



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Administration	Drew Nelson - City Administrator	January 4, 2022

ITEM

Facility Space License Agreement – Smiling J, LLC, DBA Hilltop Broadband

BACKGROUND

Harriet Alexander Field is owned and operated by a partnership between Chaffee County and the City of Salida. The airport is managed by a board made up of representatives of both the City and County, and the board makes operational recommendations to both the Board of County Commissioners and the City Council.

The Airport Advisory Board routinely recommends approval of certain leases to allow private parties to utilize facilities at the airport. The airport recently received a request from Smiling J, LLC, doing business as Hilltop Broadband, to allow for the installation of fixtures on the airport's emergency beacon tower for the purpose of providing telecommunications redundancy within Chaffee County. The equipment on the tower would be for the purpose of operating a telecommunication fixed wireless microwave internet and VoIP service facility by Hilltop Broadband. In exchange for the lease, Hilltop Broadband would provide the airport with fiber optic broadband service (50 MB download and 10 MB upload), along with a monthly fee to compensate for electrical costs and other expenses. The term of the agreement would be for five (5) years, with two (2) additional 5-year renewal terms at the discretion of Hilltop Broadband.

FISCAL NOTE

The attached License Agreement provides for a monthly fee of \$150.00 to be provided to the airport for electrical costs and other expenses, along with the value of high speed internet access for the airport.

STAFF RECOMMENDATION

Staff recommends that the City Council approve the Facility Space License Agreement with Smiling J, LLC, DBA Hilltop Broadband, as recommended by the Airport Advisory Board.

SUGGESTED MOTION

A City Councilperson should state, "I move to combine and approve the Consent Agenda", followed by a second and a roll call vote.

SMILING J, LLC DBA HILLTOP BROADBAND

FACILITY SPACE LICENSE AGREEMENT

This License Agreement (the "Agreement") is made on _____, 2021 between **the governments of Chaffee County, Colorado ("Chaffee County") and the City of Salida ("City")** the Sponsors for Harriet Alexander Airport, (Chaffee County and the City collectively as the "Sponsors") and Smiling J, a Colorado LLC, d.b.a Hilltop Broadband ("Licensee").

Licensee desires to install certain fixed wireless internet improvements on an existing tower owned and used by the Sponsors situated at Harriet Alexander Field ("Airport"), Salida, Colorado, as further described in ***Exhibit A*** (the "Premises"). The Airport's emergency beacon equipment is situated on the tower. The purpose of this Agreement is to license certain tower and work space to Licensee in order to allow the installation of Licensee's equipment and in order to provide telecommunications redundancy within Chaffee County. Any "Exhibit" referenced in this Agreement is hereby incorporated in its entirety into this Agreement.

In consideration of the covenants and agreements contained in this Agreement, the parties agree as follows:

1. License Grant.

- a. The Sponsors hereby licenses to Licensee rights to enter onto the Premises for the purpose of conducting the licensed activities as described in paragraph 2 below, subject to the terms and conditions of this License.
- b. This License does not create an interest or estate in Licensee's favor in the Premises. Chaffee County retains legal possession of the Premises, and this License merely grants to Licensee the personal privilege to engage in the licensed activities in accordance with the rights set forth herein throughout the term of this Agreement.

2. Scope of Activities Permitted. Licensee shall use and occupy the premises for the purpose of installing and maintaining Licensee's equipment on the tower and operating a telecommunication fixed wireless microwave internet and VoIP service facility, and for no other purpose. Licensee may install the equipment specified in ***Exhibit B***. Such equipment provided by Licensee shall remain owned by Licensee. The Premises shall be used by Licensee for no other purpose. Licensee shall at all times comply with the Site Access and Security Instructions as incorporated herein as ***Exhibit C***. Licensee's installation of its equipment on the existing tower shall conform to the engineering conditions described in ***Exhibit D***. Licensee shall be responsible, at its own cost, for obtaining all necessary permits and approvals and for all other costs in connection with its equipment and the licensed activities, including all maintenance and repair of the Licensee's equipment.

3. **Limitation and Subordination of Rights Granted.**

- a. The foregoing grant of right is subject and subordinate to the prior and continuing right of Chaffee County to use and maintain the Premises, including its right and power to construct, maintain, repair, renew, use, operate, change, modify or relocate any and all real property improvements or personal property upon, along or across any or all parts of the Premises, all or any of which may be freely done at any time or times by Chaffee County without liability to Licensee or to any other party for compensation or damages.
- b. The foregoing grant is also subject to all outstanding superior rights (including those in favor of lessees of Chaffee County's property and others) and Chaffee County's right to renew and extend the same.
- c. Chaffee County makes no warranty or covenant, express or otherwise, as to (i) the suitability of the Premises for Licensee's intended purposes, (ii) Chaffee County's ownership of the Premises, or (iii) Licensee's quiet enjoyment of the Premises.
- d. Chaffee County reserves the right to continue to use the Premises for any and all uses allowed under law.
- e. Chaffee County reserves the right to grant easement or license interests in the Premises after the Effective Date to other grantees, and to allow the use of the Property for any and all uses allowed by law.
- f. This License and Licensee's use of the Premises is subject to all matters of record and existing uses affecting the Premises prior to the Effective Date.

4. **Initial License Term.** Chaffee County demises the above Premises to Licensee for a term of five (5) years (the "Initial License Term") commencing as of the date this Agreement is executed and signed by all Parties. The Parties agree that this Agreement supersedes and replaces in its entirety any and all prior written or oral Agreements.

5. **Renewal Terms.** Licensee shall have the option to renew the Agreement for two (2) additional terms of five (5) years each (the "Renewal Term"). All of the terms and conditions of the Agreement shall apply during the Renewal Term. Unless notice is given by Licensee to Chaffee County no less than 30 days prior to expiration of the then current term, the Agreement will automatically renew for an additional Renewal Term.

6. **Fee.** Licensee shall supply, at no additional charge, fiber optic broadband service to the Airport at a bandwidth of 50 megabits download and 10 megabits upload service and to reasonably upgrade service and bandwidth in accordance with the site capabilities and plans speeds advertised and offered to other Licensee customers. In addition, Licensee shall pay a monthly fee of \$150.00 to compensate Sponsor for electrical costs and other related expenses.

All payments shall be made to Chaffee County on the first day of each month during the term of this Agreement at the address specified below.

Payment Address: Chaffee County Finance Department
Attn: Director of Finance and Personnel
104 Crestone Avenue
Salida, Colorado 81201

7. **Fee Increases.** If Licensee opts to renew the Agreement, the monthly Fee shall be increased by \$50.00 for each Renewal Term. The Parties may agree in writing to additional compensation based on the relative increase(s) in expenses.

8. **Public Utilities.** Licensee is responsible for the provision of any and all required telecommunications services to the Premises for the term of this Agreement, unless otherwise specified in this Agreement. Electrical power for Licensee's equipment will be provided by the Sponsor. The Sponsor is not responsible and Licensee shall hold Sponsor harmless for any power outages, regardless of whether or not such outages are the result of Chaffee County's actions or inactions.

9. **Termination.**

a. **Termination due to Default.** Either Party may terminate this Agreement by written notice to the other Party if the other Party is in material default of this Agreement and has failed to cure such default within thirty (30) days after receipt of written notice of such default or other extended period as agreed to by the Parties.

b. **Termination due to Eminent Domain.** If the Premises or any part thereof materially affecting Licensee's use of the Premises shall be taken by eminent domain, this Agreement shall terminate on the date when title vests pursuant to such taking. Licensee shall be entitled to part of any award for such taking limited to any taking of fixtures and improvements owned by Licensee and for moving expenses.

c. **Termination due to Destruction of Premises.** In the event of a whole or partial destruction of the Premises during the term hereof due to fire or any other cause, Chaffee County or Licensee may terminate this Agreement.

d. **Termination due to Governmental Permits.** Licensee may terminate this Agreement upon sixty (60) days written notice to Sponsor if any governmental approval, authorization, or permit required to install at or operate from the Premises is denied, delayed, or revoked after diligent effort by Licensee to obtain and maintain such approval, authorization, or permit. Sponsor shall cooperate with Licensee in obtaining any required approvals, authorizations, or permits.

e. **Termination due to Federal Prime Contract.** Licensee may terminate this Agreement upon sixty (60) days written notice to Chaffee County in the

event that the Licensee's Prime Contract with the FAA is terminated, discontinued, or modified in any way that would eliminate the Licensee's need for this Agreement.

f. **Termination due to System Performance.** Licensee may terminate this Agreement upon sixty (60) days written notice to Chaffee County in the event that the Premises are determined, at the sole discretion of Licensee, not to provide satisfactorily efficient and effective mission purpose performance.

g. **Termination for Convenience.** Either Chaffee County or Licensee may terminate this Agreement without cause upon one-hundred and eighty (180) days written notice to the other.

10. **Removal of Equipment after Termination.** Licensee shall have 180 days to remove equipment from the premises upon termination of this Agreement.

11. **Entry and Inspection.** Nothing in this Agreement shall limit the rights of Chaffee County to enter upon the property or facility on which the Premises are located, or authorize others to do so, for any purpose that does not materially interfere with Licensee's operations from the Premises.

12. **Interference.** Licensee shall not use the Premises in any way which interferes with the use of the Premises by the Sponsor or its tenants or licenses. Such interference shall be considered a material breach of this Agreement. Licensee, upon notice from the Sponsor, shall be responsible for terminating said interference. In the event any such interference does not cease within forty-eight (48) hours of receipt of notice, Licensee acknowledges that continuing interference may cause irreparable injury and, therefore, Sponsor shall have the right, in addition to any other rights that it may have at law or in equity, to bring an action to enjoin such interference or to terminate this Agreement immediately upon notice.

13. **Ordinances and Statutes.** Licensee shall comply with all statutes, ordinances and requirements of all local, state and federal authorities now in force, or which may hereafter be in force, pertaining the Premises, occasioned by or affecting the use thereof by Licensee.

14. **Taxes.** All equipment attached to or otherwise brought onto the site by Licensee shall at all times be deemed to be Licensee's personal property. Licensee shall pay directly to the taxing authority any personal property taxes which may be assessed with respect to such equipment.

15. **Insurance.** Licensee shall maintain in full force during the term of this Agreement the following insurance:

- a. **Employer's Liability, Workers' Compensation and Unemployment Insurance.** Licensee shall secure and maintain employer's liability, Workers' Compensation Insurance and Unemployment Insurance that will protect it against any and all claims resulting from injuries to and death of employees, if any, working on the Premises. The term 'employee' and/or 'independent contractor' will be defined for the purpose of this

Contract by reference to regulations of the Department of Labor, Social Security and the Internal Revenue Service. Employer's Liability is required for minimum limits of \$100,000.00 Each Accident; \$500,000.00 Disease-Policy Limit; \$100,000.00 Disease-Each Employee.

- b. Comprehensive General Liability in the amount not less than those limits of liability established from time to time for governmental entities under the provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-114. Currently, such limits are \$350,000.00 per person and \$990,000.00 per occurrence. This coverage should be provided on an ISO 1998 Form or the most current form. Coverage to include:
 - i. Premises
 - ii. Products/Completed Operations if work includes a manufacturing operation
 - iii. Broad Form Comprehensive, General Liability
- c. Automobile Liability. Minimum limits are required to be \$1,000,000.00 for each occurrence. Coverage must include:
 - i. All vehicles owned, non-owned, and hired to be used on the Premises;
 - ii. Medical Payments.
- d. Within thirty (30) days of the execution of this Agreement, Licensee will provide insurance certificates listing Chaffee County as an additional insured for the commercial general liability coverage required herein.

16. **Indemnification.** Licensee indemnifies Chaffee County and the City against and holds Chaffee County and the City harmless from any and all direct costs, claims, damages, expenses, or causes of action which arise out of this Agreement. Licensee shall insure that all its installers, technicians, contractors, agents, members and managers expressly agree to such indemnification and similarly expressly agree to hold Chaffee County and the City harmless. This indemnity does not apply to any claims arising from the intentional misconduct of Chaffee County and the City.

17. **Hazardous Substance.** The parties agree that the Premises shall be maintained in compliance with all local, state, and federal laws and regulations pertaining to the use, storage, or presence of hazardous substances. Licensee agrees to save and hold Chaffee County harmless from any and all costs, liabilities and/or claims by third parties that arise out of hazardous contamination found on the Premises directly attributable to actions of Licensee.

18. **Notices and Demands.** All notices, demands or requests which may be given by any Party to the other Party under this Agreement shall be in writing and shall be deemed to have been duly delivered on the date delivered in person or sent via fax, or three (3) business days after the date deposited, postage prepaid, in the United States mail via certified mail return receipt requested, and addressed as follows, or at such other places as may be designated by the Parties from time to time:

When to the Sponsor:

License Agreement
Harriet Alexander/Hilltop Broadband

Chaffee County Administrative Offices
Attn: Director of County General Administration
104 Crestone Avenue
Salida, Colorado 81201

With a copy to:
Chaffee County Attorney
104 Crestone Avenue
Salida, CO 81201

City of Salida

When to Licensee:

Hilltop Broadband
Attn: Site Use and Lease Coordinator
PO Box 1770
Berthoud, CO 80513

19. **Contract Disputes.** This Agreement shall be governed by the laws of State of Colorado and any action at law concerning the provisions hereof shall be brought only in Chaffee County, Colorado.
20. **Governmental Immunity.** Notwithstanding any other provision of this License to the contrary, no term or condition of this License shall be construed or interpreted as a waiver, express or implied, of any provision of the Colorado Governmental Immunity Act (CGIA). Liability arising out of the negligence of the County, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the CGIA.
21. **Assignment and Subletting.** Licensee shall not have the right to assign this Agreement or sublet any portion of the Premises without the prior written consent of the Sponsor, which will not be reasonably withheld.
22. **Successors.** The terms and provisions of this Agreement and the conditions herein bind Chaffee County, the City and Chaffee County's and the City's administrators, successors, and assigns. The terms and provisions of this Agreement and the conditions herein bind Licensee and Licensee's heirs, executors, administrators, successors, and assigns.

23. **Severability.** If any provision of this Agreement is found invalid or unenforceable under judicial decree or decision, the remaining provisions of this Agreement shall remain in full force and effect.

24. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and may be modified only in writing signed by both Parties.

In witness whereof, the Parties have executed this Agreement by their duly authorized officers or representatives as of the date shown below.

CHAFFEE COUNTY

LICENSEE

By: 
Greg Felt
Title: Chairman, Board of Commissioners
of Chaffee County

By: _____
Eric Ryplewski
Title: President, Hilltop Broadband

Date: 12/20/21

Date: _____

CITY OF SALIDA

By: _____

[print name]

Title: _____

Date: _____

[Intentionally left blank]

EXHIBIT A

DESCRIPTION OF LICENSED PREMISES AND SITE PLAN

Address: 9255 Co Rd 140, Salida, CO 81201

Coordinates: 38.5357, -106.0472

Licensed Area: Ground Level site use shall consist of an area no larger than 12 x 10 feet and shall be limited to the space necessary for the Telecom operations and equipment directly related to the tower equipment. Tower use shall consist of any practical area on the tower on which communications equipment can be mounted in a safe and practical fashion. In no way shall the mounting or location of equipment interfere with the operation of the rotating beacon.

Power: Chaffee County to provide access to a 20-amp breaker.

Telecom: Site use shall be for the operation of a fixed terrestrial wireless telecommunication system. Uses outside of this scope must be approved by the Airport Manager.

EXHIBIT B

LICENSEE EQUIPMENT

Devices to be placed in external job box outside of communications shelter:

Equipment	Qty	Approximate Height	Approximate Width	Approximate Depth	Approximate Weight
Job Box	1	30	40	30	400

Microwave Radios on Licensee's Tower:

Equipment	Qty	Approximate Height	Approximate Width	Approximate Depth	Approximate Weight
Backhaul A	1	45ft	3 ft	NA	17 lbs.
Backhaul B	1	45 ft	3ft	NA	17 lbs.
Sector Antennas	9	50 ft	8 in	3 in	13 lbs.
Network Switch	1	50 ft	14 in	3 in	9 lbs.

Any replacement of the above equipment must be done with the written permission of the Sponsor and shall be done at Licensee's cost and in a professional manner. At no time may any equipment interfere with the structural integrity of the tower, violate any law, ordinance, code or regulation or adversely affect the utilization of the Premises by the Sponsor.

EXHIBIT C

SITE ACCESS AND SECURITY INSTRUCTIONS

- The premises shall be available upon prior notice and availability of Airport staff.
- The Tower in which Licensee equipment is to be located is secured at all times.
- Licensee will provide to the Airport Manager a list of names of Licensee personnel who are authorized to have access. Licensee will update this list as needed.
- When Licensee requires access to the Tower, Licensee will call the Airport Manager prior to arrival and if possible notify the Airport of the expected arrival time of Licensee' personnel.
- Licensee personnel must show their employee photo ID card or badge to authorized County personnel to gain access.
- Access to the Tower is limited to between the hours of 6AM and midnight 365 days per year, unless special arrangements are made with or through the Airport Manager. If such access is needed, Licensee personnel must make arrangements through the Airport Manager for authorized Chaffee County personnel to give them access.
- Licensee may access external job box at any time without notification to Communications Center Manager or other prior arrangements.
- Licensee may access the site equipment at any time to make emergency or unplanned repairs to correct an outage or service disrupting condition. Licensee shall inform the Airport Manager of the repairs completed within a reasonable time after repairs are completed.