

**EXHIBIT D
TO
GROUND LEASE**

INSURANCE REQUIREMENTS

1. **Required Insurance Coverage.** Tenant shall maintain all the following insurance policies:
 - 1.1. *Automobile Liability Insurance.* Insurance coverage against claims of personal injury (including bodily injury and death), and property damage covering all owned, leased, hired, and non-owned vehicles used by Tenant, with minimum limits for bodily injury and property damage of Two Million Dollars (\$2,000,000). Such insurance shall be provided by a business or commercial vehicle policy and may be provided through a combination of primary and excess or umbrella policies, all of which shall be subject to pre-approval by City, which pre-approval shall not be unreasonably withheld.
 - 1.2. *Liability Insurance.* Commercial general liability insurance against claims for bodily injury, personal injury, death, or property damage occurring upon, in the Lease Area, at least as broad as Insurance Services Office Occurrence Form CG0001, with a minimum liability limit of Two Million Dollars (\$2,000,000) for any one occurrence and Four Million Dollars (\$4,000,000) aggregate. Commercial general liability insurance coverage may be provided through a combination of primary and excess or umbrella insurance policies. If commercial general liability insurance or other form with a general aggregate limit is used, the general aggregate limit shall apply separately to the Lease Area.
 - 1.3. *Property Insurance.* Insurance providing coverage for the Lease Area and all improvements on or to the Lease Area against loss, damage, or destruction by fire or other hazards encompassed under Cause of Loss – Special Form of property insurance coverage then customarily used for like properties in the County, in an amount equal to one hundred percent (100%) of the replacement value (without deduction for depreciation) of all improvements (excluding excavations and foundations), and in any event sufficient to avoid co-insurance and with no co-insurance penalty provision, with “ordinance or law” coverage. To the extent customary for like properties in the County at the time, such insurance shall include coverage for explosion of steam and pressure boilers and similar apparatus located in or associated with the Lease Area, an “increased cost of construction” endorsement and an endorsement covering demolition and cost of debris removal.
 - 1.4. *Workers Compensation Insurance.* Workers compensation insurance complying with the provisions of State law and an employer’s liability insurance policy, with a minimum liability limit of One Million Dollars (\$1,000,000) per accident for bodily injury, or disease, covering all employees of Tenant.

- 1.5. *Contractors Pollution Liability Insurance.* If the Permitted Use includes sampling, testing, geotechnical boring, construction, or installation activities below the surface of the Property (collectively, “Subsurface Work”), Contractors Pollution Liability insurance against claims arising from pollution conditions or site environmental conditions, including ongoing operations performed by Tenant or on Tenant’s behalf, Tenant’s products, Tenant’s work (including Tenant’s completed operations performed by Tenant or on Tenant’s behalf), or premises owned, leased, controlled, or used by Tenant, with minimum liability limits of Two Million Dollars (\$2,000,000) for any one claim or occurrence and Four Million Dollars (\$4,000,000) aggregate per policy period of one year. All costs of defense covered by the Contractors Pollution Liability Insurance shall be outside the policy’s liability limits. The deductible for Contractors Pollution Liability Insurance may not exceed Twenty-Five Thousand Dollars (\$25,000) per claim unless and until Tenant obtains City’s separate written approval of a higher deductible amount. With City’s separate prior written approval, Tenant may satisfy its obligation to maintain Contractors Pollution Liability Insurance through its subcontractor that will perform the Subsurface Work maintaining Contractors Pollution Liability Insurance as required under these Insurance Requirements (defined below). When Tenant requests City’s approval to use its subcontractor’s Contractors Pollution Liability Insurance, Tenant shall certify to City that all Subsurface Work requiring Contractors Pollution Liability Insurance under these Insurance Requirements will be performed exclusively by the subcontractor that will maintain the Contractors Pollution Liability Insurance and provide City with a copy of its subcontractor’s Contractors Pollution Liability Insurance policy. Policies issued on a claims made basis must be issued before any work commences, be maintained for the duration of all work and include a 12-month extended claims discovery period applicable to all work or the policy or policies must be maintained for at least 12 months after completion of all the work without advancing the retroactive date.
2. **Nature of Insurance.** The contents of this EXHIBIT D are sometimes referred to as the “**Insurance Requirements.**” All Liability Insurance, Automobile Liability Insurance, Property Insurance, Workers Compensation Insurance, and Contractors Pollution Liability Insurance (if required) policies required by these Insurance Requirements shall be issued by carriers that: (a) are listed in the then current “Best’s Key Rating Guide—Property/Casualty—United States & Canada” publication (or its equivalent, if such publication ceases to be published) with a minimum financial strength rating of “A-” and a minimum financial size category of “VII” (exception may be made for the State Compensation Insurance Fund when not specifically rated); and (b) are authorized to do business in the State by the State Department of Insurance. Tenant may provide any insurance under a “blanket” or “umbrella” insurance policy, provided that: (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the Lease Area, which amount(s) shall equal or exceed the amount(s) required by these Insurance Requirements; and (ii) such policy otherwise complies with the requirements of these Insurance Requirements.
3. **Policy Requirements and Endorsements.** All insurance policies required by these Insurance Requirements shall contain (by endorsement or otherwise) the following provisions:

- 3.1. *Insured.* Liability Insurance and Contractors Pollution Liability Insurance policies shall name the City Parties as “additional insured.” The coverage afforded to the City Parties shall be at least as broad as that afforded to Tenant regarding the Lease Area and may not contain any terms, conditions, exclusions, or limitations applicable to the City Parties that do not apply to Tenant.
- 3.2. *Primary Coverage.* All insurance coverage maintained by Tenant shall be primary to all insurance or self-insurance maintained by the City Parties and all insurance or self-insurance maintained by the City Parties shall be excess of all insurance maintained by Tenant and shall not contribute with any insurance maintained by Tenant.
- 3.3. *Contractual Liability.* Liability Insurance and Contractors Pollution Liability Insurance policies shall contain contractual liability coverage for Tenant’s Indemnity obligations under this Lease. Tenant’s maintaining or failing to maintain such contractual liability coverage shall not relieve Tenant from nor satisfy any Indemnity obligation of Tenant under this Lease.
- 3.4. *Deliveries to City.* Evidence of Tenant’s maintenance of all insurance policies required by these Insurance Requirements shall be delivered to City before the Effective Date. No later than ten (10) days before any insurance required by these Insurance Requirements expires, is cancelled or its liability limits are reduced or exhausted, Tenant shall deliver to City evidence of Tenant’s maintenance of all insurance required by these Insurance Requirements. Each insurance policy required by these Insurance Requirements shall be endorsed to state that coverage shall not be cancelled, suspended, voided, reduced in coverage or in limits, except after thirty (30) days’ advance Notice of such action to City. Phrases such as “endeavor to” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company” shall not be included in the cancellation wording of any certificates or policies of insurance applicable to the City Parties under these Insurance Requirements.
- 3.5. *Waiver of Certain Claims.* Tenant shall cause each insurance carrier providing any Liability Insurance, Worker’s Compensation Insurance, or Automobile Liability Insurance coverage under these Insurance Requirements to endorse their applicable policy(ies) with a Waiver of Subrogation (defined below) with respect to the City Parties, if not originally in the policy. To the extent Tenant obtains an insurance policy covering both the Tenant Parties and the City Parties and containing a Waiver of Subrogation, the Parties release each other from any Claims for damage to any Person or property to the extent such Claims are paid by the insurance carrier under such insurance policy. **“Waiver of Subrogation”** means and refers to a provision in, or endorsement to, any insurance policy, under which the carrier agrees to waive rights of recovery by way of subrogation against the City Parties for any loss such insurance policy covers.
- 3.6. *No Representation.* No Party makes any representation that the limits, scope, or forms of insurance coverage required by these Insurance Requirements are adequate or sufficient.

- 3.7. *No Claims Made Coverage.* None of the insurance coverage required by these Insurance Requirements, except Contractors Pollution Liability Insurance, may be written on a claims-made basis.
- 3.8. *Fully Paid and Non-Assessable.* All insurance maintained by Tenant in satisfaction of these Insurance Requirements shall be fully paid for and non-assessable.
- 3.9. *Separation of Insured.* All Liability Insurance, Contractors Pollution Liability Insurance, and Automobile Liability Insurance shall provide for separation of insured for Tenant and the City Parties. Insurance policies obtained in satisfaction of these Insurance Requirements may provide a cross-suits exclusion for suits between named insured Persons but shall not exclude suits between named insured Persons and additional insured Persons.
- 3.10. *Deductibles and Self-Insured Retentions.* All deductibles or self-insured retentions under insurance policies issued in satisfaction of these Insurance Requirements shall be declared to and approved by City. Tenant shall pay all such deductibles or self-insured retentions regarding the City Parties. Each insurance policy issued in satisfaction of these Insurance Requirements shall provide that, to the extent Tenant fails to pay all or any portion of a self-insured retention under such policy in reference to an otherwise insured loss, City may pay the unpaid portion of such self-insured retention, in City's sole and absolute discretion. All amounts paid by City toward self-insured retentions regarding insurance policies covering the City Parties under these Insurance Requirements shall be reimbursed to City by Tenant in the same manner that insurance costs are reimbursable to City from Tenant under Section 5 of these Insurance Requirements.
- 3.11. *No Separate Insurance.* Tenant shall not carry separate or additional insurance coverage concurrent in form or contributing in the event of loss with insurance coverage required by these Insurance Requirements unless the City Parties are made additional insured under such insurance coverage.
4. **Insurance Independent of Indemnification.** These Insurance Requirements are independent of the Parties' Indemnification and other obligations under this Lease and shall not be construed or interpreted in any way to satisfy, restrict, limit or modify the Parties' Indemnification or other obligations or to limit the Parties' liability under this Lease, whether within, outside or in excess of such coverage, and regardless of solvency or insolvency of the insurer issuing the coverage, nor shall the provision of such insurance preclude City from taking such other actions as are available to City under any other provision of this Lease or otherwise at law or in equity.
5. **City Option to Obtain Coverage.** During the continuance of an Event of Default arising from the failure of Tenant to maintain any insurance coverage required by these Insurance Requirements, City may, in City's sole and absolute discretion, purchase such required insurance coverage. City shall be entitled to immediate payment from Tenant of all premiums and associated reasonable costs paid by City to obtain such insurance coverage. Each amount becoming due and payable to City under this Section 5 that is not paid within fifteen (15) days after Notice from City with an explanation of the amounts owed, will accrue Default Interest

from the date incurred until paid. Election by City to purchase or not to purchase insurance coverage otherwise required by these Insurance Requirements to be carried by Tenant shall not relieve Tenant of any Default or Event of Default or Tenant's obligation to maintain all insurance coverage required by these Insurance Requirements.