

CITY OF UNALASKA  
UNALASKA, ALASKA

RESOLUTION 2022-08

A RESOLUTION OF THE UNALASKA CITY COUNCIL AUTHORIZING A 20-YEAR LEASE OF LAND ON HAYSTACK TO OPTIMERA INC. FOR THE PURPOSES OF A TELECOMMUNICATIONS TOWER AND RELATED APPURTANENCES

WHEREAS, the City of Unalaska is the owner of land located within Lot 1 of Needle Subdivision, Plat 95-32, Records of the Aleutian Islands Recording District, Third Judicial District, State of Alaska, with said parcel more specifically described in Attachment A; and

WHEREAS, OptimERA Inc. has applied to lease approximately 4,300 square feet of land on Haystack that is currently unencumbered by existing leases and easements; and

WHEREAS, the term of this lease is through December 2041; and

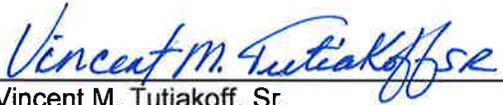
WHEREAS, OptimERA Inc. agrees to the terms of the lease and will pay the City \$10,800 annually; and

WHEREAS, the City has included a termination clause to allow the City to continue evaluating the leasing situation atop Haystack and, if possible, propose a more orderly lease-lot arrangement to maximize the usage of Haystack space for future telecommunication needs of the City, existing and future leaseholders; and

WHEREAS, UCO § 7.12.020 requires City Council approval of any lease of City property having a term greater than 5 years and that no lease shall be for a term of more than thirty years unless the City Council determines from the purpose of the lease or the nature of improvements which may be placed thereon that a longer term would benefit the City.

NOW THEREFORE BE IT RESOLVED that the Unalaska City Council authorizes the lease of land located within Lot 1 of Needle Subdivision, Plat 95-32, Records of the Aleutian Islands Recording District, Third Judicial District, State of Alaska, with the term of said lease to run through December 2041 in accordance with the terms and conditions of the Lease Agreement attached hereto.

PASSED AND ADOPTED by a duly constituted quorum of the Unalaska City Council on March 8, 2022.

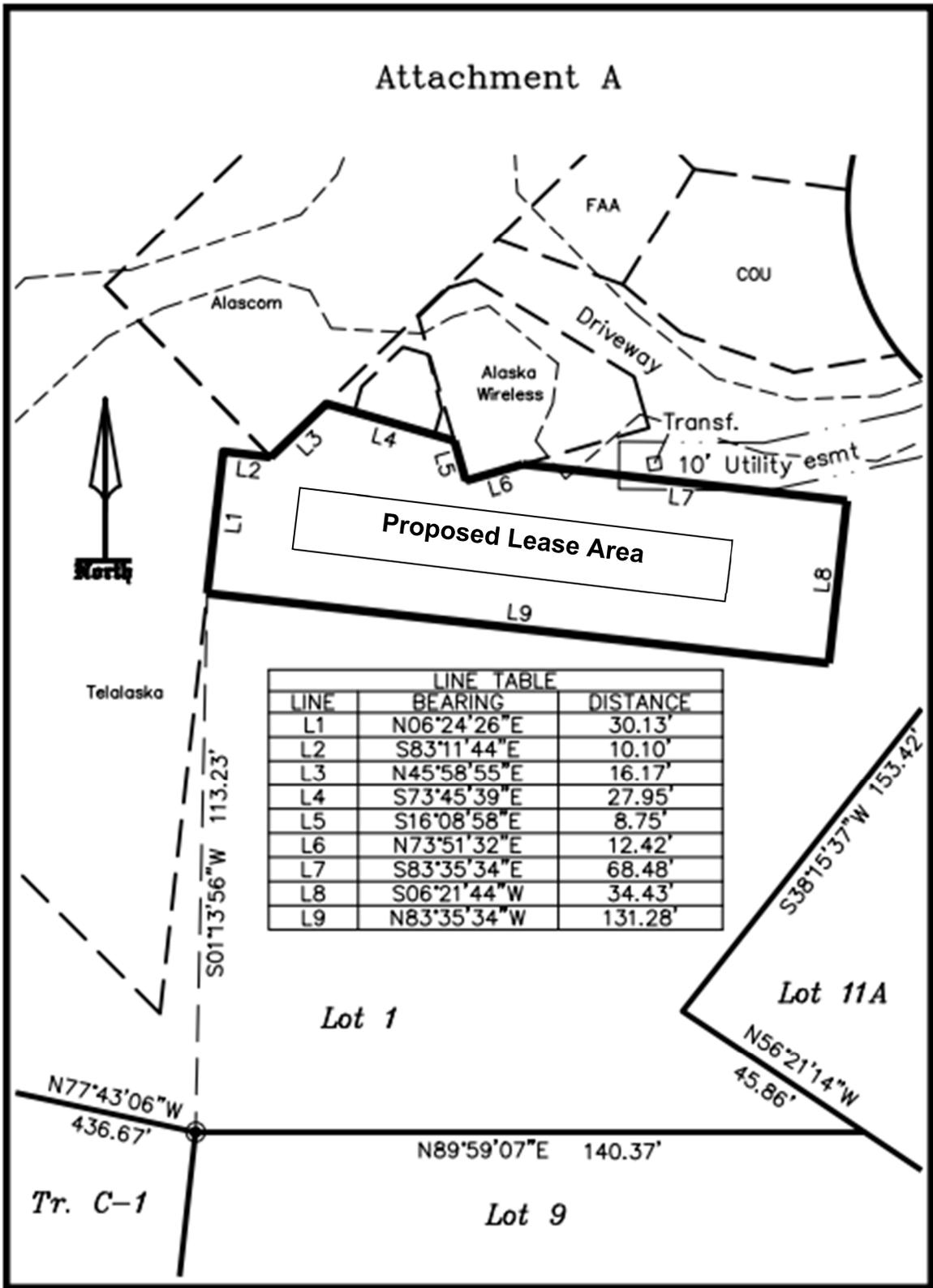
  
\_\_\_\_\_  
Vincent M. Tutiakoff, Sr.  
Mayor

ATTEST:

  
\_\_\_\_\_  
Marjie Veeder, CMC  
City Clerk



# Attachment A



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## MEMORANDUM TO COUNCIL

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To: Mayor and City Council Members  
From: William Homka Planning Director  
Through: Erin Reinders, City Manager  
Date: March 8, 2022  
Re: Resolution 2022-08: Authorizing a 20-year lease of land on Haystack to OptimERA, Inc. for the purposes of a telecommunications tower and related appurtenances

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**SUMMARY:** OptimERA is seeking a long-term lease of twenty years for a city-owned property on Haystack. The company plans to construct a telecommunications tower on the site. City Council must authorize the City Manager to enter into leases with terms extending beyond five years. Staff recommends approval.

### **PREVIOUS COUNCIL ACTION**

October 26, 2021	Executive Session - Haystack Update
July 27, 2021	City Manager Directive – Haystack Communications Site
Resolution 1987-91	A resolution establishing an agreement with Channel 8 for the use of city property for the purpose of using a communications receiver for an FM station.
Resolution 1994-54	A resolution approving the City Manager signing a lease for a portion of Tract C Haystack Hill Subdivision with Bristol Bay Cellular Partnership for use as a communication site.
Resolution 2003-45	A resolution of the Unalaska City Council authorizing the City Manager to sign a 20-year lease with Alaska Wireless for antenna space on Haystack Hill.
Resolution 2005-3	A resolution of the Unalaska City Council authorizing the City Manager to sign a 20-year lease with the Department of Transportation, Federal Aviation Administration for antenna space on Haystack Hill.
Resolution 2006-38	A resolution of the Unalaska City Council authorizing the City Manager to amend the existing lease with Alaska Wireless for antenna space on Haystack Hill.
Resolution 2014-78	A resolution of the Unalaska City Council approving a lease agreement for a term of 20-years between the City of Unalaska and TelAlaska Cellular for a portion of Lot 1, Needle Subdivision.

**BACKGROUND:** OptimERA currently uses a tower located on Haystack and owned by KUCB. In 2017 OptimERA applied to lease a separate space on Haystack to build its own tower. That application was denied because the space was already leased to another entity.

Emmett Fitch, OptimERA CEO, raised Haystack's difficult leasing situation at the City Council meeting on July 27, 2021. City Council passed a Directive to City Manager which reads *"Start the process to terminate leases on Haystack for communications and work to upgrade and allow equal access to facilities for communications on Haystack with new leases."*

The basic challenge is that there is high demand for telecommunications leases on Haystack. The leases have been approved for periods of time ranging between 20 and 30 years. Four existing Haystack leases to telecom companies have between 2 and 13 years remaining in the term of their leases. A fifth encumbrance on Haystack is not a lease but a perpetual non-expiring, indenture (easement) that originated in 1971 and has no termination date. Taken together, the existing leases occupy most of the buildable city-owned land atop Haystack.

None of the City's existing Haystack leases include a termination clause. It is not possible for the City to start a process to terminate leases. Worse, the existing leases have developed over decades and are not necessarily the most efficient use of land nor do they maximize Haystack's telecommunications potential.

To thoroughly evaluate the leases and Haystack situation, William Homka, Planning Director assembled a team to review all aspects of the City's leasing, from contract inception to billing to recordation and everything in between. The team includes: Marjie Veeder, City Clerk; Charles Cacciola, City Attorney; Jim Sharpe, Acting Finance Director; Western Alaska Land Title Company; Appraisal Company of Alaska; personnel at Public Works; and Cameron Dean, GIS Administrator. The team reported to City Council about its progress on October 26, 2021 and sought input about options for proceeding with a long-term approach for Haystack leasing.

The Planning Department prepared Figure 1: Haystack Leases to show the current space on Haystack. Within the fenced area, TelAlaska has the largest lease at 11,662 square feet; Alaska Wireless has 1,937 square feet; and the FAA has 679 square feet. OptimERA affixed equipment to a KUCB tower sometime in the recent past. KUCB is subleasing part of a site leased to Alaska Wireless (GCI), and OptimERA is leasing from KUCB.

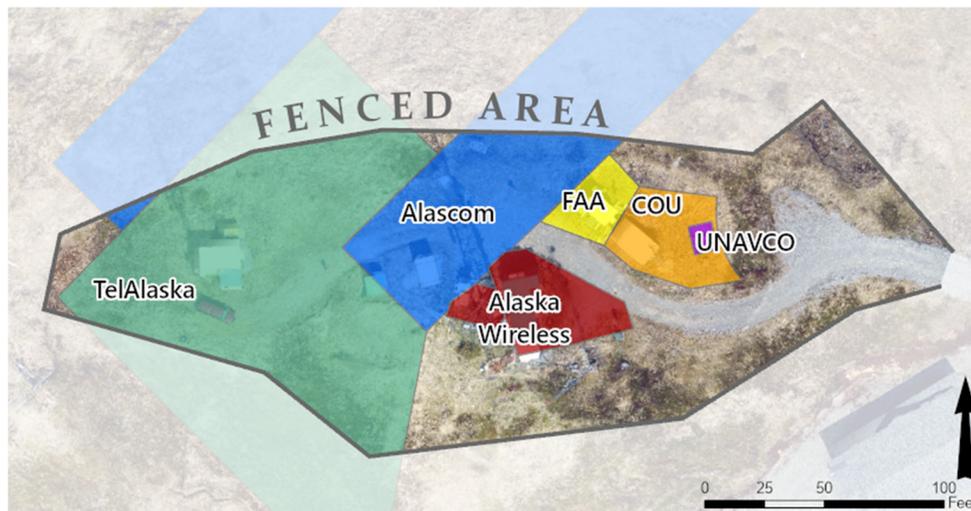
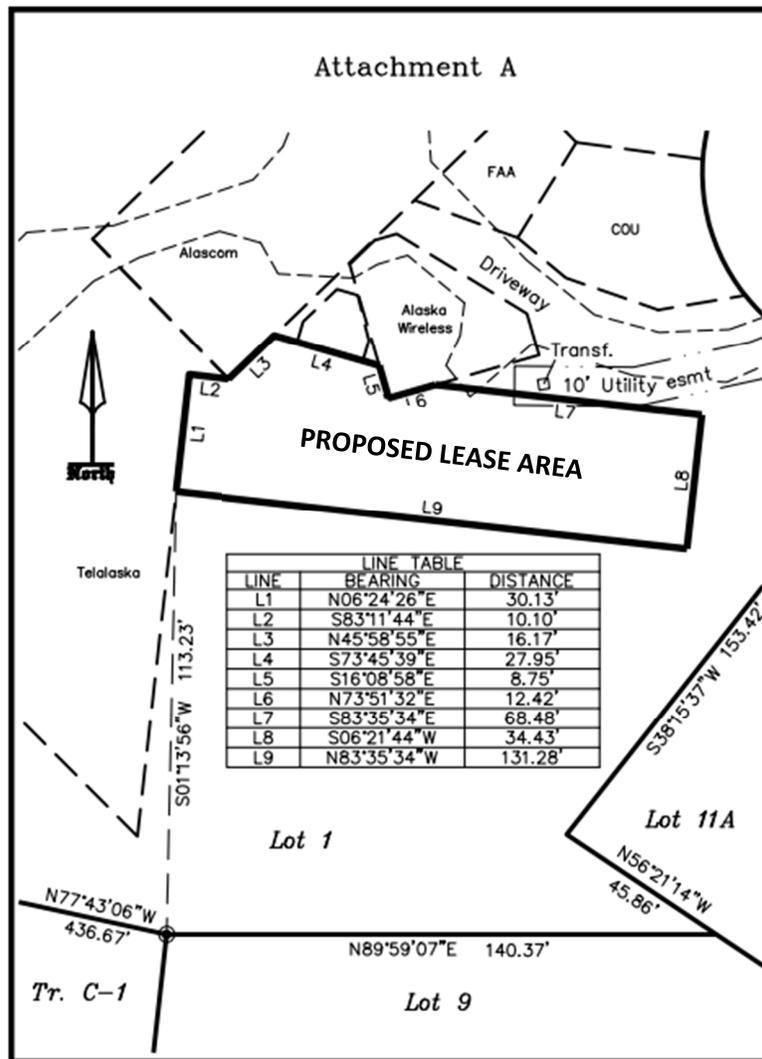


FIGURE 1: HAYSTACK LEASES

**DISCUSSION:** On December 27, 2021 OptimERA submitted a new application to lease property on Haystack for a telecommunications tower. The area is just below its present location on KUCB's antenna and is not encumbered by a lease or easement. On February 27, 2022 OptimERA informed the City the lease terms were acceptable.

The proposed lease is for a site just below the Alaska Wireless area (indicated in red in Figure 1). The parcel is located within Lot 1 of Needle Subdivision, Plat No. 95-32. The specific site can be viewed in Attachment A and is identified as 'Proposed Lease Area.' The site covers approximately 4,300+ square feet. The lease term is 20 years beginning March 1, 2022 through December 31, 2041. Rent for the remaining 10 months in 2022 is \$9,000. The yearly rent thereafter will be \$10,800. The value of this lease is \$214,200 over the 20-year period.

This lease has a termination clause for both the City and OptimERA. The lease accounts for the City's goal to implement a new leasing or licensing regime for Haystack Mountain, including the parcel subject to this lease. Upon adoption of such new leasing or licensing regime, the City may terminate this Lease upon 180 days' written notice to Lessee.



**ALTERNATIVES:** City Council can propose an amendment to the lease terms and/or area or reject Resolution 2022-08 altogether.

**FINANCIAL IMPLICATIONS:** The value of this lease is \$214,200 over the 20-year period.

**LEGAL:** This lease was developed in coordination with the City Attorney.

**STAFF RECOMMENDATION:** Staff recommends adoption of Resolution 2022-08.

**PROPOSED MOTION:** I move to adopt Resolution 2022-08.

**CITY MANAGER COMMENTS:** I support Staff's recommendation.

**ATTACHMENTS:**

1. Draft Lease Agreement
2. OptimERA Inc. Lease Application

## RECORD IN ALEUTIANS ISLAND RECORDING DISTRICT

### LEASE AGREEMENT

This Lease Agreement is made and entered into this \_\_\_\_ day of February 2022 by and between the City of Unalaska, a first-class Alaska municipal corporation ("Lessor"), whose address is P.O. Box 610, Unalaska, Alaska 99685, and OptimERA, Inc., an Alaska corporation ("Lessee"), whose address is 132 Loop Road, Unalaska, AK 99685.

NOW THEREFORE, Lessor and Lessee, in consideration of the mutual covenants and conditions stated in this Lease, agree as follows:

1. Parcel. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, a parcel of land located within Lot 1 of Needle Subdivision, Plat No. 95-32, Records of the Aleutian Islands Recording District, Third Judicial District, State of Alaska, with said parcel more specifically described as:

[metes and bounds description of parcel]

the ("Parcel"), which is depicted in the plan view attached as Exhibit A;

EXCEPTING AND RESERVING THEREFROM, to Lessor and its assigns during the term of this Lease, the following specific interests, which shall be in addition to and not in derogation of any general reservations to Lessor, which may be stated elsewhere in this Lease: easements, rights of way and reservations of record,

2. Term. The term of this Lease shall commence on March 1, 2022 and end on December 31, 2041 unless sooner terminated as provided in this Lease.

(a) Early Termination by Lessee. Lessee shall have the option to terminate this lease at any time prior to the expiration of the initial term subject to the following conditions:

(1) Lessee shall give Lessor written notice of its intent to so terminate this lease no less than 90 days prior to the date of termination; and

(2) Lessee shall pay a termination fee to Lessor equal to one year's rent at the then-existing rental rate.

(b) Early Termination by Lessor. Lessor has informed Lessee that Lessor wishes to implement a new leasing or licensing regime for Haystack Mountain, including the parcel subject to this Lease. Upon adoption of such new leasing or licensing regime, Lessor may terminate this Lease upon 180 days' written notice to Lessee.

3. Rent. For March 1, 2022 through December 31, 2022 Lessee shall pay to Lessor, on or before March 1, 2022, Rent in the amount of \$9,000. Thereafter, Lessee shall pay Rent in the amount of \$10,800 per year, in advance, on January 1 of each year.

4. Payment of Rent. Rent payments shall be made payable to the City of Unalaska and delivered to the City of Unalaska Finance Department, P.O. Box 610, Unalaska, Alaska 99685, or to any other address that Lessor may designate in writing.

5. Interest on Delinquent Payments. All unpaid rents and fees shall accrue interest at the rate of 10.5% per annum beginning 30 days after payment is due.

6. Use of Parcel. (a) Lessee shall use and occupy the Parcel in compliance with all applicable laws, regulations, ordinances and orders which a public authority has promulgated or may promulgate, including those of a building or zoning authority and those relating to pollution and sanitation control. Lessee shall not permit any unlawful occupation, business, or trade to be conducted on the Parcel. Lessee shall properly locate itself and its improvements on the Parcel, and shall not commit waste of the Parcel, whether ameliorated or otherwise. Notwithstanding such laws, regulations, ordinances and orders, Lessee shall maintain the Parcel in a reasonably neat and clean condition, and take all prudent precautions to prevent or suppress pollution of the ground, surface water, air, or land, and to prevent erosion or destruction of the land.

(b) Lessee may use the Parcel for any lawful purpose in connection with its telecommunication operations or any business purpose of Lessee, provided that:

(1) All equipment on the Parcel, including, but not limited to, antennas placed on the Parcel shall not interfere with other equipment located on or about the same general site;

(2) All antennas and equipment shall be grounded to meet the National Electrical Code (NEC). The antenna/equipment facilities wind support guy lines shall include anti-reflective insulators as to prevent any Electro Magnetic Interference (EMI) with any other equipment on or about the site. Lessee will investigate any and all interference reports sent in written form. Lessee will maintain technical support to correct any and all reports of interference by Lessee's equipment. Lessee will install any equipment necessary to filter, tune, and isolate any interference developed by the installed equipment; and

(3) All towers shall be designed to prevent the climbing of the tower by the public.

7. Quiet Enjoyment. Lessor covenants and agrees that Lessee, upon performance of all of Lessee's obligations under this Lease, shall lawfully, quietly and exclusively hold, occupy and enjoy the Parcel during the term of this Lease without disturbance by Lessor or by any person having title paramount to Lessor's title or by any person claiming under Lessor, provided, however, that Lessor expressly reserves the right, without compensation or adjustment of rentals to Lessee, to grant surface, underground or overhead easements or rights-of-way for

public improvements and purposes in or upon the Parcel if the exercise of this right will not unreasonably interfere with Lessee's improvements and use of the Parcel.

8. Alterations and Improvements. Upon receiving written permission from Lessor, Lessee may make alterations, additions and improvements to the Parcel, at Lessee's sole cost and expense. Lessor's consent shall not be unreasonably withheld. Lessee shall remove all improvements and personal property of Lessee from the Parcel at the end of the Lease term and the Parcel shall be restored to the condition prevailing on the first day of the Term of this Lease.

9. Title to Improvements. All buildings, structures, fixtures and permanent improvements placed or attached on or about the Parcel by Lessee shall remain the property of Lessee until such time as the expiration or termination of this Agreement.

10. Removal of Improvements And Chattels After Termination. (a) Upon termination, Lessee shall remove all improvements and chattels from the Parcel.

(b) If any improvements or chattels not removed from the Parcel as required by this section shall, upon 30 days' written notice to Lessee, become property of Lessor if not removed within the 30 days following notice. Alternatively, Lessor may choose to remove the improvements at Lessee's expense.

(c) Lessee shall reimburse Lessor for damages to the Parcel caused by the removal of fixtures and improvements.

11. Encumbrance of Parcel. Lessee, during the term of this Lease, shall not encumber or cloud Lessor's reversionary interest in the Parcel, without the prior written consent of Lessor; and any such act or omission, without the prior written consent of Lessor, shall be voidable by Lessor.

12. Assignment of Lease and Sublease of Parcel. Lessee may not assign this Lease or sublet, sublease or rent the Parcel, or any portion thereof, nor allow any third party to use of the Parcel, or any portion thereof, for a consideration, without the prior written consent of Lessor, which Lessor may withhold for any reason. No assignment or sublease shall be approved until the assignee or sublessee agrees to be subject to and governed by the provisions of this Lease in the same manner as the original Lessee to the extent that they may be applicable to the sublease except for the payment of Rent and other monetary obligations. No assignment or sublease will be effective until approved by Lessor in writing, nor shall such assignment or sublease annul Lessee's obligation to pay the rent herein required for the full term of this Lease. Except as permitted by Lessor, no subdivision of Lessee's leasehold interest, including any exposed airspace thereon, shall occur. Any application for sublease or assignment shall include payment of a \$500 administrative fee.

13. Denial of Warranty Regarding Conditions. Lessor makes no warranty, express or implied, nor assumes any liability whatsoever, regarding the natural, social, economic, or environmental conditions of the Parcel, including, without limitation, the soil, water and drainage conditions, natural or artificial hazards, and the profitability or fitness of the Parcel for any use. Lessee represents and warrants that it has independently inspected the Parcel and made all tests, investigations and observations necessary to satisfy itself of the condition of the Parcel. Lessee shall and is relying solely on such independent inspection, tests, investigations and observations in making this Agreement. Lessee accepts and shall be responsible for any risk of harm to any person and property, including but not limited to, employees of Lessee, from any latent defects in the Parcel.

14. Agreement to Terms of Lease. Lessor and Lessee agree and recognize that each of the covenants and conditions in this Lease and any attachments thereto are merged and incorporated into this agreement and shall be binding upon themselves and upon their respective successors, successors in interest and assigns and shall inure to their benefit. Lessor and Lessee further agree and recognize that this Lease shall be conditioned upon satisfactory performance by Lessor and Lessee of all covenants and conditions contained herein.

15. Utilities and Services. Lessee shall, at its expense, procure and timely pay for all services and utilities and hook-ups therefor which are necessary or appropriate for its operation or use of the Parcel.

16. Easements. Lessor reserves the right to make grants to third parties or reserve to Lessor easements through, on or above the Parcel for the purpose of providing water, sewer or electric services to the Parcel or to adjacent properties, or for the purpose of providing reasonable public access to public waters, provided that no such easement or may be granted or reserved which unreasonably interferes with Lessee's use of the Parcel.

17. Access. Lessor makes no representations or warranty that it will construct or maintain access to the Parcel.

18. Valid Existing Rights. This Lease is entered into and made subject to all valid existing rights, including easements, rights-of-way, reservations, or other interests in land of record on the date of execution of this Lease.

19. Inspection. Lessor shall have reasonable access to the Parcel for purposes of inspection regarding the faithful performance by Lessee of the covenants and conditions of this Lease and for the performance of other lawful requirements.

20. Acquisition of Rights or Interests. Any right or interest acquired during the term of this Lease and accruing to the benefit of the Parcel shall remain appurtenant to the Parcel during that term, and shall not be severed or transferred from the Parcel without the prior consent of Lessor. In the event of termination or forfeiture of this Lease, any such right or interest shall revert to Lessor along with the Parcel.

21. Environmental Indemnification. If any hazardous substances are released or discharged on or from the Parcel to, on or about the Parcel or other properties, including, but not limited to, the surface or subsurface waters adjacent to the Parcel during the term of this Agreement, Lessee shall indemnify, defend, and hold Lessor harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses, including, but not limited to, costs incurred in connection with any investigation of site conditions or any cleanup, remediation, removal, or restorative work required by any federal or state agency due to the presence of hazardous substances in the soil or groundwater on or under the Parcel or other affected properties, whether such losses arise during or after the term of this Agreement, but only to the extent that such release or discharge is not caused by the fault of Lessor or its agents, representatives, contractors or employees.

22. Hazardous Substances. Lessor represents and warrants to Lessee that, to the best of its information, knowledge and belief, no hazardous substances have been released, discharged or spilled on the Parcel; however, Lessor does not represent, warrant or guarantee that this is necessarily the case. Otherwise, Lessor has made no express or implied representations or warranties to Lessee with respect to the release, discharge or spillage of any hazardous substances

in, on or about the Parcel. Lessee hereby releases and discharges Lessor, its affiliates and all of their respective past, present and future officials, employees, agents, attorneys, insurers and representatives, with prejudice, from any and all claims, obligations or liabilities which have arisen, resulted from or are based upon, or may in the future arise out of, result from or be based upon, in whole or in part, the past release, discharge or spill of any hazardous substances or other environmental pollution in, on or about the Parcel, regardless of whether such claim, obligation or liability, or the type or extent thereof, is now known or foreseeable; provided, however, that such release and discharge shall be inapplicable to claims, obligations and liabilities that are based upon a material breach of the representations and warranties made by Lessor in this Section.

23. Definition of Hazardous Substance. Hazardous substance, as such term is used in this Agreement, includes: (a) (1) crude oil, (2) petroleum, (3) diesel fuel, (4) marine fuel, (5) heating oil, (6) gasoline, (7) motor oil, (8) kerosene, (9) aviation fuel, (10) other petroleum products, additions and derivatives, (11) urea formaldehyde foam insulation, (12) asbestos, and (13) polychlorinated biphenyls; and (b) any other (1) pollutant, (2) contaminant or (3) toxic, flammable, explosive, radioactive, noxious, hazardous, extremely hazardous, dangerous or potentially dangerous waste, material or substance, the response to which or the remediation or removal of which is required, or the manufacture, preparation, production, use, maintenance, treatment, storage, transfer, disposal, handling, processing or ownership of which is restricted, prohibited, regulated or penalized by any federal or state law or regulation as now or hereafter in effect.

24. Erosion Prevention. Lessee shall prevent unwarranted erosion of the Parcel that is caused by Lessee's use or occupancy of the Parcel. Any such erosion shall be repaired in a manner satisfactory to Lessor at Lessee's sole expense.

25. Waiver or Forbearance. The receipt of rent by Lessor, with or without knowledge of any breach of the Lease by Lessee, or of any default on the part of Lessee in the observance or performance of any of the terms, conditions or covenants of this Lease, shall not be deemed to be a waiver of any provision of this Lease. No failure on the part of Lessor to enforce a condition or covenant of this Lease, nor the waiver of any right hereunder by Lessor, unless in writing, shall discharge or invalidate the application of such term or covenant; nor shall any forbearance or written waiver affect the right of Lessor to enforce any term or covenant in the event of any subsequent breach or default. The receipt by Lessor of rent or any other sum of money, or the termination in any manner of the Lease, or the giving by Lessor of any notice hereunder to effect such termination, shall not reinstate, continue, or extend this Lease, nor destroy or in any manner or impair the validity of any such notice of termination which may have been given hereunder by Lessor to Lessee prior to the receipt of any such sum of money or other consideration, unless the contrary effect shall be expressed in writing and signed by Lessor.

26. Bankruptcy. In the event Lessee becomes insolvent, makes an assignment for the benefit of creditors, becomes the subject of a bankruptcy proceeding, reorganization, arrangement, insolvency, receivership, liquidation, or dissolution proceedings, or in the event of any judicial sale of Lessee's interest under this Lease, Lessor shall have the right to declare this lease in default.

27. Breach and Remedies: (a) Time is of the essence of this Lease. If Lessee shall materially breach any of the terms, covenants, conditions or stipulations contained in this Lease or attached hereto which are applicable to it, and said breach shall not be completely cured within 60 days after written notice of such breach has been served by Lessor upon Lessee and each holder of a security interest in Lessee's interest under this Lease that has notified Lessor of such security interest, Lessee shall be subject to such legal rights and remedies as Lessor shall have available to it under applicable law, including, but not limited to, the termination of this Lease; provided, however,

that no improvements now upon the Parcel, or which may be placed thereon during the term of this Lease, may be removed therefrom during any time in which Lessee may be in material breach of this Lease. In the event that this Lease is terminated by Lessor for a material breach by Lessee of this Lease, all rents paid by Lessee shall be forfeited to and retained by Lessor, not as a penalty, but as liquidated damages for such breach. Lessor shall not be liable for any expenditures made by Lessee or undertaken by Lessee under this Lease prior to such termination.

(b) If Lessee fails to completely cure a material breach of this Lease by it within the time allowed in (a) of this paragraph, any holder of a security interest in Lessee's interest under this Lease who has notified Lessor of such security interest may cure or remedy such breach if the breach can be cured by the payment of money or, if this cannot be done, by performing, or undertaking in writing to perform, Lessee's obligations which are the subject of such breach that are capable of performance by the holder. The holder shall act within 60 days from the date of receipt of notice under (a) of this paragraph, or within any additional period, which Lessor may allow for good cause.

(c) In the event that this Lease is terminated, or in the event that the Parcel is abandoned by Lessee during the term of this Lease, Lessor may immediately, or at any time thereafter, enter or reenter and take possession of such Parcel and without liability for any damage there for, remove all persons and personal properties therefrom, either by summary proceedings or by suitable action at law; provided, however, that the words "enter" and "re-enter" as used herein are not restricted to their technical legal meaning. Any entry or re-entry, possession, repossession, or dispossession by Lessor, whether taken by summary proceedings or otherwise, shall not be deemed to absolve, relieve, release or discharge Lessee, either in whole or part, for any monetary liability under the Lease.

28. Indemnification. To the fullest extent allowed by law, Lessee shall defend indemnify and hold harmless Lessor from and against all claims and demands for loss or damage, including property damage, personal injury, wrongful death, and wage or employment claims in any way arising out of or in connection with the use or occupancy of the Parcel by Lessee or by any other person holding under Lessee, except to the extent that such claims or demands are caused by the fault of Lessor or its agents, representatives, employees or contractors.

29. Surrender of Leasehold. Upon the expiration or sooner termination of this Lease, Lessee shall quietly and peaceably leave, surrender and yield up unto Lessor all of the Parcel. In the event that Lessee remains in possession of the Parcel after the expiration of this Agreement with Lessor's permission, Lessee shall be deemed to be occupying the Parcel as a month-to-month tenant, subject to all of the terms and conditions of this Agreement and the law, to the extent that they may be applicable to a month-to-month tenant.

30. Required Insurance. The following insurance coverage is required to be furnished by Lessee and is subject to annual review and adjustment by Lessor, who may require reasonable increases in such coverage based on increased risks. Prior to execution of this Lease, Lessee shall provide Lessor with a certificate of insurance meeting the insurance requirements below. The insurance policies must be written by a company or companies that are on the Alaska Division of Insurance's "admitted list" or "surplus lines insurance list". The broker/agent must be licensed to do business in the State and, if surplus lines insurance is provided, the broker must have a surplus broker license.

(a) Comprehensive (Commercial) General Liability Insurance. Such insurance must have coverage limits of not less than \$1,000,000 combined single limits per

occurrence and not less than \$2,000,000 aggregate limits and shall include Parcel operations, independent contractors, products/completed operations, broad form property damage, blanket contractual and personal injury endorsements. The policies evidencing such coverage shall contain, or be endorsed to contain, the following provisions:

(1) Lessor, its officers, its agents and its employees are to be covered as additional insureds with respect to liability arising out of use of the Parcel or operations of Lessee with respect to the Parcel.

(2) Lessee's insurance coverage shall be primary insurance with respect to Lessor, its officers, agents, and employees. Any insurance or self-insurance maintained by Lessor shall be excess of Lessee's insurance and shall not contribute to it.

(3) Coverage shall state that Lessee's insurance shall apply separately to each insured against whom claim is made or suit brought except with the respect to the limits of insurer's liability.

(4) That, as respects the interests of Lessor, such insurance shall (A) not be invalidated by any action or neglect of any person other than Lessor and (B) insure Lessor regardless of any misrepresentation, breach or non-observance of any warranty, declaration or condition contained in any applications by Lessee for, or policy evidencing, such insurance; and

(5) That no such insurance shall be canceled or materially changed as respects the interests of Lessor on less than 30 days' prior written notice to Lessor.

(b) Workers' Compensation and the Employer's Liability Coverage. Lessee shall be covered with workers compensation insurance and employer's liability insurance in the required statutory amounts.

31. Notices. All notices required or permitted under this Lease shall be personally delivered or sent by certified mail, postage prepaid, to the parties at the following addresses:

**If to Lessor:**

Erin Reinders, City Manager  
City of Unalaska  
P.O. Box 610  
Unalaska, AK 99685

**If to Lessee:**

Emmett J Fitch, CEO  
OptimERA, Inc.  
P.O. Box 921134  
Dutch Harbor, AK 99692

Any notice or demand which must be given or made by Lessor or Lessee shall be in writing and shall be complete if personally delivered or sent by United States certified mail to the address shown in the Lease Agreement, or to such other address as each of the parties may designate in writing from time to time. A copy of any such notice shall be forwarded to Lessor, and to the holder of any security interest in Lessee's interest in the Lease has properly given notice of its security interest in the Lease to Lessor.

32. Integration and Modification. This Lease, including all attachments and documents which by reference are incorporated herein or made a part hereof, contains the entire agreement between the parties hereto.

33. Amendments. This Lease may not be modified or amended except by a writing signed by both parties hereto, and any purported amendment or modification shall be without legal effect until reduced to writing and signed by both parties hereto.

34. Severability of Clauses of Lease Agreement. If any clause or provision of this Lease is adjudged invalid or unenforceable, it shall not affect the validity or enforceability of any other clause or provision of this Lease or give any cause of action in favor of either party as against the other.

35. Applicable Law. The laws of the State of Alaska shall govern this Lease. The venue for any dispute between the parties shall lie exclusively with Superior Court at Unalaska and the parties waive any right to removal.

IN WITNESS WHEREOF, Lessor and Lessee have each caused this lease to be duly executed as of the date first written above.

LESSOR: CITY OF UNALASKA

BY \_\_\_\_\_  
Erin Reinders, City Manager

STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of February 2022, by Erin Reinders, City Manager for the City of Unalaska, a first class Alaska municipal corporation, on behalf of the City of Unalaska.

\_\_\_\_\_  
Notary Public, State of Alaska  
My Commission expires \_\_\_\_\_

LESSEE: OPTIMERA, INC.

BY \_\_\_\_\_

STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of February 2022, by \_\_\_\_\_, on behalf of the corporation.

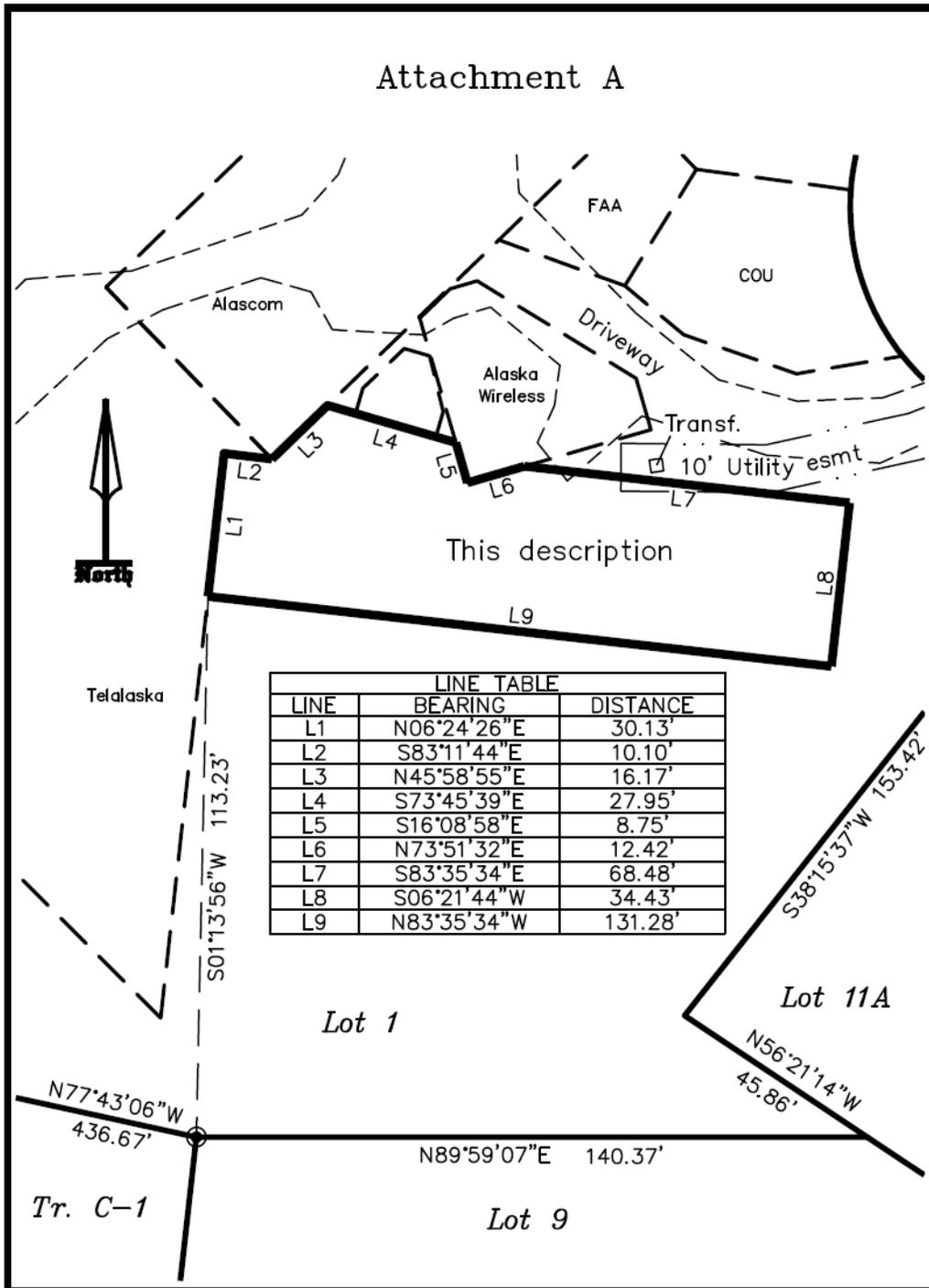
\_\_\_\_\_  
Notary Public, State of Alaska  
My Commission expires \_\_\_\_\_

## Exhibit A

The following is a description of a lease boundary within Lot 1 Needle Subdivision, Plat 5-32, Aleutian Islands Recording District.

Beginning at an angle point on the south boundary of Lot 1, one leg bearing N89°59'07"E 140.37 feet and the other bearing N77°43'06"W 436.67 feet; thence N0°13'56"E 113.23 feet and the true point of beginning; thence N06°24'26"E 30.13 feet; thence S83°11'44"E 10.10 feet; thence N45°58'55"E 16.17 feet; thence S73°45'39"E 27.95 feet; thence S16°08'58"E 8.75 feet; thence N73°51'32"E 12.42 feet; thence S83°35'34"E 68.48 feet; thence S06°21'44"W 34.43 feet; N83°35'34"W 121.15 feet and the true point of beginning. Containing 4318 s.f. See Attachment A.

# Attachment A



LINE TABLE		
LINE	BEARING	DISTANCE
L1	N06°24'26"E	30.13'
L2	S83°11'44"E	10.10'
L3	N45°58'55"E	16.17'
L4	S73°45'39"E	27.95'
L5	S16°08'58"E	8.75'
L6	N73°51'32"E	12.42'
L7	S83°35'34"E	68.48'
L8	S06°21'44"W	34.43'
L9	N83°35'34"W	131.28'

Return to:  
 City of Unalaska  
 Planning Department  
 P.O. Box 610  
 Unalaska, AK 99685

# APPLICATION FOR LEASE CITY OF UNALASKA, ALASKA

DATE **12-12-2017**

Date Received

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Applicant's Name: **OptimERA Inc.**

Mailing Address: **P.O. Box 921134, Dutch Harbor, AK 99692**

Contact Name: **Emmett J Fitch**

Daytime Phone: **907-581-4983**

---

**LEGAL DESCRIPTION:** (Fill in applicable blanks)

Request Lease Acreage/s.f **2500 s.f.**

Brief Description Of Proposed Lease Parcel Use : (Attach Additional Information If Necessary) **See Attached Exhibit (A) "OptimERA-Phase\_2-LTE-Haystack"**

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Approximate Value Of Proposed Improvements To Parcel : \$1 million

Building Permit Application No.:

Bonding Amount: \$

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## **ATTACH A COMPLETE LIST OF ALL EQUIPMENT WITH SPECIFICATIONS AND PROPOSED USE; THIS MUST INCLUDE ALL FREQUENCIES.**

*PER Title 47 of the Code of Federal Regulations the FCC regulates all electromagnetic spectrum. Our FRN number is 0021762067 and can be used to identify all current and future frequencies used at any time.*

<https://www.fcc.gov/engineering-technology/policy-and-rules-division/general/radio-spectrum-allocation>

**NOTE:**

*Due to the sensitive nature and non-disclosure agreements OptimERA has in place we cannot provide you with any of the equipment specifications except that all equipment will be in FCC regulation compliance.*

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**ATTACH SITE PLAN:** (YOU MUST **INDICATE THE FOLLOWING TO SCALE**):

! PROPOSED AND EXISTING ELECTRIC, SEWER AND WATER SERVICE ROUTING

**The only service that will be required will be an electric service. Installation of this service will be at the discretion of the Electric Utility.**

**See Attached Exhibit (A) "OptimERA-Phase\_2-LTE-Haystack" for the following**

- ! PROPOSED AND EXISTING BUILDING(S) OR STRUCTURE(S) ON PARCEL
- ! ADJACENT RIGHTS - OF - WAY(S)

! DIMENSIONS OF STRUCTURES, HEIGHT, DISTANCES FROM LEASE LINES TO ALL STRUCTURES.

**Indicate On The Attached Map The Proposed Lease Area.**

**See Attached Exhibit (A) "OptimERA-Phase\_2-LTE-Haystack" for the following**

**ACKNOWLEDGEMENT**

I understand that I am responsible for any and all costs incurred as part of this application process, which may include but not limited to: an intermodal frequency study, metes and bounds description prepared by an Alaska licensed surveyor and engineer-stamped drawings of all equipment and/or structures. I also understand that providing any or all of the required documents does not guarantee approval of the lease area by the City of Unalaska.

**Exception to Acknowledgments:**

An intermodal frequency study will not be acknowledged or paid for by OptimERA. The Enforcement Bureau's Spectrum Enforcement Division, in conjunction with the Regional and Field Offices, is responsible for responding to interference complaints involving FCC licensees.

Signature

A handwritten signature in black ink, appearing to be "E. J. Smith", written over a faint signature line.

Date 12-12-2017

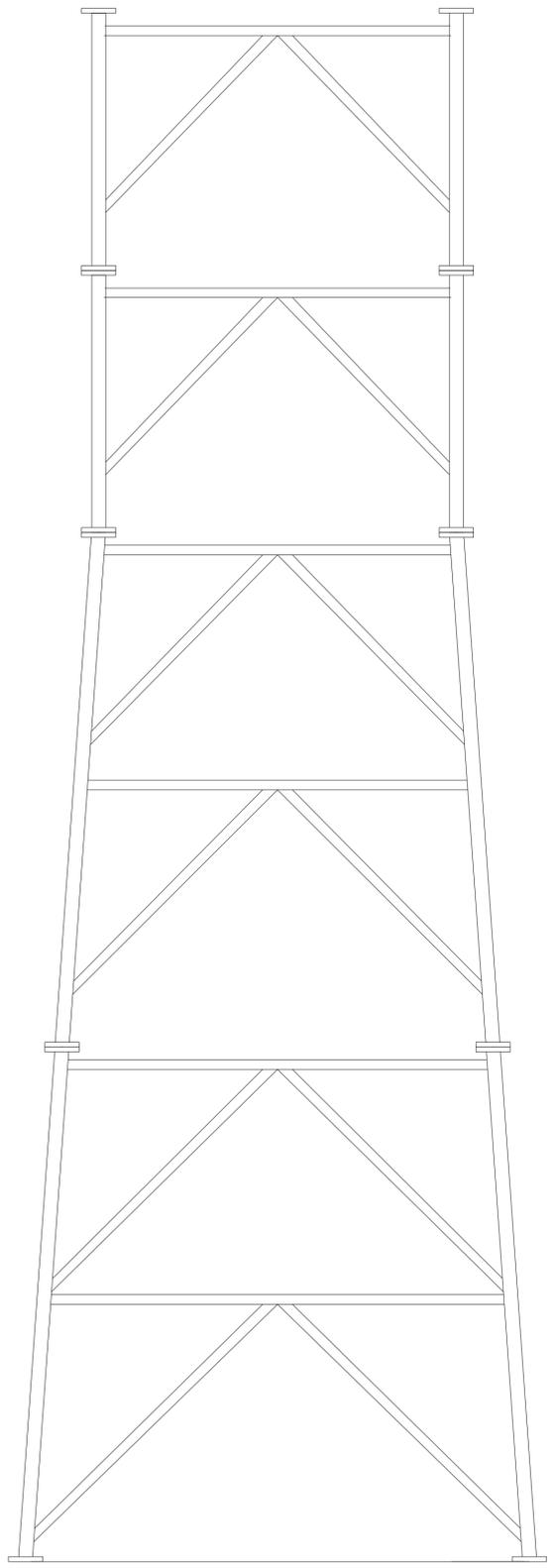
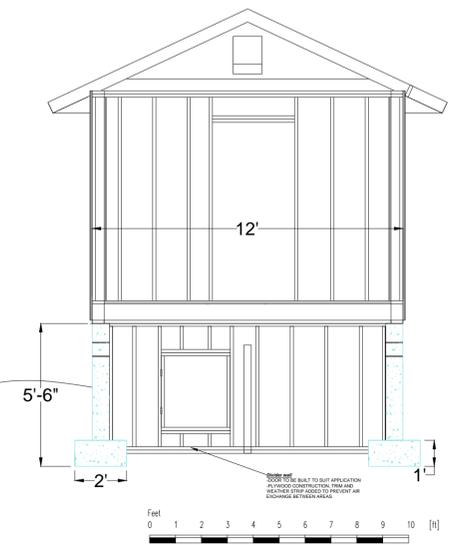
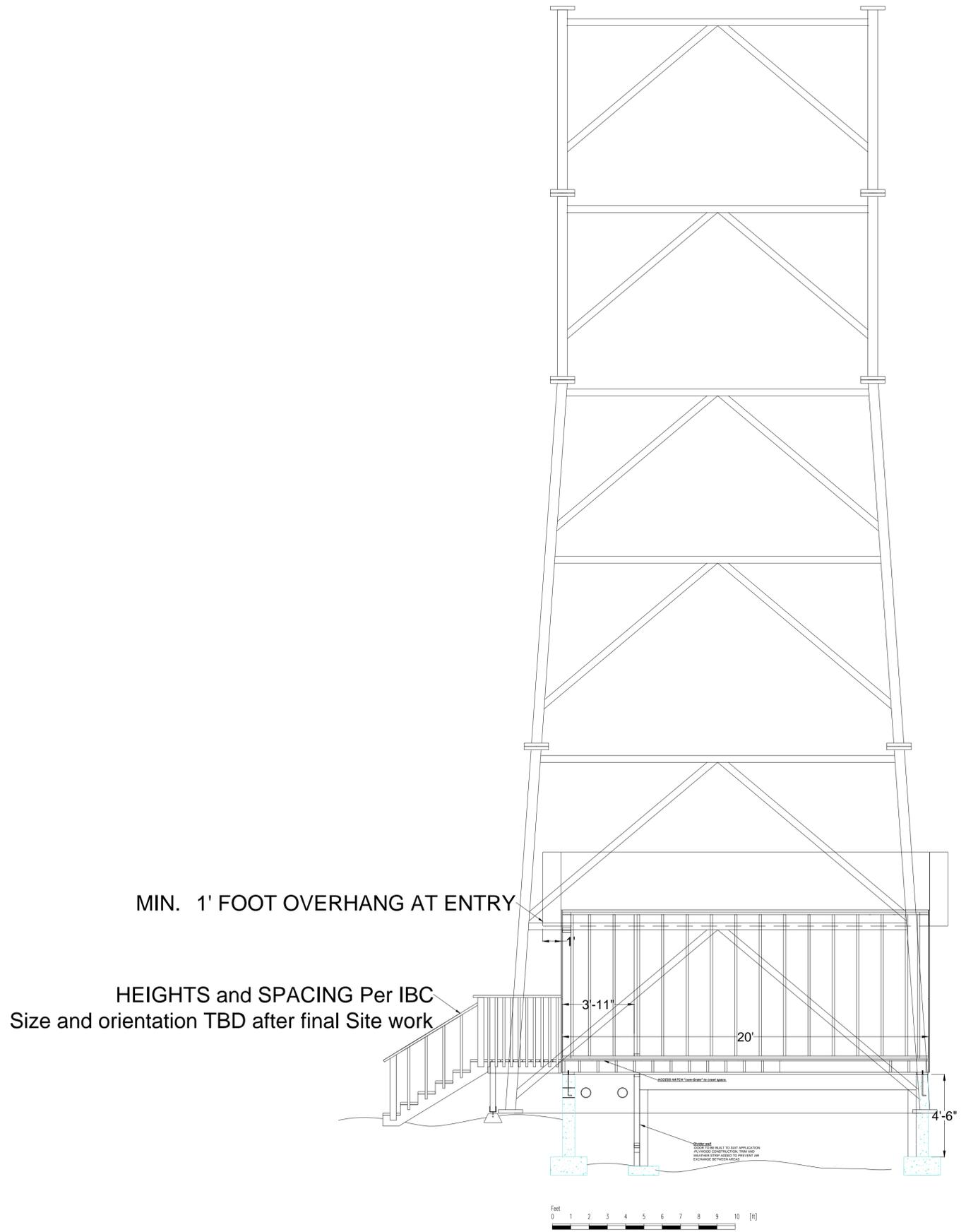
# OptimERA - Unalaska Phase 2 - LTE



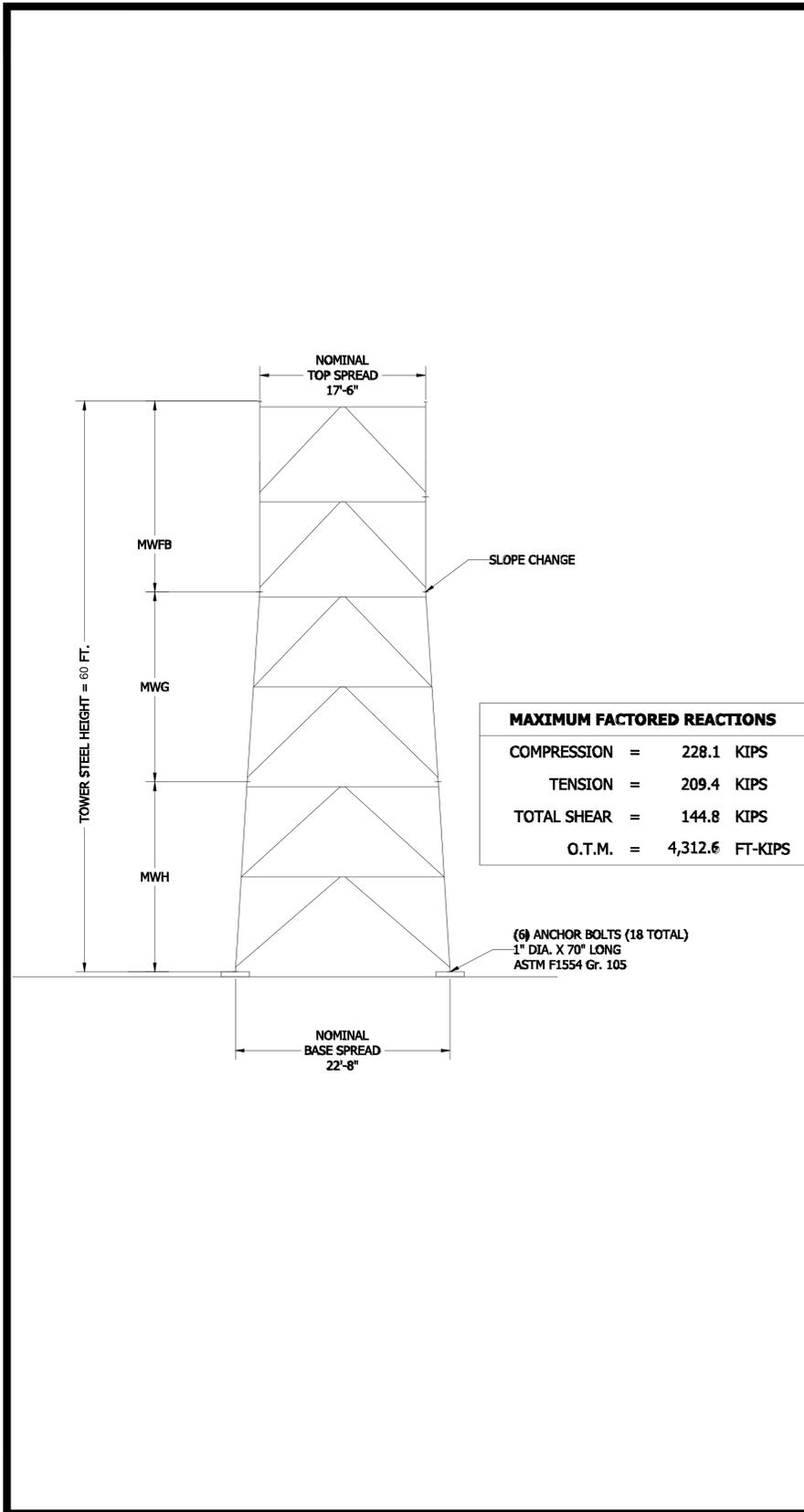
**OptimERA** Internet by, and for Unalaskans

Mofostro Photos

<b>OPTIMERA INC.</b> <small>"OPTIMIZING TECHNOLOGY FOR A NEW ERA" P.O. Box 921134 Dutch Harbor, Alaska 99692</small>		<b>60' SSMW TOWER</b>			
		COVER - Haystack Lease request			
CHECKED	DRAWN	DATE	SCALE	DRAWING NO.	SHEET
....	MMS	11/14/2017	Per Detail	SSMW-HS-001	



<b>OPTIMERA INC.</b> "OPTIMIZING TECHNOLOGY FOR A NEW ERA" P.O. Box 921134 Dutch Harbor, Alaska 99692		<b>60' SSMW TOWER</b>			
		Tower Detail			
CHECKED ....	DRAWN MMS	DATE 11/14/17	SCALE Per Detail	DRAWING NO. SSMW-HS-002	SHEET



TOWER DESIGN LOADING		
DESIGN WIND LOAD PER ANSI/TIA-222-G: BASIC WIND SPEED (NO ICE) = 150 MPH BASIC WIND SPEED (ICE) = 130 MPH DESIGN ICE THICKNESS = 1.0 IN. STRUCTURE CLASS = II EXPOSURE CATEGORY = D TOPOGRAPHIC CATEGORY = 4 EARTHQUAKE SPECTRAL RESPONSE ACCELERATION: S1 = 2.36		
THIS TOWER IS DESIGNED TO SUPPORT THE FOLLOWING LOADS:		
ELEVATION (FT)	ANTENNA TYPE	LINE SIZE (NOM)
TOP	LIGHTNING ROD	-
40	(6) HPA65R-KE8A, (6) LTE RADIOS ON SECTOR FRAME W/ WORK PLATFORM	(6) 1-5/8"
30	(3) HPA65R-KE8A, (3) LTE RADIOS ON SECTOR FRAME W/ WORK PLATFORM	(3) 1-5/8"
40	(6) SD2ft TIA w/o radome (AZ. 0,120,240 DEG) [6GHZ]	(6) 7/8"
30	(6) SD2ft TIA w/o radome (AZ. 0,120,240 DEG) [6GHZ]	(6) 7/8"

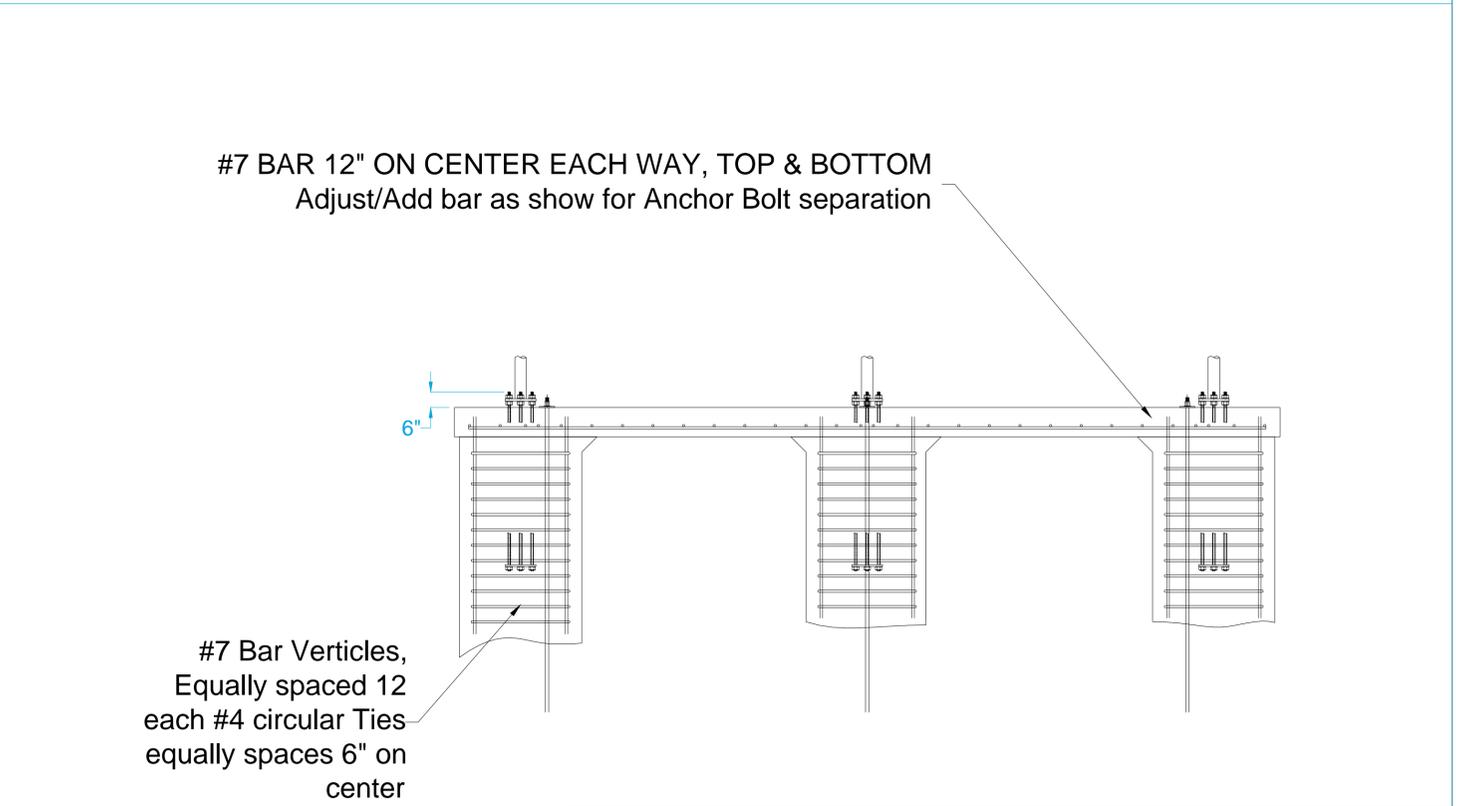
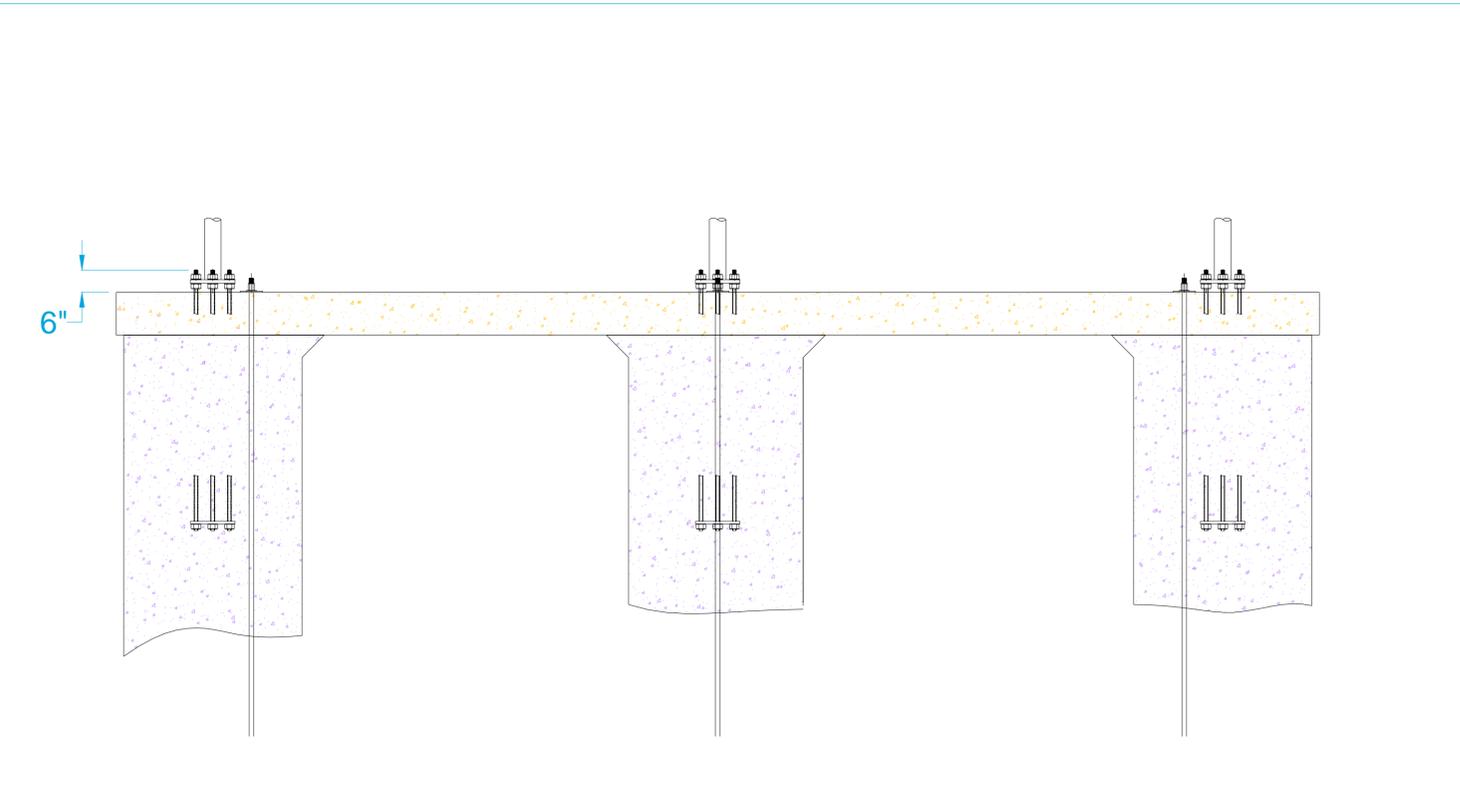
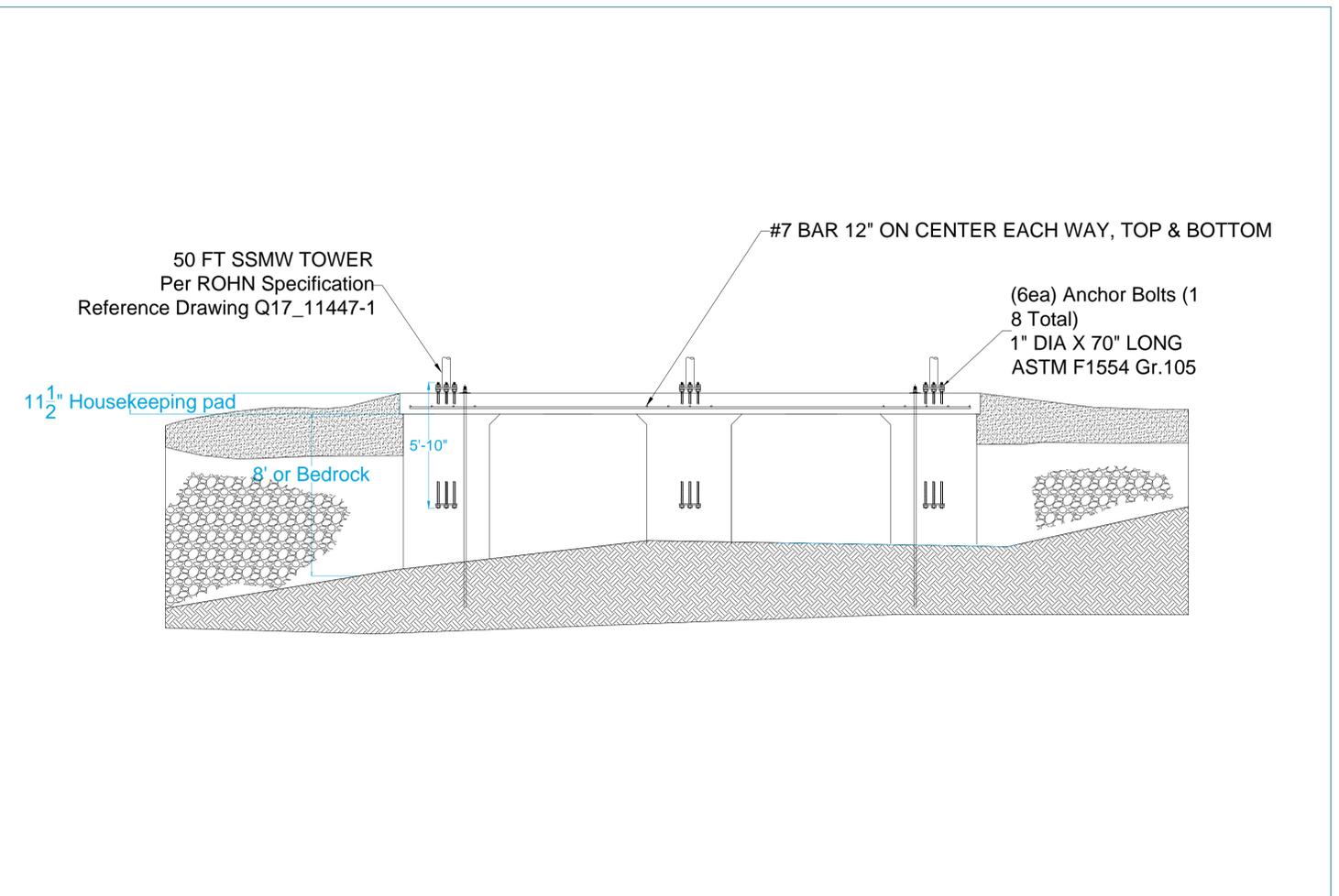
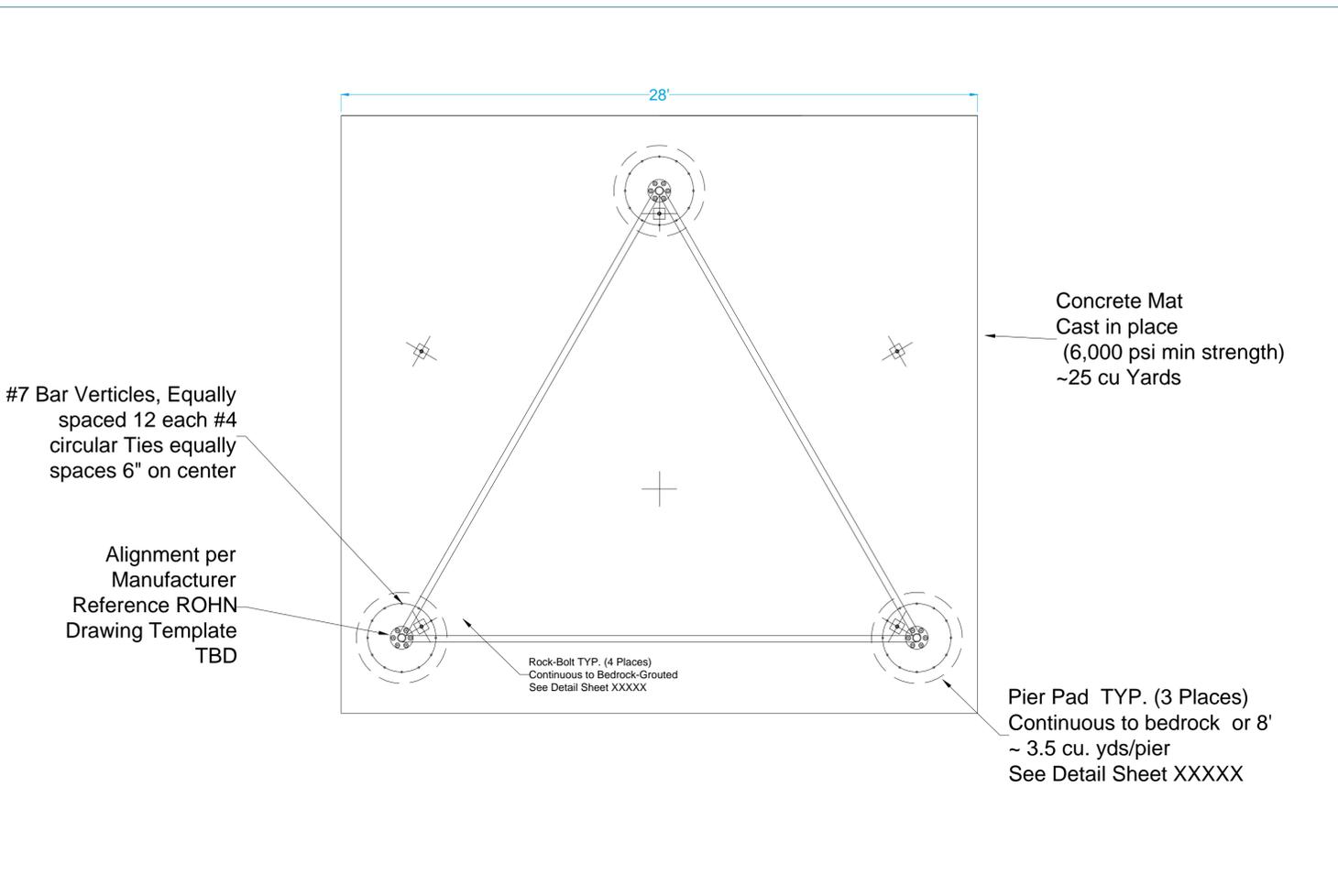
TOWER DESIGNED WITH AN ADDITIONAL 25% LOADING AND LINES.

SECTION MAIN MEMBER SCHEDULE			
SECTION	LEG	DIAGONAL	HORIZONTALS
MWFB	PIPE 3.500x0.216	PIPE 3.500x0.300 (1)	PIPE 2.875x0.203 (1)
MWG	PIPE 4.500x0.237	PIPE 4x0.318 (2)	PIPE 3.500x0.300 (2)
MWH	PIPE 5.563x0.375	PIPE 4.500x0.237 (2)	PIPE 3.500x0.300 (2)

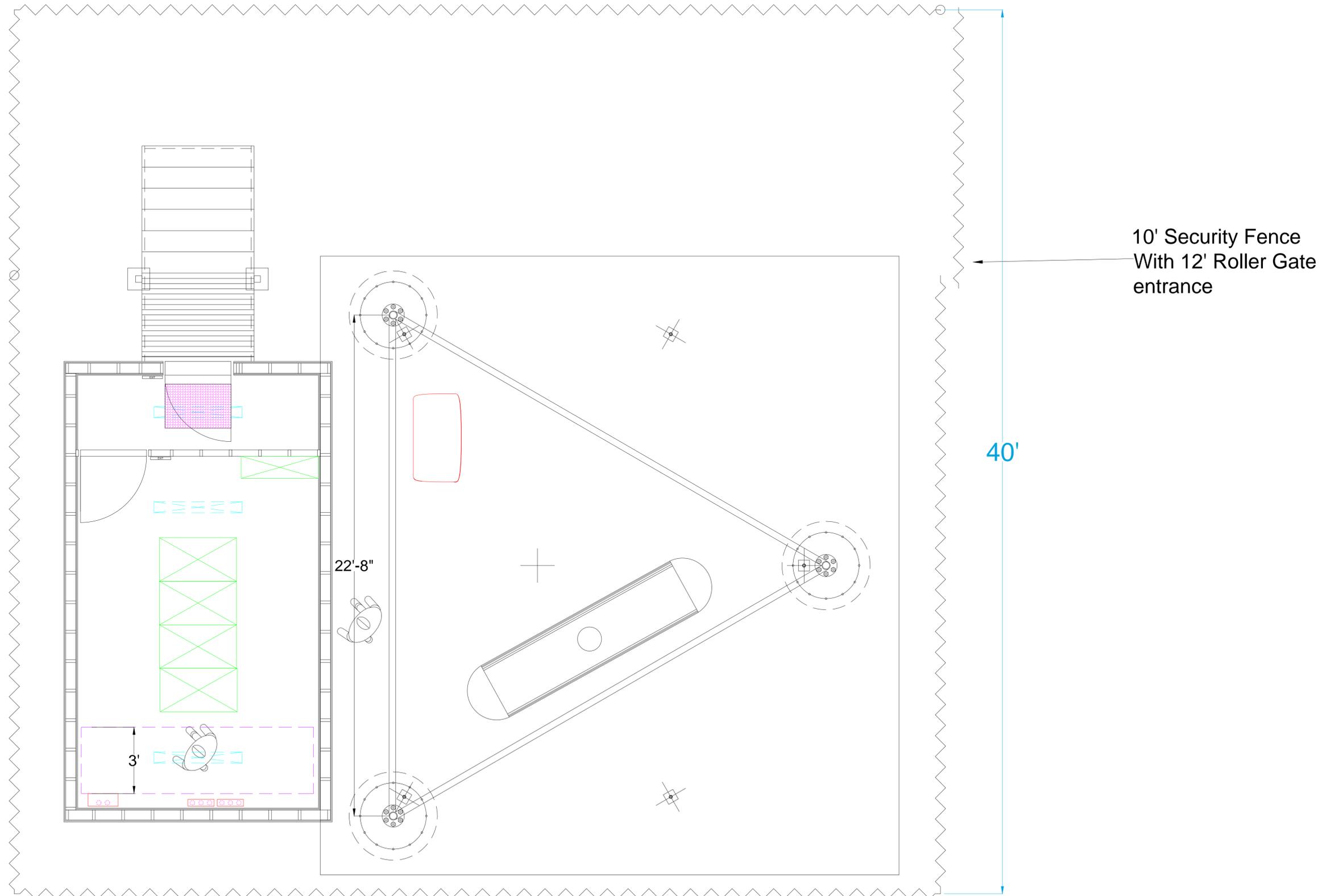
NOTE: SECTION NUMBERS ARE FOR REFERENCE ONLY. FOR NOMINAL FACE WIDTH DIMENSIONS, REFER TO THE STRESS ANALYSIS.  
THE NUMBERS SHOWN IN PARENTHESES INDICATE THE NUMBER OF BAYS FROM TOP TO BOTTOM.

FILE NO. Q17-11447-1			
REVISIONS			
REV.	DESCRIPTION	DWN	CHK APP
 PO BOX 5999 PEORIA, IL 61601-5999 TOLL FREE 800-727-ROHN			
THIS DRAWING IS THE PROPERTY OF ROHN. IT IS NOT TO BE REPRODUCED, COPIED OR TRACED IN WHOLE OR IN PART WITHOUT OUR WRITTEN CONSENT.			
FRIGID NORTH DESIGN PROFILE 60FT MW DUTCH HARBOR 60 FT			
DWN: SWG	CHK'D:	DATE: Sep/21/17	
ENGR:	SHEET #: 1 OF 1		
PRJ. ENGR: SWG	PRJ. MANG'R:		
DRAWING NO: Q17-11447-1 PROFILE			REV: 0

<b>OPTIMERA INC.</b> <small>"OPTIMIZING TECHNOLOGY FOR A NEW ERA"</small> P.O. Box 921134 Dutch Harbor, Alaska 99692		<b>60' SSMW TOWER</b> Tower - Building site plan			
CHECKED	DRAWN	DATE	SCALE	DRAWING NO.	SHEET
....	MMS	11/14/2017	Per Detail	SSMW-HS-003	



<b>OPTIMERA INC.</b> <small>"OPTIMIZING TECHNOLOGY FOR A NEW ERA"</small> P.O. Box 921134 Dutch Harbor, Alaska 99692		<b>60' SSMW TOWER</b>			
		Foundation Detail			
CHECKED	DRAWN	DATE	SCALE	DRAWING NO.	SHEET
....	MMS	11/14/17	Per Detail	SSMW-HS-004	



<b>OPTIMERA INC.</b> <small>"OPTIMIZING TECHNOLOGY FOR A NEW ERA"          P.O. Box 921134          Dutch Harbor, Alaska 99692</small>		<b>60' SSMW TOWER</b>			
		Tower - Building site plan			
CHECKED ....	DRAWN MMS	DATE 11/14/2017	SCALE Per Detail	DRAWING NO. SSMW-HS-005	SHEET



- Proposed Lease site to occupy area SW of AT&T shelters
- ~50' x 50' area
- 200amp <sup>240</sup>/<sub>120</sub> Electrical service
- Location and orientation representative only. Subject to lease options and excavation limitations.
- Security fence to optionally be constructed on lease boundary after final construction

OPTIMERA PROPRIETARY AND COMPETITION SENSITIVE | All Rights Reserved

Exhibit (A)\_006\_ of 006

<b>OPTIMERA INC.</b> <small>"OPTIMIZING TECHNOLOGY FOR A NEW ERA"</small> <small>P.O. Box 921134</small> <small>Dutch Harbor, Alaska 99692</small>		<b>60' SSMW TOWER</b>			
		Tower - Building site plan			
CHECKED	DRAWN	DATE	SCALE	DRAWING NO.	SHEET
....	MMS	11/14/2017	Per Detail	SSMW-HS-007	