew this lease beyond the original term herein specified for five (5) additional five (5) year increments upon the same terms and conditions as set out in this lease. Grantee will notify Grantor in writing at least 90 days prior to termination of its intent to exercise this option.

6. ACCESS. Grantee shall have right of ingress and egress to and from the premises from Lutak Road for periodic repairs and maintenance as required.
7. LIABILITY. Grantee shall indemnify, defend and hold harmless Grantor, its agents, parent, affiliates, subsidiaries, officers, directors and employees from and against:
  - (a) Any and all liability for loss, damage, expenses, claims or fees which arise out of, or are related to any act or omission by Grantee; and
  - (b) Any and all liability (including voluntary response costs) arising from the presence of hazardous materials upon, about or beneath the premises or migrating to or from the premises arising in any manner whatsoever out of the activities of Grantor, whether or not Grantor has been negligent.

This obligation shall include, but not limited to, the expense of defending all third-party claims, suits or administrative proceedings, even if such claims, suits and proceedings are groundless, false or fraudulent, and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties or other sums due against Grantee.

It is the intent of the parties that Grantee shall insure itself against losses or damages resulting from power of heating system failure, fire, earthquake, vandalism, or other similar causes.

8. INSURANCE. Grantee shall, at its own expense, maintain and keep in force during the term of this agreement, adequate insurance with an insurance company registered to do business in Alaska, to protect themselves, their agents, and Grantor against comprehensive public liability, property damage, and Pollution liability. This insurance shall have a combined single limit coverage for bodily injury, including death, and property damage in the amount of at least One Million Dollars (\$1,000,000.00) per occurrence. Grantee shall also insure itself and its property from loss from any cause and shall secure business interruption expense, if available. All such insurance shall name Grantor as an additional insured party, contain a waiver of subrogation endorsement, as required by Paragraph 9, and provide that the other party shall be notified at least thirty (30) days prior to any termination, cancellation or material change that adversely affects Grantor in such insurance coverage. Grantee shall provide

Grantor certificates of insurance coverage required by this agreement with thirty (30) days of signing this agreement. The failure of the Grantee to maintain this insurance coverage in full shall constitute a material breach of the Agreement. The failure of the Grantee to name the Grantor as an additional insured shall constitute a material breach of the Agreement.

9. WAIVER OF SUBROGATION. Grantee shall cause each insurance policy obtained by it to provide that the insurance carrier waives all right of recovery by way of subrogation against Grantor and Grantor's insurance.
10. HAZARDOUS MATERIALS. Grantee shall indemnify Grantor and protect Grantor's lands from damage or pollution caused by a spill or release of hazardous materials onto Grantor's lands during the use, transport, or storage of such petroleum products, batteries, anti-freeze or chemicals as Grantee may utilize in the construction, maintenance, or eventual dismantling of the site. Grantee shall be liable for the costs of any remediation activity at the site required by State and Federal regulations.
11. TAXES AND ASSESSMENTS. Grantee shall be liable for payment of any real and personal property taxes or assessments that may be levied on the land or on Grantee's fixtures, improvements, equipment or other Grantee property on the premises.
12. ASSIGNMENT OR SUBLETTING. Grantee may not assign this agreement or sublet any interest in the premises without the prior written consent of the borough assembly. In the event of an approved request for assignment, or proposal to sublet a portion or all of the premises, Grantee and Grantor will negotiate a new rent fee schedule to reflect the value of the revised circumstances.

An approved assignment shall be subject to all of the terms and conditions of the lease and the assignor shall not be relieved of the assignor's obligations as lessee thereunder.

An approved sublease shall be in writing and be subject to the terms and conditions of the original lease and such further terms and conditions as the borough assembly may deem appropriate. A copy of the sublease shall be filed with the borough clerk.

In the event the Grantee assigns or sublets the premises, or attempts to assign or sublet the premises, without the consent of the Grantor, the lease shall become immediately voidable, at the sole option and in the sole discretion of the Grantor.

13. EVENTS UPON TERMINATION. Upon termination of this Lease, whether at the end of the term of the lease or pursuant to termination of the Lease prematurely by either party, Grantor shall have one hundred eighty (180) days within which to remove all improvements constructed by it from Grantee's property. Upon

removal of Grantee's improvements, Grantee shall return the lease area to as near the original condition as is practicable. Such restoration must be completed to the satisfaction of Haines Borough.

In the event that there has been a high likelihood of a spill or release of hazardous materials onto Grantor's lands, as determined by the Grantor in its discretion, Grantee will provide a Phase I environmental assessment covering affected lands upon the completion of clean-up and/or restoration.

14. DEFAULT. In the event that either party shall consider the other responsible for a breach of this agreement, the complaining party agrees to give the other written notice by certified mail of the default or breach complained of, and the other party shall have thirty (30) days after receipt of such notice, unless circumstances beyond the other party's control prevent such correction within this period, within which to correct any default or breach of the agreement. Failing such correction, this agreement may be terminated by the complaining party. Termination of this agreement for default does not relieve Grantee from its' obligation to pay any lease payments due prior to the notice of default or to restore the site as specified on Paragraph 12 of this lease.
15. NOTICES. Any notice by Grantee or Grantor will be served at Haines Borough Offices, and any notice by Grantor to Grantee will be served on Vertical Bridge Development LLC, 750 Park of Commerce Dr., Ste 200, Boca Raton, FL 33487.
16. MISCELLANEOUS. This agreement shall extend to and bind the respective heirs, personal representatives, successors and assigns of the parties to this agreement. Nothing in this agreement is intended to benefit any third party not a signatory hereto.
17. GOVERNING LAW. This agreement shall be governed by the laws of the State of Alaska. Any agent or other person executing this agreement on behalf of a party represents and warrants to the other party that he or she has full power and authority to execute this agreement on the party's behalf. Venue for any legal action shall be in the State of Alaska District Court at Juneau, Alaska. Grantor and Grantee agree that any trial in any action filed related to this Agreement shall be held in Haines, Alaska.
18. WAIVER. Neither party shall be deemed to have waived any rights under this agreement unless such waiver is in writing and signed by the party. No delay or omission on the part of either party in exercising any right shall operate as a waiver of such right or any other right. A waiver by either party of a provision of this agreement shall not prejudice the party's rights to demand strict compliance with that provision in the future. Whenever consent by one party is required in this agreement, the granting of such consent in any one instance shall not constitute continuing consent to subsequent instances where such consent is required.

19. MODIFICATION. This agreement may not be modified, except in writing signed by both parties. Grantee acknowledges and understands that no employee, representative, or individual assembly member has any authority to modify this Agreement, or make any representations as to modifying the Agreement, and that only the Assembly as a body has the authority to approve a written modification of the Agreement.

20. INTEGRATION. This agreement contains the entire agreement between the parties and supersedes all previous negotiations, commitments and communications. It shall continue in effect for so long as either party owes any duty or obligation to the other. This agreement will not be construed against the party which prepared it.

IN WITNESS WHEREOF, the parties hereto have executed this agreement.

Grantee: VERTICAL BRIDGE DEVELOPMENT LLC Grantor: HAINES BOROUGH

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Annette Kreitzer  
Haines Borough Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
Name:  
Title:

Attest: \_\_\_\_\_  
Aleka Fullerton  
Haines Borough Clerk