



DATE: December 18, 2024

TO: Waste Management Authority Board

FROM: Kelly Schoonmaker, Senior Program Manager

SUBJECT: New Cingular Lease on Agency Property

SUMMARY

The Agency owns and manages rangeland property with multiple tenants in the Altamont Hills. The Agency proposes to enter into a lease agreement for access and a utility trench with New Cingular Wireless PCS, LLC, who is installing a telecommunications tower on a neighboring property. At the December 18, 2024, WMA Board meeting, staff will ask the Board to authorize the Executive Director to enter into a lease agreement with New Cingular Wireless PCS, LLC.

DISCUSSION

In 1993-94, the Agency purchased 1,600+ acres of land over six parcels in the Altamont Hills in unincorporated Alameda County (“Property”). 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, a wind power easement over a portion of the Property, and a conservation easement on one of the parcels.

In 2024, the Agency was approached by New Cingular Wireless PCS, LLC (New Cingular) to lease a small area (the “Premises”) on the parcel commonly known as Parcel 6 (Assessor’s Parcel Number 099A-1820-002; the “Site”), described and shown in the final draft lease Agreement (Attachment 1). Most of the Site is subject to a conservation easement dated and recorded on December 21, 2018, which protects the conservation values of the Site, and limits construction and other activities.

New Cingular intends to install a monopole tower on the neighboring parcel, APN 099-1820-003-02, owned by Vieira Ranch Investments (“Vieira Ranch Property”). To operate the monopole tower, New Cingular needs to trench power conduits from a proposed new utility pole on the Site to the base of the monopole tower on the Vieira Ranch Property and to access the Site and the Vieira Ranch Property.

New Cingular has therefore requested to enter into a lease with the Agency that would allow it to access the Premises and install, operate, and maintain the utility pole and 40 linear feet of power conduits there with a 10-foot access easement, and would provide it with access across the Site on the existing 50-foot driveway to the Vieira Ranch Property, as described in the Agreement. The Premises are located within Exception Area 4, a portion of the Site not subject to the conservation easement.

The Agreement has been reviewed by New Cingular and WMA staff and counsel. The term of the lease is 10 years, and the annual rent is \$4,000. This rental amount includes a 3% annual increase averaged over the ten-year term of the lease. Conducting a formal bid process is not required in this case as the lease meets the criteria of ACWMA Ordinance 2024-02 (Attachment 2): it does not exceed 10 years; the rent is less than \$10,000 monthly; and the use is compatible with other on-going uses of the Property and would provide a public benefit by facilitating operation of the monopole tower on the Vieira Ranch Property, which would improve cellular coverage in the area, including on the Site and on neighboring Agency property. As required by the Leasing Ordinance, the Agency issued a public notice with information about the Agreement, the process for accepting additional offers, and the process for executing the Agreement. As the Leasing Ordinance also requires, notice was issued 15 days prior to accepting offers, posted at the Agency's office and with the County clerk, and published in a newspaper of general circulation.

RECOMMENDATION

That the Board hold a public hearing concerning the proposed lease, make a finding that the property subject to the lease will be used for compatible uses and that the lease will be of public benefit, and authorize the Executive Director to enter into a lease agreement with New Cingular Wireless, PCS, LLC.

ATTACHMENTS

Attachment 1: Lease Agreement between New Cingular Wireless, PCS, LLC, and Alameda County Waste Management Authority

Attachment 2: ACWMA Ordinance 2024-02

**LEASE AGREEMENT BETWEEN
ALAMEDA COUNTY WASTE MANAGEMENT AUTHORITY
AND NEW CINGULAR WIRELESS PCS, LLC**

THIS LEASE AGREEMENT (“Lease Agreement”), effective as of the last date signed, is made by and between New Cingular Wireless PCS, LLC, a Delaware limited liability company, (“Lessee”) and the Alameda County Waste Management Authority, a public agency (“Agency”).

RECITALS

- A. Agency owns certain real property in Alameda County commonly known as Parcel 6 (Assessor’s Parcel Number (“APN”) 099A-1820-002), described and shown in **Exhibit A** (the “Site”). Most of the Site is subject to a Conservation Easement Deed dated and recorded December 21, 2018 (“Conservation Easement”), which protects the conservation values of the Site.
- B. Lessee intends to install a monopole tower on the neighboring parcel, APN 099-1820-003-02, owned by Vieira Ranch Investments (“Vieira Ranch Property”). To operate the monopole tower, Lessee needs to trench power conduits from a proposed new utility pole on the Site to the base of the monopole tower on the Vieira Ranch Property and to access the Site and the Vieira Ranch Property.
- C. Agency is willing to lease a portion of the Site, as shown in **Exhibit B** (the “Premises”) to Lessee for Lessee’s proposed uses, which include access to the Premises and access across the Site on the existing access road to the Vieira Ranch Property and installation of certain utilities as described in **Exhibit C** and **Exhibit D**, subject to the terms and conditions of this Lease Agreement. The Premises are within Exception Area 4, a portion of the Site not subject to the Conservation Easement.
- D. Lessee’s use of the Premises in accordance with this Agreement is compatible with other ongoing uses of the Site and would provide a public benefit by facilitating operation of the monopole tower on the Vieira Ranch Property, which would improve cellular coverage in the area, including on the Site and on neighboring Agency property.

NOW, THEREFORE, in consideration of the above recitals and mutual covenants herein set forth, Agency and Lessee (together, “Parties” and each individually, a “Party”) agree as follows:

- 1. **GRANT OF LEASE.** Subject to the conditions specified in this Lease Agreement, Agency hereby grants Lessee the right to use the Premises for the purposes and uses described in **Exhibit C** (“Uses”).
- 2. **TERM.** The term of this lease shall be 10 years, commencing on the date of the latter of the signature dates below (“Start Date”) and ending on the day before the tenth anniversary of the Start Date (“Term”). Thereafter, subject to all legal requirements, Agency agrees to consider in good faith any application by Lessee to enter into a new Lease Agreement under substantially the same terms and conditions as in this Lease Agreement, except that the Rent may be increased to reflect conditions at that time.

3. **RENT.**

- a. Lessee shall pay Agency the sum of \$4,000.00 per year as a fee for use of the Premises ("Rent"), payable annually.
- b. The first payment shall be due on or before the Start Date. Thereafter, each annual payment shall be payable prior to or on the anniversary of the Start Date while this Lease Agreement is in effect.
- c. If payment of Rent is not received by Agency on or before the 30th day following the due date, it shall be deemed delinquent and subject to a late charge of 5% of the delinquent amount, without limiting any of Agency's other rights and remedies under the Lease Agreement.
- d. If the Lease Agreement is terminated prior to the end of the Term, Agency shall refund any advance payment of the Rent made by Lessee, minus any delinquent Rent, and any charges and interest owed, for the period of time after the date of termination.

4. **USE OF PREMISES.**

- a. The Premises shall be used by Lessee for the Uses described in **Exhibit C**, which includes any installation, construction, and maintenance of any equipment and facilities described in **Exhibit D** ("Equipment"). No other use of the Premises is permitted except with the advance written consent of Agency.
- b. Lessee shall be responsible for all costs associated with its use of the Premises and any costs associated with installation, maintenance, and use of Lessee's Equipment.
- c. Lessee shall keep the Premises in a neat and clean condition and not leave or store any trash, garbage, or refuse of any kind in, on, or about the Premises and shall cause any refuse, trash, paper, or other waste deposited on the Premises by any of its employees, agents, or designated representatives to be picked up, and disposed of in the appropriate manner.
- d. Lessee shall not use, commit, allow, or permit to be used or committed any offensive or improper use, or any nuisance, on the Premises that may unreasonably or unlawfully disturb or damage the Premises, or interfere with any party's use and enjoyment of its property.
- e. Lessee shall comply, and ensure Lessee's personnel, and its contractors and any other parties acting on its behalf comply with all obligations in this Lease Agreement, including those safety requirements set forth in **Exhibit E**. Lessee shall be solely responsible for the conduct of its employees, agents, and sub-contractors while on the Site.

5. **CONDITION OF PREMISES.**

- a. Agency makes no warranty of the Premise’s suitability for the uses permitted under this Lease Agreement. By entering this Lease Agreement, Lessee accepts the Premises in its present condition.
 - b. If Lessee causes any damage to the Premises or Site, Lessee shall repair the same at its sole expense within 30 days of receipt of written notice from Agency; notwithstanding the foregoing, if the damage creates an unsafe condition presenting an immediate or imminent threat to public safety and welfare or damage to the environment, Lessee shall immediately implement reasonable measures to remedy that unsafe condition and shall fully correct the unsafe condition at its sole expense within 10 days of receipt of written notice of the unsafe condition from Agency, or a later date approved in writing by Agency based on interim measures that reduce the safety risk to a level acceptable to Agency, which approval shall not be unreasonably withheld or denied. If Agency determines Lessee has not repaired the damage within the time specified in this Section 5.b, Agency may, at its option, conduct the repairs itself, and invoice Lessee for the costs of the repairs, which Lessee must pay within 20 days of receipt of any such invoice.
6. **INSPECTIONS AND ENTRY BY AGENCY.** Lessee shall permit Agency and Agency’s agents, employees, and assigns, at all reasonable times, to enter the Premises for the purposes of inspection or to make repairs, alterations, or additions to any portion of the Site. Agency shall use its best efforts to minimize any disruption to Lessee’s use of the Premises.
7. **PRIOR APPROVALS.** Lessee shall obtain and maintain all needed governmental licenses, permits, and approvals for Lessee’s Uses and for construction, operation, and maintenance of the Equipment. Lessee shall provide Agency with such licenses, permits, and approvals upon request.
8. **COMPLIANCE WITH LAW.** Lessee shall, at its sole cost and expense, comply with all statutes, laws, rules, and regulations concerning Lessee’s use of the Premises, and operation of the Equipment, including, without limitation, the laws of the United States of America, the laws of the State of California, and the ordinances, regulations, and requirements of the County of Alameda, or other lawful authorities having jurisdiction over the Uses.
9. **INTERFERENCE WITH OTHER ACTIVITIES.**
- a. Lessee’s use of or access to the Premises shall not interfere with Agency’s use of the Site, including but not limited to habitat preservation, livestock grazing, wind power generation, or activities of other licensees, lessees, and easement holders that exist now or in the future.
 - b. Lessee acknowledges that it does not have any exclusive right to use of the Premises and that Agency expressly reserves the right to use, lease, or license use of the Premises in the future for other purposes that will not interfere materially with Lessee’s use of the Premises.

- c. In exercising its right of access to and use of the Premises, Lessee agrees to cooperate with any reasonable security procedures utilized by Agency at the Premises.
 - d. Lessee agrees to coordinate through the Agency with tenants and other entities with rights to the Premises or Site to identify mutually acceptable means for minimizing conflicts during use of the Premises and any installation and use of Lessee's Equipment at the Premises. If Agency reasonably suspects that Lessee's use of the Premises or Equipment is interfering with other tenants or entities' rights to the Premises or Site, Agency may require Lessee, at Lessee's own cost and expense, to contract with a mutually agreed upon third party with expertise in the nature of the interference to provide an independent determination regarding interference issues. If the third party finds that Lessee's use of the Premises is interfering with others' use of the Premises or Site, Lessee, at its sole cost and expense, shall coordinate with Agency to implement a solution that eliminates all such interference.
10. **ALTERATIONS; ADDITIONS.** Lessee shall not make or cause to be made any alterations, additions, or improvements ("Additions") to or on the Premises or Site without the prior written consent of Agency, except those Additions within the scope of Uses specified in **Exhibit C**. Where written consent of Agency is required, Lessee shall deliver written notice at least 30 days prior to any intended Additions and allow Agency the opportunity examine any plans or specifications, impose additional requirements or restrictions, and object (and therefore prohibit) such Additions.
11. **FIRE MEASURES.** Lessee shall take all reasonable precautionary measures to guard against fire on the Premises or Site while on or accessing the Premises. Lessee shall take reasonable precautions to prevent fuel spills. Any generator or apparatus that uses fuel shall be equipped with double containment, and leak detection for fuel storage. Exhaust systems and engines shall be equipped with spark arrestor(s).
12. **ENVIRONMENTAL ISSUES; HAZARDOUS MATERIALS.**
- a. Lessee shall not bring any hazardous materials onto the Premises or Site except for those expressly agreed to in **Exhibit C**. Lessee shall handle any hazardous materials it brings onto the Premises or Site in accordance with all applicable federal, state, and local laws and regulations. No pesticides, herbicides, retardants, or chemicals shall be used that may migrate outside the Premises.
 - b. If any investigation or monitoring of site conditions or any cleanup, containment, restoration, removal, or other remedial work (collectively, the "Remedial Work") is required under any applicable federal, state, or local law or regulation, by any judicial order, or by any governmental entity, or in order to comply with any agreement entered into because of, or in connection with, hazardous substances brought onto or generated on the Premises or Site by Lessee, Lessee shall perform or caused to be performed the Remedial Work in compliance with such law, regulation, order, or agreement. All costs, fees, and expenses of such Remedial Work shall be paid by Lessee including, without limitation, all charges of Lessee's contractors, consultants, engineers, attorneys, and architects in connection with monitoring or review of such

Remedial Work. In the event Lessee shall fail to commence or cause to be commenced, or fail to diligently prosecute to completion such Remedial Work within 45 days from receipt of written notice from Agency, Agency may, but is not obligated to, cause such Remedial Work to be performed, and all costs, fees, and expenses thereof, or incurred in connection therewith, shall be reimbursed to Agency by Lessee within 30 days of receipt of an invoice from Agency.

The requirements of this Section shall survive the expiration or termination of this Lease Agreement.

13. **UTILITIES.** Lessee shall, at its own expense, pay for all utilities related to the use of the Premises and its Equipment, including any costs and expenses related to any utility meters, connection charges, deposits, or fees chargeable by any utility company for Lessee. Utility upgrades necessary for the use of the Premises shall be made by Lessee at its sole expense. Utility upgrades shall all be underground except for 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 any existing facilities or equipment without prior notification. Should power interruption attributable to Lessee occur for more than 4 hours, Lessee shall, at its sole expense, provide an uninterrupted power supply to the existing facilities or equipment.
14. **TAXES.** During the term of this Lease Agreement, Lessee shall promptly pay, before delinquency, any and all taxes, and other governmental charges, if any, which shall be laid, assessed, levied, or imposed upon, or become due and payable and upon the Lessee, the Premises, or any part thereof, including, but not limited to: (i) all taxes levied on the personal property, fixtures, and Equipment, and (ii) all license fees and other charges imposed upon Lessee's business or operations conducted thereon.
15. **INSURANCE.** Lessee shall, at Lessee's own cost and expense, secure and maintain during the entire term of this lease insurance as required by the provisions set forth in **Exhibit F.**
16. **MECHANIC'S LIENS.** Lessee shall pay, or cause to be paid, all costs and expenses for work done by it, or caused to be done by it, on the Premises of a character that will or may result in any lien on the Premises. Lessee will keep the Premises free and clear of any mechanic's lien and/or other lien on account of work done by Lessee or at its request. Lessee shall protect, indemnify, and hold Agency harmless against and from any and all claims, demands, actions, suits, liabilities, loss, damage, costs, expenses, and judgments arising out of or related to claims and claims of lien of laborers, materials, or others for work performed for, or materials or supplies furnished to Lessee or at its request.
17. **NOTICES.** All notices that are required under this Lease Agreement shall be provided in the manner set forth herein. Notice to a Party shall be delivered to the attention of the person below, or to such other person or persons as may hereafter be designated by that Party in writing. Notice shall be in writing sent (a) by a nationally recognized overnight carrier, (b) registered or certified first-class mail, return receipt requested, or (c) by e-mail, provided that a copy is also sent out not later than 1 business day thereafter by overnight carrier or registered or certified mail as described in (a) or (b)

immediately above. E-mail communications shall be deemed to have been received on the date of such transmission, provided the sender obtained an electronic confirmation of delivery (or response to an e-mail from the recipient that was not an out-of-office notice). In the case of first-class mail notice, notice shall be deemed to have been given upon receipt or refusal of delivery by the intended recipient. For overnight delivery, notice shall be deemed to be received on the date delivered.

AGENCY: Alameda County Waste Management Authority
1537 Webster Street
Oakland, CA 94612
Attn: Kelly Schoonmaker
Fax: (510) 893-2308
E-Mail: kschoonmaker@stopwaste.org

LESSEE: New Cingular Wireless PCS, LLC
Attn: Tower Asset Group – Lease Administration
Re: Cell Site No.: CCL05482
Cell Site Name: Patterson Pass Road (CA)
Search Ring Name: Patterson Pass Road
Fixed Asset No.: 14638065
1025 Lenox Park Boulevard NE, 3rd Floor
Atlanta, GA 30319
E-Mail: TowerNotices@list.att.com

With a required copy concurrently to:

New Cingular Wireless PCS, LLC
Attn: Legal Department – Network Operations
Re: Cell Site No.: CCL05482
Cell Site Name: Patterson Pass Road (CA)
Search Ring Name: Patterson Pass Road
Fixed Asset No.: 14638065
208 S. Akard Street
Dallas, TX 75202
E-Mail: TowerNotices@list.att.com

18. **ASSIGNMENT; SUCCESSORS.** The rights granted hereby may not be assigned, sold, licensed, or otherwise transferred by Lessee without prior written consent of Agency, provided that Lessee will have the right to assign, sell or transfer such rights, in whole or part, without Agency’s consent, to: (a) any entity controlled by or under common control with Lessee, (b) any entity that acquires all or substantially all of the Lessee’s assets in the market as defined by the Federal Communications Commission in which the Premises is located (collectively, “Approved Transfer”). Upon notification to Agency of such assignment, transfer or sale, Lessee will be relieved of all future performance, liabilities and obligations under this Lease Agreement. Lessee shall provide Agency with written notice of any such assignment within 10 days of such assignment. . Any attempt by Lessee to assign, this Agreement to any entity or party other than an Approved Transfer shall be void upon inception. Agency, at its sole discretion, may assign its rights and obligations hereunder without notice or approval of Lessee.

19. **CO-LOCATON.** It is the policy of Alameda County and its agencies to co-locate communication towers and facilities to avoid the degradation of the landscape and minimize impacts. Lessee shall provide access to its Equipment as needed to facilitate co-location of communication infrastructure by other public or private entities, provided said co-location will not result in interference with Lessee's existing uses at the Premises.
- a. Should a request to co-locate be made to either Lessee or Agency, the contacted party shall obtain the necessary contact information to pursue co-location opportunities and give notice to non-contacted party within 15 days of contact.
 - b. Lessee shall not unreasonably deny a request from Agency on behalf of itself or others to co-locate communication infrastructure which will not materially interfere with the activities of the Lessee at the Premises.
 - c. Agency shall not unreasonably deny a request from Lessee on behalf of itself or others to co-locate communication infrastructure which will not materially interfere with the activities of Agency at the Premises.
 - d. The Parties agree to meet and confer on any request to co-locate at the Premises.
 - e. The Parties agree to and shall share gross revenue from the co-location of communication infrastructure at the Premises. Any such shared gross revenue shall be collected by Lessee and 50% of such revenue shall be forwarded to Agency pursuant to the same schedule set forth in Section 3 of this Agreement.

20. **DEFAULT.**

- a. The occurrence of any of the following will constitute a material default and breach of this Lease Agreement by Lessee or Agency:
 - i. The abandonment of the Premises by Lessee for a period exceeding 60 days.
 - ii. Any failure by Lessee to pay Rent before it becomes delinquent as provided in Section 3.c, or any failure by Lessee to timely pay utility charges or taxes, which failure continues for more than 5 days after such amount is due.
 - iii. Failure to perform any obligation under this Lease Agreement and failure to cure such breach within 15 days of receiving notice of such breach, provided that if the nature of the breach is such that the Party claiming breach determines it will reasonably require more than 15 days to cure, the breaching Party shall not be in default if it promptly commences the cure and diligently proceeds to completion of the cure.
 - iv. The filing of any voluntary or involuntary petition in bankruptcy or the admission by Lessee of insolvency that is not removed within 60 days of filing.

- b. Upon any default and in accordance with Section 21.a below , the non-defaulting Party shall have the right to suspend or terminate the Lease Agreement and seek any other remedies available by law or equity.
- c. The Parties shall make a good faith effort to settle any dispute or claim arising under this Lease Agreement. If the Parties fail to resolve such disputes or claims, if agreeable to the Parties, they shall submit them to non-binding mediation in California at shared expense of the Parties for at least 8 hours of mediation. If mediation does not arrive at a satisfactory result, arbitration, if agreed to by all Parties, or litigation may be pursued. In the event of litigation, mediation or arbitration, each Party shall bear its own costs and attorneys' fees.
- d. In the event of a breach of any term, covenant, or condition of this Lease Agreement by Lessee, Agency may, with knowledge of such breach, permit Lessee to continue in possession of the Premises, but any waiver by Agency of any term, covenant, or condition herein contained, or of any breach thereof, shall neither vitiate the same, nor any other term, covenant, or condition contained herein, nor operate as a waiver of any other or future breach.

21. TERMINATION OF LEASE AGREEMENT.

- a. This Lease Agreement may be terminated without further liability on 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 60 days of receipt of written notice of default, provided that if such default is curable, but not curable within such 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 60 days, the defaulting party must send to the other party, within the 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 Agency if it determines that the Lease Agreement conflicts with plans or uses approved by Agency in the future for the Site.
- b. This Lease Agreement may be terminated without further liability on 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 6 months or 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 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.

- c. Within 45 days of termination or expiration of this Lease Agreement, Lessee shall restore the Premises to as good a condition as existed on the Start Date or other reasonable condition acceptable to Agency.
- d. Any Equipment installed at the Premises by Lessee and any of Lessee's personal property shall remain the property of Lessee. On termination or expiration of this Lease Agreement, Lessee shall remove all Equipment and personal property placed on the Premises by Lessee or its invitees or agents. If not removed within 45 days of termination or expiration of this Lease Agreement, the Equipment and any other personal property shall become the property of Agency. If Lessee does not remove the Equipment or personal property, Lessee shall reimburse Agency for any costs it incurs for its removal within 30 days of receipt of an invoice from Agency.

The requirements of this Section shall survive the expiration or termination of this Lease Agreement.

- 22. **LIABILITY.** Agency will not be liable to Lessee, and Lessee hereby waives any claims against Agency, for any damage to property, injury, or death to any person in, on, or about the Premises by or from any cause except the sole active negligence or willful misconduct of Agency.
- 23. **INDEMNIFICATION.** Lessee shall indemnify and hold Agency and Agency's officers, directors, board member, partners, employees, agents, contractors, or subcontractors harmless from and against any and all losses, claims, liabilities, damages, costs, and expenses (including reasonable attorneys' fees and costs) and injuries (including personal injuries or death) (all of the foregoing, collectively "Claims") arising from or in connection with Lessee's or Lessee's officers', directors', partners', employees', agents', contractors', or subcontractors' use, installation, operation, maintenance, or repair of Equipment or use of the Premises or access to the Premises, except to the extent that such Claims arise from or in connection with the sole active negligence or willful misconduct of Agency. The indemnity provisions of this Section shall survive the expiration or termination of this Lease Agreement.
- 24. **EXHIBITS.** All exhibits referred to in this Lease Agreement are attached hereto and are by this reference incorporated herein and made a part of this Lease Agreement.
- 25. **POWER TO EXECUTE AGREEMENT.** Each individual executing this Lease Agreement, on behalf of one of the Parties, represents that he or she is duly authorized to sign and deliver the Lease Agreement on behalf of such Party and that this Lease Agreement is binding on such Party in accordance with its terms.
- 26. **HEADINGS.** The headings to the sections of this Lease Agreement are for convenience only and are not a part of this Lease Agreement and shall have no effect on the construction or interpretation of any part of this lease.
- 27. **TIME.** Time is of the essence as to all provisions of this Lease Agreement.
- 28. **DUPLICATE EXECUTION.** This Lease Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken

together shall constitute one and the same instrument and have the force of an original.

- 29. **JURISDICTION AND SEVERABILITY.** This Lease Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Lease Agreement shall be in that state and venue shall be in Alameda County, California. If any part of this Lease Agreement is found to conflict with applicable laws, such part shall be inoperative, null and void insofar as it conflicts with said laws, but the remainder of this Lease Agreement shall be in full force and effect.

- 30. **PRESUMPTIONS REGARDING PREPARATION.** The Parties acknowledge and agree that each of the Parties has been represented by counsel or has had full opportunity to consult with counsel. 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.

- 31. **ENTIRE AGREEMENT AND MODIFICATION.** This Lease Agreement, including all Exhibits, represents the final, complete, and exclusive statement of the agreement between the Parties and supersedes all prior and contemporaneous understandings and agreements of the Parties. No Party has been induced to enter into this Lease Agreement by, nor is any party relying upon, any representation or warranty outside those expressly set forth herein. This Lease Agreement may only be amended by mutual agreement of the Parties in writing and signed by both Parties.

IN WITNESS WHEREOF, the Parties to this Lease Agreement have caused this Lease Agreement to be duly executed on their behalf by their authorized representatives.

Lessee	Agency
By: AT&T Mobility Corporation Its: Manager _____ [Name and Title] Date: _____	_____ Pat Cabrera for Timothy Burroughs, Executive Director Date: _____
	APPROVED AS TO FORM: _____ Richard Taylor, General Counsel Date: _____

List of Exhibits

Exhibit A: Legal Description and Map of Site

Exhibit B: Map Showing Premises

Exhibit C: Uses of Premises

Exhibit D: Equipment

Exhibit E: Safety Requirements for Use of Premises

Exhibit F: Insurance Requirements

EXHIBIT A
Legal Description and Map of Site

The "Site" is legally described as follows:

Real property in the unincorporated area of the County of Alameda, State of California, described as follows: The Northeast ¼ of Section 10, in Township 3 South, Range 3 East, of the Mount Diablo Base and Meridian.

APN: 099A-1820-002

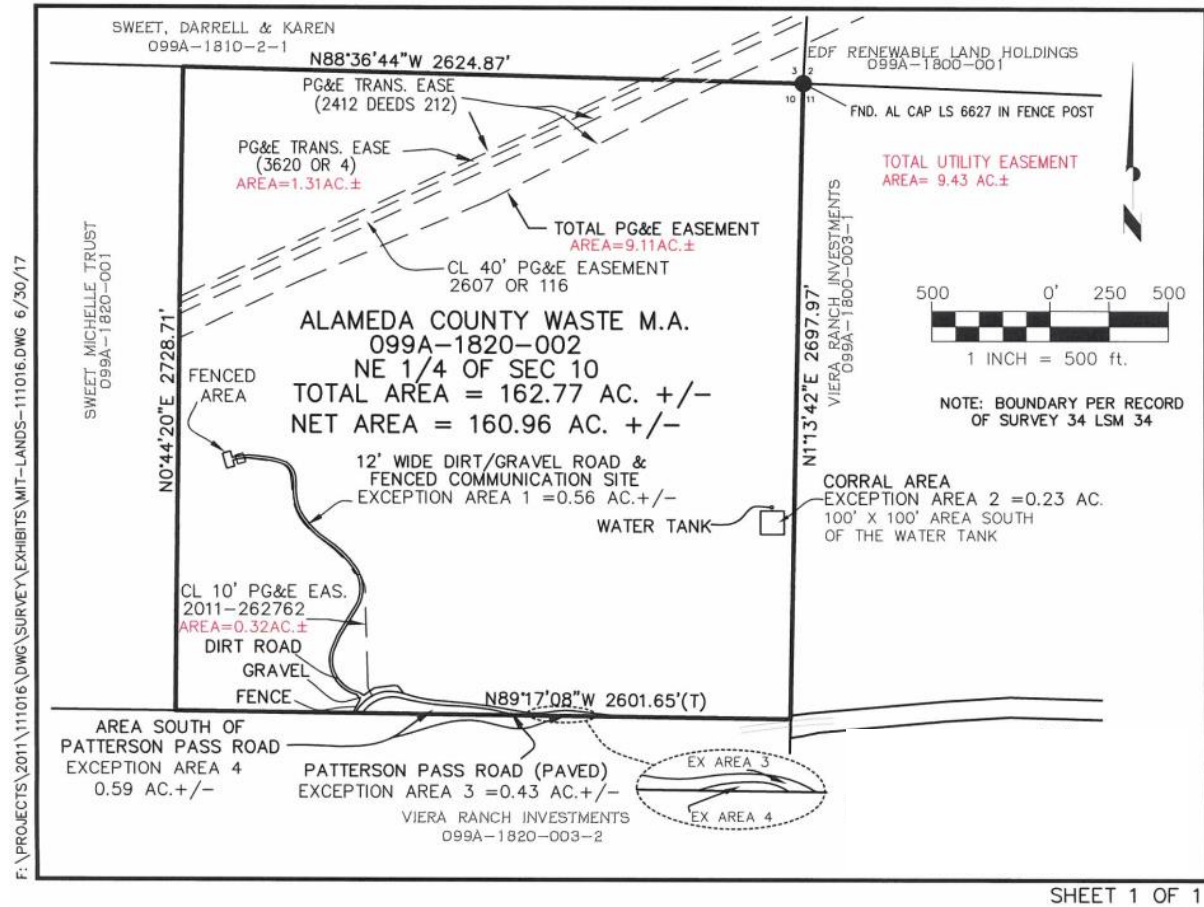
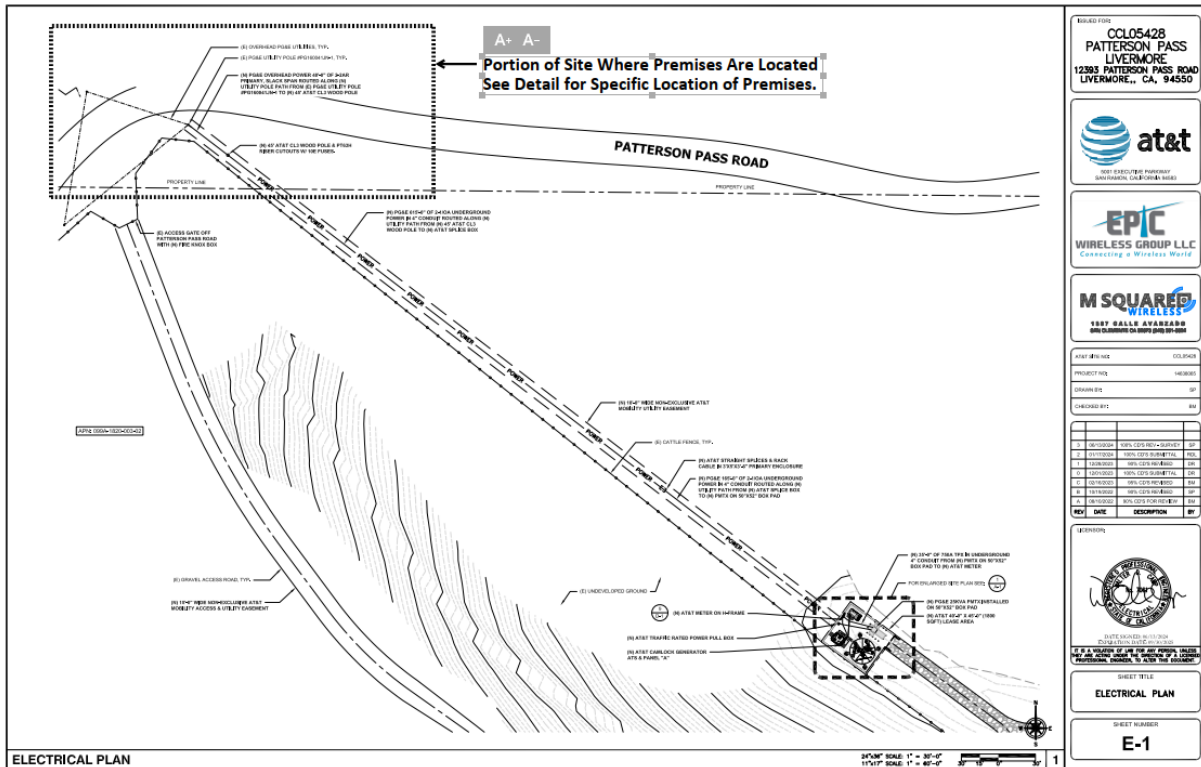


EXHIBIT B
Map Showing Premises

Portion of Site where Premises are located:



Detail showing location of Premises:

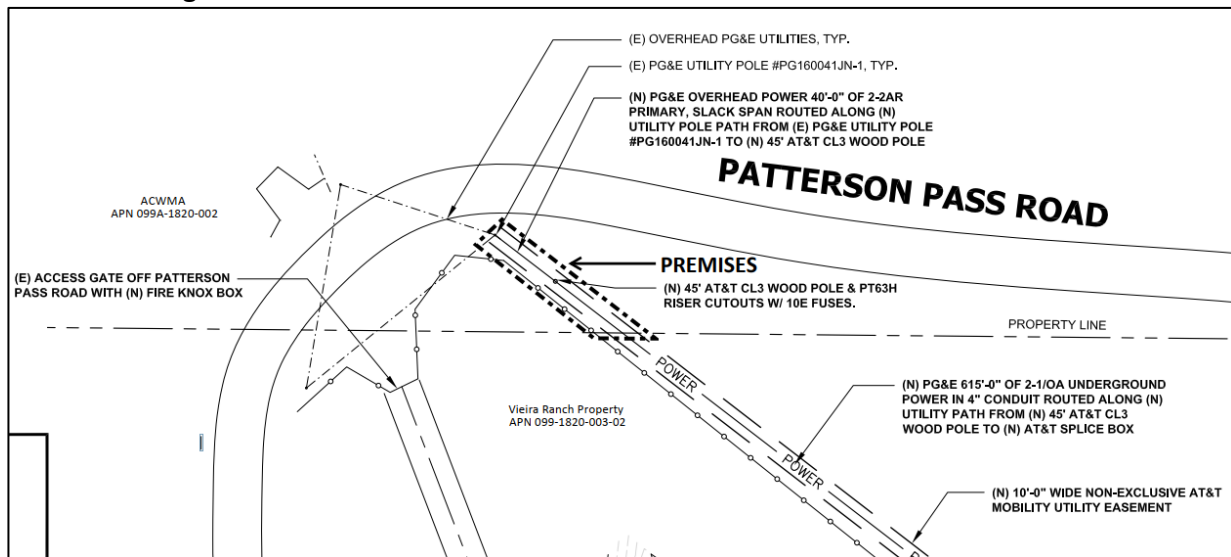


EXHIBIT C
Uses of Premises

Lessee's use of the Premises will include the Uses listed below:

1. Access through the Site via the existing access road from the public right-of-way commonly known as Patterson Pass Road to the Vieira Ranch Property. This access road is shown in **Exhibit B**.
2. Per an approved PG&E power design, installing a new 45-foot tall utility pole ("new utility pole") 40 feet southeast of an existing PG&E utility pole (Pole #PG160041JN-1), at the location shown in **Exhibit B**, and installing an overhead power line from the existing PG&E utility pole to the new utility pole.
3. Trenching power conduits from the new utility pole to the Vieira Ranch Property, within the 10-foot wide by approximately 80-foot long area of the Premises shown in **Exhibit B**, in a trench measuring approximately 3 feet deep and 16 inches wide.
4. Operating, maintaining, repairing and removing the Equipment, and replacing the Equipment with equipment serving the same functions and of approximately the same dimensions.

EXHIBIT D
Equipment

Lessee may install, construct, and maintain the following equipment and facilities (“Equipment”) on the Premises:

1. A new 45-foot tall wood utility pole (“new utility pole”).
2. An overhead power line from existing PG&E utility pole (Pole #PG160041JN-1) to the new utility pole.
3. A riser along the length of the new utility pole.
4. Power conduits trenched underground from the base of the new utility pole, within the 10-foot wide area of the Premises shown in Exhibit B and described in Exhibit C.

EXHIBIT E
Safety Requirements for Use of Premises

The following safety procedures shall be followed while on the Site (including the Premises):

1. In the event of an Emergency, the Lessee shall contact 911 and provide assistance and support to emergency responders.
2. Lessee shall exercise caution while on the Site. There are unmarked hazards, obstacles and objects that can cause harm if not properly observed.
3. No smoking on the Site or within the immediate vicinity of the Site.
4. No open flames.
5. No discharge of firearms.
6. No firearms shall be allowed on the Site unless allowed by Law.
7. No speeding: The maximum speed limit on the Site is 15 miles per hour.
8. No hunting, stalking, harassing of any mammals, reptiles, insects, or birds.
9. No horseplay, roughhousing, or other recreational activities are allowed on the Site.
10. No cooking, camping, prospecting, or star gazing, while on the Site.
11. No alcohol, beer, spirits, drugs, or other substances, legal or illegal that impair the user in any form are allowed on the Site.
12. No scenic viewing, photography, collecting of samples or data, monitoring or recording of conditions or environment while on the Site unless such activity is specifically authorized by this Lease Agreement or is the principal purpose for accessing the Site.
13. No off-road driving. All registered vehicles shall observe California vehicle code.
14. All off-road vehicles accessing the Site shall be equipped with approved spark arrestors.

Exhibit F

Insurance Requirements

1. During the life of this agreement, Lessee and all subcontractors shall maintain the following minimum insurance:

A. *Comprehensive general liability insurance*: Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis including products and completed operations, personal & advertising injury liability, blanket contractual liability per standard policy terms and conditions, and broad-form property damage liability coverage. The combined single limit for bodily injury and property damage shall be at least \$2,000,000. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

B. *Automobile Liability*: ISO Form Number CA 00 01 covering any auto (Code 1), bodily injury and property damage liability insurance covering owned, non-owned (Code 9), rented, and hired (Code 8) cars. The combined single limit for bodily injury and property damage shall at least \$1,000,000 per accident.

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 agreement. The Employer's Liability policy shall be endorsed to waive any right of subrogation against the Agency, its employees or agents.

D. *Professional Errors and Omissions Liability Insurance*. The limit of liability shall be at least \$1,000,000. If the policy is written on a "claims made" basis, Lessee must maintain required coverage for a period of three years after the expiration of this agreement. Lessee may satisfy this requirement by renewal of existing coverage or purchase of either prior acts or tail coverage applicable to said three-year period.

Lessee shall submit to Agency 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. In the event that Agency has tendered a claim to Lessee or its insurer and Lessee or its insurer has denied coverage to Agency, Lessee will make available to the Agency within ten (10) days of the Agency's written request to Lessee, complete, certified copies of all required insurance policies with any proprietary or confidential information redacted, and/or to allow Agency to view complete, unredacted copies of all required insurance policies virtually. Lessee shall not cancel, assign, or change any policy of insurance required by this agreement or engage in any act or omission that will cause its insurer to cancel any insurance policy required by this agreement except after providing 30 days prior written notice to Agency. If an insurance policy required by this agreement is unilaterally cancelled or changed by the insurer, the Lessee shall immediately provide written notice to the Agency and obtain substitute insurance meeting the requirements of this agreement. Nothing in this subsection relieves Lessee of its obligation to maintain all insurance required by this Lease Agreement at all times during the term of the agreement.

If an insurance policy required by this agreement is unilaterally cancelled or changed by the insurer, the Lessee shall immediately provide written notice to the Agency and obtain substitute insurance meeting the requirements of this agreement. Nothing in this subsection relieves Lessee of its obligation to maintain all insurance required by this Lease Agreement at all times during the term of the agreement.

2. As to all of the policies of insurance listed above, the following shall apply:

A. *Deductibles and Self-Insured Retentions.* Any deductibles or self-insured retentions must be declared to and approved by the Agency. At the option of the Agency, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Agency, its officers, officials and employees; or (2) the Lessee shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

A. *Agency as Additional Insured.* The Agency, its officers, officials, employees, agents and volunteers are to be included as additional insureds by endorsement as respects this agreement with the same coverage and limits available to the named insured regarding: liability caused in whole or in part by activities performed by or on behalf of the Lessee; premises owned, occupied or used by the Lessee, or automobiles owned, leased, hired or borrowed by the Lessee. The coverage shall contain no special limitations on the scope of the protection afforded to the Agency, its officers, officials, employees, agents or volunteers. Any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the Additional Insured. Any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the Additional Insured; the additional insured coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named Insured; whichever is greater. For any claims related to this project, the Lessee's insurance coverage shall be primary insurance as respects the Agency, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Agency, 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 Agency's own form. Additional insured coverage does not apply to errors and omissions insurance. Agency shall be named as "Alameda County Source Reduction and Recycling Board, Alameda County Waste Management Authority and Energy Council."

C. *Other Insurance Provisions.* The policies are to contain, or be endorsed to contain, the following provisions:

- Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Agency, its officers, officials, employees or volunteers.
- 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 with insurers with a Bests' rating of no less than A:VII.

E. *Umbrella/Excess Insurance.* The limits of insurance required in this 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 basis for the benefit of Agency (if agreed to in a written contract or agreement) before the Agency's own Insurance or self insurance shall be called upon to protect it as a named insured.

F. *Subcontractors.* Lessee agrees to include in all subcontracts the same requirements and provisions of this agreement including the indemnity and insurance requirements to the extent they apply to the scope of the subcontractor's work. Subcontractors hired by Lessee shall agree to be bound to Lessee and Agency in the same manner and to the same extent as Lessee is bound to Agency under this agreement and Lessee shall furnish a copy of this agreement's insurance and indemnity provisions to all subcontractors. All subcontractors shall provide Lessee with valid certificates of insurance and the required endorsements included in the agreement prior to commencement of any work and Lessee will provide proof of compliance to the Agency.

3. Lessee hereby grants to Agency a waiver of any right to subrogation which any insurer of Lessee may acquire against Agency by virtue of the payment of any loss under such insurance. Lessee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether Agency 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 agreement, Lessee shall immediately notify Agency by telephone. Lessee shall promptly submit to Agency a written report, in such form as may be required by Agency of all accidents which occur in connection with this agreement. This report must include the following information: (a) name and address of the injured or deceased person(s); (b) names and address of Lessee's subcontractor, if any; (c) name and address of Lessee's liability insurance carrier; and (d) a detailed description of accident and whether any of Agency's equipment, tools, materials or staff were involved. Failure to comply with this section shall constitute a material breach of this agreement.

All Insurance modifications must be approved by the Agency's contract administrator

Insurance Modification Approved (Yes)___ (No) __ (No) Date Approved _____ (CAS Initials)

—

Type of Insurance Waived or Reduced:

Automotive Liability (Auto) _____, Worker's Comp (W/C)_____, Professional Liability (P/L)

Type of Insurance Waived or Reduced:

Automotive Liability (Auto) _____, Worker's Comp (W/C)_____, Professional Liability (P/L)

**ORDINANCE 2024-02
AMENDING ORDINANCE 2000-01**

**ORDINANCE ESTABLISHING PROCEDURES FOR CERTAIN LEASES AND LICENSES OF PROPERTY
OWNED BY THE AUTHORITY**

The Board of the Alameda County Waste Management Authority (“Authority”) finds that:

1. In 2000 the Authority adopted Ordinance 2000-01, the Ordinance Establishing Procedures for Certain Leases of Property Owned by the Authority. The Authority now wishes to amend the ordinance to increase the allowable monthly rental payment to \$10,000 to reflect a change in state law, to allow for that monthly rental payment to be further increased if permitted by a future change in state law, and to update the ordinance’s noticing provisions.
2. The Board of the Alameda County Waste Management Authority held a public meeting on June 26, 2024, to consider this Ordinance, and after considering all testimony and written materials provided in connection with that meeting introduced this ordinance and waived the reading thereof.

Therefore, the Board of the Authority hereby ordains as follows:

Section 1. Amendment.

Ordinance 2000-01 is hereby amended as shown in Exhibit A. Text to be added is indicated in bold underlined font (e.g., **underlined**), and text to be deleted is indicated in strikeout font (e.g., ~~strikeout~~).

Section 2. Severability.

If any provision of this Ordinance or its application to any situation is held to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance, which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are declared to be severable.

Section 3. Publication.

Within 15 days after adoption, a summary of the Ordinance with the names of those voting for and against shall be published and a certified copy of the full text with the names of those voting for and against the Ordinance shall either (i) be posted on the Authority’s website or (ii) be posted in the Authority’s offices. The Ordinance shall become effective 30 days after adoption.

- Continued on following page -

Following introduction on June 26, 2024, passed and adopted July 24, 2024 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

I certify that under the penalty of perjury that the foregoing is a full, true and correct copy of
ORDINANCE NO. 2024-02.

ARLISS DUNN
CLERK OF THE BOARD

Exhibit A

**ORDINANCE 2000-01
as amended by Ordinance 2024-02**

**AN ORDINANCE ESTABLISHING PROCEDURES FOR CERTAIN LEASES AND LICENSES OF
PROPERTY OWNED BY THE AUTHORITY**

The Board of the Alameda County Waste Management Authority ordains as follows:

SECTION 1 (Enactment)

The Board of the Authority does hereby enact this ordinance in full consisting of Sections 1 through Section 6.

SECTION 2 (Findings)

- (a) The Authority finds that the proposed process for entering into leases or licenses for real property owned by the Authority—which applies only to leases and licenses that are non-renewable, do not exceed 10 years, have a monthly rental not ~~in excess of~~ **exceeding ten** thousand dollars (~~\$5,000~~**10,000**) **or the amount authorized in Government Code section 25537 (or any successor provision), whichever is greater,** are of public benefit, and provide for uses that are compatible with the Authority's use of the property—will provide adequate notice to the public of such leases and licenses, ensure long-term stewardship of Authority property, and establish an efficient process for managing Authority property.
- (b) The Authority finds that it has the power to enact this ordinance pursuant to the Joint Exercise of Powers Agreement for Waste Management.

SECTION 3 (Definitions)

The following definitions govern the use of terms in this ordinance:

- (a) “Authority” means the Alameda County Waste Management Authority created by the Joint Exercise of Powers Agreement for Waste Management.
- (b) “Board” means the governing body of the Authority made up of elected representatives of the member agencies pursuant to the Joint Exercise of Powers Agreement for Waste Management.

SECTION 4 (Procedures for Entering into Specified Leases and Licenses for Authority Property)

Where the Authority proposes to enter into a lease or license for any real property belonging to, leased by, or licensed by the Authority, where the lease or license is nonrenewable, does not exceed 10 years, ~~does not have~~ has a monthly rental ~~in excess of~~ not exceeding five ten thousand dollars (\$5,00010,000) or the amount authorized under Government Code section 25537 (or any successor provision), whichever is greater, will be of public benefit, and will provide for a use that is compatible with the Authority's uses of the property, the following procedures shall apply:

- (a) The Authority shall issue a notice that describes the property to be leased or licensed, the terms of the lease or license, the location where offers to lease or license the property will be accepted, the location where the lease or license will be executed, ~~the~~ any Authority officer authorized to execute the lease or license, and the date of the public hearing on the lease or license.
- (b) The notice of the proposed lease or license shall be published in the following manner:
 - 1) posting of the notice with the County clerk;
 - 2) posting of the notice at the Authority office;
 - 3) at least 15 days prior to accepting the offers to lease or license the property, mailing of the notice to any person who has filed a written request for such notice with a person designated by the Authority receive these requests; and
 - 4) publication of the notice in a newspaper of general circulation ~~two times, with the first notice occurring~~ at least 15 days prior to accepting the offers to lease or license the property ~~and with at least six days between the publication dates, in a newspaper of general circulation.~~
- (c) Where the proposed lease or license involves residential property, notice shall also be provided to housing sponsors (as defined by section 50074 and 50074.5 of the Health and Safety Code).
- (d) The Authority shall hold a public hearing concerning the proposed lease or license and shall make a finding that the property subject to the lease or license will be used for compatible uses and that the lease or license will be of public benefit.

SECTION 5 (Exemption)

The provisions of Section 4 shall not apply to any lease or license that the Authority enters into with the state, or with any county, city, district, public agency, public corporation or public utility corporation.

SECTION 6 (Notice and Verification)

~~This ordinance shall be posted at the Authority Office after its second reading by the Board for at least thirty (30) days and shall become effective thirty (30) days after the second reading.~~