

**ITEM FOR CONSIDERATION
BY THE
BOARD OF PORT COMMISSIONERS**

August 12, 2025

**Subject: FY 2025 FAA AIRPORT INFRASTRUCTURE GRANT (AIG)
 AGREEMENT OFFER (HANGAR DEVELOPMENT PHASE 2 DESIGN) –
 PORT RESOLUTION NO. 25-1327**

Presented by: James Alton, Airport Manager

RCW & POLICY REQUIREMENTS:

Under RCW 47.68.090, any city, county, airport authority, political subdivision, federally recognized Indian tribe, public corporation, or person(s) that owns and operates, a public-use airport included in the Washington Aviation System Plan (WASP) is considered an eligible airport sponsor and may apply for WSDOT Airport Aid grant funds. Federal AIP grants for planning, development, or noise compatibility projects are at or associated with individual public-use airports (including heliports and seaplane bases). Further, to be eligible for a grant, an airport must be included in the National Plan of Integrated Airport Systems (NPIAS).

BACKGROUND:

FAA Airport Infrastructure Grant (AIG) grant funds are part of the Bipartisan Infrastructure Law (BIL) to support airport infrastructure improvements and enhance economic growth. Currently, the Port is working with Century West Engineering to plan for new hangar space at CLM. Originally, the hangars were envisioned to be single-engine T-hangars, but over time, the plan was revised to a 70 x 250 ft building with four box hangars. The size of each hangar measures 62.5 ft x 70 ft. Compared to T-hangars, box hangars will provide more space to house larger aircraft. The design of these new hangars is currently funded at 95% by the FAA through the Bipartisan Infrastructure Law (BIL) and is included in the Port's 2025 Capital Budget.

ANALYSIS:

2025 design grant will cover architectural, structural, electrical, and mechanical engineering for Hangar E, which is anticipated to be a Pre-Engineered Metal Building (PEMB). This project advances AIP policy by improving airport capacity. Grant Offer for Project No. 3-53-0047-045-2025 at William R Fairchild International Airport is ready for execution. A completed grant agreement requires a Commission-adopted resolution that authorizes submittal of signatures, states that matching funds are available, and indicates the support of elected officials.

ENVIRONMENTAL IMPACT:

None.

FISCAL IMPACT:

Currently, the FAA funds projects at 95%. WSDOT will provide 2.5%, and the Port will be responsible for the remaining 2.5% non-federal share.

The proposed budget for this project is as follows:

	FAA	WSDOT	Port	Total
Hangar Development	\$276,961.00	\$7288.00	\$18,385.00	\$302,634

The Port's total share for this project is \$18,385.00. This includes \$11,000 for the design of the restrooms, which are not eligible for FAA funding. The Port has included \$80,000 for this project in its 2025 Capital Budget.

RECOMMENDED ACTION:

1. Introduce and adopt Resolution No. 25-1327 authorizing the Executive Director to sign and submit the corresponding FAA AIP grant application for \$276,961.00 in Airport Infrastructure Grant funding for the Hangar Development – Phase 2 Design project, and to make any minor changes as may be needed.
2. Approve the Executive Director to execute the contract for design with Century West Engineering to proceed with the Hangar Development Phase 2 Design, and to make any minor changes to the standard form of contract as may be needed.

A RESOLUTION OF THE PORT OF PORT ANGELES, WASHINGTON, ACCEPTING AIRPORT INFRASTRUCTURE GRANT OFFER 3-53-0047-045-2025 FROM THE FEDERAL AVIATION ADMINISTRATION FOR HANGAR DESIGN PHASE 2 AND TO EXECUTE THE CONTRACT FOR DESIGN WITH CENTURY WEST ENGINEERING.

WHEREAS, the Port of Port Angeles, as sponsor, on behalf of the William R. Fairchild International Airport (CLM) accepts FAA Airport Infrastructure Grant offer 3-53-0047-045-2025 for Hangar Development - Phase 2 Design and

WHEREAS, the Port of Port Angeles is an eligible public agency sponsor; and

WHEREAS, the total funding for the Projects is to be comprised of FAA Airport Improvement Program (AIP) and Bipartisan Infrastructure Law (BIL) funding, WSDOT Aviation grant funding, and local match funding from the Port; and

WHEREAS, the Port has the required sponsor match for the Project (2.5% or \$18,385.00) set aside in its 2025 Capital Budget, which was approved and adopted on November 19, 2024; and

WHEREAS, the Port has selected Century West Engineering to complete the Phase 2 Design based on their qualifications and deep knowledge of working with the FAA.

NOW, THEREFORE, BE IT RESOLVED that the Port Commission of the Port of Port Angeles, Washington, supports this project, authorizes signatures to accept the grant offer from the Federal Aviation Administration, and to execute the contract for design with Century West Engineering.

ADOPTED by the Board of Commissioners of the Port of Port Angeles at a regular meeting thereof held this 12th day of August 2025.

PORT OF PORT ANGELES
BOARD OF COMMISSIONERS

Steven D. Burke, President

Colleen M. McAleer, Vice President

Connie L. Beauvais, Secretary

**ITEM FOR CONSIDERATION
BY THE
BOARD OF PORT COMMISSIONERS**

Date: August 12, 2025

SUBJECT: Atlas Tower

Presented by: Caleb McMahon, Director of Economic Development

RCW & POLICY REQUIREMENTS

Per RCW 53.08.080 Lease of Property, a district may lease all lands, wharves, docks, and real and personal property upon such terms as the port commission deems proper. No lease shall be for a period longer than fifty years, with an option up to an additional thirty years.

Per RCW 53.08.085, security for rent is required for every lease of more than one year. Rent may be secured by rental insurance, bond, or other security satisfactory to the port commission, in an amount equal to one-sixth the total rent, but in no case shall such security be less than one year's rent or more than three years' rent. If the security is not maintained, the lease shall be considered in default. The port commission may, in its discretion, waive the rent security requirement or lower the amount of such requirement on the lease of real and/or personal port property.

Per Section I of the Port's Delegation of Administrative Authority to the Executive Director, all term lease agreements or use agreements of real or personal property shall be leased only under an appropriate written lease instrument executed by the Commission. Per Section 1.B.1, Commission Approval is required for any lease with a term in excess of one year, and per Section 1.B.4, Commission approval is required for any lease that contains any material non-standard terms or conditions.

Background:

Atlas Tower contacted the Port regarding the feasibility of locating a cellular tower on the northern portion of the Port's Airport Industrial Park property. After consulting with engineering and the City of Port Angeles, the project was found to be feasible. Furthermore, a satisfactory price was agreed upon as well as the use of the Port's standard lease template. A previous lease was approved by the Port Commission, but due to permitting and construction delays, Atlas requested a later start date.

Commercial Ground lease

Port Area: William Fairchild Airport.

Address: Approximately 2600 West 18th Street

Leased Space: 2500 Square feet of unimproved land

Rental Rate: \$.16 per square foot/per month

Use: Develop, maintain, and lease a wireless communication facility

Monthly Payments: Monthly payments of \$400

Escalation: 2% annual escalation

Commencement Date: The Commencement Date of this Lease shall be **September 15, 2025** ("Scheduled Commencement Date"); **provided, however**, if Tenant is unable to commence occupancy as of the Scheduled Commencement Date due to ongoing construction or completion of Tenant's improvements necessary for occupancy, then the Commencement Date shall be deferred to the date construction is substantially complete and the Premises are ready for occupancy by Tenant (the "Actual Commencement Date"), **not to exceed five (5) months from the Scheduled Commencement Date**. In no event shall the Actual Commencement Date be later than **February 15, 2026**. Tenant shall promptly notify Landlord in writing of the anticipated date of substantial completion and shall commence tenancy and rent payment on the Actual Commencement Date

Term: Original term of 30 years.

Options to Renew: Two (2) options to renew the term of the lease for 5 years each.

Fiscal Impact of the Agreement:

Per year: \$4,800

\$120,000.00 Upon completion of the tower

\$350.00 per month per additional carrier

Common Area Maintenance (CAM): N/A

Utilities: Lessee responsibility.

Tenant Improvements: None

Financial Security: Three months+\$1200

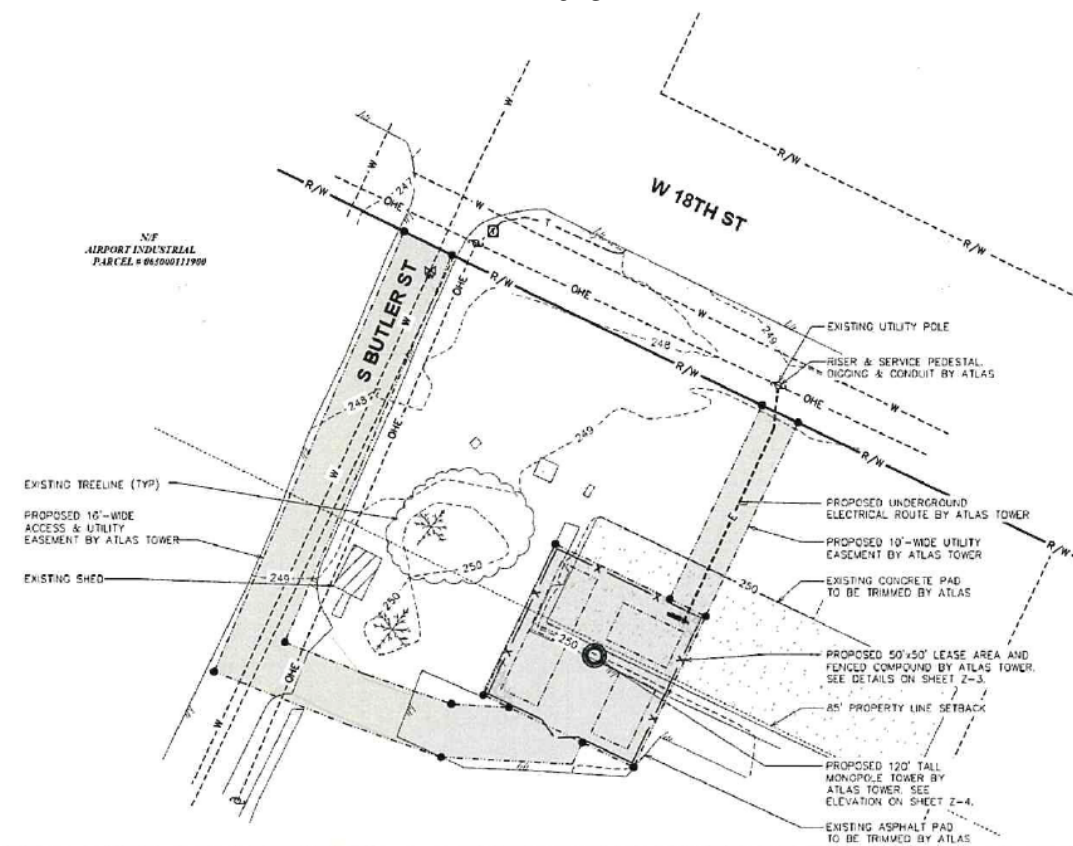
Non-standard terms requiring Commission approval for renewal/amendment: None

Unique Terms and Conditions: Atlas has agreed to let the Port place a repeater on tower.

Other Special Considerations: None

Environmental Impact: None

Exhibit A



Initials: _____
Port

MP
Lessee

COMMERCIAL GROUND LEASE

THIS COMMERCIAL GROUND LEASE (the “Lease”) is made and entered into as of the date last written below, by and between the **PORT OF PORT ANGELES**, a Washington municipal corporation (the “Port”), and **Atlas Tower 1, LLC**, a Colorado Limited Liability Company (“Lessee”) (individually “Party” and collectively “Parties”).

ARTICLE I

Summary of Lease Terms and Definitions

The Port: Port of Port Angeles
338 W First St.
Port Angeles, WA 98362

Lessee: Atlas Tower 1, LLC
2500 30th Street, STE 304
Boulder, CO 80301

Premises: 2,500 square feet of unimproved land located at approximately 2600 18th Street, Port Angeles, Washington as depicted in the Map of Premises attached to this Lease as **Exhibit A**.

Lessee-owned Improvements:

As of the Commencement Date as defined herein, the following fixtures and improvements are owned by Lessee and are not part of this Lease: None

Initials:

Port



Lessee

Use of Premises: Develop, maintain, and lease a wireless communication facility including a space for a repeater to be placed by the Port.

Benefit to the Public: Improved cellular network and repeater location for Port.

Commencement Date: The Commencement Date of this Lease shall be **September 15, 2025** (“Scheduled Commencement Date”); **provided, however**, if Tenant is unable to commence occupancy as of the Scheduled Commencement Date due to ongoing construction or completion of Tenant’s improvements necessary for occupancy, then the Commencement Date shall be deferred to the date construction is substantially complete and the Premises are ready for occupancy by Tenant (the “Actual Commencement Date”), **not to exceed five (5) months from the Scheduled Commencement Date**. In no event shall the Actual Commencement Date be later than **February 15, 2026**. Tenant shall promptly notify Landlord in writing of the anticipated date

of substantial completion and shall commence tenancy and rent payment on the Actual Commencement Date

Term: 30 years and two (2) renewals for five (5) years, for a total of forty (40) years. Termination upon 60 days' Notice by either Party.

All Land Leases shall not exceed an original term of 30 years and two (2) renewals for five (5) years, for a total of forty (40) years.

Extensions: Two (2) five-year extensions.

[X] Requires Port consent, at Port's sole discretion

Base Rent:

\$400.00/ month

\$120,000.00 buydown

2.0% annual escalation

\$350.00 per month per additional carrier

ARTICLE II

Premises, Term, Renewals

2.1 **PREMISES:** In consideration of the rents hereinafter reserved and of the covenants and conditions set forth herein to be performed by Lessee, the Port does hereby lease the Premises to Lessee.

2.2 **TERM:** The term of this Lease shall be for Thirty (30) years beginning **September 15, 2025** ("Scheduled Commencement Date"); **provided, however**, if Tenant is unable to commence occupancy as of the Scheduled Commencement Date due to ongoing construction or completion of Tenant's improvements necessary for occupancy, then the Commencement Date shall be deferred to the date construction is substantially complete and the Premises are ready for occupancy by Tenant (the "Actual Commencement Date"), **not to exceed five (5) months from the Scheduled Commencement Date**. In no event shall the Actual Commencement Date be later than **February 15, 2026**. Tenant shall promptly notify Landlord in writing of the anticipated date of substantial completion and shall commence tenancy and rent payment on the Actual Commencement Date. If Lessee takes possession of the Premises before the Commencement Date, Lessee shall pay the pro rata rent for the period prior to commencement of the Lease term.

2.3 **RENEWAL:** Subject to the terms and conditions herein, at Port consent, Lessee may renew this Lease for two (2) consecutive (5) five-year periods by giving written notice of such intention to the Port at least ninety days (90) days prior to the expiration of the term of this Lease or any renewal thereof. It is a condition precedent to Lease Renewal that the Lessee be in good standing at the time of renewal and that Lessee is not in default under the terms of this Lease or

any other lease or agreement with the Port. The terms and conditions of any renewal shall be generally the same as set forth in this Lease, provided however rent shall be recalculated as provided herein and the terms of this Lease shall be updated to be consistent with the terms and conditions of the existing Port's Commercial Lease Agreement. All lease extensions and renewals shall be at the sole discretion of the Port unless previously authorized by the Commission. At the time of renewal, extension, exercising option, etc. the Lease will be reevaluated and brought up to fair market value.

Lessee's right of renewal is likewise subject to and contingent upon the Port's acceptance of Lessee's renewal notice, which the Port may withhold in its sole discretion. Should the Port decline to accept Lessee's renewal notice, this Lease will terminate upon the expiration of the then-existing term.

ARTICLE III **Rent, Rental Adjustment**

3.1 **RENT**: The term "**Rent**" as used herein includes Base Rent, CAM Expenses (if any), applicable Washington State leasehold excise tax, and other fees and charges assessed herein. Base Rent and Washington State leasehold excise tax shall be paid without the requirement that the Port provide prior notice or demand, and shall not be subject to any counterclaim, setoff, deduction, defense or abatement. Any other fees and charges which may be assessed by the Port herein, the Port shall first provide written notice thereof, and Lessee shall pay such fees and/or charges within thirty (30) days of receipt of such written notice without any counterclaim, setoff, deduction, defense or abatement.

3.1.1 If Lessee fails to pay the required Rent as by this Lease, the Port shall charge late fees as outlined below. An administrative fee of \$25 will be charged for each month a late or finance fee is charged:

3.1.1.1. **30 days nonpayment** = late fee is charged. At the first of month after 30 days late: Late fee is 2% or \$100, whichever is greater, of total outstanding Rent, leasehold tax ("**LHT**"), utilities and charges billed.

3.1.1.2 **60 days nonpayment** = late fee is charged. At the first of month after 60 days late: Late fee is 5% or \$300, whichever is greater, of outstanding Rent, LHT, utilities, and charges billed. Eviction process will be initiated.

3.1.1.3 **90 days nonpayment** = late fee of 8% or \$700 whichever is greater, of outstanding Rent, LHT, utilities, and charges billed and eviction will be enforced.

3.1.2 **Base Rent Adjustment**: The Base Rent shall be adjusted annually each January 1st by the addition of an amount equal to the fixed rate of 2% of the existing Base Rent.

3.3 **ABATED RENT**. If this Lease provides for a postponement of any monthly rental payments or other rent concession, such postponed rent is called the "**Abated Rent**." Lessee shall be credited with having paid all of the Abated Rent on the expiration of the term of this Lease only if Lessee has fully, faithfully and punctually performed all of Lessee's obligations hereunder, including the payment of all Rent, including, if applicable, Abated Rent, and all other monetary

obligations and the surrender of the Premises in the condition required by this Lease. If Lessee defaults and does not cure within any applicable grace period, the Abated Rent shall immediately become due and payable in full and this Lease shall be enforced as if there were no such rent abatement or other rent concession. In such case, Abated Rent shall be calculated based on the full initial rent payable under this Lease, plus interest thereon at the rate of twelve percent (12%) per annum from date each monthly rental payment was postponed.

3.4 **LEASEHOLD AND OTHER TAXES.** Lessee shall be liable for, and shall pay throughout the term of this Lease, all license fees and excise and occupation taxes covering the business conducted on the Premises and all taxes on property of Lessee on the Premises and any taxes on the leasehold interest created by this Lease, whether imposed on Lessee or on the Port. Lessee shall also pay, or reimburse the Port for all taxes, other than any net income taxes payable by the Port, including ad valorem taxes or taxes levied in lieu of an ad valorem tax or tax on the leasehold interest created by this Lease and/or measured by the rent payments hereunder. With respect to any such taxes payable by the Port which are measured by the rent payments hereunder, Lessee shall pay to the Port with each rent payment an amount equal to the tax on, or measured by, that particular payment. All other tax amounts for which the Port is or will be entitled to reimbursement from Lessee shall be payable by Lessee to the Port at least fifteen (15) days prior to the due dates of the respective tax amounts involved: provided, that Lessee shall be entitled to a minimum of ten (10) days written notice of the amounts payable by it.

ARTICLE IV

Use of Premises, Condition of Property, Improvements, Removal of Property, Maintenance, and Utilities

4.1 **LESSEE'S USE OF THE PREMISES:** Lessee shall only conduct the following activity on the Premises: __Develop, maintain, and lease a wireless communication facility__ (the "Authorized Use") and such additional uses incidental or otherwise related to such Authorized Use.

4.1.1 Lessee shall be in default under this Lease if it: (i) ceases conducting the Authorized Use for any period of time exceeding one hundred twenty (120) consecutive days; or (ii) conducts any other business or activity on the Premises without first obtaining a validly executed lease modification. In conducting the Authorized Use, Lessee shall properly and fairly serve the public, providing reasonable hours of operation, and reasonably suitable service.

4.1.2 Notwithstanding the foregoing described use, the Premises shall not be used to store, distribute or otherwise handle flammable, dangerous or hazardous materials, excepting only those necessary to conduct the Authorized Use. At the request of the Port, Lessee shall provide a list of all flammable, dangerous or hazardous materials stored or used on the Premises.

4.2 **ACCEPTANCE OF PREMISES:** Lessee accepts the Premises, including all existing improvements thereon, "as is" without further maintenance liability on the part of the Port, except as otherwise specifically noted herein. Lessee is not relying on any representations of the Port as to condition, suitability, zoning restrictions or usability, except the Port's right to grant a lease of

the Premises. Lessee shall conduct investigation of environmental conditions pursuant to the National Environmental Policy Act (NEPA) and provide a copy of that report to Lessor.

4.3 **CONSTRUCTION OF TENANT IMPROVEMENTS:** Lessee shall abide by the following terms with regard to making any tenant improvements on the Premises (“**Tenant Improvements**”):

4.3.1 Subject to obtaining the Port’s written approval, Lessee may make and install, at its own expense, such Tenant Improvements as are normal and customary in connection with the Authorized Use set forth herein. Lessee’s contractor, if any, shall be subject to the Port’s approval, not unreasonably withheld. The Port reserves the right to condition its approval upon Lessee providing payment and/or performance bonds satisfactory to the Port. Lessee shall submit plans to and obtain written approval from the Port before commencing any Tenant Improvements. The Port shall have a reasonable period of time to review such plans prior to issuing a decision. Upon the provision of written notice to Lessee that the Port’s review of plans will require extraordinary staff review time, the Port may charge Lessee a reasonable pre-established fee for staff, consultant or attorney time required to review the plans. All Tenant Improvements which are to be designated fixtures shall be so designated by the Port upon the Port’s approval of the plans for such improvements. Unless otherwise agreed, all improvements by Lessee shall conform to the requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 *et seq.* (the “ADA”) in any areas that the public would have unobstructed access. Lessor and Lessee agree that the Lessee will not allow the public into most or all of the leased area and Lessee will fence areas for safety and pursuant to Federal Communications Commission regulations.

4.3.2. Return on Investment. All Tenant Improvements completed by the Port at its expense will require a return on investment of not less than the Port’s expense paid by the Lessee receiving the benefit from said Tenant Improvement. Lessee does not anticipate any Tenant Improvements completed by the Port at its expense.

4.3.3. A payback schedule for the Tenant Improvement costs will be determined by the Port on a case-by-case basis.

4.3.4. All Tenant Improvements will have a scheduled return on investment until the Port’s expense and overhead associated with the Tenant Improvement is reimbursed by Lessee.


4.3.5 **Unauthorized Improvements:** Any Tenant Improvements made on the Premises without the Port’s prior written consent or which are not in conformance with the plans submitted to and approved by the Port (“**Unauthorized Improvements**”) shall be subject to removal by Lessee upon sixty (60) days’ written notice from the Port.

4.4 **TITLE TO TENANT IMPROVEMENTS AND PERSONAL PROPERTY AT END OF LEASE:** Except as otherwise provided in the description of the Premises in Article I above, as of the Commencement Date, all existing structures, buildings, installations, and improvements of any kind located on the Premises are owned by and title thereto is vested in the Port. Prior to the conclusion of the Lease, at the Port’s option, Lessee shall remove the following from the Premises:

- a. All equipment;
- b. All personal property;
- c. All Tenant Improvements not designated as fixtures; and
- d. All Lessee Improvements not designated as fixtures in Article I above or pursuant to Section 4.3.1 above.

Initials:

Port



Lessee

4.4.1 If any of the foregoing items are not removed from the Premises by the conclusion of the Lease or when the Port has the right of re-entry, then the Port may, at its sole option, elect any or all of the following remedies:

a. Upon the expiration of thirty (30) days' written notice to Lessee that equipment, personal property and/or Tenant Improvements remaining on the Premises will be removed therefrom, the Port may remove any or all of the items and to dispose of them without liability to Lessee. The Port shall not be required to mitigate its damages, to dispose of the items in a commercially reasonable manner, or to make any effort whatsoever to obtain payment for such items. Lessee agrees to pay the Port's costs and damages associated with Lessee's failure to remove such items, including, but not limited to, the following: storage, demolition, removal, transportation and lost rent (collectively "**Disposal Costs**"); provided, however, that any net proceeds recovered by the Port in excess of its Disposal Costs will be deducted from Lessee's financial obligation set forth herein. Lessee's financial obligations herein shall survive the termination of this Lease.

b. To have the title to any or all of such items revert to the Port.

c. To commence suit against Lessee for damages or for specific performance.

4.4.2 During any period of time employed by Lessee under this Section to remove structures, buildings, installations, improvements, machines, appliances, equipment and trade fixtures, Lessee shall continue to pay a rent due and all other fees or expenses due and owing to the Port in accordance with this Lease on a prorated daily basis.

4.4.3 The foregoing remedies are cumulative, and the Port shall not be required to elect its remedies.

4.5 **MAINTENANCE OF PREMISES:** Maintenance and repair of the Premises and all improvements thereon are the sole responsibility of Lessee. Without limiting the generality of the foregoing, Lessee shall maintain the Premises in good condition including, without limitation, repairing damage caused by Lessee, its employees, agents, licensees, invitees or anyone on the

Premises as a result of Lessee's activities. The Port and Lessee specifically acknowledge and agree that the Port has no responsibility to maintain, repair or replace the Lessee-owned Improvements described in Article I above.

4.6 **UTILITIES AND SERVICES:** Lessee shall be liable for and shall pay throughout the term of this Lease all charges for all utility services furnished to the Premises, including but not limited to, light, heat, gas, janitorial services, garbage, disposal, security, electricity, water, stormwater and sewerage, including any connection fees and any fire protection, police protection, or emergency health services as furnished by local authorities and as may be the subject of a contract between the Port and such local authorities or as imposed by ordinance or statute. The Lessee will ensure all utility services are transferred to their name upon commencement of this agreement. If the Premises are part of a building or part of any larger Premises to which any utility services are furnished on a consolidated or joint basis, Lessee agrees to pay to the Port Lessee's pro-rata share of the cost of any such utility services. Lessee's pro-rata share of any such services may be computed by the Port on any reasonable basis, and separate metering or other exact segregation of cost shall not be required. At the conclusion of this Lease, Lessee shall arrange for such utility services to be terminated and for the final bill to be sent to Lessee. Lessee shall be liable for all utility charges that accrue if it fails to so terminate services.

4.7 **COMPLIANCE WITH PORT REGULATIONS AND WITH ALL LAWS:**

4.7.1 Lessee agrees to take reasonable action to comply with all applicable rules and regulations of the Port pertaining to the Premises now in existence or hereafter promulgated for the general safety and convenience of the Port, its various lessees, invitees, licensees and the general public upon receipt of notice of the adoption of such regulations.

4.7.2 Lessee agrees to comply with all applicable federal, state and municipal laws, ordinances, and regulations, including without limitation those relating to environmental matters. Any fees for any inspection of the Premises during the Lease term by any federal, state or municipal officer related to Lessee use and occupancy of the Premises and the fees for any so-called "Certificate of Occupancy" shall be paid by Lessee.

ARTICLE V
Insurance and Financial Security

5.1 **CASUALTY LOSS OF LESSEE:** The parties hereto agree that the Port shall not be responsible to Lessee for any property loss or damage done to Lessee's property, whether real, personal or mixed, occasioned by reason of any fire, storm or other casualty whatsoever. It shall be Lessee's responsibility to provide its own protection against casualty losses of whatsoever kind or nature, regardless of whether or not such loss is occasioned by the acts or omissions of the Port, Lessee, third party, or act of nature.

5.2 **INSURANCE:**

5.2.1 **Liability**: Lessee shall procure and maintain during the term of this Lease and any extensions or renewals of this Lease a comprehensive general liability policy covering on an occurrence basis all claims for personal injury (including death) and property damage (including all real and personal property located on the Premises) arising on the Premises or arising out of Lessee's operations. This policy shall also include contractual liability coverage for all indemnities provided under this Lease. Limit per occurrence shall not be less than \$1,000,000, or the equivalent. General aggregate limit shall not be less than \$2,000,000, when applicable (and will be endorsed to apply separately to each site or location.) Limit per claim and in the aggregate shall not be less than \$1,000,000, or the equivalent. Annual aggregate limit shall not be less than \$2,000,000. The liability policies shall contain a cross-liability provision such that the policy will be construed as if separate policies were issued to Lessee and to the Port.

5.2.2 **Property Insurance**. At all times during the term of this Lease, Lessee shall maintain in effect on Lessee-owned improvements fire and extended coverage property insurance for physical loss and damage *excluding* earthquake and flood insurance. Such policy or policies shall be written in the form of replacement cost insurance in an amount not less than 100% of the full replacement cost of Lessee's improvements thereon, which amount shall be adjusted not less frequently than annually.

AND/OR

5.2.2 **Property**: Lessee shall procure and maintain during the term of this Lease and any extensions or renewals of this Lease fire and extended coverage property insurance for physical loss and damage, written on an "all risks" basis *excluding* earthquake and flood insurance, to the Leased Premises and to all Lessee-owned improvements, with the Port named as a loss payee. Such policy or policies shall be written in the form of replacement cost insurance in an amount not less than 100% of the full replacement value, which amount shall be adjusted not less frequently than annually. The proceeds of such insurance in case of loss or damage shall be first applied on account of the obligation of the Port to repair and/or rebuild the Leased Premises to the extent that such proceeds are required for such purpose. Lessee shall also procure and maintain during the term of this Lease and any extensions or renewals of this Lease business interruption insurance by which Rent will be paid to the Port for a period of up to one (1) year if the Premises are destroyed or rendered inaccessible by a risk insured against by a policy of fire and extended coverage property insurance, with vandalism and malicious mischief endorsements.

5.2.3 **Workers' Compensation; Employer's Liability/Stop Gap**: If Lessee has employees, Lessee shall obtain, at Lessee's expense, and keep in effect during the term of this Lease and any renewals or extensions of this Lease, Workers' Compensation as required by the State of Washington, with statutory limits, and Employer's Liability/Stop Gap Insurance with limits of not less than One Million Dollars (\$1,000,000) per accident for bodily injury or disease. Lessee has no employees that will work in the lease area. All work will be performed by licensed professional telecommunication and construction companies. Lessee may substitute Workers' Compensation Insurance of these professional telecommunication and construction companies to satisfy the insurance requirements.

5.2.4 **Pollution Legal Liability and Remediation**: Lessee shall procure and maintain during the term of this Lease and any extensions or renewals of this Lease, Pollution Legal

Liability and Remediation insurance for all operations, with a limit no less than \$2,000,000 per claim or occurrence and \$3 ,000,000 aggregate per policy period of one year. This policy shall include coverage for bodily injury, property damage personal injury and environmental site restoration, including fines and penalties in accordance with applicable EPA or state regulations. Lessee shall maintain this coverage for a minimum of five (5) years after the expiration or earlier termination of this Lease.

5.2.5 **Excess Liability/Umbrella Coverage:** Lessee shall obtain, at Lessee's expense, and keep in effect during the term of this Lease and any extension or renewal of this Lease, Umbrella Liability Insurance providing excess coverage over primary liability coverages, including Employer's Liability, of not less than \$3 ,000,000.

5.2.6 **Verification of Coverage:** For each insurance policy required herein, Lessee shall provide to the Port, prior to Lessee's occupancy of the Premises, original certificates of insurance, all required amendatory endorsements establishing coverage required under this Lease, a copy of each policy declarations and endorsements page, and complete copies of each policy. Provided, the Port's failure to obtain the required documents prior to Lessee's occupancy shall not be deemed a waiver of Lessee's obligation to provide them. Receipt of such certificate or policy by the Port does not constitute approval by the Port of the terms of such policy.

5.2.7 **Additional Insured; Primary Coverage; Non-Contributory:** Each insurance policy required herein shall name the Port, and only the Port, as an additional insured. For any claims related to this Lease, Lessee's insurance coverage shall be primary insurance coverage as to the Port. Any insurance or self-insurance maintained by the Port shall be excess of Lessee's insurance and shall not contribute with it.

5.2.8 **Changes in Coverage Requirements:** The Port reserves the right to modify any insurance requirements set forth herein, including limits, at the same time as revaluation of the annual Rent, as a condition of approval of assignment or sublease of this Lease, upon any breach of the environmental liability provision herein, upon a material change in the condition of any improvements, upon a change in the Authorized Use, or under other special circumstances as determined by the Port. Lessee shall obtain new or modified insurance coverage within thirty (30) days after changes are required by the Port.

5.2.9 **Substitute Coverage:** If Lessee fails to procure and maintain any insurance required herein, the Port shall have the right, but not the obligation, to procure and maintain substitute insurance and to pay the premiums, chargeable to Lessee. Lessee shall pay to the Port upon demand the full amount paid by the Port.

5.2.10 **Negligence of Lessee:** Each insurance policy required herein shall expressly provide that the insurance proceeds of any loss will be payable notwithstanding any act or negligence of Lessee which might otherwise result in a forfeiture of said insurance.

5.2.11 **Self-Insured Retentions:** If Lessee is self-insured, self-insured retentions must be declared to and approved by the Port. At the Port's option, either (i) Lessee shall obtain coverage to reduce or eliminate such self-insured retentions as respects the Port; or (ii) Lessee shall provide

a financial guarantee satisfactory to the Port guaranteeing payment of losses and related investigation, claim administration and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or the Port.

5.2.12 **Acceptability of Insurers:** All insurance required herein shall be placed with insurers authorized to conduct business in the state of Washington with a current A.M. Best's rating of no less than A-VII, unless otherwise specifically authorized by the Port.

5.2.13 **Notice of Cancellation:** Each insurance policy required herein shall expressly provide that coverage shall not be canceled or changed except with prior written notice to the Port of no less than thirty (30) days. Lessee shall provide the Port with any revised endorsements, policy declarations and endorsements pages, and policies as soon as practicable after any changes are made to any policy.

5.3 **WAIVER OF SUBROGATION:** The Port and Lessee hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective insurance contracts including any extended coverage endorsements thereto provided that this paragraph shall be inapplicable to the extent it would have the effect of invalidating any insurance coverage of the Port or Lessee. Each party agrees to cause their respective insurance carriers to include in its policies a waiver of subrogation clause or endorsement.

5.4 **FINANCIAL SECURITY:**

5.4.1 In compliance with the requirements of RCW 53.08.085 (as presently codified or hereafter amended) and other laws of the State of Washington, Lessee agrees it will secure its performance of the rental portion of this Lease by procuring and maintaining, during the term of this Lease, a corporate surety bond, or by providing other financial security satisfactory to the Port (the "**Bond**"), in an amount totaling:

✓ Three months of Rent.

5.4.2 The Bond shall be in a form and issued by a surety company acceptable to the Port and shall comply with the requirements of Washington law. Lessee shall obtain such Bond and forward evidence thereof to the Port within thirty (30) days of execution of this Lease, but in no event later than the Commencement Date of this Lease. Failure to comply with this requirement shall be grounds for termination of this Lease without notice by the Port. Such Bond shall be kept always in effect during the term of this Lease. Failure to comply with this requirement shall render Lessee in default. The Bond shall be increased annually to reflect any adjustments in annual Rent. No future amendment or extension to this Lease shall be effective until the Port, surety or insurer has given its consent thereto and the amount of the Bond has been adjusted as required.

5.4.3 Upon any default by Lessee in its obligations under this Lease and Lessee's failure to cure such default in accordance with its rights to do so under this Lease, the Port may collect on the Bond to offset the liability of Lessee to the Port. Collection on the Bond shall not relieve Lessee of liability for any amounts not offset by the amount collected under the Bond, shall not limit any of the Port's other remedies, and shall not reinstate or cure the default or prevent termination of the Lease because of the default. Lessee shall have from the time of receipt of notice of an event of default no less than 10 days to cure any monetary issues and lessee shall have from the time of receipt of notice of an event of default no less than 30 days to cure any non-monetary issues.

5.4.4 Any Bond may provide for termination on the anniversary date thereof upon not less than one (1) year's written notice to the Port if the Lease is not in default at the time of said notice. In the event of any such termination, Lessee shall obtain a new Bond or other security, also subject to the Port approval, to replace the security being so terminated to be effective on or before the date of termination.

5.4.5 If the Port Commission exercises its discretion pursuant to RCW 53.08.085 to reduce or waive Lessee's Bond requirement under this Lease, the Port may at any time make a determination that changes in the material circumstances related to Lessee no longer support such reduction or waiver, and thereafter increase Lessee's Bond requirement up to that required by RCW 53.08.085.

ARTICLE VI

Environmental Liability

6.1 **ENVIRONMENTAL INDEMNIFICATION:** Lessee shall defend (with legal counsel suitable to the Port), indemnify and hold the Port harmless from any and all claims, demands, judgments, orders or damages resulting from Hazardous Substances on the Premises caused in whole or in part by the activity of Lessee, its agents, or subtenants during any period of time that Lessee has occupied all or a portion of the Premises during the term of this Lease or any previous lease or agreement. The term "Hazardous Substances" as used herein shall mean any substance heretofore or hereafter designated as hazardous under the Resource Conservation and Recovery Act, 42 USC Sec. 6901 *et seq.*; the Federal Water Pollution Control Act, 33 USC Sec. 1257 *et seq.*; the Clean Air Act, 42 USC Sec. 2001 *et seq.*; the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 USC Sec. 9601 *et seq.*; or the Hazardous Waste Cleanup-Model Toxic Control Act, RCW 70.105D, all as amended and subject to all regulations promulgated there under.

6.1.1 Lessee's defense and indemnity obligations under this article are unconditional, shall not be discharged or satisfied by the Port's re-entry of the Premises or exercise of any other remedy for Lessee's default under this Lease, shall continue in effect after any assignment or sublease of this Lease, and shall continue in effect after the expiration or earlier termination of this Lease.

6.1.2 Although Lessee shall not be liable for any Hazardous Substances that existed on the Premises prior to commencement of its leasehold relationship with the Port (whether by this

Lease or any prior lease agreements), Lessee shall be responsible for the costs of any environmental investigations or remediation arising from any development or use of the Premises by Lessee, and Lessee hereby releases the Port from any contribution claim for those costs. By way of example only, if Lessee excavates soil on the Premises which contains Hazardous Substances, then Lessee will be responsible for the cost associated with disposing of those disturbed soils.

6.2 CURRENT CONDITIONS AND DUTY OF LESSEE: The Port makes no representation about the condition of the Premises. Hazardous Substances may exist in, on, under or above the Premises. Lessee should, but is not required to, conduct environmental assessments or investigations of the Premises prior to or during this Lease to determine the existence, scope and location of any Hazardous Substances. If there are any Hazardous Substances in, on, under or above the Premises as of the Commencement Date, Lessee shall exercise the utmost care with respect to the Hazardous Substances, the foreseeable acts or omissions of third parties affecting the Hazardous Substances, and the foreseeable consequences of those acts or omissions.

6.2.1 Prior to conducting any environmental investigation of the subsurface of the Premises, Lessee shall provide prior written notice to the Port. Lessee shall provide the Port with the results of all such investigations.

6.3 NOTIFICATION AND REPORTING: Lessee shall immediately notify the Port if Lessee becomes aware of any of the following:

- a. A release or threatened release of Hazardous Substances in, on under or above the Premises, any adjoining property, or any other property subject to use by Lessee in conjunction with its use of the Premises;
- b. Any problem or liability related to or derived from the presence of any Hazardous Substance in, on under or above the Premises, any adjoining property or any other property subject to use by Lessee in conjunction with its use of the Premises;
- c. Any actual or alleged violation of any federal, state or local statute, ordinance, rule, regulation or other law pertaining to Hazardous Substances with respect to the Premises, any adjoining property, or any other property subject to use by Lessee in conjunction with its use of the Premises; or
- d. Any lien or action with respect to any of the foregoing.

6.3.1 Lessee shall, at the Port's request, provide the Port with copies of any and all reports, studies or audits which pertain to environmental issues or concerns and to the Premises, and which are or were prepared by or for Lessee and submitted to any federal, state or local authorities pursuant to any federal, state or local permit, license or law. These permits include, but are not limited to, any National Pollution Discharge and Elimination System permit, any Army Corps of Engineers permit, any State Hydraulics permit, any State Water Quality certification, or any Substantial Development permit.

6.3.2 Upon expiration or sooner termination of this Lease, Lessee shall remove from the Premises any soils or other media impacted by Hazardous Substances where such materials were deposited on the Premises by Lessee or its employees, representatives or agents. Any failure to complete such removal by the expiration or sooner termination of this Lease, and upon the expiration of thirty (30) days' notice that such materials remain on the Premises, Lessee shall be deemed a holding over by Lessee subject to the provision of Section 7.21 (HOLDING OVER). Lessee shall represent and warrant that, upon termination of the Lease, all Hazardous Substances that Lessee is required to remove from the Premises pursuant to this subsection have been removed from the Premises.

ARTICLE VII

Miscellaneous Provisions

7.1 **LESSEE WILL OBTAIN PERMITS:** Lessee agrees to obtain and comply with all necessary permits for any Authorized Use or leasehold improvement. If Lessee fails to obtain and comply with such permits, then Lessee accepts full responsibility for any and all resulting costs incurred by the Port, including actual attorneys' fees. In this way, Lessee agrees to be solely responsible for all damages, costs and expenses incurred as a result of Lessee's failure to fully comply with any necessary permit process and requirements.

7.2 **LIENS:** Lessee agrees to keep the Premises free and clear of all liens and charges whatsoever. Lessee shall not allow any mechanics' and materialmen's or other liens to be placed upon the Premises. If such a lien is placed or recorded, Lessee shall cause it to be discharged of record, at its own expense, within thirty (30) days of the Port's demand. Failure to comply with the Port's demand within thirty (30) days shall be a default under the terms of this Lease. Notwithstanding the foregoing, the Port acknowledges that Lessee may use its Tenant Improvements as security for a loan, and the Port agrees to reasonably cooperate with Lessee and its creditor(s) to allow such creditor(s) to obtain such security.

7.3 **INDEMNIFICATION AND HOLD HARMLESS:** The Port, its employees and/or agents shall not be liable for any injury (including death) to any persons or for damage to any property regardless of how such injury or damage be caused, sustained or alleged to have been sustained by Lessee or by others as a result of any condition (including existing or future defects in the Premises) or occurrence whatsoever related in any way to the Premises and the areas adjacent thereto or related in any way to Lessee's use or occupancy of the Premises and of the areas adjacent thereto. Lessee agrees to defend and to hold and save the Port (including its commissioners, employees and/or agents) harmless from all liability or expense (including attorneys' fees, costs and all other expenses of litigation) in connection with any such items of actual or alleged injury or damage. Lessee specifically agrees that any bond or other security provided pursuant to any provisions of this Lease shall extend to the indemnity agreed to herein. Lessee acknowledges that it expressly and specifically waives immunity under the industrial insurance statute of the state of Washington, Title 51 RCW, for purposes of this indemnification provision and further acknowledges that this waiver was mutually negotiated by the parties.

7.4 **LAWS AND REGULATIONS:** Lessee agrees to conform to and abide by all applicable rules, codes, laws, regulations and Port policies in connection with its use of the Premises and the

construction of improvements and operation of Lessee's business thereon and not to permit said Premises to be used in violation of any applicable rule, code, law, regulation, Port policy, or other authority.

7.4.1 Lessee's obligations herein shall include, but in no way be limited to, the obligation to comply with all State and Federal environmental laws and regulations.

7.5 **WASTE AND REFUSE:** Lessee agrees not to allow conditions of waste and refuse to exist on the Premises and to keep the Premises in a neat, clean and orderly condition and to be responsible for all damages caused to the Premises by Lessee, its agents, or any third party on the Premises.

7.6 **DAMAGE AND DESTRUCTION:**

7.6.1 Except as otherwise stated herein, should the Premises be partially damaged by fire or other casualty, or rendered partially unfit for use by reason of fire or other casualty, the Premises shall be repaired with due diligence by the Port, and in the meantime the Rent (as defined in Section 3.1 above) shall be abated in the same proportion that the untenable portion of the Premises bears to the whole thereof, for the period from the occurrence of the damage to the completion of the repairs. Lessee shall cooperate fully in obtaining and making available proceeds of insurance provided by Lessee in furtherance of such repairs.

7.6.2 If any building or improvement erected by Lessee on the Premises or any part thereof shall be damaged or destroyed by fire or other casualty during the term of this Lease, Lessee may, at its option and at its sole cost and expense, repair or restore the same according to the original plans thereof or according to such modified plans as shall be previously approved in writing by the Port. Lessee shall provide the Port notice of its intention to repair or restore the Premises within sixty (60) days after the damage or loss occurs. Such work of repair or restoration shall be commenced within one hundred twenty (120) days after the damage or loss occurs and shall be completed with due diligence but not longer than one (1) year, if possible, or as soon thereafter as is reasonably possible after such work is commenced, and such work shall be otherwise done in accordance with the requirements of the provisions hereof pertaining to the construction of improvements upon the Premises. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration, or if Lessee elects not to repair or restore, to the cost of removing, demolishing, or clearing off the building or improvements. If (i) there are not insurance proceeds, or (ii) the same shall be insufficient for said purpose, Lessee shall make up the deficiency out of its own funds. Should Lessee fail or refuse to make the repair, restoration or removal as hereinabove provided, then in such event said failure or refusal shall constitute a default under the covenants and conditions hereof, and all insurance proceeds so collected shall be forthwith paid over to and be retained by the Port on its own account, and the Port may, but shall not be required to, sue and apply the same for and to the repair, restoration or removal of said improvements, and the Port may, at its option, terminate this Lease as elsewhere provided herein.

7.6.3 Except as otherwise stated herein, should the Premises be completely destroyed by fire or other casualty, or should they be damaged to such an extent that the Premises are rendered

wholly unfit for their accustomed uses, the Port shall have the option to terminate this Lease on thirty (30) days' notice, effective as of any date not more than thirty (30) days after the occurrence. In the event that this Section shall become applicable, the Port shall advise Lessee within thirty (30) days after the happening of any such damage whether the Port has elected to continue the Lease in effect or to terminate it. If the Port shall elect to continue this Lease, it shall commence and prosecute with due diligence any work necessary to restore or repair the Premises. If the Port shall fail to notify Lessee of its election within said thirty (30) day period, the Port shall be deemed to have elected to terminate this Lease, and the Lease shall automatically terminate thirty (30) days after the occurrence of the damage. For the period from the occurrence of the damage to the Premises as described in this Section to the date of completion of the repairs to the Premises (or to the date of termination of the Lease if the Port shall elect not to restore the Premises), Rent due hereunder shall be abated in the same proportion as the untenable portion of the Premises bears to the whole thereof.

7.7 **SIGNS:** Lessee may place in or upon the Premises only such signs as are related to the Authorized Use of the Premises, PROVIDED that Lessee shall first obtain Port's written consent as to size, location, materials, method of attachment, and appearance. Lessee shall install any approved signs at Lessee's sole expense and in compliance with all applicable laws, ordinances, rules and regulations. Lessee shall not damage or deface the Premises in installing or removing signs and shall repair any damage to the Premises caused by such installation or removal.

7.8 **ATTORNEYS' FEES AND COURT COSTS:** In any litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Lease (whether in contract, tort, or both) or seeks a declaration of any rights or obligations under this Lease, the prevailing party shall be awarded its reasonable attorney fees, and costs and expenses incurred.

7.9 **ASSIGNMENT OF ATLAS' LEASE AND IMPROVEMENTS TO PROPERTY:** Lessee shall not assign, rent or sublease any portions of this Lease or any extension thereof, without the prior written consent of the Port, which consent shall not be unreasonably withheld, and no rights hereunder in or to said Premises shall pass by operation of law or other judicial process, or through insolvency proceedings with the exception that Lessor's prior approval is not required for colocation, license, sublease of cell tower space to third parties such as telecom carriers, infrastructure providers, and public agencies. Otherwise, the rights and obligations hereof shall extend to and be binding upon their respective successors, representatives and assigns, as the case may be. Lessee shall furnish the Port with copies of all such proposed assignment, sublease or rental documents. For the purposes of this Lease, any change of ownership including sale, liquidation or other disposition of some or all of the corporate stock or limited liability company units will be considered an assignment. Should the Port consent to an assignment made by Lessee for the purposes of obtaining a loan or other consideration from a third party, then the Port's consent shall be made in accordance with the consent to assignment document used by the Port for these specific assignments. A copy of this consent form shall be provided by the Port upon request of Lessee.

7.9.1 If the Port refuses to consent to an assignment, Lessee's sole remedy shall be the right to bring a declaratory action to determine whether the Port was entitled to refuse such assignment under the terms of this Lease.

7.9.2 No consent by the Port to any assignment or sublease shall be a waiver of the requirement to obtain such consent with respect to any other or later assignment or sublease. Acceptance of Rent or other performance by the Port following an assignment or sublease, whether or not the Port has knowledge of such assignment or sublease, shall not constitute consent to the same nor a waiver of the requirement to obtain consent to the same. Notwithstanding the foregoing rights of the port to consent to sublease, Lessee shall have the right to sublease space on the tower and ground equipment within the premises for the purpose of adding additional mobile network operators to improve the utility of wireless communication facility with written notice to Lessor but without consent of Lessor provided that such new use is in conformity with the purpose of the Lessee.

7.9.3 A minimum handling and transfer fee ("**Transfer Fee Deposit**") of Three Hundred Dollars (\$300.00) shall be payable by Lessee to the Port if Lessee requests the Port's consent to a proposed assignment (including an assignment to a creditor for security purposes), sublease or modification of this Lease. The Port reserves the right to increase the Transfer Fee Deposit up to Five Hundred Dollars (\$500.00) if, in the Port's sole judgment, the transaction will necessitate the expenditure of substantial time and expense on the part of the Port. Such Transfer Fee Deposit shall be submitted to the Port at the same time that Lessee requests the Port's consent to the proposed sublease, assignment or modification. If the Port's reasonable and customary attorneys' fees exceed the Transfer Fee Deposit, then Lessee agrees to reimburse the Port for such additional reasonable and customary attorneys' fees. Lessee's failure to remit this additional amount within sixty (60) days of the mailing of the notice of such charges, shall constitute a default under this Lease. Notwithstanding anything to the contrary herein, Lessee shall not be obligated to reimburse the Port in any case where an assignment, sublease or modification is not accomplished due to total refusal on the part of the Port to grant its consent to the request.

7.9.4 If, pursuant to any assignment or sublease, Lessee receives rent, either initially or over the term of the assignment or sublease, Lessee shall pay to the Port, as additional rent expenses hereunder, \$350 per month for each collocation after the first anchor tenant plus leasehold excise tax on that additional rent payment. .

7.9.5 If this Lease is assigned, or if the underlying beneficial interest of Lessee is transferred, or if the Premises or any part thereof is sublet to or occupied by anybody other than Lessee, the Port may collect Rent from the assignee, subtenant or occupant and apply the net amount collected to the Rent herein reserved, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, subtenant or occupant as tenant, or a release of Lessee from the further performance by Lessee of covenants on the part of Lessee herein contained. No assignment or subletting shall affect the continuing primary liability of Lessee (which, following assignment, shall be joint and several with the assignee), and Lessee shall not be released from performing any of the terms, covenants and conditions of this Lease.

7.9.6 Notwithstanding any assignment or sublease, or any indulgences, waivers or extensions of time granted by the Port to any assignee or sublessee or failure of the Port to take action against any assignee or sublease, Lessee hereby agrees that the Port may, at its option, and

upon not less than three (3) days' notice to Lessee, proceed against Lessee without having taken action against or joined such assignee or sublessee, except that Lessee shall have the benefit of any indulgences, waivers and extensions of time granted to any such assignee or sublessee.

7.10 REIMBURSEMENT FOR EXPENSES: Should Lessee seek to assign this Lease to any creditor as security for a loan or forbearance from such creditor, or attempt to otherwise assign, sublease, or modify this Lease between the parties during the term of this Lease or any renewal thereof, then Lessee agrees to reimburse the Port for all customary and reasonable attorney fees paid by the Port for the review and opinion of such attorney acting on the request. A failure to reimburse the Port within sixty (60) days of the mailing of notice of such charges shall constitute a default under the terms of this Lease. Notwithstanding anything to the contrary herein, Lessee shall not be obligated to reimburse the Port in any case where an assignment, sublease, or modification is not accomplished due to total refusal on the part of the Port to grant its consent to the request.

7.11 TERMINATION: Upon expiration or sooner termination of this Lease or any extension thereof, whether by expiration of the stated term or sooner termination thereof, as herein provided, Lessee shall surrender to the Port the Premises peaceably and quietly. Lessee shall restore the Premises to the condition existing at the time of initiation of this Lease, except for: (i) normal wear and tear, and (ii) any improvements which the Port permits to remain on the Premises.

7.11.1 If the Port, at its sole discretion, shall require the use of the Premises for a public use in connection with the business of the Port not involving the lease thereof to another private lessee or in the event that the Port, at its sole discretion, shall require the use of the Premises for a major capital improvement for public or private use in connection with the operation of the business of the Port, then this Lease may be terminated by the Port by written notice delivered or mailed by the Port to Lessee not less than ninety (90) days before the termination date specified in the notice, unless the need for such use constitutes an emergency, in which case this Lease shall terminate as soon as is practicable.

7.11.2 If the United States Government, the State of Washington, or any agency or instrumentality of said government shall take title, possession, the rights of the Premises or any part thereof, the Port shall have the option to terminate this Lease, and if the taking has substantially impaired the utility of the Premises to Lessee, Lessee shall have the option to terminate this Lease. Both options shall be exercisable as of the date of said taking. If Lessee is not in default under any of the provisions of this Lease on the date of such taking, any rental prepaid by Lessee shall be promptly refunded to Lessee to the extent allocable to any period subsequent to said date, and all further obligations of the parties shall terminate except liabilities, which shall be accrued prior to such date. To the extent Lessee owns certain improvements upon the Premises and is not otherwise directly compensated therefore by the taking entity, Lessee shall receive a fair allocation of any award received by the Port due to termination for government use. Nothing herein contained shall preclude Lessee from independently pursuing a direct claim for compensation from the taking entity for the value of its improvements to the Premises or its leasehold interest therein.

7.11.3 If any court having jurisdiction in the matter shall render a decision which has become final and which will prevent the performance by the Port of any of its obligations under this Lease, then either party hereto may terminate this Lease by written notice, and all rights and obligations hereunder (with the exception of any undischarged rights and obligations that occurred prior to the effective date of termination) shall thereupon terminate. If Lessee is not in default under any of the provisions of this Lease on the effective date of such termination, any rent prepaid by Lessee shall, to the extent allocable to any period subsequent to the effective date of the termination, be promptly refunded to Lessee.

7.12 **DEFAULT, CROSS DEFAULT, AND REMEDIES:** Failure to pay Rent or any other monetary obligations by the first day of each month shall constitute a default under the terms of this Lease. If Lessee is in default in the payment of Rent or other monetary obligations then, at the Port's sole option, upon three (3) days' written notice, this Lease may be terminated and the Port may enter upon and take possession of the Premises. Without limiting the generality of the foregoing, Lessee expressly authorizes the Port to obtain a prejudgment writ of restitution in the event of default by Lessee. This remedy is in addition to and is not exclusive of any other remedies provided either by this Lease or by law.

7.12.1 If Lessee shall fail to perform any term or condition of this Lease, other than the payment of Rent or other monetary obligations, then upon providing Lessee thirty (30) days' written notice of such default, and if Lessee fails to cure such default within the thirty (30) day notice thereof, the Port may terminate this Lease and enter upon and take possession of the Premises. This remedy is in addition to and is not exclusive of any other remedies provided either by this Lease or by law.

7.12.2 If within any one (1) year period, the Port serves upon Lessee three notices requiring Lessee either to: (i) comply with the terms of this Lease or to vacate the Premises or (ii) pay Rent or vacate (collectively referred to herein as "**Default Notices**"), then Lessee shall, upon a subsequent violation of any term of this Lease by Lessee (including failure to pay Rent), be deemed to be in unlawful detainer, and the Port may, in addition to any other remedies it may have, immediately terminate the Lease and/or commence an unlawful detainer action without further notice to Lessee.

7.12.3 The following shall also constitute a default under the terms of this Lease: (i) A default by Lessee under any other agreement or lease with the Port; (ii) insolvency of Lessee; (iii) an assignment by Lessee for the benefit of creditors; (iv) the filing by Lessee of a voluntary petition in bankruptcy; (v) an adjudication that Lessee is bankrupt or the appointment of a receiver of the properties of Lessee; (vi) the filing of an involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within thirty (30) days after filing; and (vii) attachment of or the levying of execution on the leasehold interest and failure of Lessee to secure a discharge of the attachment or release of the levy of execution within ten (10) days.

7.12.4 A default under this Lease shall constitute a default under any other lease or agreement which Lessee has with the Port (hereinafter such other agreements shall be referred to as "**Collateral Agreements**"). Likewise, any material breach or default under a Collateral Agreements shall be deemed a material breach or default under the terms of this Lease. If any

Collateral Agreements are terminated for a material breach or default of Lessee, then the Port shall, without limiting any other remedies it may have, be entitled to terminate this Lease upon five (5) days' written notice to Lessee.

7.12.5 In addition to the foregoing remedies specified in this article, the Port may exercise any remedies or rights under the laws of the State of Washington. Under no circumstances shall the Port be held liable in damages or otherwise by reason of any lawful re-entry or eviction. The Port shall not, by any re-entry or other act, be deemed to have accepted any surrender by Lessee of the Premises or be deemed to have otherwise terminated this Lease or to have relieved Lessee of any obligation hereunder.

7.12.6 The Port shall be under no obligation to observe or perform any covenant of this Lease after the date of any material default by Lessee unless and until Lessee cures such default.

7.12.7 A fee of Five Hundred Dollars (\$500.00) shall be assessed to Lessee for each Default Notice issued to Lessee to defray the costs associated with preparing, issuing, and serving such notice. This fee shall be payable on the first (1st) day of the month following the issuance of the notice.

7.13 **NON WAIVER:** Neither the acceptance of Rent nor any other act or omission of the Port after a default by Lessee shall operate as a waiver of any past or future default by Lessee, or to deprive the Port of its right to terminate this Lease, or be construed to prevent the Port from promptly exercising any other right or remedy it has under this Lease. Any waiver by the Port shall be in writing and signed by the Port in order to be binding on the Port.

7.14 **NOTICES:** Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing addressed to the other party at the addresses as follows:

TO THE PORT	Port of Port Angeles P.O. Box 1350 Port Angeles, Washington, 98362
TO LESSEE:	Atlas Tower 1, LLC 2500 30 th Street, STE 304 Boulder, Colorado, 80301

or such address as may have been specified by notifying the other party of the change of address. Notice shall be deemed served on the date of actual delivery or the first attempted delivery as shown on the return receipt if mailed with the United States Postal Service by certified mail, return receipt requested.

7.15 **AGENT FOR SERVICE:** Lessee agrees that if Lessee is in unlawful detainer, pursuant to Chapter 59.12 RCW, and the Port is unable to serve Lessee with the unlawful detainer pleadings after one service attempt, then the Port shall be deemed to have complied with the service

requirements of Chapter 59.12 RCW if it mails such pleadings via certified mail to the address set forth in the notice section of this Lease and posts such pleadings in a conspicuous location on the Premises. Service shall be deemed complete on the third (3rd) day following the day of posting or day of mailing, whichever is later.

7.16 **SECURITY:** Lessee specifically acknowledges that the Port has no duty to provide security for any portion of the Premises or surrounding areas. Lessee assumes sole responsibility and liability for the security of itself, its employees, customers, and invitees, and their respective property in or about the Premises. Lessee agrees that to the extent the Port elects to provide any security, the Port is not warranting the effectiveness of any such security personnel, services, procedures or equipment and that Lessee is not relying and shall not hereafter rely on such security personnel, services, procedures or equipment. The Port shall not be responsible or liable in any manner for failure of any such security personnel, services, procedures or equipment to prevent or control, or apprehend anyone suspected of personal injury or property damage in, on or around the Premises.

7.17 **QUIET ENJOYMENT:** The Port acknowledges that it has ownership of the Premises and that it has the legal authority to lease the Premises to Lessee. The Port covenants that Lessee shall have quiet enjoyment of the Premises during the term of this Lease so long as the terms are complied with by Lessee and subject to the Port's right of entry onto the Premises as set forth herein.

7.17.1 The Port reserves the right to grant easements and other land uses on the Premises to others when the easement or other land uses applied for will not unduly interfere with the use to which Lessee is putting the Premises or interfere unduly with the approved plan of development for the Premises. No easement or other land uses shall be granted to third parties, until damages to the Lessee have been dealt with appropriately, or waiver signed by Lessee.

7.17.2 Lessee understands that various federal agencies, including the Department of Homeland Security and U.S. Coast Guard, have the authority to restrict access to certain areas on property owned by the Port in order to counter a terrorist or other threat. Such restrictions could impact Lessee's ability to access the Premises for an indefinite period of time. Since such restrictions on access are outside the control of the Port, Lessee agrees that such interruptions shall not be deemed a violation of this Lease or the Covenant of Quiet Enjoyment.

7.18 **PORT MAY ENTER PREMISES; INSPECTION:** The Port reserves the right to inspect the Premises after written notice (except where the Port reasonably believes there exists or is about to exist an emergency, in which case no notice is required) at any and all reasonable times throughout the term of this Lease, provided that it shall not unduly interfere with Lessee's operations. The right of inspection reserved to the Port hereunder shall impose no obligation on the Port to make inspections to ascertain the condition of the Premises, and shall impose no liability upon the Port for failure to make such inspections. The Port shall have the right to place and maintain "For Rent" signs in conspicuous places on the Premises for a reasonable period of time prior to the expiration or sooner termination of the Lease.

7.19 **TIME**: It is mutually agreed and understood that time is of the essence of this Lease and that a waiver of any default of Lessee shall not be construed as a waiver of any other default.

7.20 **INTERPRETATION**: This Lease has been submitted to the scrutiny of the parties hereto and their counsel, if desired. In any dispute between the parties, the language of this Lease shall, in all cases, be construed as a whole according to its fair meaning and not for or against either the Port or Lessee. If any provision is found to be ambiguous, the language shall not be construed against either the Port or Lessee solely on the basis of which party drafted the provision. If any word, clause, sentence, or combination thereof for any reason is declared by a court of law or equity to be invalid or unenforceable against one party or the other, then such finding shall in no way affect the remaining provisions of this Lease.

7.21 **HOLDING OVER**: If Lessee remains in possession of said Premises after the date of expiration of this Lease without the Port's prior written consent, such holding over shall constitute and be construed as tenancy at sufferance only, at a monthly rent equal to one hundred fifty percent (150%) of the rent owed during the immediately preceding month under this Lease and otherwise upon the terms and conditions in this Lease and shall continue to be responsible for payment of applicable CAM Expenses and leasehold excise tax obligations. If Lessee holds over with the Port's prior written consent, then until such time as a new written Lease is executed by the parties hereto, Lessee shall continue to make payments to the Port on a month-to-month basis as provided for in this Lease. Such holdover tenancy may be terminated by either party at the end of any such monthly period by sending written notice not less than five (5) days before the end of such period. Such holdover tenancy shall be subject to all terms and conditions contained herein.

7.22 **PROMOTION OF PORT COMMERCE**: Lessee agrees that throughout the term of this Lease it will, insofar as practicable, promote the activities of the Port.

7.23 **SURVIVAL**: All obligations of Lessee, as provided for in the Lease, shall not cease upon the termination of this Lease and shall continue as obligations until fully performed. All clauses of this Lease, which require performance beyond the termination date, shall survive the termination date of this Lease.

7.24 **GOVERNING LAW**: This Lease, and the right of the parties hereto, shall be governed by and construed in accordance with the laws of the State of Washington, and the parties agree that in any such action jurisdiction and venue shall lie exclusively in Clallam County, Washington.

7.25 **ESTOPPEL CERTIFICATES**: At Lessee's request, the Port agrees to execute and deliver to Lessee or its lender(s), a customary estoppel certificate in a form acceptable to the Port which sets forth the following information: (i) the terms and conditions of this Lease, (ii) the status of the Rent payments under the Lease; and (iii) the Port's knowledge of any breaches or anticipated breaches of the Lease. The Port shall have no obligation to execute an estoppel certificate which requests any information other than as set forth above. Lessee agrees to reimburse the Port for all attorneys' fees paid by the Port for the review and opinion of such attorney acting on the request for such estoppel certificate and in negotiating acceptable language in the estoppel certificate. A failure to reimburse the Port within sixty (60) days of the mailing of notice of such charges shall constitute a default under the terms of this Lease.

7.26 **ATTORNMENT:** In the event the Premises are sold, Lessee shall attorn to the purchaser upon the sale provided that the purchaser expressly agrees in writing that, so long as Lessee is not in default under the Lease, Lessee's possession and occupancy of the Premises will not be disturbed and that such purchaser will perform all obligations of the Port under the Lease.

7.27 **ENTIRE AGREEMENT:** This Lease contains all of the understandings between the parties. Each party represents that no promises, representations or commitments have been made by the other as a basis for this Lease which have not been reduced to writing herein. No oral promises or representations shall be binding upon either party, whether made in the past or to be made in the future, unless such promises or representations are reduced to writing in the form of a modification to this Lease executed with all necessary legal formalities by the Commission of the Port of Port Angeles, or its designee.

7.28 **COMMISSIONS AND FEES.** In the absence of any agreement between the parties to the contrary, each party represents and warrants to the other that it has not been represented by, or introduced to the other by, any broker or agent. In the absence of any agreement between the parties to the contrary, each party hereby agrees to indemnify and hold the other harmless from and against any and all fees, commissions, costs, expenses (including attorneys' fees) obligations and causes of actions arising against or incurred by the other party by reason of any claim for a real estate commission or a fee or finder's fee by reason of any contract, agreement or arrangement with, or services rendered at the request of, the indemnifying party.

7.29 **VALIDATION:** IN WITNESS WHEREOF, the Port has caused this instrument to be signed by its Executive Director, or other designee, by authority of the Commission of the Port of Port Angeles, and this instrument has been signed and executed by Lessee, the day and year first above written.

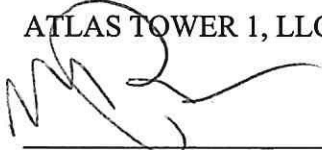
LESSOR:

PORT OF PORT ANGELES

Paul S. Jarkiewicz
Its: Executive Director

LESSEE:

ATLAS TOWER 1, LLC



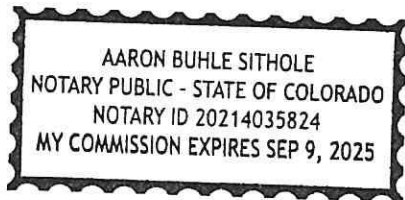
Name: MICHAEL POWERS
Its: DIRECTOR of LEGAL AFFAIRS

STATE OF _____)

County of Boulder) ss.

On this 6th day of August, 2026, before me the undersigned, a Notary Public in and for the State of ~~Washington~~ ^{Colorado}, duly commissioned and sworn, personally appeared Michael Powers, to me known to be the Director of Legal of Atlas Towers the entity that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said entity for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.



Aaron
NOTARY PUBLIC in and for the
State of Colorado, residing
at Boulder County
My Commission Expires: 9/9/25

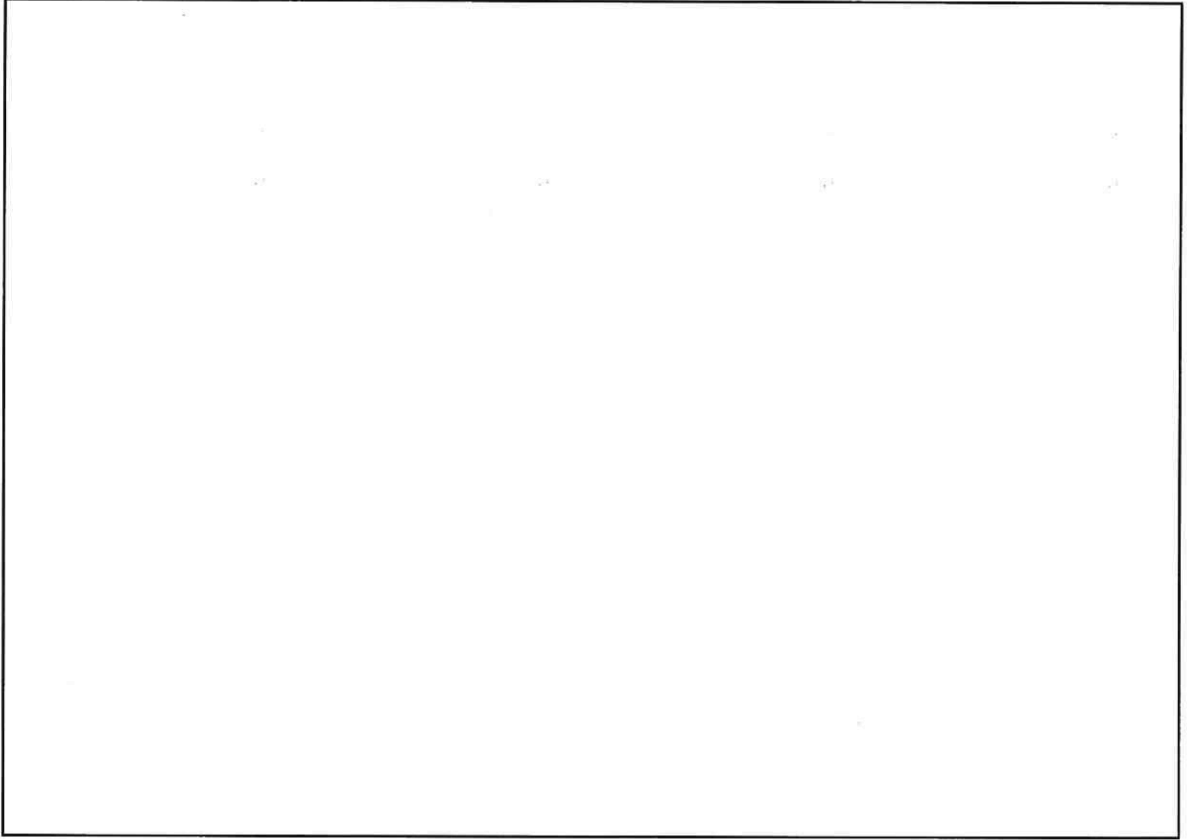
STATE OF WASHINGTON)
COUNTY OF CLALLAM) ss.

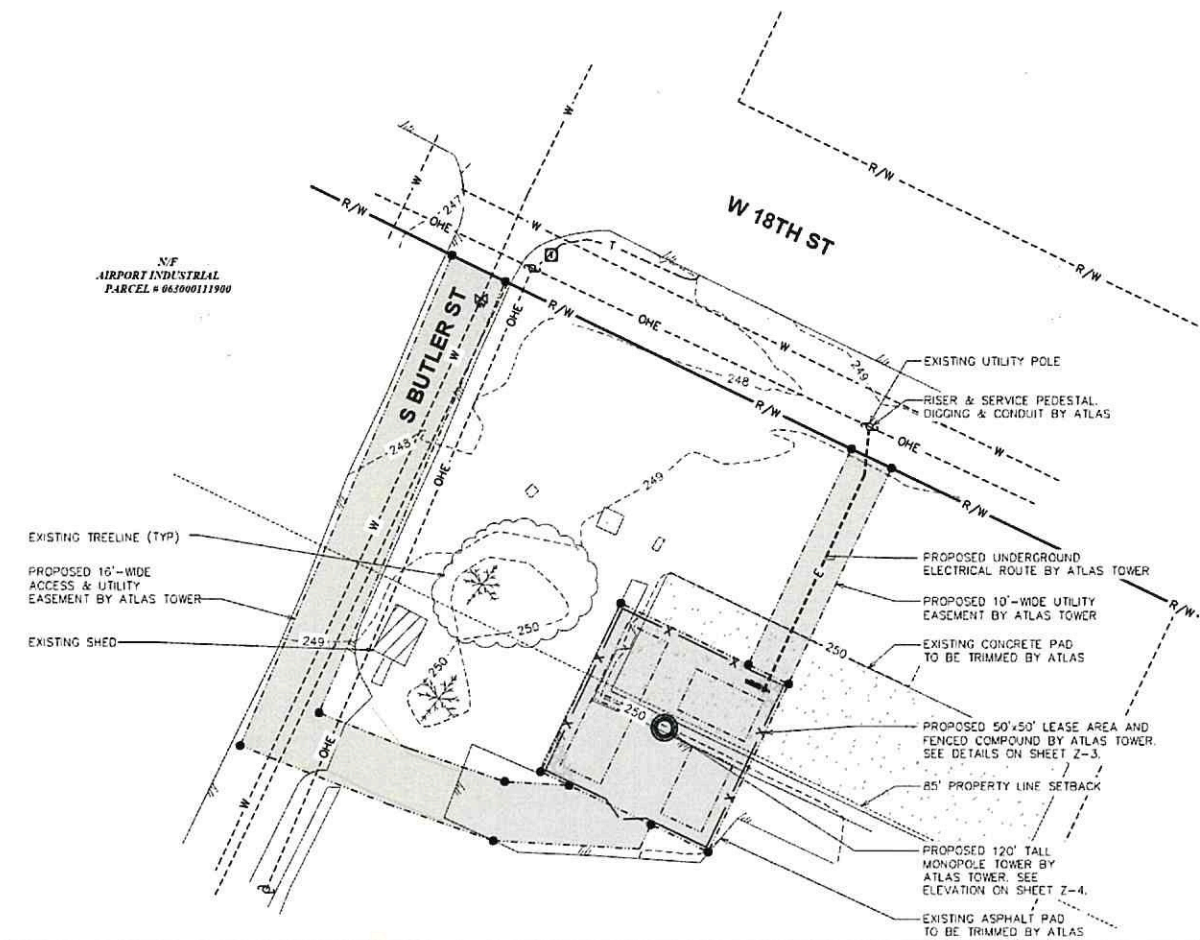
On this _____ day of _____, 2025, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Paul Jarkiewicz**, to me known to be the **Executive Director of the Port of Port Angeles**, the entity that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said entity for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.

NOTARY PUBLIC in and for the
State of Washington, residing
at _____
My Commission Expires: _____

EXHIBIT A – Leased Premises





Initials:

Port

MP
Lessee

Memorandum of Understanding

Between

**THE WASHINGTON STATE
OFFICE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES**

and

Port of Port Angeles

and

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

for the

**STATE OF WASHINGTON
UNIFIED CERTIFICATION PROGRAM**

This Memorandum of Understanding for participation in the State of Washington Unified Certification Program (UCP) is between the Port of Port Angeles (POPA) and the State of Washington, through its Office of Minority and Women's Business Enterprises (OMWBE) and ITS Department of Transportation (WSDOT) and is effective as of the date of the last signatory hereto.

WITNESSETH:

WHEREAS, the Undersigned are recipients of funding and assistance programs administered by the U.S. Department of Transportation (USDOT) and its operational modal, the Federal Aviation Administration (FAA), in the state of Washington;

WHEREAS, Washington State Office of Minority and Women's Business Enterprises (OMWBE) performs certification following the regulations in 49 Code of Federal Regulations (CFR) Part 26;

WHEREAS, 49 CFR 26.81 requires all USDOT recipients in each state to participate in a Unified Certification Program (UCP);

WHEREAS, Chapter 39.19.120 Revised Code of Washington (RCW) designates OMWBE as the exclusive authority for certification of minority, women, and socially and economically disadvantaged business enterprises for all programs administered by the state of Washington, any city, town, county, special purpose district, public corporation created by the state, municipal corporation, or quasi-municipal corporation within the state of Washington; and

In Consideration of the foregoing recitals, the Undersigned agree as follows:

1. Representation of Accountability

The Washington State Department of Transportation (WSDOT) and OMWBE represent that WSDOT is ultimately accountable and responsible to USDOT for Disadvantaged Business Enterprise (DBE) Certification in the state of Washington and is therefore a necessary signatory to this agreement.

2. Acknowledgement and Acceptance of Unified Certification Program

Port of Port Angeles agrees to participate in a UCP, as required by 49 CFR Part 26.

3. Designation of Exclusive Certifying Authority; Binding Effect

Port of Port Angeles agrees as follows:

3.1 OMWBE is now, and shall continue to be the sole and exclusive certification authority for participation in the USDOT DBE Program in the state of Washington in accordance with 49 CFR Part 26 and Chapter 39.19 RCW.

3.2 Final certification determinations made by OMWBE shall be binding and have the full force and effect of law as may be provided by 49 CFR Part 26.

3.3 Only final certification determinations issued by OMWBE prior to the due date for bids or offers on a contract which a firm seeks to participate as a DBE shall be recognized for purposes of award.

4. Notification Responsibilities of the Parties

Each party to this agreement agrees to notify the other parties of all regulatory changes, interpretations and other communications affecting the operation, duties, and/or responsibilities of each party under this agreement.

5. Duties and Responsibilities of OMWBE

In its capacity as the sole and exclusive certification authority in the state of Washington, it is acknowledged that OMWBE shall perform the following duties and have the following responsibilities:

5.1 Comply with and follow all certification standards and nondiscrimination requirements of 49 CFR Part 26, as may be approved from time to time, including without limitation, implementation of all USDOT directives and guidance concerning certification matters.

5.2 Only process applications for certification from firms with principal places of business outside the state of Washington if such firms have received certification determinations from the designated UCPs of the states in which the firms maintain principal places of business.

5.3 Issue administratively final determinations to certify, recertify or remove a firm based upon applications submitted to it for certification and recertification, appeals, third party challenges, ineligibility complaints, recipient-initiated proceedings, and USDOT directives.

5.4 Share information and documents concerning firms certified in the state of Washington with other state UCPs that are considering applications of certification from such firms.

5.5 Maintain a unified *DBE Directory* of firms certified by OMWBE pursuant to this UCP that shall contain all of the information required by 49 CFR 26.31 and be available to the public electronically, on the Internet, and in print.

5.6 Cooperate fully with all oversight, review and monitoring activities of USDOT and the other parties, as it relates to the implementation and ongoing activities of the UCP.

5.7 Cooperate fully with and participate in any audits or certification performance reviews and/or respond to and reply to other requests for information as may be directed to the UCP by USDOT and/or the Federal Transit Administration and/or Port of Port Angeles

6. Duties and Responsibilities of Port of Port Angeles

Port of Port Angeles shall perform the following duties and have the following responsibilities:

6.1 Pay a reasonable fee or other appropriate charge that has been established by rule in accordance with RCW 39.19.210 and WAC 326-02-034(3)(a).

6.2 Provide OMWBE and WSDOT with a copy of the Port of Port Angeles Disadvantaged Business Enterprise Program Plan, and a copy of the Port of Port Angeles Annual DBE Agency Goal Submittal as provided to the Federal Transit Administration.

6.3 Comply with and follow all certification standards and nondiscrimination requirements of 49 CFR Part 26, as may be approved from time to time, including without limitation, implementation of all USDOT directives and guidance to grantees and recipients concerning certification matters.

6.4 Cooperate fully with all oversight, review and monitoring activities of USDOT and/or the Federal Transit Administration, as it relates to the implementation and ongoing activities of the UCP.

6.5 Cooperate fully with and participate in any audits or certification performance reviews and/or respond to and reply to other requests for information as may be directed to Port of Port Angeles by USDOT and/or the Federal Transit Administration and/or OMWBE.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding effective as of the last date of all the signatories appearing here below.

ACCEPTED:

Washington State Office of Minority and Women's Business Enterprises

BY: _____ Date: _____
Sarah Erdmann
Acting Director

Approved as to Form:

Assistant Attorney General
State of Washington

Port of Port Angeles

BY: _____ Date: _____
Authorized Signature
Title

Approved as to Form (if required):

Legal Counsel

Washington State Department of Transportation

BY: _____ Date: _____
Roger Millar
Secretary

Approved as to Form:

Assistant Attorney General
State of Washington