

Introduced by:	Mayor
Date:	03/02/21
Hearing:	04/06/21
Action:	Postponed as Amended to 04/2021
Vote:	9 Yes, 0 No, 0 Absent
Date:	04/20/21
Action:	Enacted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2021-11**

**AN ORDINANCE AUTHORIZING A COMMUNICATIONS SITE LEASE
AGREEMENT WITH VERTICAL BRIDGE DEVELOPMENT, LLC**

WHEREAS, Vertical Bridge Development, LLC is seeking to improve wireless services in the Summit Lake area; and

WHEREAS, Vertical Bridge Development, LLC is proposing to install a communication tower and equipment at Kenai Peninsula Borough (“borough”) managed land in the rural community of Summit Lake; and

WHEREAS, in 2015, the borough received a final decision approving conveyance of the land; and

WHEREAS, Vertical Bridge Development, LLC has determined that a 2,187 square foot site on borough-managed land to the west of Summit Lake is the most desirable to meet its requirements; and

WHEREAS, the 2,187 square-foot site is located within the 317.86-acre borough-managed parcel described as Govt. Lot 1 excluding ASLS 97-32 and ASLS 2000-01, Section 5, Township 6 North, Range 1 West, Seward Meridian, Seward Recording District, Third Judicial District, State of Alaska; and

WHEREAS, Vertical Bridge Development, LLC proposes a market value lease; and

WHEREAS, entering into a negotiated lease of the property with Vertical Bridge Development, LLC is consistent with Goal 2 of the Moose Pass comprehensive plan, and furthers Goal 2, Focus Area: Land Use and Changing Environment, Objective C of the Kenai Peninsula Borough Comprehensive Plan; and

WHEREAS, the Kenai Peninsula Borough Planning Commission at its regularly scheduled meeting of March 15, 2021, recommended approval by unanimous consent;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. The assembly finds that entering into a Communications Site Lease Agreement with Vertical Bridge Development, LLC is in the best interest of the public and the borough. This finding is based on the following facts:

- a. The borough will receive a fair market rent for the term of the lease.
- b. The land will be used to provide a new communications site that will benefit communication network users, including public safety providers.
- c. The leasing of land for communication purposes is supported by Goal 2 of the Moose Pass Comprehensive Plan and Goal 2, Focus Area: Land Use and Changing Environment, Objective C of the Kenai Peninsula Borough Comprehensive Plan.

SECTION 2. The mayor is authorized, pursuant to KP 17.10.100(I), Negotiated Sale or Lease, to negotiate and enter into a lease of the above-described area to Vertical Bridge Development, LLC, subject to all lease conditions required by this ordinance and the applicable provisions of KP 17.10, Borough Land and Resources.

SECTION 3. The assembly makes an exception to KP 17.10.090 requiring classification prior to disposal. This exception is based on the following findings of facts pursuant to KP 17.10.230:

1. Special circumstances or conditions exist.
 - a. KP 17.10.080(A) states, classification of property is for review, plan implementation and management purposes. The classification system designates the most appropriate uses of the land and thereby guides borough management of such lands and implementation actions to provide for the identified users.
 - b. KP 17.10.080(E) states, classification or reclassification shall be based on a need identified in the borough Comprehensive Plan or upon recommendations from the mayor, the planning commission, an advisory planning commission, the public, or a local, state, or federal government agency. The borough has no identified management plan for this property at this time.
2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is in the most practical manner of complying with the intent of this chapter.

- a. The notice requirement is intended to make the public aware of an opportunity to purchase borough property, which is not applicable to the lease of property solely to Vertical Bridge Development, LLC.
3. That the granting of this exception will not be detrimental to the public welfare or injurious to other property in the area.
 - a. The communication tower site is compatible with the surrounding vacant, utility and recreational land uses.

SECTION 4. Pursuant to KPB 17.10.230, the assembly authorizes an exception to the requirements of 17.10.110, Notice of Disposition, based on the following findings of facts:

1. Special circumstances or conditions exist.
 - a. The proposed lease is solely with Vertical Bridge Development, LLC and for the purpose of operating and maintaining a communication tower site.
 - b. The notice requirement is intended to make the public aware of an opportunity to purchase borough property, which is unnecessary since the intent of the disposal is to lease the property solely to Vertical Bridge Development, LLC.
2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical manner of complying with the intent of this chapter.
 - a. The notice requirement is intended to make the public aware of an opportunity to purchase property, which is not applicable to the lease of property solely to Vertical Bridge Development, LLC.
3. That the granting of this exception will not be detrimental to the public welfare or injurious to other property in the area.
 - a. The communication tower site is compatible with the surrounding land uses.

SECTION 4. This lease is subject to a condition that the Director of the State of Alaska, Department of Natural Resources, Division of Mining, Land, and Water consents to the lease.

SECTION 5. The mayor is authorized to execute a Communications Site Lease Agreement with terms and conditions substantially similar to the agreements attached to this resolution.

SECTION 5. Vertical Bridge Development, LLC shall have 90 days from the date of enactment of this ordinance to execute the agreement.

SECTION 6. That this ordinance shall take effect immediately upon its enactment.

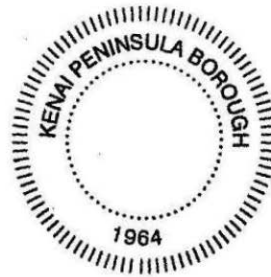
ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 20TH DAY OF APRIL, 2021.



Brent Hibbert, Assembly President

ATTEST:



Jonni Blankenship, MMC, Borough Clerk

04/06/2021 Vote on motion to postpone as amended:

Yes: Bjorkman, Carpenter, Chesley, Cox, Derkevorkian, Dunne, Elam, Johnson, Hibbert
No: None
Absent: None

04/20/21 Vote on motion to enact:

Yes: Bjorkman, Carpenter, Chesley, Cox, Derkevorkian, Dunne, Elam, Johnson, Hibbert
No: None
Absent: None

OPTION AND COMMUNICATIONS SITE LEASE AGREEMENT

This OPTION AND COMMUNICATIONS SITE LEASE AGREEMENT (this “Agreement” or this “Lease”) will become effective when all parties have signed the Agreement (the “Effective Date”). This Agreement is entered into by the **Kenai Peninsula Borough**, a municipal corporation, whose mailing address is 144 North Binkley Street, Soldotna, Alaska 99669 (the “Lessor” or the “Borough”), and **Vertical Bridge Development, LLC**, a Delaware limited liability company, whose mailing address is 750 Park of Commerce Drive, Suite 200, Boca Raton, FL 33487 (the “Lessee”).

PART I. BACKGROUND, AUTHORIZED CONTACT AND CONTRACT DOCUMENTS

1. Background. Lessor owns certain real property located in the Kenai Peninsula Borough, in the State of Alaska, that is more particularly described and/or depicted in Exhibit 1 attached hereto (the “Property”). For good and valuable consideration, the parties agree that the Lessor will grant the Lessee the right to use a portion of the Property in accordance with the terms of this Agreement.

2. Authorized Contact. All communications about this Agreement shall be directed as follows, any reliance on a communication with a person other than the listed below is at the party’s own risk.

LESSOR

Name: Kenai Peninsula Borough
Attn: Land Management Division
Re: Lease No. XX
Mailing Address: 144 N. Binkley St.
Soldotna, AK 99669

LESSEE

Name: Vertical Bridge Development, LLC
Attn: VP of Asset Management
Re: Site #: US-AK-5250; Site Name: Canyon Creek
Mailing Address: 750 Park of Commerce Drive, Suite 200
Boca Raton, FL 33487

For Notices required hereunder:

Name: Vertical Bridge Development, LLC
750 Park of Commerce Drive, Suite 200
Boca Raton, FL 33487
Attn: General Counsel
Re: Site #: US-AK-5250; Site Name: Canyon Creek

3. Contract Documents. As authorized by Kenai Peninsula Borough Ordinance 2021-11, this Agreement is the final and complete understanding of the parties. The following exhibits and appendices are attached and are considered part of this Agreement as well as anything incorporated by reference or attached to those exhibits or appendices:

Appendix A: Lease Provisions Required by KPB 17.10

Appendix B: Site Specific Lease Provisions

Exhibit 1: Description of the “Property” and the “Leased Premises”

Exhibit 2: Leased Premises site sketch

Exhibit 3: Memorandum of Lease

If in conflict, the Agreement shall control. If in conflict the order of precedence shall be: Appendix B, the Agreement, Appendix A, Exhibit 1, Exhibit 2, and then Exhibit 3.

PART II. LEASE DESCRIPTION AND TERMS

4. DESCRIPTION OF PROPERTY; OPTION.

(a) Subject to the terms and conditions of this Agreement, Lessor hereby grants to Lessee an exclusive option to lease a certain portion of the Property containing approximately 2,187 square feet (5-sided perimeter measuring 25' - 50' - 50' - 25' - 35.4') including the air space above such ground space as described and depicted on Exhibit 1 and Exhibit 2 attached hereto (the "Leased Premises") for the placement of the Communication Facilities. In addition, a buffer area ten (10) feet in width around the perimeter of the Leased Premises may be utilized by the Lessee strictly for purposes of complying with Section 11(b) below.

(b) During the Option Term, and during the Term, Lessee and its agents, engineers, surveyors and other representatives will have the right to enter upon the Property to inspect, examine, conduct soil borings, drainage testing, material sampling, radio frequency testing and other geological or engineering tests or studies of the Property (collectively, the "Tests"), to apply for and obtain licenses, permits, approvals, or other relief required of or deemed necessary or appropriate at Lessee's sole discretion for its use of the Leased Premises and include, without limitation, applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits (collectively, the "Government Approvals"), initiate the ordering and/or scheduling of necessary utilities, and otherwise to do those things on or off the Property that, in the opinion of Lessee, are necessary in Lessee's sole discretion to determine the physical condition of the Property, the environmental history of the Property, Lessor's title to the Property and the feasibility or suitability of the Property for Lessee's permitted use, all at Lessee's expense. Lessee will not be liable to Lessor or any third party on account of any pre-existing defect or condition on or with respect to the Property, whether or not such defect or condition is disclosed by Lessee's inspection. Lessee will restore the Property to its condition as it existed at the commencement of the Option Term, reasonable wear and tear and loss by casualty or other causes beyond Lessee's control excepted.

(c) In consideration of Lessor granting Lessee an option to lease the Leased Premises (the "Option"), Lessee agrees to pay Lessor the sum of Three Thousand Five Hundred and No/100 Dollars (\$3,500.00) within thirty (30) business days after the Effective Date. The Option may be exercised during an initial term of one (1) year commencing on the Effective Date (the "Option Term").

(d) Lessee may assign this Option to any person or entity, at any time with prior written consent of the Kenai Peninsula Borough's mayor, which will not be unreasonably withheld or delayed so long as the Assignee agrees to the assignment and novation and complies with all terms of this Agreement. Notwithstanding the foregoing, upon thirty (30) days' written notice to Lessor, Lessee may assign this Option or its rights or obligations to (a) any person or entity controlling, controlled by, or under common control with Lessee, or (b) in connection with the sale or other transfer of substantially all of Lessee's assets in the FCC market area where the Leased Premises is located. If this Option is assigned, the assignee shall comply with all terms of the assignment, this Agreement, and applicable Borough code.

(e) During the Option Term, Lessee may exercise the Option by notifying Lessor in writing. If Lessee exercises the Option, then Lessor leases the Leased Premises to Lessee subject to the terms and conditions of this Agreement. If Lessee does not exercise the Option during the Initial Option Term or any extension thereof, then this Agreement will terminate, and the parties will have no further liability to each other.

(f) If during the Option Term, or during the Term if the Option is exercised, Lessor decides to subdivide, sell, or change the status of the zoning of the Leased Premises, the Property or any of Lessor's contiguous, adjoining or surrounding property (the "Surrounding Property"), or in the event of a threatened foreclosure on any of the foregoing, Lessor shall immediately notify Lessee in writing. Lessor agrees that during the Option Term, or during the Term if the Option is exercised, Lessor shall not initiate or consent to any change in the zoning of the Leased Premises, the Property or the Surrounding Property or impose or consent to any other use or restriction that would prevent or limit Lessee from using the Leased Premises for the permitted use. Any and all terms and conditions of this Agreement that by their sense and context are intended to be applicable during the Option Term shall be so applicable.

5. TERM.

(a) The initial term will be five (5) years (the "Initial Term"), commencing on the effective date of written notification by Lessee to Lessor of Lessee's exercise of the Option (the "Term Commencement Date").

(b) Lessee will have the option to extend the term of this Agreement for four (4) successive terms of five (5) years each (each, a "Renewal Term"). Each Renewal Term will commence automatically, unless Lessee delivers notice to Lessor, not less than thirty (30) days prior to the end of the then-current Term, of Lessee's intent not to renew. For purposes of this Agreement, "Term" includes the Initial Term and any applicable Renewal Term(s).

(c) Should Lessee or any assignee, sublessee or licensee of Lessee hold over the Leased Premises or any part thereof after the expiration of this Agreement, such holdover shall constitute and be construed as a tenancy from month-to-month only, but otherwise upon the same terms and conditions.

6. CONDITIONAL LEASE.

The lands subject to this Lease are municipal entitlement lands. The Borough currently has management authority of the lands subject to this Lease but anticipates that the State of Alaska will complete its processes and convey fee title within the next 5 years. This Lease is issued on a conditional basis and shall be cancelled in whole or in part in the event the Borough is denied title to said lands. In such event, Lessor shall notify Lessee in writing as soon as reasonably possible. However, the Borough shall in no way be liable for any damage that may be done to the land by the Lessee or liable for any claim of any third party, or to any claim that may arise from ownership. In the event the Borough does receive title to the land under lease, the conditional lease shall have the same standing, force and effect as non-conditional leases issued under the provisions of KPB 17.10.

7. TERMINATION.

This Agreement may be terminated, without penalty or further liability, as follows:

(a) by Lessee upon written notice to Lessor if Lessee is unable to obtain, or maintain any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now or hereafter intended by Lessee; or if Lessee determines, in its sole discretion, that the cost of or delay in obtaining or retaining the same is commercially unreasonable;

(b) by Lessee, upon written notice to Lessor if Lessee determines, in its sole discretion, due to the

title reports or survey results, that the condition of the Leased Premises is unsatisfactory for its intended uses;

(c) by Lessee upon written notice to Lessor for any reason or no reason at any time prior to commencement of construction by Lessee; or

(d) by Lessee upon sixty (60) days' prior written notice to Lessor for any reason or no reason so long as Lessee pays Lessor a termination fee equal to six (6) months' Rent at the then-current rate, and subject to removal requirements contained within Section 13. No such termination fee will be payable on account of the termination of this Agreement by Lessee under any termination provision contained in any other Section of this Agreement.

8. RENT. Beginning on the first day of the month following the date that Lessee exercises the Option (the "Rent Commencement Date"), Lessee shall pay to Lessor a monthly rent payment of One Thousand and No/100 Dollars (\$1,000.00) (the "Rent") at the address set forth above on or before the fifth (5th) day of each calendar month in which Rent is due, in advance. Rent will be prorated for any partial month. On each anniversary of the Term Commencement Date, Rent shall adjust annually by Two percent (2%) over the prior year's Rent amount.

9. TAXES. Lessee shall pay any real or personal property taxes assessed on, or any portion of such taxes attributable to, the Communication Facilities located on the Leased Premises, including any taxable private leasehold interests.

10. USE. The Leased Premises are being leased for the purpose of erecting, installing, operating and maintaining radio or communications towers, transmitting and receiving equipment, antennas, dishes, mounting structures, equipment shelters and other supporting structures, and related equipment (collectively, the "**Communication Facilities**"). Lessee may, subject to the foregoing, make any improvement, alteration or modification to the Leased Premises as are deemed appropriate by Lessee for the permitted use herein. Lessee will have the right to clear the Leased Premises of any trees, vegetation, or undergrowth which interferes with Lessee's use of the Leased Premises for the intended purposes. Subject to Section 16 below, Lessee will have the exclusive right to install and operate upon the Leased Premises communications towers, buildings, equipment, antennas, dishes, fencing, and other accessories related thereto, and to alter, supplement, and/or modify same as may be necessary.

11. SECURITY AND BUFFER LANDSCAPING.

(a) **Fence & Site Security.** Notwithstanding Section 4 above, the Lessee will install a locked, sight-obscuring fence at least six feet (6') in height around the perimeter of the Leased Premises to protect against unauthorized access to the Leased Premises. The fence must be of a color that blends in with the surrounding landscape (i.e. brown, green or similar color). Lessee may also elect, at its expense, to construct such other enclosures and/or fences as Lessee reasonably determines to be necessary to secure its improvements, including the tower(s), building(s), guy anchors, and related improvements situated upon the Leased Premises. Lessee may also undertake any other appropriate means to restrict access to its communications towers, buildings, applicable guy anchors, applicable guy wires, and related improvements, including, without limitation, posting signs for security purposes.

(b) **Buffer Landscaping.** To blend with the surrounding use of the Property as a trail system and outdoor space, the Lessee will only clear Leased Premises to the extent necessary for its Communication Facilities. Within thirty (30) days of completing fence installation around the Leased Premises, the Lessee will install a landscaping bed with a width of 10 feet outside of the fenced-in area of the Leased Premises, as

shown in Exhibit 2, excluding the access drive, to ensure a vegetative buffer exists between the leased area and the trail system and outdoor space. Trees must be planted within the landscaping bed at intervals no greater than 15 feet on center. Evergreen trees must be a minimum of 6 feet in height at time of planting, and deciduous trees must have a minimum caliper of one and one-half-inch. No more than 50 percent of planted trees may be deciduous. At least one shrub with a minimum height of 18 inches at planting will be planted for every 100 square feet of landscaping bed. Existing native trees and shrubs may be used to meet buffer landscaping requirements.

(c) **Performance Bond; Two-Year Replacement Period.** Lessee shall provide a performance bond either in the form of cash or through a corporate surety qualified to do business in the state in the amount of Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) prior to any exercise of the Option by Lessor. The bond may be used for the purpose of replacement of any dead trees or bushes within a period of two years after initial installation and any unused portion of the security will be released to the Lessee following the expiration of the two-year replacement period. Following the expiration of the two-year replacement period, Lessor shall be solely responsible for replacement of dead trees or bushes within the landscaping buffer.

12. ACCESS, MAINTENANCE, AND UTILITIES.

(a) **Access.** During the Term, Lessee, and its guests, agents, customers, lessees, sublessees and assigns will have the unrestricted, exclusive right to use, and will have free and unfettered access to, the Leased Premises seven (7) days a week, twenty-four (24) hours a day. Lessor for itself, its successors and assigns, hereby grants and conveys unto Lessee, its customers, employees, agents, invitees, sublessees, sublicensees, successors and assigns a nonexclusive easement to the extent depicted on Exhibit 2 (a) for ingress and egress, and (b) for the construction, installation, operation and maintenance of overhead and underground electric and other utility facilities (including fiber, backhaul, wires, poles, guys, cables, conduits and appurtenant equipment), with the right to reconstruct, improve, add to, enlarge, change and remove such facilities, over, across and through any easement for the benefit of and access to the Leased Premises, subject to the terms and conditions herein set forth. Lessor agrees to cooperate with Lessee's efforts to obtain such utilities and services. If there are utilities already existing on the Leased Premises which serve the Leased Premises, Lessee may utilize such utilities and services. Upon Lessee's request, Lessor will execute and deliver to Lessee requisite recordable documents evidencing the easements contemplated hereunder within fifteen (15) days of Lessee's request.

(b) **Maintenance.** Lessee will keep and maintain the Leased Premises in good condition.

(c) **Utilities.** The Lessee is solely responsible for installing separate meters for utility use and payment, as applicable, and shall not connect to any Lessor-owned electrical, communication, or other utility without Lessor's prior written approval, which shall not be unreasonably withheld, conditioned, or delayed.

13. EQUIPMENT, FIXTURES AND REMOVAL. The Communication Facilities will at all times be the personal property of Lessee and/or its sublessees and licensees, as applicable. Lessee or its customers shall have the right to erect, install, maintain, and operate on the Leased Premises such equipment, structures, fixtures, signs, and personal property as Lessee may deem necessary or appropriate, and such property, including the equipment, structures, fixtures, signs, and personal property currently on the Leased Premises, will not be deemed to be part of the Leased Premises, but will remain the property of Lessee or its customers. Unless otherwise agreed to in writing by the parties, within ninety (90) days after the expiration or earlier termination of this Agreement (the "Removal Period"), Lessee must remove its improvements and restore the Leased Premises to grade in a natural condition free of contamination, reasonable wear and tear excepted,

which shall include removal of all concrete and other foundation materials to a depth of five (5) feet below grade, and perform all obligations under this Agreement during the Removal Period, including without limitation, the payment of Rent on a prorated per diem basis, at the rate in effect upon the expiration or termination of this Agreement. Any property not so removed shall be deemed abandoned and may be removed and disposed of by Lessor in such manner as Lessor will determine, without any obligation on the part of Lessor to account to Lessee for any proceeds therefrom. Time is of the essence.

14. ASSIGNMENT. Lessee may assign this Agreement to any person or entity, at any time with prior written consent of Lessor which will not be unreasonably withheld or delayed so long as the Assignee agrees to the assignment and novation and complies with all terms of this Agreement. Notwithstanding the foregoing, upon thirty (30) days' written notice to Lessor, Lessee may assign this Agreement or its rights or obligations to (a) any person or entity controlling, controlled by, or under common control with Lessee, or (b) in connection with the sale or other transfer of substantially all of Lessee's assets in the FCC market area where the Leased Premises is located.

15. SUBLEASING AND REVENUE SHARE.

(a) **Subleasing.** Lessee will have the exclusive right to sublease or grant licenses to use the improvements or any other towers, structures, equipment, or ground space on the Leased Premises, provided that Lessee sends Lessor written notice within (15) days of such sublease or grant licenses.

(b) **Revenue Share.** In addition to and separate from the Rent, Lessee shall pay to the Lessor thirty-three percent (33%) of rents actually collected by Lessee from any applicable sublessees excluding the initial anchor sublessee of Lessee that shall not be subject to the Revenue Share, as defined herein, and exclusive of non-recurring fees (e.g. structural analysis fees, mount analysis fees, and capital expenditures) and reimbursements (such as for taxes and utilities) (the "Revenue Share"). The Revenue Share shall be paid to Lessor with the Rent in the month immediately following receipt by Lessee from the applicable sublessee. Upon reasonable written request, Lessee will provide Lessor redacted copies of any applicable Sublease (except that master lease agreements such as Verizon, AT&T, Dish, or T-Mobile or other national broadband carriers may be redacted to conceal confidential information, trade secrets or information subject to a non-disclosure agreement so long as the terms of the such agreement applicable to the subleasing or licensing of space at the Leased Premises, including amounts payable, are not redacted) for the purpose of confirming relevant financial terms and information. For the purposes of this Agreement: (i) "Sublease" is defined as any arrangement in which the Lessee or any sublessee leases to another party or entity, any portion of the Leased Premises described in this Agreement or improvements thereon, including but not limited to a sublease for an antenna, microwave dish, or wireless communications equipment; and (ii) "Sublessee" means any sublessee or licensee of Lessee, that: (A) has entered into a sublease or license with Lessee for the use of the improvements after the Effective Date; and (B) is not paying any rent or fees directly to Lessor for the use of ground space related to the use of Lessee's improvements.

(c) **Authorized Contact of Sublessee.** Lessee shall provide the Lessor the name, telephone number, and email address of the authorized contact for the sublessee who is responsible for sublessee's day-to-day operations or activities on the Leased Premises.

16. CO-LOCATE RIGHTS RESERVED BY LESSOR.

(a) Lessor reserves the right to install emergency response communication equipment on Lessee's tower. At no rent due from Lessor to Lessee nor any reduction in the Rent, Lessor shall be allowed, at Lessor's sole expense, to attach its emergency response communication equipment to Lessee's

telecommunications tower provided Lessor first obtains Lessee's written consent, with such consent not to be unreasonably withheld. Pursuant to the foregoing, Lessee hereby agrees to reserve on behalf of Lessor a twenty foot (20') vertical envelope at a height of fifty feet (50') to seventy feet (70') in the event Lessee builds a tower on the Leased Premises ("**Lessor's Tower Space**"). Any equipment installed on Lessor's Tower Space shall not exceed seven thousand and five hundred (7,500) square inches of wind loading capacity and the transmission from such equipment shall not result in any impairment or diminution in the quality of Lessee's service. Further, said approval shall be given only after Lessee has reviewed and approved Lessor's engineering plans for said antenna attachments. Approval shall not be unreasonably withheld. Upon written approval by Lessee, said attachments shall be installed, at Lessor sole expense, by qualified licensed and insured contractors and in accordance with Lessee's directives for the method of installment. In addition to Lessor being responsible for its own installation, Lessor shall also be responsible for its own utilities and operations and agrees that any ground space required for Lessor's Tower Space shall be outside the Leased Premises. Lessor acknowledges and agrees that Lessee reserves the right to relocate Lessor's antennas at any time(s) to accommodate modifications required for Lessee's future system requirements, provided such relocation shall provide equivalent quality of service after such relocation.

(b) Any reservation of right granted to Lessor pursuant to this Section is solely limited to Lessor's use only of the twenty foot (20') vertical envelope described above and Lessor acknowledges and agrees that Lessor does not have the right to lease, license, sublease, sublicense, etc. such space on the tower on the Leased Premises to any other party including, without limitation, any wireless communication entity.

17. COVENANTS, WARRANTIES AND REPRESENTATIONS.

(a) Lessor represents and warrants that Lessor is the owner in fee simple of the Property, free and clear of all liens and encumbrances except as to those which may have been disclosed to Lessee in writing prior to the execution hereof, and that Lessor alone has full right to lease the Leased Premises for the Term.

(b) Lessor shall not do or knowingly permit anything during the Term that will unreasonably interfere with or negate any Lessee's quiet enjoyment and use of the Leased Premises or cause Lessee's use of the Leased Premises to be in nonconformance with applicable local, state, or federal laws. Lessor will cooperate with Lessee in any effort by Lessee to obtain certificates, permits, licenses and other approvals that may be required by any governmental authorities. Lessor agrees to promptly execute any necessary applications, consents or other documents as may be reasonably necessary for Lessee to apply for and obtain the proper zoning approvals required to use and maintain the Leased Premises and the Communication Facilities.

(c) To the best of Lessor's knowledge, Lessor has complied and will comply with all laws with respect to the Property. No asbestos-containing thermal insulation or products containing PCB, formaldehyde, chlordane, or heptachlor or other hazardous materials have been placed on or in the Property by Lessor or, to the knowledge of Lessor, by any prior owner or user of the Property. To the knowledge of Lessor, there has been no release of or contamination by hazardous materials on the Property.

(d) Subject to Section 11 above, Lessee will have access to all utilities required for the operation of Lessee's improvements on the Leased Premises that are existing on the Property.

(e) Except for the sublessees and licensees of Lessee, there currently exist no licenses, sublicenses, or other agreements, written or oral, granting to any party or parties the right of use or occupancy of any portion of the Leased Premises; there are no outstanding options or rights of first refusal to purchase the Property or any portion thereof or interest therein, or any equity or interest in Lessor if Lessor is an entity; and there are no parties (other than Lessor) in possession of the Leased Premises except as to those that may have been

disclosed to Lessee in writing prior to the execution hereof.

(f) Each party hereto warrants and represents that it has the necessary power and authority to enter into and perform its respective obligations under this Agreement.

18. WAIVERS.

(a) Lessor hereby waives any and all lien rights it may have, statutory or otherwise, in and to the Communication Facilities or any portion thereof, regardless of whether or not such is deemed real or personal property under applicable laws. Lessor will not assert any claim whatsoever against Lessee for loss of anticipatory profits or any other indirect, special, incidental or consequential damages incurred by Lessor as a result of the construction, maintenance, operation or use of the Leased Premises by Lessee.

(b) EACH PARTY HERETO WAIVES ANY AND ALL CLAIMS AGAINST THE OTHER FOR ANY LOSS, COST, DAMAGE, EXPENSE, INJURY OR OTHER LIABILITY WHICH IS IN THE NATURE OF INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES WHICH ARE SUFFERED OR INCURRED AS THE RESULT OF, ARISE OUT OF, OR ARE IN ANY WAY CONNECTED TO THE PERFORMANCE OF THE OBLIGATIONS UNDER THIS AGREEMENT.

19. INSURANCE. Lessee and any sublessees or assignees shall carry and maintain for the duration of the Term, including renewals and the Removal Period, insurance against claims for injuries to persons or property which may arise from or in connection with the Lessee's operation, use, or occupancy of the Leased Premises. The Lessee, including any sublessees or assignees, will bear the cost of such insurance. Coverage and policy limits will be as follows:

(a) Commercial General Liability (CGL): CGL insurance on ISO Form CG 00 01 (or its equivalent) on an "occurrence" basis, including property damage, bodily injury and personal injury with limits of \$1,000,000 per occurrence. If a general aggregate limit applies, the general aggregate limit shall be twice the required occurrence limit.

(b) Umbrella / Excess policy: With limits of \$2,000,000 per occurrence and in the aggregate. Lessee may use any combination of primary and excess insurance to meet the total limits required.

(c) Worker's Compensation Insurance: Insurance as required by the State of Alaska, with Statutory Limits, and Employer's liability Insurance limits of \$500,000 per accident for bodily injury or disease and per disease policy limit.

(d) Property Insurance: Insuring against all risks of loss to any Lessee improvements at full replacement cost with no insurance penalty provision. Lessee shall have the right to self-insure such Property Insurance.

(e) Automobile Liability: Commercial automobile liability coverage for all owned, hired, and non-owned autos with limits of \$1,000,000 per accident for bodily injury and property damage.

20. OTHER INSURANCE PROVISIONS.

(a) The insurance coverage provided for herein may be maintained pursuant to master policies of insurance covering other communication facilities of Lessee and its corporate affiliates. All insurance policies

required to be maintained by Lessee hereunder must be with responsible insurance companies, eligible to do business in the state of Alaska. Lessee shall provide at least thirty (30) days' prior written notice to Lessor of cancellation or nonrenewal of any required insurance that is not replaced. Lessee must evidence such insurance coverage by delivering to Lessor, if requested, a copy of a certificate of insurance of such policies issued by the insurance companies underwriting such risks or Lessee's form of self-insurance.

(b) The Lessor shall be included as additional insured with respect to liability caused, in whole or in part, by Lessee's operations under this Agreement.

(c) The Lessee's insurance coverage, except for workers' compensation/employer's liability insurance and self-insured property coverage, shall be primary insurance with respect to the Lessor and the Lessee's use and occupation of the Leased Premises. Any insurance maintained by the Lessor will be excess of the Lessee's insurance and will not contribute to it.

(d) The Property Insurance or self-insurance must include the Lessor as Joint Loss Payee as its interest may appear, and the provision of Joint Loss Payee status satisfies any requirement for waiver of subrogation for Lessee's self-insured property coverage.

(e) Notwithstanding the foregoing, Lessee may self-insure any required coverage under the same terms as required by this Agreement.

21. WAIVER OF SUBROGATION. To the extent allowed by law, Lessee hereby grants to Lessor a waiver of any right of subrogation which any insurer of said Lessee may acquire against the Lessor by virtue of the payment of any loss under such insurance. This provision applies regardless of whether or not the Lessor has received a waiver of subrogation endorsement from the insurer.

22. NON-EXCLUSIVITY. Lessor acknowledges and agrees that, except as may be disclosed to Lessee in writing prior to the execution hereof, there are no prior existing rights, uses, or authorization granted to third parties or retained by Lessor to locate improvements below grade or in proximity to the Leased Premises. Upon at least sixty (60) days prior written notice to Lessee, Lessor reserves the right to grant further or additional rights or authorization to locate improvements below grade or in proximity to the Leased Premises to the extent such rights or authorizations do not unreasonably interfere with Lessee's equipment or operations.

23. LESSEE LIABILITIES. In addition to other liabilities under this Agreement, the Lessee has the following liabilities and agrees:

(a) The Lessee assumes all risk of loss, damage or destruction to Lessee's improvements on the Leased Premises.

(b) The Lessee will comply with all applicable federal, state, and local laws or regulations, including relevant environmental laws, as well as public health and safety laws and other laws relating to the siting, permitting, construction, operation and maintenance of any facility, improvement or equipment on the Leased Premises.

(c) The Lessor has no duty, either before or during the lease term, to inspect the Leased Premises or warn of hazards and if the Lessor inspects the Leased premises, it shall incur no additional duty nor any liability for hazards not identified or discovered through such inspections. This Section shall survive the termination or revocation of this Agreement, regardless of cause.

(d) The Lessee has an affirmative duty to protect from damage the Leased Premises and interests of the Lessor related to this Agreement.

23. INDEMNIFICATION.

(a) Lessee agrees to defend, indemnify, and hold harmless Lessor, its employees, public officials, and volunteers, with respect to any action claim or lawsuit arising out of (1) a breach of this Agreement or (2) the use and occupancy of the Leased Premises or the Property by the Lessee. This agreement to defend, indemnify, and hold harmless includes all losses and liabilities without limitation as to any damages resulting from judgment, or verdict, and includes the award of any reasonable attorney's fees actually incurred even if in excess of Alaska Civil Rule 82. The obligations of Lessee arise immediately upon notice to the Lessor of any action, claim, or lawsuit. Lessor will notify Lessee in a timely manner of the need for indemnification but such notice is not a condition precedent to Lessee's obligation and may be waived where the Lessee has actual notice. This agreement applies and is in full force and effect whenever and wherever any action, claim or lawsuit is initiated, filed, or otherwise brought against Lessor relating to the Lessee's use and occupancy of the Leased Premises or the Property. Notwithstanding the foregoing, Lessee's duty to indemnify, defend, and hold harmless Lessor as set forth above shall not apply to the extent a claim arises from the negligence or willful misconduct of Lessor, its employees, public officials, and volunteers.

(b) To the extent allowed by law and subject to a specific appropriation by the Kenai Peninsula Borough Assembly for this purpose, Lessor agrees to defend, indemnify, and hold harmless Lessee, its employees, affiliates, officers, directors, successors and assigns, with respect to any action claim or lawsuit arising out of (1) a breach of this Agreement or (2) the use and occupancy of the Leased Premises or the Property by the Lessor. This agreement to defend, indemnify, and hold harmless includes all losses and liabilities without limitation as to any damages resulting from judgment, or verdict, and includes the award of any attorney's fees even if in excess of Alaska Civil Rule 82. The obligations of Lessor arise immediately upon notice to the Lessee of any action, claim, or lawsuit. Lessee will notify Lessor in a timely manner of the need for indemnification but such notice is not a condition precedent to Lessor's obligation and may be waived where the Lessor has actual notice. This agreement applies and is in full force and effect whenever and wherever any action, claim or lawsuit is initiated, filed, or otherwise brought against Lessee relating to the Lessor's use and occupancy of the Leased Premises or the Property. Notwithstanding the foregoing, Lessor's duty to indemnify, defend, and hold harmless Lessee as set forth above shall not apply to the extent a claim arises from the negligence or willful misconduct of Lessee, its employees, its employees, affiliates, officers, directors, successors and assigns. Lessee further acknowledges the following: (1) Lessor currently has no appropriation currently available to it to defend and indemnity Lessee under this provision; (2) the enactment of any such appropriation remains in the sole discretion of the Kenai Peninsula Borough Assembly; and (3) the Kenai Peninsula Borough Assembly's failure to make such an appropriation creates no further obligation or duty on behalf of Lessor.

24. INSPECTION. The Lessor reserves the right to enter upon and inspect the Leased Premises at any time to assure compliance with the conditions of this Lease. Except in case of emergency, Lessor shall provide Lessee with at least forty-eight (48) hours' prior written notice of Lessor's intention to enter upon and inspect the Leased Premises. Lessee reserves the right to have a representative present at all times during Lessor's inspection.

25. FORCE MAJEURE. The time for performance by Lessor or Lessee of any term, provision, or covenant of this Agreement will be deemed extended by time lost due to delays resulting from acts of God, strikes, civil riots, floods, material or labor restrictions by governmental authority, and any other cause not within the control of Lessor or Lessee, as the case may be.

26. DEFAULT. The failure of Lessee or Lessor to perform any of the covenants of this Agreement will constitute a default. The non-defaulting party must give the other written notice of such default, and the defaulting party must cure such default within thirty (30) days after receipt of such notice. In the event any such default cannot reasonably be cured within such thirty (30) day period, the defaulting party must provide prompt notice of inability to cure and provide a plan to cure the default within a time frame provided. The time for curing a default will be extended for such period of time as may be necessary and reasonable; however, in no event will this extension of time to cure be in excess of ninety (90) days, unless agreed upon in writing by the non-defaulting party.

27. REMEDIES. Should the defaulting party fail to cure a default under this Agreement, the other party will have all remedies available either at law or in equity, including the right to terminate this Agreement.

28. LESSEE MORTGAGES.

(a) Lessor consents to the granting by Lessee of a lien and security interest (each, a “**Lessee Mortgage**”) in Lessee’s interest in this Agreement and all of Lessee’s personal property and fixtures attached to the real property described herein to one or more lenders (any such lender, and any successor, assign, designee or nominee of such lender, hereinafter a “**Lender**”) only to the extent and amount necessary to maintain improvements on the Leased Premises. The Lessee may not encumber the leasehold interest or the Leased Premises to finance projects or improvements outside of the Leased Premises. Lessor agrees to recognize Lender as Lessee hereunder upon any such exercise by Lender of its rights of foreclosure. Any such encumbrance shall be subordinate to Lessor’s rights and interest in the Leased Premises and the Property. Any such encumbrance shall be limited to the Lessee’s interest in the Leased Premises. It is a material breach of this Agreement for Lessee to attempt to encumber any interest in Lessor’s title to or interest in the Leased Premises or the Property.

(b) Lessor acknowledges that nothing contained herein shall be deemed or construed to obligate Lender to take any action hereunder, or to perform or discharge any obligation, duty or liability of Lessee under this Agreement. No Lender shall become liable under the provisions of this Agreement unless and until such time as the Lender assumes ownership of the leasehold estate created hereby and agrees to comply with the terms and conditions of this Agreement or any extensions and modifications thereof.

29. MISCELLANEOUS.

(a) **Survival.** If any term of this Agreement is found to be void or invalid, such invalidity will not affect the remaining terms of this Agreement, which will continue in full force and effect.

(b) **Non-waiver.** Failure of party to insist on strict performance of any of the conditions or provisions of this Agreement, or failure to exercise any of a party’s rights hereunder, will not waive such rights.

(c) **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Alaska.

(d) **Bind and Benefit.** This Agreement is binding upon and will inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

(e) **Memorandum.** A short-form Memorandum of Lease may be recorded at Lessor or Lessee’s option in the form as depicted in Exhibit 3, attached hereto. Lessor will promptly execute any Memorandum

of Lease or Memorandum of Amendment to Lease, or corrective amendments thereto, upon written request of Lessee.

(f) **W-9.** As a condition precedent to payment, the Lessor agrees to provide the Lessee with a complete IRS Form W-9, or its equivalent, upon execution of this Agreement.

(g) **Counterparts.** This Agreement may be executed in counterpart, each of which when so executed and delivered shall be considered an original and all of which when taken together will constitute one and the same instrument.

(h) **Entire Agreement.** This Agreement and exhibits, appendices or incorporated attachments hereto, constitute the entire agreement and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement.

[SIGNATURES BEGIN ON NEXT PAGE]

PART III. EXECUTION

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date (date last signed by a party hereto).

LESSOR: Kenai Peninsula Borough
an Alaska municipal corporation

LESSEE: Vertical Bridge Development, LLC
a Delaware limited liability company

By: _____
Charlie Pierce, Borough Mayor

By: _____

Date: _____

Print Name: _____

ATTEST:

Its: _____

Date: _____

Johni Blankenship, Borough Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

Sean Kelley, Deputy Borough Attorney

APPENDIX A

LEASE PROVISIONS REQUIRED BY KPB 17.10

(1) **Accounts Current.** The Lessee shall not be delinquent in the payment of any tax, debt or obligation owed to the KPB prior to execution of the Agreement.

(2) **Assignment.** Lessee may assign the lands upon which he has an agreement only if approved by the mayor or land management officer when applicable. Applications for assignment shall be made in writing on a form provided by the land management division. The assignment shall be approved if it is found that all interests of the borough are fully protected.

(3) **Breach of Agreement.** In the event of a default in the performance or observance of any of the Agreement terms or conditions, and such default continues thirty days after written notice of the default, the Borough may cancel Agreement or take any legal action for damages or recovery of the property. No improvements may be removed during the time which the contract is in default.

(4) **Cancellation.** This Agreement may be cancelled at any time upon mutual written agreement of the parties.

(5) **Entry or Re-entry.** In the event the Agreement is terminated, canceled or forfeited, or in the event of abandonment of Leased Premises by Lessee during the Term, the KPB its agents, or representatives, may immediately enter or re-enter and resume possession of the Leased Premise. Entry or re-entry by KPB shall not be deemed an acceptance of surrender of the Agreement.

(6) **Fire Protection.** The Lessee shall take all reasonable precautions to prevent, and take all reasonable actions to suppress destructive and uncontrolled grass, brush, and forest fires on the Property under Agreement, and comply with all laws, regulations and rules promulgated and enforced by the protection agency responsible for forest protection within the area wherein the Property is located.

(7) **Hazardous Waste.** The storage, handling and disposal of hazardous waste shall not be allowed on the Leased Premises.

(8) **Modification.** The Agreement may not be modified orally or in any manner other than by an agreement in writing signed by all parties or their respective successors in interest.

(9) **Notice.** Any notice or demand, which under the terms of the Agreement or under any statute must be given or made by the parties thereto, shall be in writing, and be given or made by registered or certified mail, addressed to the other party at the address shown on the contract. However, either party may designate in writing such other address to which such notice of demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed received when deposited in a U.S. general or branch post office by the addressor.

(10) **Notice of Default.** Notice of the default will be in writing as provided in paragraph 26 above.

(11) **Removal or Reversion of Improvements Upon Cancellation of Purchase Agreement or Lease.**

(a) Improvements on Leased Premises owned by Lessee shall, within thirty calendar days after the termination of the agreement, be removed by him; provided, such removal will not cause injury or damage to the land; and further provided, that the mayor or land management officer when applicable may extend the time for removing such improvements in cases where hardship is proven. The Lessee may, with the consent of the mayor or land management officer when applicable, dispose of its improvements to the Sublessee or Assignee, if applicable.

(b) If any improvements and/or chattels having an appraised value in excess of ten thousand dollars, as determined by a qualified appraiser, are not removed within the time allowed, such improvements and/or chattels shall, upon due notice to the Lessee be sold at public sale under the direction of the mayor and in accordance with the provisions of KPB Chapter 5. The proceeds of the sale shall inure to the former Lessee who placed such improvements and/or chattels on the lands, or his successors in interest, after paying to the Borough all moneys due and owing and expenses incurred in making such a sale. In case there are no other bidders at any such sale, the mayor is authorized to bid, in the name of the Borough, on such improvements and/or chattels. The bid money shall be taken from the fund to which said lands belong, and the fund shall receive all moneys or other value subsequently derived from the sale of leasing of such improvements and/or chattels. The Borough shall acquire all the rights, both legal and equitable, that any other purchaser could acquire by reason of the purchase.

(c) If any improvements and/or chattels having an appraised value of ten thousand dollars or less, as determined by the mayor, are not removed within the time allowed, such improvements and/or chattels shall revert and absolute title shall vest in the Borough. Upon request, the Lessee shall convey said improvements and/or chattels by appropriate instrument to the KPB.

(12) **Rental for Improvements or Chattels not Removed.** Any improvements and/or chattels belonging to the Lessee or placed on the Property and remaining upon the premises after the termination of the contract shall entitle the KPB to charge a reasonable rent therefor.

(13) **Re-rent.** In the event that the Agreement should be terminated, canceled, forfeited or abandoned, the KPB may offer said lands for lease or other appropriate disposal pursuant to the provisions of this chapter or other applicable regulations.

(14) **Responsibility for Location.** It shall be the responsibility of the Lessee to properly locate improvements on the Leased Premises.

(15) **Rights of Mortgage or Lienholder.** In the event of cancellation or forfeiture the Agreement for cause, the holder of a properly recorded mortgage, conditional assignment, or collateral assignment will have the option to acquire the lease for the unexpired term thereof, subject to the same terms and conditions as in the Agreement. Any party acquiring the lease agreement must meet the same requirements as the Lessee.

(16) **Sanitation.** The Lessee shall comply with all regulations or ordinances which a proper public authority in its discretion shall promulgate for the promotion of sanitation. The Leased Premises under the Agreement shall be kept in a clean and sanitary condition and every effort shall be made to prevent any pollution of the waters and lands.

(17) **Shore Land Public Access Easement.** As established by AS 38.05, Borough lands sold or leased may be subject to a minimum 50 foot public access easement landward from the ordinary high water mark or mean high water mark.

(18) **Violation.** Violation of any provision KPB 17.10 or of the terms of the Agreement of may expose the Lessee to appropriate legal action including forfeiture of purchase interest, termination, or cancellation of its interest in accordance with state law.

(19) **Written Waiver.** The receipt of payment by the Borough, regardless of knowledge of any breach of the purchase agreement by the purchaser, lessee or permittee, or of any default on the part of the purchaser, lessee or permittee in observance or performance of any of the conditions or covenants of the agreement, shall not be deemed to be a waiver of any provision of the agreement. Failure of the Borough to enforce any covenant or provision therein contained shall not discharge or invalidate such covenants or provision or affect the right of the Borough to enforce the same in the event of any subsequent breach or default. The receipt by the Borough of any payment of any other sum of money after notice of termination or after the termination of the agreement for any reason, shall not reinstate, continue or extend the agreement, nor shall it destroy or in any manner impair the efficacy of any such notice of termination unless the sole reason for the notice was nonpayment of money due and payment fully satisfies the breach.

APPENDIX B

SITE SPECIFIC LEASE PROVISIONS

CO-LOCATE RIGHTS RESERVED BY KPB: In addition to paragraph 16 of the Communications Site Lease Agreement (the “Agreement”), the KPB reserves twenty (20) vertical feet of tower space. This reservation shall start from fifty (50) feet from the bottom of the tower structure, unless other space is mutually agreed to by the parties (the “Reserved Space”). To the extent this appendix conflicts with paragraph 16 of the Agreement, the terms of this appendix shall control.

The KPB may sublease the Reserved Space to other government agencies or organizations for the purpose of facilitating communications for first responders, disaster management, general government operations, or other public safety uses. The sublessee will provide an inventory of equipment and proposed vertical location to the Lessee for the purposes of ensuring that no interference is likely for the proposed installation. KPB and any sublessee will be responsible for frequency coordination and adherence to all applicable regulations to prevent interference.

KPB AND SUBLESSEE USAGE: The KPB and any sublessee (the “KPB”) may use the Reserved Space solely for the purposes of providing public safety communications. The KPB may choose to install equipment to provide general government communications, monitoring equipment, and other similar uses. In general, equipment may include, but is not limited, to VHF Radio Frequency (RF) transceivers, RF repeaters, licensed or unlicensed point-to-point antennas, microwave backhaul, surveillance cameras and other monitoring devices, and associated items that may support conventional or trunked radio systems. All equipment or facilities placed within the Reserved Space or on the Leased Premises shall remain the personal property of the KPB or its sublessee.

INTERFERENCE WITH LESSEE EQUIPMENT: In the event that proposed or installed equipment from the KPB or sublessee interferes with equipment of the Lessee, all parties will work to explore technical solutions or changes to mitigate such interference. If mitigations are not available, the Lessee has the right to deny access to the tower for such equipment. All other provisions of paragraph 165 related to interference remain in effect.

ACCESS: The KPB may establish outdoor equipment cabinets or full equipment shelters on or within the Leased Premises, provided that such facilities do not interfere with similar facilities of the Lessee. Access will only be permitted to the Lessee upon separate mutual agreement. Such premises may have restrictions due to State or Federal policy and regulations, in such event, these regulations will prevail over the lease terms.

RENT: The Reserved Space is free of charge. The KPB is not responsible for any additional or direct rent payment to Lessee for the use of the tower or associated premises. The KPB is responsible for the costs of establishing, maintaining, and removing equipment during the life of this Agreement, as well as for any utilities required to maintain KPB equipment.

EXHIBIT 1

DESCRIPTION OF PROPERTY AND LEASED PREMISES

Page 1 of 1

The Property is legally described as follows:

Govt Lot 1, Section 5, Township 6 North, Range 1 West, Seward Meridian, Seward Recording District, Third Judicial District, State of Alaska, EXCEPTING THEREFROM ASLS 97-32, according to Plat No. 98-3 and also EXCEPTING THEREFROM, ASLS 2000-01, according to Plat No. 2001-10.

The Leased Premises are described as follows:

COMMENCING at a 2 inch aluminum cap as shown on said record of survey, located on the north side of the existing gravel access road and having NAD83, Zone 4, State Plane Coordinates of Northing: 2,427,217.94 feet, Easting: 1,730,462.97 feet; **THENCE** N47°53'40"W a distance of 291.19 feet to the **TRUE POINT OF BEGINNING**; **THENCE** from said True Point of Beginning, S68°08'19"E a distance of 50.00 feet; **THENCE** S21°51'41"W a distance of 50.00 feet; **THENCE** N68°08'19"W a distance of 25.00 feet; **THENCE** N23°08'19"W a distance of 35.36 feet; **THENCE** along said north easement line N21°51'41"E a distance of 22.72 feet to the **True Point of Beginning**. Containing 2,187 square feet, more or less.

The BASIS OF BEARINGS for this description is the centerline line of Seward Highway as measured between two found 2 inch aluminum caps and bearing N21°51'41"E.

Access and Utility Easement(s):

Being a strip of land 15.00 feet in width lying 7.50 feet on each side of the following described centerline located within Government Lot 1, Section 5, Township 6 North, Range 1 West, Seward Meridian, AK located northwesterly of the Seward Highway, as shown on the Record of Survey filed as Plat No. 2017-6, recorded in the Seward Recording District, more particularly described as follows:

COMMENCING at a 2 inch aluminum cap as shown on said record of survey, located on the north side of the existing gravel access road and having NAD83, Zone 4, State Plane Coordinates of Northing: 2,427,217.94 feet, Easting: 1,730,462.97 feet; **THENCE** N48°29'57"E a distance of 49.21 feet to the **TRUE POINT OF BEGINNING**, said point being located on the westerly right-of-way line of the Seward Highway as shown on said record of survey; **THENCE** from said True Point of Beginning, N71°55'43"W A distance of 22.68 feet; **THENCE** N82°12'57"W a distance of 25.51 feet; **THENCE** N86°36'42"W a distance of 31.72 feet; **THENCE** N79°50'49"W a distance of 40.54 feet; **THENCE** N68°29'45"W a distance of 32.17 feet; **THENCE** N59°34'38"W a distance of 30.23 feet; **THENCE** N38°21'47"W a distance of 52.77 feet; **THENCE** N22°14'18"W a distance of 30.81 feet; **THENCE** N13°09'27"W a distance of 28.39 feet; **THENCE** N23°35'56"E a distance of 23.58 feet; **THENCE** N61°47'42"E a distance of 39.00 feet; **THENCE** N21°51'41"E a distance of 20.00 feet to the Point of Terminus, the side lines of said easement to be extended or shortened to meet at angle points and to terminate at said westerly right-of-way line and the westerly prolongation of the northerly line of the lease area. Containing 5,661 square feet, more or less.

The BASIS OF BEARINGS for this description is the centerline line of Seward Highway as measured between two found 2 inch aluminum caps and bearing N21°51'41"E.

Option and Communications Site Lease Agreement

Site Name: Canyon Creek
Site Number: US-AK-5250

EXHIBIT 3

Memorandum of Lease

(Attached)

(Above 2" Space for Recorder's Use Only)

Upon Recording, Return to:

Vertical Bridge Development, LLC
750 Park of Commerce Drive, Suite 200
Boca Raton, FL 33487
Attn: Daniel Marinberg

Grantor: Kenai Peninsula Borough
Grantee: Vertical Bridge Development, LLC
Legal Description: Attached as Exhibit 1
Tax Parcel ID #: 03525005
Site Number: US-AK-5250
Site Name: Canyon Creek
State: Alaska
Borough: Kenai Peninsula Borough
Recording District: Seward, Third Judicial

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("Memorandum") is entered into by and between **Kenai Peninsula Borough**, an Alaska municipal corporation, having a mailing address of 144 N. Binkley St., Soldotna, AK 99669 (the "**Lessor**"), and **Vertical Bridge Development, LLC**, a Delaware limited liability company, having a mailing address of 750 Park of Commerce Drive, Suite 200, Boca Raton, FL 33487 (the "**Lessee**").

1. Lessor and Lessee entered into a certain Option and Communications Site Lease Agreement (the "Agreement") on the _____ day of _____, 20_____ for the purpose of installing, operating and maintaining a communication facility and other improvements. All of the foregoing is set forth in the Agreement.
2. The initial lease term will be five (5) years commencing on the effective date of written notification by Lessee to Lessor of Lessee's exercise of the option, with four (4) successive automatic five (5) year options to renew.
3. The portion of the land being leased to Lessee (the "Leased Premises") and associated easements are described and depicted in **Exhibit 1** annexed hereto.
4. Lessee is entitled to sublease and/or license the Premises, including any communications tower located thereon.
5. Lessor and Lessee now desire to execute this Memorandum to provide constructive knowledge of Lessee's lease of the Leased Premises.

Option and Communications Site Lease Agreement

Site Name: Canyon Creek
Site Number: US-AK-5250

6. This Memorandum and Agreement are governed by the laws of the State of Alaska.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the day and year first above written.

LESSOR: Kenai Peninsula Borough
an Alaska municipal corporation

LESSEE: Vertical Bridge Development, LLC
a Delaware limited liability company

By: _____
Charlie Pierce, Borough Mayor

By: _____

Date: _____

Print Name: _____

Its: _____

ATTEST:

Date: _____

Johni Blankenship, Borough Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

Sean Kelley, Deputy Borough Attorney

EXHIBIT 1 TO MEMORANDUM OF LEASE

DESCRIPTION OF PROPERTY AND LEASED PREMISES

Page 1 of 2

The Property is legally described as follows:

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The Leased Premises are described and/or depicted as follows:

COMMENCING at a 2 inch aluminum cap as shown on said record of survey, located on the north side of the existing gravel access road and having NAD83, Zone 4, State Plane Coordinates of Northing: 2,427,217.94 feet , Easting: 1,730,462.97 feet; **THENCE** N47°53'40"W a distance of 291.19 feet to the **TRUE POINT OF BEGINNING**; **THENCE** from said True Point of Beginning, S68°08'19"E a distance of 50.00 feet; **THENCE** S21°51'41"W a distance of 50.00 feet; **THENCE** N68°08'19"W a distance of 25.00 feet; **THENCE** N23°08'19"W a distance of 35.36 feet; **THENCE** along said north easement line N21°51'41"E a distance of 22.72 feet to the **True Point of Beginning**. Containing 2,187 square feet, more or less.

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COMMENCING at a 2 inch aluminum cap as shown on said record of survey, located on the north side of the existing gravel access road and having NAD83, Zone 4, State Plane Coordinates of Northing: 2,427,217.94 feet, Easting: 1,730,462.97 feet; **THENCE** N48°29'57"E a distance of 49.21 feet to the **TRUE POINT OF BEGINNING**, said point being located on the westerly right-of-way line of the Seward Highway as shown on said record of survey; **THENCE** from said True Point of Beginning, N71°55'43"W A distance of 22.68 feet; **THENCE** N82°12'57"W a distance of 25.51 feet; **THENCE** N86°36'42"W a distance of 31.72 feet; **THENCE** N79°50'49"W a distance of 40.54 feet; **THENCE** N68°29'45"W a distance of 32.17 feet; **THENCE** N59°34'38"W a distance of 30.23 feet; **THENCE** N38°21'47"W a distance of 52.77 feet; **THENCE** N22°14'18"W a distance of 30.81 feet; **THENCE** N13°09'27"W a distance of 28.39 feet; **THENCE** N23°35'56"E a distance of 23.58 feet; **THENCE** N61°47'42"E a distance of 39.00 feet; **THENCE** N21°51'41"E a distance of 20.00 feet to the Point of Terminus, the side lines of said easement to be extended or shortened to meet at angle points and to terminate at said westerly right-of-way line and the westerly prolongation of the northerly line of the lease area. Containing 5,661 square feet, more or less.

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