



DATE: September 23, 2020

TO: Waste Management Authority Board

FROM: Kelly Schoonmaker, Program Manager

SUBJECT: Communications Tower Lease on Authority Property

SUMMARY

The WMA owns and manages rangeland property with multiple tenants in the Altamont Hills. The WMA proposes to enter into a new lease agreement for a telecommunications site with the current tenant, Vasco Winds, LLC, whose lease expires on October 1, 2020. At the September 23, 2020, WMA meeting, staff will ask the WMA Board to authorize the Executive Director to enter into a new lease agreement with Vasco Winds, LLC.

DISCUSSION

In 1993-94, the WMA purchased 1,600+ acres of land over six parcels in the Altamont Hills in unincorporated Alameda County ("Property"). The parcels were purchased by voluntary agreements with property owners, using funds from the San Francisco Mitigation Fee account for the purpose of reserve landfill capacity. Current uses of the Property include cattle grazing (through licenses with private parties), transmission and communications towers (through leases and licenses with public and private parties), one residential rental of a historic farmhouse, and a wind power easement over a portion of the Property. Staff manages all of the land and activities according to sustainable stewardship practices and in accordance with our Range Management Plan.

In 2009, the WMA entered into an agreement with Altamont Infrastructure Company, LLC, to lease a communications tower and building on Parcel 6 ("Tower") to enable communications for the wind operations. This lease was assigned to Vasco Winds, LLC, (Vasco Winds) in 2016. The lease expired on October 1, 2019 and was extended to September 30, 2020. Vasco Winds has requested to enter into a new lease agreement to continue use of the tower. The final draft agreement (Attachment) has been reviewed by Vasco Winds and WMA staff and counsel. The term of the lease is 10 years, and the annual rent is \$4,040. This rental amount includes a 3% annual increase averaged over the ten-year term of the lease. Based on a Board-adopted policy, conducting a formal bid process is not required in this case due to the length of the lease term (10 years or shorter) and the amount of the rent (less than \$5,000 monthly).

RECOMMENDATION

That the Authority Board authorize the Executive Director to enter into a lease agreement with Vasco Winds, LLC, for use of the communications tower and building on Parcel 6.

ATTACHMENT

Lease Agreement between Vasco Winds, LLC, and Alameda County Waste Management Authority

LEASE AGREEMENT BETWEEN
VASCO WINDS, LLC
AND
ALAMEDA COUNTY WASTE MANAGEMENT AUTHORITY

THIS LEASE AGREEMENT (“Lease Agreement”) dated as of September _____, 2020, is made by and between Vasco Winds, LLC, a Delaware limited liability company (“Lessee”) and the Alameda County Waste Management Authority, a public agency (“Lessor”).

RECITALS

This Lease Agreement is entered into based upon the following facts, circumstances and understandings:

- A. Lessor owns certain real property on Patterson Pass Road, Livermore, California, legally described in Exhibit A attached hereto and commonly known as Parcel 6 (“Lessor’s Real Property” or “the Property”). Lessor owns a building on Parcel 6 (“the Building”) and the exterior of the Building contains a lattice tower. Most of the Property is subject to a Conservation Easement Deed dated and recorded December 21, 2018, which protects the conservation values of the Property (“Conservation Easement”).
- B. Lessee operates and maintains various assets relating to and necessary for the operation of wind energy generation facilities in the Altamont Pass, which are in the vicinity of the Property. Lessee desires to lease space within the Building and on the existing lattice tower, for the purpose of installing equipment, including antennas, cabling, radios and an equipment cabinet (“Lessee’s Equipment”).
- C. Lessor is willing to lease space within the Building and on the lattice tower, as described in Exhibit B attached hereto (“the Premises”) to Lessee for Lessee’s proposed uses subject to the terms and conditions of this Lease Agreement. The Premises are not within the portion of the Property protected by the Conservation Easement.

WHEREFORE, the parties hereto agree as follows:

1. **Grant of Lease.** Lessor hereby leases to Lessee the Premises for Lessee’s proposed use, subject to the following terms and conditions.

2. **Permitted Uses.** The Premises may be used by Lessee for the installation, use and maintenance of Lessee's Equipment for its radio transmission relay services to the surrounding area ("Permitted Uses").
3. **Term.** The term of this Lease Agreement ("Term") shall be ten (10) years commencing October 1, 2020 ("Commencement Date").
4. **Rent and Services.**
 - a. Lessee shall pay Lessor, as rent, the sum of \$4,040.00 per year ("Rent"), payable annually on or before October 1st of each year to Lessor's mailing address specified in Section 17, Notices and Deliveries.
 - b. If the Rent is not received by Lessor on or before the thirtieth (30th) day following the due date, it shall be deemed delinquent. If the Rent is not paid before delinquency and Lessee has received written notice of a default from Lessor, then the amount due and unpaid shall be subject to a late charge at the rate of five percent (5%) of the overdue amount, without limitation to Lessor's other rights and remedies under this Lease Agreement.
 - c. In addition to paying such Rent, the Lessee shall pay for utility services to the Premises resulting from Lessee's use of the Premises or Lessee's Equipment, including any costs and expenses related to any utility meters, connection charges, deposits or fees chargeable by any utility company. Utility upgrades necessary for Lessee's use of the Premises shall be made by Lessee at its sole expense. Utility upgrades shall all be underground with the exception of above ground components within the Premises. Lessee shall also upgrade utility connections to the existing facilities at the Premises as necessary. Lessee shall not interrupt power to the Premises without prior notification to Lessor and any other users of the Premises. Should power interruption attributable to Lessee occur in excess of 4 hours, Lessee shall at its sole expense provide an uninterrupted power supply for other users of the Premises.
5. **Ongoing Access to Premises.** Throughout the Term of this Lease Agreement, Lessee shall have the right of access to the Premises through Lessor's Real Property for its employees and agents twenty-four (24) hours a day, seven (7) days per week, at no additional charge to Lessee. In exercising its right of access to the Premises herein, Lessee agrees to cooperate with any reasonable security procedures utilized by Lessor at Lessor's Real Property and further agrees not to disturb or interfere with the business or other activities of Lessor or of other lessees, tenants or occupants of Lessor's Real Property. Lessor shall comply with the safety procedures attached hereto as Exhibit C and shall maintain all existing access roadways or driveways extending from the nearest public

roadway to the Premises in a manner sufficient to allow for Lessee's access to the Premises. Lessee shall not be responsible for maintaining and repairing such roadways and driveways, except for any damage caused by Lessee's use of such roadways or driveways. If Lessee causes any such damage, Lessee shall notify Lessor and repair within twenty (20) days the same at its sole expense, or if the roadway is impassable, Lessee shall repair the road within five (5) days at its sole expense.

- 6. Lessee's Work, Maintenance and Repairs.** Lessee shall be responsible for ensuring the Premises are maintained in neat and safe condition in compliance with all applicable codes and governmental regulations, at no cost to Lessor. Any damage caused to the Premises by Lessee, its employees, agents, contractors, subcontractors, sublessees, licensees, or invitees, shall be promptly repaired within fifteen (15) days, or as otherwise agreed to by the parties, at the sole expense of Lessee after providing timely notice of such damage to Lessor. Lessee shall maintain and replace as needed any and all gates on the Premises that Lessee has installed, and shall return all gates on Lessor's Real Property that Lessee did not install to the same condition that Lessee finds them. Lessee shall ensure gates are closed after use by Lessee, and Lessee shall make every reasonable effort not to disturb agricultural operations on Lessor's Real Property, including but not limited to, by keeping all vehicles on designated roadways. Lessee shall take all reasonable precautionary measures to guard against fire on Lessor's Real Property while on or in any way using the Premises or Lessor's Real Property. Upon the expiration, cancellation or termination of this Lease Agreement, Lessee shall surrender the Premises in good condition, less ordinary wear and tear. Lessee shall restore the surface of the ground to the same condition it was in at the Commencement Date, less ordinary wear and tear.
- 7. Title to Lessee's Equipment.** Title to Lessee's Equipment, and any other items placed on the Premises by Lessee shall be held by Lessee. All of Lessee's Equipment shall remain the property of Lessee and is not to be considered fixtures. Lessee shall remove at its sole expense all Lessee's Equipment and, if requested by Lessor, any and all other improvements installed within the Premises. Such removal shall be coordinated with Lessor with the expiration or termination date of this Lease Agreement.
- 8. Interference with Other Activities.** Lessee's Equipment and operations shall not interfere with any activities or uses of Lessor's Real Property by Lessor or other tenants, lessees or easement holders on the Property, including but not limited to cattle grazing, telecommunications, East Bay Regional Communications Systems Authority, Bay Area Air Quality Management District which exist now on Lessor's Real Property ("Other Activities"). Upon written notice from Lessor of apparent interference by Lessee with Other Activities, Lessee shall have the responsibility to promptly terminate such

interference or demonstrate to Lessor with supporting documentation that the apparent interference is not caused by Lessee's Equipment or operations. In addition, Lessor shall comply with the Conservation Easement when accessing any portion of the Property outside the Premises, and shall not undertake any activities within the Premises that harm the conservation values protected by the Conservation Easement, which Lessee acknowledges it received prior to entering into this Lease Agreement. Notwithstanding the foregoing, Lessor may continue to use the Premises for the Permitted Uses.

- 9. Taxes.** Lessee shall reimburse Lessor for any increase in the real property taxes or personal property taxes levied against Lessor's Real Property or due and payable as a result of this Lease Agreement or Lessee's use of the Premises. Nothing in this paragraph shall be construed as limiting either party's right to contest, appeal or challenge any tax assessment.

10. Termination.

- a.** This Lease Agreement may be terminated without further liability on thirty (30) days prior written notice as follows: (i) by either party upon a default of any covenant, condition, or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default, provided that if such default is curable, but not curable within such sixty (60) day period, then within such period of time as is reasonably necessary to accomplish such cure (in order to avail itself of this time period in excess of sixty (60) days, the defaulting party must send to the other party, within the sixty (60) day period, a written plan to cure the default, which is reasonably acceptable to the other party, and the defaulting party must diligently commence and continue to perform such cure to completion according to the written plan); (ii) by either party if Lessee is unable to occupy or utilize the Premises due to a ruling or directive of any governmental or regulatory agency; or (iii) by Lessor if it determines that the Lease Agreement conflicts with plans or uses approved by Lessor in the future for Lessor's Real Property.
- b.** This Lease Agreement may be terminated without further liability on one hundred eighty (180) days prior written notice by Lessee, if it determines that the Premises are not appropriate for the intended purpose of the Lease Agreement. In such event, Lessee shall pay a termination fee in an amount equal to six (6) months or two (2) quarters of the then current Rent and remove any and all of Lessee's Equipment and installations, restoring the surface to the condition it was in prior to this Lease Agreement, normal wear and tear excepted. The termination fee shall be paid within thirty (30) days of the effective date of termination of this Lease Agreement. Payment of the termination fee shall not alleviate or be in lieu of the Lessee's

obligation to remove equipment and installations and restore the surface to its pre-lease condition, normal wear and tear excepted.

11. Insurance. Lessee shall, at Lessee's own cost and expense, secure and maintain during the entire Term, insurance as required by the provisions set forth in Exhibit D.

12. Use of Lessor's Property.

a. **Notice of Non-Responsibility.** Lessor shall have the right to post and maintain on Lessor's Real Property and to record as required by law any notice or notices of non-responsibility provided for by the Mechanics' Lien Laws of the State in which Lessor's Real Property is located.

b. **Compliance with Law.** All of Lessee's Equipment and operations on the Premises shall be in accordance with all valid laws, ordinances, statutes, orders and regulations, in effect at the time of such construction or work or otherwise made applicable to such construction or work, of all federal, state, county or local governmental agencies or entities having jurisdiction over Lessor's Real Property and Lessee's actions.

c. **Mechanics' Liens.** Lessee shall keep Lessor's Real Property and all buildings and improvements, now or hereafter located on Lessor's Real Property free and clear of all liens and claims of liens which attach to Lessor's Real Property or to any of Lessor's improvements located on Lessor's Real Property for labor and services performed on, and materials, supplies or equipment furnished to Lessor's Real Property in connection with Lessee's use of Lessor's Real Property pursuant to this Lease Agreement.

13. Assignments or Transfers. Except as otherwise provided herein, Lessee may not assign or transfer this Lease Agreement to any person or entity without the prior written approval of Lessor. Lessee shall provide Lessor written notice of a request of assignment at least thirty (30) days prior to the effective date of the proposed assignment. Approval of assignment by Lessor shall not be unreasonably withheld. Lessee will be permitted to assign or transfer this Lease Agreement to an Affiliate without obtaining the prior written consent of Lessor but shall provide Lessor with notice of any such transfer within ten (10) days of such transfer. "Affiliate" shall mean and refer to any person or entity controlling or controlled by Lessee, or an entity that has acquired fifty-one percent (51%) or more of Lessee's stocks or assets.

14. Subleases. This Lease Agreement is made exclusively between Lessor and Lessee. Lessee shall not sublease any portion of the Premises without Lessor's prior written consent. Any such sublease for which consent is granted shall provide that the sublessee shall be bound by all the duties and obligations of this Lease Agreement and that Lessee shall be primarily liable to Lessor for such sublessee's performance under this Lease Agreement.

15. Indemnification.

- a. Lessee agrees to indemnify, hold harmless, defend, and protect Lessor, its officers, directors, agents, employees, invitees (each of which is an indemnitee) from and against any and all claims, losses, damages, demands, liabilities, suits, costs, expenses (including attorneys' fees), penalties, judgments, or obligations whatsoever for or in connection with injury (including death), damage to any person, loss or damage of property to whomsoever belonging, or pecuniary or monetary loss resulting from, arising out of, or in any way related to activity conducted by the Lessee. This includes, but is not limited to, Lessee's development, construction, use, maintenance, and occupation of, and/or removal from the premises, and any facilities or operations thereon, including events occurring on or off the property, premises, or facilities, regardless of how the injury or damage was caused or suffered, unless the injury or damage resulted solely from the active gross negligence or intentional and willful misconduct of the Lessor, its officers, directors, agents or employees.
- b. Lessee hereby waives all claims and recourse against Lessor, including the right of contribution for loss, damage, or expenses by reason of death or injury to persons or damage to the Premises, and releases Lessor from any liability relating to or in any way connected with Lessee's activities or Lessee's use of the property, premises, or facilities, unless injury or damage is caused solely by the active gross negligence or intentional and willful misconduct of Lessor, its officers, directors, agents or employees.
- c. The provisions of this section shall survive the expiration, cancellation or expiration of this Lease Agreement.

16. Hazardous Materials. Lessee shall not bring or use any hazardous materials onto Lessor's Real Property.

17. Notices and Deliveries. Any notice or demand required to be given herein shall be made by certified or registered mail, return receipt requested, confirmed fax, or reliable overnight delivery service to the address of the respective parties set forth below:

Lessor: Alameda County Waste Management Authority
c/o Kelly Schoonmaker, Program Manager
1537 Webster Street
Oakland, CA 94612
kschoonmaker@stopwaste.org
Telephone: (510) 891-6500

Lessee: Vasco Winds, LLC
c/o Land Services Administration
700 Universe Blvd.,
Juno Beach, FL 33408
Telephone: (855) 552-9872

Lessor or Lessee may from time to time designate any other address for notices or deliveries by written notice to the other party.

18. Attorneys' Fees and Litigation Costs. If any action at law or in equity is brought to recover any Rent or other sums under this Lease Agreement, or for or on account of any breach of or to enforce or interpret any of the covenants, terms, or conditions of this Lease Agreement, or for the recovery of the possession of the Premises, the prevailing party shall be entitled to reasonable attorney's fees, costs and other expenses, in addition to any other relief to which such party may be entitled. Prevailing party includes (a) a party who dismisses an action in exchange for sums allegedly due; (b) the party that receives performance from the other party of an alleged breach of covenant or a desired remedy, if it is substantially equal to the relief sought in an action; or (c) the party determined to be prevailing by a court of law or any alternative dispute resolution process.

19. Miscellaneous.

a. Severability. If any provision of the Lease Agreement is held to be invalid or unenforceable by a court of competent jurisdiction with respect to any party, the remainder of this Lease Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable shall not be affected, and each provision of this Lease Agreement shall be valid and enforceable to the fullest extent permitted by law.

b. Binding Effect. Each party represents and warrants that said party has full power and authority, and the person(s) executing this Lease Agreement have full power and authority, to execute and deliver this Lease Agreement, and that this Lease

Agreement constitutes a valid and binding obligation of each party, enforceable in accordance with its terms. This Lease Agreement shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties as well as a party's employees, agents, contractors, subcontractors, sublessees, licensees, and invitees.

- c. **Waivers.** No provision of this Lease Agreement shall be deemed to have been waived by a party unless the waiver is in writing and signed by the party against whom enforcement of the waiver is attempted. No custom or practice which may develop between the parties in the implementation or administration of the terms of this Lease Agreement shall be construed to waive or lessen any right to insist upon strict performance of the terms of this Lease Agreement.
- d. **Governing Law.** This Lease Agreement shall be governed by and construed in accordance with the laws of the State of California.
- e. **Survival.** Terms and conditions of this Lease Agreement which by their sense and context survive the termination, cancellation or expiration of this Lease Agreement will so survive.
- f. **Entire Agreement; Amendments.** This Lease Agreement constitutes the entire agreement and understanding between the parties regarding Lessee's lease of the Premises and supersedes all offers, negotiations and other agreements concerning the subject matter contained herein. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease Agreement must be in writing and executed by authorized representatives of both parties.
- g. **No Presumptions Regarding Preparation of Lease Agreement.** The parties acknowledge and agree that each of the parties have been represented by counsel or has had full opportunity to consult with counsel and that each of the parties has participated in the negotiation and drafting of this Lease Agreement. Accordingly it is the intention and agreement of the parties that the language, terms and conditions of this Lease Agreement are not to be construed in any way against or in favor of any party hereto by reason of the roles and responsibilities of the parties or their counsel in connection with the preparation of this Lease Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Lease Agreement on the dates set forth below.

LESSOR:

Alameda County Waste Management Authority

By: _____ Date: _____

Wendy Sommer, Executive Director

Approved as to Form:

By: _____ Date: _____

Richard Taylor, ACWMA Counsel

LESSEE:

Vasco Winds, LLC

A Delaware Limited Liability Company

By: _____ Date: September _____, 2020

Mark B. Patten IV, Assistant Vice President

EXHIBIT A
DESCRIPTION OF LESSOR'S REAL PROPERTY

Parcel APN: 099A-1820-2

The land referred to herein below is situated in the unincorporated area in County of Alameda, State of California and is described as follows: the Northeast $\frac{1}{4}$ of Section 10, in Township 3 South, Range 3 East, of the Mount Diablo Base and Meridian.

EXHIBIT B
DESCRIPTION OF THE PREMISES

The area within the fence enclosing the Building and the lattice tower at the Patterson Pass Tower Site, including the Building and lattice tower, the access gate at Patterson Pass Road and the access road to the site.

EXHIBIT C
SAFETY PROCEDURES FOR THE PROPERTY

The following Safety Procedures shall be followed by Lessees while on or accessing the Property:

- In the event of an Emergency, the Licensee shall contact 911 and provide assistance and support to emergency responders.
- The Licensee shall be solely responsible for the conduct of its employees, agents, and sub-contractors while on the Property.
- The Licensee shall exercise caution while on the Property. There are unmarked hazards, obstacles and objects that can cause harm if not properly observed.
- No smoking on the Property or within the immediate vicinity of the Property.
- No open flames.
- No discharge of firearms.
- No firearms shall be allowed on the Property unless allowed by Law.
- No speeding: The maximum speed limit on the Property is 15 miles per hour.
- No hunting, stalking, harassing of any mammals, reptiles, insects, or birds.
- No horseplay, roughhousing, or other recreational activities are allowed on the Property.
- No cooking, camping, prospecting, star gazing, while on the Property.

- No alcohol, beer, spirits, drugs, or other substances, legal or illegal that impair the user in any form are allowed on the Property.
- No off-road driving. All registered vehicles shall observe California vehicle code.

- END OF EXHIBIT C -

EXHIBIT D
INSURANCE REQUIREMENTS

1. Lessee shall, at Lessee's own cost and expense, secure and maintain during the entire Term the following minimum insurance:
 - a. Commercial General Liability Insurance shall be provided by Lessee in an aggregate amount of Five Million and no/100 dollars (\$5,000,000.00) such limit may be satisfied by a combination of primary and umbrella policies. Lessee may satisfy this requirement by obtaining the appropriate endorsement to any master policy of liability insurance Lessee may maintain. The Commercial general liability insurance shall include personal injury liability, blanket contractual liability, and broad-form property damage liability coverage.
 - b. Automobile bodily injury and property damage liability insurance covering owned, non-owned, rented, and hired cars. The combined single limit for bodily injury and property damage shall at least \$1,000,000.
 - c. Statutory workers' compensation and employer's liability insurance as required by state law with a limit of at least \$1,000,000 per accident for bodily injury or disease. Neither Lessee nor its carrier shall be entitled to recover any costs, settlements, or expenses of workers' compensation claims arising out of this Lease Agreement. The Employer's Liability policy shall be endorsed to waive any right of subrogation against the Lessor, its employees or agents.
 - d. Lessee shall submit to Lessor certificates of insurance and endorsements for the policies listed above. All endorsements shall be signed by a person authorized by that insurer to bind coverage on its behalf. Lessee shall give 30 days' prior written notice to Lessor of the cancellation of the policies. Lessee will give notice of any changes in a policy that reduce the limits required herein. If an insurance policy required by this Lease Agreement is unilaterally cancelled by the insurer, the Lessee shall immediately provide written notice to the Lessor and obtain substitute insurance meeting the requirements of this Lease Agreement. Nothing in this subsection relieves Lessee of its obligation to maintain all insurance required by this Contract at all times during the term of the Lease Agreement.
2. As to all of the policies of insurance listed above, the following shall apply:
 - a. *Self Insured Retentions.* Self-insured retentions must be declared to and approved by the Lessor. The Lessor may require the Lessee to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
 - b. *Lessor as Additional Insured.* The Lessor, its officers, officials, employees, agents and volunteers must be included as additional insureds under the commercial general liability policy and automobile policy including automobiles owned,

leased, hired or borrowed by the Lessee with respect to liability arising out of work or operations performed by or on behalf of the Lessee including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Lessee's insurance (at least as broad as ISO Form CG 20 10).

For any claims related to Lessee's operations, the Lessee's insurance coverage shall be primary insurance as respects the Lessor, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Lessor, its officers, officials, employees, or volunteers shall be excess of the Lessee's insurance and shall not contribute with it. Coverage can be provided in the form of an endorsement to the Lessee's insurance (at least as broad as ISO Form CG 20 38 04), or as a separate owner's policy, or on the Lessor's own form. Additional insured coverage does not apply to errors and omissions insurance.

- c. *Other Insurance Provisions.* The policies are to contain, or be endorsed to contain, the following provisions:
 - i. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Lessor, its officers, officials, employees or volunteers.
 - ii. The Lessee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- d. *Insurer Rating.* Insurance is to be placed by insurance carriers having an A.M. Best rating of "A-" or better, or (ii) insurance carriers having a Standard & Poor's Global rating of "A" or better, or (iii) insurance carriers having an equivalent rating by another nationally recognized insurance rating agency, or (iv) such other insurance carriers of recognized responsibility (which, solely in the case of insurance carriers described in this clause (iv), shall require the consent, which consent shall not be unreasonably withheld or delayed), in each case, that are authorized to do business in the State where the Services are performed or to be performed..
- e. *Umbrella/Excess Insurance.* The limits of insurance required in this Lease Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory on a follow-form basis.
- f. *Subcontractors.* Lessee agrees to include in all contracts for work on Lessee's behalf on the property that is the subject of this Lease Agreement the insurance requirements set forth herein. All contractors shall provide Lessee with valid certificates of insurance and the required endorsements included in the Lease

Agreement prior to commencement of any work and Lessee will provide proof of compliance to the Lessor upon request of Lessor.

3. Lessee hereby grants to Lessor a waiver of any right to subrogation which any insurer of Lessee may acquire against Lessor by virtue of the payment of any loss under such insurance. Lessee agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether Lessor has received a waiver of subrogation endorsement from the insurer.
4. If a death, serious personal injury or substantial property damage occurs in connection with the performance of this Lease Agreement, Lessee shall immediately notify Lessor by telephone. Lessee shall promptly submit to Lessor a written report, in such form as may be required by Lessor of all accidents which occur in connection with this Lease Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) names and address of Lessee's sublessee, if any; (3) name and address of Lessee's liability insurance carrier; and (4) a detailed description of accident and whether any of Lessor's equipment, tools, materials or staff were involved. Failure to comply with this section shall constitute a material breach of this Lease Agreement.

- END OF EXHIBIT D -

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