AGENDA

ALISO VIEJO CITY COUNCIL
WEDNESDAY, NOVEMBER 16, 2022
7:00 PM REGULAR MEETING

City Hall
Council Chambers
12 Journey
Aliso Viejo, CA

Mayor Ross Chun
Mayor Pro Tem Richard W. Hurt
Councilmember Tiffany Ackley
Councilmember David C. Harrington
Councilmember Mike Munzing

SPECIAL NOTICE REGARDING COVID-19

On March 4, 2020, Governor Newsom proclaimed a State of Emergency in California as a result of the threat of COVID-19. On September 16, 2021, Assembly Bill 361 (AB 361) was signed by Governor Newsom, to allow for the City Council to attend City Council meetings telephonically and for the public to participate in the City Council meeting by electronic means.

Given the health risks associated with COVID-19, state and local officials are recommending measures to promote social distancing; therefore, the City of Aliso Viejo will not have the Council Chambers open to the public for this meeting. Members of the public may access the meeting live using any of the following sources:

- Cox Communications Channel 851
- AT&T U-Verse Channel 99
- Online at www.avcity.org/agendas
- Online via GoToWebinar at https://attendee.gotowebinar.com/register/6269364051548874764

Staff anticipates a return to in-person City Council meetings to occur in December 2022.

Public comments may be submitted by calling (949) 425-2509 to leave a recorded message by 4:00 pm on the day of the meeting or via email to Community-Input@avcity.org. Alternatively, public comments may be submitted by logging onto the meeting through this link and using the "Raise Hand" feature: https://attendee.gotowebinar.com/register/6269364051548874764. Comments are limited to three minutes each.

WELCOME to the City of Aliso Viejo City Council meeting.

It is the City's intention to comply with the Americans with Disabilities Act (ADA). If you need special assistance to participate in the meeting, the City will make reasonable arrangements to ensure accessibility and/or accommodations. [28 CFR 35.102-35.104 ADA Title II] Please contact the City Clerk's Office at (949) 425-2505 at least 48 hours prior to the meeting.

Regular meetings of the City Council are held on the first and third Wednesday of the month at the City Hall Council Chambers, 12 Journey, Aliso Viejo. Copies of the agenda are available in the lobby at City Hall on the Thursday preceding a regularly scheduled City Council meeting. All communications received by the City regarding an agenda item have been included in the agenda materials. Supplemental documents relating to specific agenda items, including communications received after agenda delivery, are presented at the dais and in the Public Copy agenda binder at the time of the meeting. Supplemental documents are also available for review in the City Clerk's office, 12 Journey, Aliso Viejo. For more information, please contact City Hall at (949) 425-2505.

This meeting will be broadcast live on Cox Communications Channel 851, AT&T U-Verse Channel 99 and the City's website. By attending the City Council Meeting, you are giving your permission to be televised. The Council Meetings are rebroadcast on Wednesday at 7:00 p.m. on Cox Communications Channel 851, AT&T U-Verse Channel 99, and can be viewed on the internet at www.avcity.org.

DAVID A. DOYLE	SCOTT C. SMITH	MITZI ORTIZ
CITY MANAGER	CITY ATTORNEY	CITY CLERK

PLEASE SILENCE ALL CELL PHONES AND OTHER
ELECTRONIC EQUIPMENT WHILE CITY COUNCIL IS IN SESSION

CALL TO ORDER: CONVENE REGULAR MEETING

ROLL CALL

PLEDGE OF ALLEGIANCE:

1. SPECIAL PRESENTATIONS:

1.1. RECOGNITION OF SUPERNOVA AWARD RECIPIENTS - BOY SCOUTS OF AMERICA EL CAMINO REAL DISTRICT
Certificate of Recognition - Alexandra Nottage
Certificate of Recognition - Christian Guerrero (1)
Certificate of Recognition - Christian Guerrero (2)

1.2. TRUSTED PARTNER - ALISO VIEJO COMMUNITY ASSOCIATION
Certificate of Recognition

2. ADDITIONS, DELETIONS, REORDERING TO THE AGENDA:

3. COMMUNITY INPUT:

Members of the public wishing to address the City Council can submit public comments by calling (949) 425-2509 to leave a recorded by 4:00 pm on the day of the meeting or via email to Community-Input@avcity.org. Written comments will be read into the record and recorded messages will be aired during the meeting. Alternatively, public comments may be submitted by logging onto the meeting through this link and using the "Raise Hand" feature: https://attendee.gotowebinar.com/register/6269364051548874764. Comments are limited to three (3) minutes each. In compliance with the Brown Act, no discussion or action may be taken on comments received at this time, except the City Council may briefly respond to statements made or questions posed.

4. CONSENT CALENDAR:

All matters listed on the Consent Calendar will be acted upon by one vote unless members of the City Council, or staff request a matter to be discussed and/or removed from the Consent Calendar for separate action. Items removed from the Consent Calendar will be discussed and voted upon immediately following City Council action on the remainder of the Consent Calendar.

4.1. WAIVE THE READING OF ALL ORDINANCES AND RESOLUTIONS

Recommended Action: Approve the reading by title only of all ordinances and resolutions wherein the titles appear on the public agenda; said titles shall be determined to have been read by title, and further reading is waived.

4.2. RESOLUTION EXTENSION AUTHORIZING VIRTUAL CITY COUNCIL MEETINGS PURSUANT TO ASSEMBLY BILL 361

Recommended Action: Move to reconfirm findings under Assembly Bill 361 and extend Resolution No. 2021-27 to continue virtual City Council meetings.

Staff Report

Attachment 1 - Resolution No. 2021-27

4.3. APPROVAL OF MINUTES

Recommended Action: Approve the Minutes as submitted for the November 2, 2022 Special Meeting and the November 2, 2022 Regular Meeting.

Draft Minutes - November 2, 2022 Special Meeting

Draft Minutes - November 2, 2022 Regular Meeting

4.4. TREASURER'S STATEMENT – SEPTEMBER 2022

Recommended Action: Approve September 2022 Treasurer's Statement.

Staff Report

Attachment 1 - Sep'22 Treasurer's Report

4.5. THIRD AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT WITH CIVIC SOLUTIONS, INC. TO PROVIDE PLANNING CONSULTING SERVICES

Recommended Action: Approve and authorize the City Manager to execute a Third Amendment to the Professional Services Agreement with Civic Solutions, Inc. for planning

consulting services to increase the total compensation by an amount not to exceed $50,000 and extend the term to June 30, 2022.
Staff Report
Attachment 1 - Original Agreement
Attachment 2 - Third Amendment

4.6. RESOLUTION AUTHORIZING THE CITY ENGINEER TO EXECUTE ALL RIGHT-OF-WAY CERTIFICATIONS AND OTHER DOCUMENTS FOR ALL STATE AND/OR FEDERALLY FUNDED PROJECTS

Recommended Action: Adopt a Resolution authorizing the City Engineer to execute all right-of-way certifications and other documents for all state and/or federally funded projects and to sign all state and/or federal funding documents associated with grant funding allocations between the City of Aliso Viejo and the State of California.
Staff Report
Attachment 1 - Resolution

5. PUBLIC HEARINGS:

5.1. REQUEST TO APPROVE AN AMENDMENT TO SPECIFIC PLAN NO. 2 AND A DEVELOPMENT AGREEMENT TO ALLOW FOR THE SALES AND SERVICE OF NON-INTERNAL COMBUSTION ENGINE VEHICLES (SP-2022-0001 AND DA-2022-00001), A CONDITIONAL USE PERMIT TO ALLOW TESLA MOTORS, INC. TO OPERATE AT 26501 ALISO CREEK ROAD (USE-2022-00009), AND DETERMINE THE PROJECT IS CATEGORICALLY EXEMPT FROM CEQA UNDER CLASS 32

Recommended Action:

1. Open and conduct a public hearing;
2. Find that the Project is exempt from the California Environmental Quality Act pursuant to State CEQA Guidelines Section 15332 (Infill Development);
3. Introduce and approve for first reading an Ordinance (Attachment 1) entitled: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, TO AMEND SPECIFIC PLAN NO. 2 FOR THE COMMONS AT ALISO VIEJO TOWN CENTER AND DETERMINE THE PROJECT TO BE CATEGORICALLY EXEMPT FROM CEQA UNDER CLASS 32 (PLANNING APPLICATION SP-2022-00001);
4. Introduce and approve for first reading an Ordinance (Attachment 2) entitled: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ALISO VIEJO AND VALUEROCK ALISO VIEJO, LLC FOR SPECIFIC PLAN NO. 2 (THE COMMONS AT ALISO VIEJO TOWN CENTER) PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65864 ET SEQ. AND DETERMINE THE PROJECT TO BE CATEGORICALLY EXEMPT FROM CEQA UNDER CLASS 32 (PLANNING APPLICATION DA-2022-00001); and
5. Adopt a Resolution (Attachment 3) approving a Conditional Use Permit for Tesla Motors, Inc. to sell, lease, and service its vehicles at 26501 Aliso Creek Road and determine the project to be categorically exempt from the California Environmental Quality Act under Class 32 (PLANNING APPLICATION USE-2022-00009).

Staff Report
Attachment 1 - SPA Ordinance
Attachment 2 - DA Ordinance
Attachment 3 - CUP Resolution
Attachment 4 - Applicant Letter
Attachment 5 - Tesla Letter
Attachment 6 - Project Plans
Attachment 7 - Traffic Memorandum
Attachment 8 - Presentation

5.2. SECOND READING AND ADOPTION OF AN ORDINANCE TO ADOPT UPDATED 2022 BUILDING CODES

Recommended Action:

1. Find that the Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15378(a) and 15061(b)(3) as the activity does not qualify as a project and is covered by the general rule that CEQA applies only to projects which have the potential for causing significant effect on the environment.
2. Conduct a public hearing to consider and adopt an Ordinance entitled: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, AMENDING CHAPTERS 13.02 & 13.04 OF TITLE 13 OF THE ALISO VIEJO MUNICIPAL CODE AND ADOPTING BY REFERENCE THE FOLLOWING MODEL CODES INTO THE ALISO VIEJO MUNICIPAL CODE: (1) CALIFORNIA BUILDING CODE, VOLUMES 1 & 2, 2022 EDITION; WITH AMENDMENTS; (2) CALIFORNIA ELECTRICAL CODE, 2022 EDITION; (3) CALIFORNIA PLUMBING CODE, 2022 EDITION; (4) CALIFORNIA MECHANICAL CODE, 2022 EDITION; (5) INTERNATIONAL PROPERTY MAINTENANCE CODE; 2021 EDITION (6) CALIFORNIA ADMINISTRATIVE CODE, 2022 EDITION; (7) CALIFORNIA ENERGY CODE, 2022 EDITION; (8) CALIFORNIA REFERENCED STANDARDS CODE, 2022 EDITION; (9) CALIFORNIA EXISTING BUILDING CODE, 2022 EDITION (10) CALIFORNIA RESIDENTIAL CODE, 2022 EDITION; WITH AMENDMENTS; (11) CALIFORNIA GREEN BUILDING STANDARDS CODE, 2022 EDITION; AND (12) CALIFORNIA FIRE CODE, 2022 EDITION, WITH AMENDMENTS.

Staff Report
Attachment 1 - Ordinance

5.3. APPLICATION FOR THE PERMANENT LOCAL HOUSING ALLOCATION (PLHA) FUNDING FROM THE CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT FOR ELIGIBLE HOUSING-RELATED PROJECTS AND PROGRAMS

Recommended Action: Conduct a public hearing and adopt a resolution authorizing the application submittal for the Permanent Local Housing Allocation (PLHA) funding from the California Department of Housing and Community Development for housing-related eligible activities.

Staff Report
Attachment 1 - Resolution
Attachment 2 - PLHA Plan

6. DISCUSSION:

6.1. SECOND AMENDMENT TO CITY MANAGER EMPLOYMENT AGREEMENT

Recommended Action: Approve the Second Amendment to Employment Agreement between the City of Aliso Viejo and David A. Doyle.

Staff Report

Attachment 1 - Second Amendment

Attachment 2 - Agreement and First Amendment

7. CITY MANAGER' S REPORT:

8. ANNOUNCEMENTS / COUNCIL COMMENTS / COMMITTEE UPDATES:

9. ADJOURNMENT:

The next regularly scheduled City Council meeting is December 7, 2022.

Certificate of Recognition

Presented to

Alexandra Nottage

Whereas, the Boy Scouts of America program offers the Dr. Bernard Harris Supernova Award to excite and expand a sense of wonder in our Scouts and inspires those who enjoy a super STEM challenge; and

Whereas, Alexandra Nottage has worked very hard toward achieving the Dr. Bernard Harris Supernova Award completing requirements above and beyond her Scout rank; and

Whereas, fostering a strong STEM education is our best opportunity to boost the spirit of innovation; and

Whereas, STEM literacy is also critical because it has a profound and growing impact on our day-to-day lives; and

Whereas, nature, space exploration, and any STEM-related interest reveals to us the beauty and power of the world we inhabit;

Now Therefore, on behalf of the City Council of the City of Aliso Viejo, I do hereby extend this Certificate of Recognition to Alexandra Nottage and congratulate her on attaining the Dr. Bernard Harris Supernova Award.

Presented this 16th day of November, 2022

Ross Chun, Mayor

Certificate of Recognition

Presented to

Christian J. Guerrero

Whereas, the Boy Scouts of America program offers the Dr. Bernard Harris Supernova Award to excite and expand a sense of wonder in our Scouts and inspires those who enjoy a super STEM challenge; and

Whereas, Christian J. Guerrero has worked very hard toward achieving the Dr. Bernard Harris Supernova Award completing requirements above and beyond his Scout rank; and

Whereas, fostering a strong STEM education is our best opportunity to boost the spirit of innovation; and

Whereas, STEM literacy is also critical because it has a profound and growing impact on our day-to-day lives; and

Whereas, nature, space exploration, and any STEM-related interest reveals to us the beauty and power of the world we inhabit; and

Now Therefore, on behalf of the City Council of the City of Aliso Viejo, I do hereby extend this Certificate of Recognition to Christian J. Guerrero and congratulate him on attaining the Dr. Bernard Harris Supernova Award.

Presented this 16th day of November, 2022

Ross Chun, Mayor

Certificate of Recognition

Presented to

Christian J. Guerrero

Whereas, the Boy Scouts of America program offers the Thomas Alva Edison Supernova Award to excite and expand a sense of wonder in our Scouts and inspires those who enjoy a super STEM challenge; and

Whereas, Christian J. Guerrero has worked very hard toward achieving the Thomas Alva Edison Supernova Award completing requirements above and beyond his Scout rank; and

Whereas, fostering a strong STEM education is our best opportunity to boost the spirit of innovation; and

Whereas, STEM literacy is also critical because it has a profound and growing impact on our day-to-day lives; and

Whereas, nature, space exploration, and any STEM-related interest reveals to us the beauty and power of the world we inhabit; and

Now Therefore, on behalf of the City Council of the City of Aliso Viejo, I do hereby extend this Certificate of Recognition to Christian J. Guerrero and congratulate him on attaining the Thomas Alva Edison Supernova Award.

Presented this 16th day of November, 2022

Ross Chun, Mayor

Certificate of Recognition

Presented to

ALISO VIEJO COMMUNITY ASSOCIATION

Trusted Partner Supporting the City of Aliso Viejo

November 2022

Presented this 16th day of November, 2022

Ross Chun, Mayor

City of Aliso Viejo
AGENDA ITEM

DATE: November 16, 2022

TO: Mayor and City Council

FROM: Mitzi Ortiz, Director of Government Services

SUBJECT: RESOLUTION EXTENSION AUTHORIZING VIRTUAL CITY COUNCIL MEETINGS PURSUANT TO ASSEMBLY BILL 361

Recommended Action:

Move to reconfirm findings under Assembly Bill 361 and extend Resolution No. 2021-27 to continue virtual City Council meetings.

Fiscal Impact:

None.

Background:

Assembly Bill 361 ("AB 361"), effective October 1, 2021, waives certain provisions of the Ralph M. Brown Act and allows legislative bodies to meet virtually until January 1, 2024, provided there is a state of emergency and either:

1. state or local officials have imposed or recommended measures to promote social distancing; or
2. the legislative body determines by majority vote that meeting in person would present imminent risks to the health and safety of attendees.

Under AB 361, the City is not required to allow public access at teleconference locations; however, the City must provide access to meetings via a call-in option or internet-based service option so that members of the public may address the City Council in real time. Additionally, every 30 days the City Council must reconsider the state of emergency and make the determination to continue meeting virtually in accordance with AB 361.

Discussion:

On October 20, 2021, the City Council adopted Resolution No. 2021-27 authorizing virtual City Council meetings under AB 361, having found and determined that (1) a state of emergency related to COVID-19 is currently in effect; (2) state and local officials have

recommended measures to promote social distancing in connection with COVID-19; and (3) due to the COVID-19 emergency, meeting in person would present imminent risks to the health and safety of attendees. At subsequent meetings, the City Council has reconfirmed the findings and extended the resolution pursuant to AB 361.

Staff will agendize this matter for consideration at each City Council meeting until such time as the state of emergency has been terminated or the City Council determines that conditions no longer exist to prevent meeting safely in person. Staff anticipates a return to in-person City Council meetings to occur in December 2022.

Staff recommends that the City Council reconfirm the findings in Resolution No. 2021-27 continue to exist and approve the extension of the resolution.

Attachment:

1. Resolution No. 2021-27

RESOLUTION NO. 2021-27

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, AUTHORIZING VIRTUAL CITY COUNCIL MEETINGS PURSUANT TO ASSEMBLY BILL 361

WHEREAS, the Aliso Viejo City Council ("Council") is committed to preserving and nurturing public access and participation in meetings of the Council; and

WHEREAS, with the exception of closed sessions, all meetings of the Council are open and public, as required by the Ralph M. Brown Act (Cal. Gov. Code 54950 – 54963), so that any member of the public may attend and participate in the Council's meetings; and

WHEREAS, starting in March 2020, in response to the spread of COVID-19 in the State of California, the Governor issued a number of executive orders aimed at containing theCOVID-19 virus; and

WHEREAS, among other things, these orders waived certain requirements of the BrownAct to allow legislative bodies to meet virtually; and

WHEREAS, pursuant to the Governor's executive orders, the Council has been holding virtual meetings during the pandemic in the interest of protecting the health and safety ofthe public, staff, and Councilmembers; and

WHEREAS, the Governor's executive order related to the suspension of certain provisions of the Brown Act expires on September 30, 2021; and

WHEREAS, on September 16, 2021 the Governor signed Assembly Bill 361 (in effect asof October 1, 2021 – Government Code Section 54953(e)), which allows legislative bodies to meet virtually provided there is a state of emergency, and either (1) state or local officials have imposed or recommended measures to promote social distancing; or (2) the legislative body determines by majority vote that meeting in person would presentimminent risks to the health and safety of attendees; and

WHEREAS, such conditions now exist in Orange County, specifically, a state of emergency has been proclaimed related to COVID-19, state and local officials are recommending measures to promote social distancing, and because of the ongoing threatof COVID-19, meeting in person would present imminent risks to the health and safety of attendees;

NOW, THEREFORE, BE IT RESOLVED BY THE ALISO VIEJO CITY COUNCIL AS FOLLOWS:

Section 1. Recitals. The Recitals set forth above are true and correct and areincorporated into this Resolution by this reference.

Section 2. Remote Teleconference Meetings. Consistent with the provisions of Government Code Section 54953(e), the Council finds and determines that (1) a state ofemergency related to COVID-19 is currently in effect; (2) state and local officials have recommended measures to promote social distancing in connection with COVID-19; and (3) due to the COVID-19 emergency, meeting in person would present imminent risks to the health and safety of attendees. Based on such facts, findings and determinations, the Council authorizes staff to conduct remote teleconference meetings of the Council under the provisions of Government Code Section 54953(e).

Section 3. Effective Date of Resolution. This Resolution shall take effect upon adoption and shall be effective for 30 days unless earlier extended by a majority vote of the Council in accordance with Section 4 of this Resolution.

Section 4. Extension by Motion. The Council may extend the application of this Resolution by motion and majority vote by up to 30 days at a time, provided that it makes all necessary findings consistent with and pursuant to the requirements of Section 54953(e)(3).

PASSED, APPROVED AND ADOPTED this 20th day of October, 2021.

Tiffany Ackley
Mayor

APPROVED AS TO FORM:

Scott C. Smith
City Attorney

ATTEST:

Mitzi Ortiz, MMC
City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF ALISO VIEJO)

I, MITZI ORTIZ, City Clerk of the City of Aliso Viejo, California, DO HEREBY CERTIFY that foregoing Resolution No. 2021-27 was duly passed and adopted by the City Council of the City of Aliso Viejo at their regular meeting held on the 20th day of October 2021, by the following roll call vote, to wit:

AYES: Mayor Ackley, Mayor Pro Tem Chun, Councilmembers Harrington, Hurt and Munzing

NOES: None

ABSENT: None

MITZI ORTIZ, MMC
CITY CLERK

(SEAL)

CITY OF ALISO VIEJO
CITY COUNCIL MINUTES
SPECIAL MEETING
NOVEMBER 02, 2022, 6:30 P.M.
Council Chambers, City Hall, 12 Journey
Aliso Viejo, California

City Council conducted this meeting in accordance with California Government Code Section 54953(e)(2) and COVID-19 pandemic protocols.

CALL TO ORDER: Mayor Chun called the Special Meeting of the City Council of the City of Aliso Viejo to order 6:30 p.m.

ROLL CALL:

PRESENT: MAYOR ROSS CHUN *(via teleconference)*
MAYOR PRO TEM RICHARD HURT *(via teleconference)*
COUNCILMEMBER TIFFANY ACKLEY *(via teleconference)*
COUNCILMEMBER DAVID C. HARRINGTON *(via teleconference)*
COUNCILMEMBER MIKE MUNZING *(via teleconference)*

ABSENT: NONE

STAFF PRESENT: SCOTT C. SMITH, CITY ATTORNEY

PUBLIC COMMENTS:

None.

CLOSED SESSION:

PUBLIC EMPLOYEE PERFORMANCE EVALUATION
Pursuant to Government Code Section 54957
Title: City Manager

CONFERENCE WITH LABOR NEGOTIATORS
Pursuant to Government Code section 54957.6
Agency designated representatives: Mayor and Mayor Pro Tem
Unrepresented employee: City Manager

REPORT FROM CLOSED SESSION:

City Attorney Scott Smith stated no reportable action was taken.

ADJOURNMENT: Mayor Chun adjourned the meeting at 6:42 p.m. to the November 2, 2022 Regular Council Meeting.

Respectfully submitted:

_____
MITZI ORTIZ, MMC
CITY CLERK

Approved by:

_____
ROSS CHUN
MAYOR

DRAFT

CITY OF ALISO VIEJO
CITY COUNCIL MINUTES
REGULAR MEETING
NOVEMBER 2, 2022, 7:00 P.M.
Council Chambers, City Hall, 12 Journey
Aliso Viejo, California

City Council conducted this meeting in accordance with California Government Code Section 54953(e)(2) and COVID-19 pandemic protocols.

CALL TO ORDER: Mayor Chun called the Regular Meeting of the City Council of the City of Aliso Viejo to order at 7:03 p.m.

ROLL CALL

PRESENT: MAYOR ROSS CHUN *(via teleconference)*
MAYOR PRO TEM RICHARD HURT *(via teleconference)*
COUNCILMEMBER TIFFANY ACKLEY *(via teleconference)*
COUNCILMEMBER DAVID C. HARRINGTON *(via teleconference)*
COUNCILMEMBER MIKE MUNZING *(via teleconference)*

ABSENT: NONE

STAFF PRESENT: DAVID A. DOYLE, CITY MANAGER
SCOTT C. SMITH, CITY ATTORNEY
MITZI ORTIZ, CITY CLERK
CHARLENE CHENG, MANAGEMENT ANALYST
ANN EIFERT, FINANCIAL SERVICES DIRECTOR
SHAUN PELLETIER, PUBLIC WORKS DIRECTOR
SO KIM, COMMUNITY DEVELOPMENT DIRECTOR
ELIZABETH MCCANN, BUILDING OFFICIAL
LIZZY MENDOZA, RECREATION & COMMUNITY SERVICES MANAGER
ISAAC AZIZ, INFORMATION TECHNOLOGY MANAGER
CAPT. SCOTT MERRILL, CHIEF OF POLICE SERVICES

PLEDGE OF ALLEGIANCE: Management Analyst Charlene Cheng led the pledge of allegiance.

REPORT FROM CLOSED SESSION:

City Attorney Scott Smith stated there was no reportable action.

1. SPECIAL PRESENTATIONS:

None.

2. ADDITIONS, DELETIONS, REORDERING TO THE AGENDA

None.

3. COMMUNITY INPUT:

1. Resident expressed support for school bond measure.
2. Resident expressed support for school bond measure.
3. Resident expressed support for school bond measure.
4. Julie Colombero expressed support for school bond measure.
5. Resident expressed support for school bond measure.

4. CONSENT CALENDAR:

Unless otherwise indicated below, the following pertains to all items on the Consent Calendar.

Motion: Mayor Pro Tem Hurt moved and Councilmember Munzing seconded to approve the recommended actions. Motion carried 5-0.

4.1. WAIVE THE READING OF ALL ORDINANCES AND RESOLUTIONS

Recommended Action: Approve the reading by title only of all ordinances and resolutions wherein the titles appear on the public agenda; said titles shall be determined to have been read by title, and further reading is waived.

4.2. RESOLUTION EXTENSION AUTHORIZING VIRTUAL CITY COUNCIL MEETINGS PURSUANT TO ASSEMBLY BILL 361

Recommended Action: Move to reconfirm findings under Assembly Bill 361 and extend Resolution No. 2021-27 to continue virtual City Council meetings.

4.3. APPROVAL OF MINUTES

Recommended Action: Approve the Minutes as submitted for the October 19, 2022 Regular Meeting.

4.4. ACCOUNTS PAYABLE

Recommended Action: Ratify accounts payable checks and electronic funds transfers issued October 13, 2022, in the amount of $1,214,714.35.

4.5. DESIGNATION OF PRIVATELY OWNED PARKS AS CITY "DESIGNATED PARKS" PURSUANT TO ALISO VIEJO MUNICIPAL CODE CHAPTER 11.10

Recommended Action: Adopt Resolution No. 2022-27 entitled: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, ADOPTED PURSUANT TO ALISO VIEJO MUNICIPAL CODE CHAPTER 11.10 TO MAKE CERTAIN PRIVATELY OWNED PARKS SUBJECT TO THE PROVISIONS OF MUNICIPAL CODE CHAPTER 11.10 (PARKS).

4.6. CONFLICT OF INTEREST CODE BIENNIAL REVIEW AND AMENDMENT

Recommended Action: Adopt Resolution No. 2022-28 approving the amended Conflict of Interest Code, pursuant to the Political Reform Act, section 87303.

5. PUBLIC HEARINGS:

None.

6. DISCUSSION:

6.1. ORDINANCE TO ADOPT UPDATED 2022 BUILDING CODES

City Manager David Doyle introduced Community Development Director So Kim, who provided an overview. Building Official Elizabeth McCann provided additional information. Staff responded to questions regarding solar energy regulations and grant funding.

Recommended Action:

1. Find that the proposed Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the State CEQA guidelines, because it does not qualify as a project as there is no potential to result in either a direct or reasonably foreseeable indirect physical change in the environment; and
2. Introduce for first reading an Ordinance entitled: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, AMENDING CHAPTERS 13.02 & 13.04 OF TITLE 13 OF THE ALISO VIEJO MUNICIPAL CODE AND ADOPTING BY REFERENCE THE FOLLOWING MODEL CODES INTO THE ALISO VIEJO MUNICIPAL CODE: (1) CALIFORNIA BUILDING CODE, VOLUMES 1 & 2, 2022 EDITION; WITH AMENDMENTS; (2) CALIFORNIA ELECTRICAL CODE, 2022 EDITION; (3) CALIFORNIA PLUMBING CODE, 2022 EDITION; (4) CALIFORNIA MECHANICAL CODE, 2022 EDITION; (5) INTERNATIONAL PROPERTY MAINTENANCE CODE; 2021 EDITION (6) CALIFORNIA ADMINISTRATIVE CODE, 2022 EDITION; (7) CALIFORNIA ENERGY CODE, 2022 EDITION; (8) CALIFORNIA REFERENCED STANDARDS CODE, 2022 EDITION; (9) CALIFORNIA EXISTING BUILDING CODE, 2022 EDITION (10) CALIFORNIA RESIDENTIAL CODE, 2022 EDITION; WITH AMENDMENTS; (11) CALIFORNIA

GREEN BUILDING STANDARDS CODE, 2022 EDITION; AND (12) CALIFORNIA FIRE CODE, 2022 EDITION, WITH AMENDMENTS.

Motion: Councilmember Ackley moved and Councilmember Harrington seconded to approve the recommended actions. Motion carried 5-0.

7. CITY MANAGER' S REPORT:

City Manager David Doyle announced registration for winter recreation classes; Health Fair & Flu Shot Clinic to be held from 9:00 a.m. to 11:00 a.m. on November 5, 2022 at Aliso Viejo Ranch; Mobile Library to be held from 2:30 p.m. to 3:30 p.m. on November 16, 2022 at Iglesia Park Community Center; Breakfast with Santa from 9:00 a.m. to 11:00 a.m. on December 16, 2022 at Aliso Viejo Ranch; and All is Bright Holiday Celebration and Tree Lighting Ceremony from 5:00 p.m. to 8:00 p.m. at December 1, 2022.

8. ANNOUNCEMENTS / COUNCIL COMMENTS / COMMITTEE UPDATES:

Councilmember Munzing:
- Attended AVCA Harvest Festival
- Attended Aliso Viejo Chamber of Commerce Evening with the Mayor
- Attended Compass Bible Church Fall Fest

Councilmember Harrington:
- Congratulated Mayor Pro Tem Hurt on completion of Ironman Triathlon

Councilmember Ackley:
- Participated in Principal for a Day
- Attended AVCA Harvest Festival

Mayor Pro Tem Hurt:
- Participated in Principal for a Day
- Announced OC Public Libraries Literacy Festival

Mayor Chun:
- Congratulated Mayor Pro Tem Hurt on completion of Ironman Triathlon
- Commented on League of California Cities Orange County Division Election
- Expressed appreciation to Aliso Viejo Chamber of Commerce for Evening with a Mayor
- Attended Coffee with a Cop
- Participated in Principal for a Day
- Attended OCFA Board of Directors Meeting
- Attended Capriotti's Sandwich Shop Grand Opening
- Hosted Pacific Grove Halloween Parade
- Commented on Native American Heritage Month

DRAFT

9. **ADJOURNMENT:** Mayor Chun adjourned the meeting at 7:40 p.m. to the regularly scheduled meeting of November 16, 2022.

Respectfully submitted:

_____
MITZI ORTIZ, MMC
CITY CLERK

Approved by:

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ROSS CHUN
MAYOR

DRAFT

City of Aliso Viejo
AGENDA ITEM

DATE: November 16, 2022

TO: Mayor and City Council

FROM: Ann Eifert, Director of Financial Services/City Treasurer

SUBJECT: TREASURER'S STATEMENT – SEPTEMBER 2022

Recommended Action:

Approve September 2022 Treasurer's Statement.

Fiscal Impact:

No Fiscal Impact

Background:

Per City policy, the Finance Department presents the monthly Treasurer's Statement for the City Council's review and approval. This statement shows the cash balances for the various funds, with a breakdown of bank account balances, investment account balances and the effective yield earned from investments.

Discussion:

The City's portfolio consists of investments in Certificates of Deposits (CD), Medium Term Notes, US Treasury bonds, Federal Agency (Government Sponsored Enterprises (GSE)) bonds, Corporate Notes (CN), and Local Agency Investment Fund (LAIF). All funds invested with LAIF are available for withdrawal within 24 hours.

With Proposition 1A, the State does not have the ability to borrow from funds invested in LAIF. CD's are insured by Federal Deposit Insurance Corporation (FDIC). FDIC is an independent agency created by Congress in 1933 to supervise banks, insure deposits, and help maintain a stable and sound banking system. Investments in agencies are backed by the implied guarantee of the U.S. government. All CN's purchased are rated "AA" or better by a nationally recognized rating agency.

Interest is credited to the City's bank account on a monthly basis. All deposits in excess of FDIC insurance limits are collateralized by the financial institution in accordance with government codes.

Fund transfers for capital projects and reimbursement of fiscal charges for the CFD 2005-01 are completed on a quarterly basis.

Attachment:

1. Sep'22 Treasurer's Statement

CITY OF ALISO VIEJO
TREASURER'S MONTHLY CASH STATEMENT

September 30, 2022

	BEGINNING BALANCE	RECEIPTS	DISBURSEMENTS	TRANSFERS IN (OUT)	ENDING BALANCE	
GENERAL FUND	$ 4,180,033.72	$ 6,721,096.55	$ 5,944,838.58		$ 5,766,102.31	
TCRF	$ 78,264.08	819.93	-	(6,354.70)	72,729.31	
GAS TAX FUND	$ 814,791.25	137,837.11	128,968.32	(560.00)	823,100.04	
MEASURE M	$ 1,348,867.97	189,295.51	3,096.00	(232.50)	1,534,834.98	
SB1-RMRA	$ 844,365.39	100,801.33		(1,299,610.31)	(354,443.59)	
PUBLIC SAFETY GRANTS	$ 119,056.13	78,740.93	13,191.26		184,605.80	(1)
AIR QUALITY IMPRVMNT FD	$ 1,071,335.55	27,253.04			1,098,588.59	
INTEGRATED WASTE MGMT FD	$ 86,192.00	678.21	3,895.00		82,975.21	
OTHER GRANTS	$ (314,028.55)	160,000.00			(154,028.55)	
TECHNOLOGY GRANT	$ 229,940.38	2,146.57	3,305.13		228,781.82	
DEVELOPMENT IMPACT	$ 1,410,622.33	1,166.57	44,472.89		1,367,316.01	
FEDERAL GRANTS	$ 2,849,530.05	27,915.26	1,818,005.70	(819,775.62)	239,663.99	
CITY FACILITY - AV CTR	$ 179,753.40	5.52			179,758.92	
CITY FACILITY - AQUATIC CTR	$ 88,789.57	180,757.91	195,218.42		74,329.06	
STREET IMPROVEMENTS	$ (999,671.10)	116,919.20	304,886.88	1,306,525.01	118,886.23	(2)
CAPITAL IMPROVEMENTS	$ (21,371.56)	21,371.56	7,495.50	7,495.50	-	(2)
STORM WATER	$ 3,230.30		5,932.30	2,702.00	-	(2)
COP CAPITAL	$ -				-	(2)
COP	$ (8,274.33)	5,004.93	1,550.00		(4,819.40)	
AV RANCH FOUNDATION	$ 100.00				100.00	
CFD 2005-01	$ (2,788.00)	6,923.06	7,693.06		(3,558.00)	
RENEWABLE FARMS	$ 68,036.00	27,496.35	59,774.50		35,757.85	
COMMUNITY TRUST	$ 7,540.68				7,540.68	
TOTALS	**$ 12,034,315.26**	**$ 7,806,229.54**	**$ 8,542,323.54**	**$ -**	**$ 11,298,221.26**	

SUMMARY OF CASH:

DEMAND DEPOSITS:	GENERAL ACCOUNT	$	3,499,663.05
SAVINGS ACCOUNT:	MONEY MARKET	$	25,714.40
INVESTMENTS:	LOCAL AGENCY INVESTMENT FD	$	7,772,843.81
	TOTAL CASH		**$ 11,298,221.26**

Years to Maturity for September 2022	1.30
Weighted Average Yield for September 2022	2.080%

All investments are placed in accordance with the City of Aliso Viejo's Investment Policy.

The above summary provides sufficient cash flow liquidity to meet the next six month's estimated expenditures.

Other monies held include Cash with Fiscal Agent, Investments, Payroll and AV Center.			**$ 29,257,285.38**
Cash With Fiscal Agent	COPS/CFD 2005-01	3,144,055.59	
Cash With Investment Advisor	City Investments	24,316,218.88	
AV Center		1,644,991.53	
PR Account		149,169.38	
Petty Cash		2,850.00	
	GRAND TOTAL OF CITY FUNDS		**$ 40,555,506.64**

(1) Public Safety Grant includes the MDC and PVS Program Costs budgeted with SLESF funds.

(2) Transfers in and out are done on a quarterly basis.
Street Improvements include the Slurry Seal, Traffic Management and Street Improvement Projects.
Capital Improvements include park and AV Ranch improvement projects.
Storm Water includes the Dairy Fork and Wood Canyon Emergent Wetland Project.

City of Aliso Viejo

Portfolio Summay
As of 9/30/2022

Investment Type	Original Cost	Par Value	Market Value *	% of Portfolio
Federal Agency Coupon Securities	$ 7,227,174	$ 7,235,000	$ 7,033,386	22.52%
LAIF	$ 7,772,844	$ 7,772,844	$ 7,772,844	24.22%
Medium Term Notes	$ 2,000,620	$ 2,000,000	$ 1,913,587	6.23%
FDIC CDs	$ 5,873,672	$ 5,880,000	$ 5,581,709	18.30%
Treasury Coupon Securities	$ 9,214,753	$ 9,500,000	$ 9,123,045	28.72%
Portfolio:	**$ 32,089,063**	**$ 32,387,844**	**$ 31,424,570**	**100.00%**

Years To Maturity	1.30
Weighted Average Yield	2.080%

*Market Values obtained from US Bank Treasury Division

CUSIP	Issuer Coupon Rate	Maturity Date Call Date	Remaining Par Value	Settle Date Book Yield	Original Value Book Value	Mkt Price Mkt YTM	Market Value Accrued Int.	% of Port Gain/Loss	Moody/S&P Fitch	WAM Eff. Dur.
Certificates of Deposit										
05580ASU9	BMW Bank	10/11/2022	245,000.00	10/11/2019	245,000.00	99.96	244,910.82	0.76%	NR/NR	0.03
	1.850%			1.85%	245,000.00	3.04%	2,148.28	-89.18	NR	0.03
7954505W1	Sallie Mae Bank	12/12/2022	245,000.00	12/13/2019	244,642.30	99.72	244,317.43	0.76%	NR/NR	0.20
	1.850%			1.64%	244,642.30	3.24%	1,365.96	-324.87	NR	0.20
949495AA3	Wells Fargo National Bank West	12/13/2022	245,000.00	12/13/2019	245,000.00	99.71	244,287.79	0.76%	NR/NR	0.20
	1.800%			1.81%	245,000.00	3.24%	217.48	-712.22	NR	0.20
27002YEX0	EagleBank	03/20/2024	245,000.00	03/20/2020	244,510.00	96.41	236,207.44	0.76%	NR/NR	1.47
	1.550%			1.60%	244,510.00	4.07%	114.45	-8,302.56	NR	1.45
05465DAK4	Axos Bank	03/26/2024	245,000.00	03/26/2020	245,000.00	96.52	236,469.84	0.76%	NR/NR	1.49
	1.650%			1.65%	245,000.00	4.07%	55.38	-8,530.17	NR	1.46
15118RUV7	Celtic Bank	04/17/2024	245,000.00	04/17/2020	245,000.00	96.02	235,245.82	0.76%	NR/NR	1.55
	1.400%			1.40%	245,000.00	4.07%	131.56	-9,754.19	NR	1.52
32110YPS8	First National Bank of America	04/22/2024	245,000.00	04/23/2020	244,522.25	95.76	234,609.31	0.76%	NR/NR	1.56
	1.250%			1.30%	244,522.25	4.07%	75.51	-9,912.95	NR	1.53
15201QDF1	CenterState Bank	04/30/2024	245,000.00	04/30/2020	244,522.25	95.66	234,369.45	0.76%	NR/NR	1.58
	1.200%			1.25%	244,522.25	4.06%	1,240.44	-10,152.80	NR	1.56
58404DGU9	Medallion Bank	04/30/2024	245,000.00	04/30/2020	244,522.25	95.66	234,369.45	0.76%	NR/NR	1.58
	1.200%			1.25%	244,522.25	4.06%	1,240.44	-10,152.80	NR	1.56
538036JN5	Live Oak Banking	08/28/2024	245,000.00	02/28/2020	244,529.60	95.63	234,302.32	0.76%	NR/NR	1.91
	1.650%			1.69%	244,529.60	4.04%	332.26	-10,227.28	NR	1.87
856285RU7	State Bank of India	11/27/2024	245,000.00	12/06/2019	245,000.00	95.75	234,587.01	0.76%	NR/NR	2.16
	2.000%			2.00%	245,000.00	4.08%	1,704.93	-10,412.99	NR	2.09
61760A4F3	Morgan Stanley Private Bank	12/12/2024	245,000.00	12/13/2019	244,416.90	95.54	234,071.29	0.76%	NR/NR	2.20
	1.950%			2.00%	244,416.90	4.09%	1,452.88	-10,345.62	NR	2.13
61690UUJ7	Morgan Stanley Bank	02/27/2025	245,000.00	02/28/2020	244,416.90	94.63	231,847.91	0.76%	NR/NR	2.41
	1.800%			1.85%	244,416.90	4.17%	422.88	-12,568.99	NR	2.34
14042RPG0	Capital One Bank NA	04/08/2025	245,000.00	04/09/2020	244,412.00	93.85	229,936.91	0.76%	NR/NR	2.52
	1.600%			1.65%	244,412.00	4.20%	1,890.19	-14,475.09	NR	2.44
33847E3J4	Flagstar Bank	05/15/2025	245,000.00	05/15/2020	245,000.00	91.80	224,916.13	0.76%	NR/NR	2.62
	0.900%			0.90%	245,000.00	4.24%	839.71	-20,083.88	NR	2.58
866264DP6	Summit State Bank	05/15/2025	245,000.00	05/18/2020	244,402.20	91.68	224,614.29	0.76%	NR/NR	2.62
	0.850%			0.90%	244,402.20	4.24%	793.06	-19,787.92	NR	2.58
89235MJS1	Toyota Financial Savings Bank	06/30/2025	245,000.00	06/30/2020	245,000.00	91.08	223,134.00	0.76%	NR/NR	2.75
	0.800%			0.73%	245,000.00	4.28%	504.77	-21,866.01	NR	2.71
59013KLQ7	Merrick Bank	12/30/2025	245,000.00	12/30/2020	245,000.00	88.58	217,019.78	0.76%	NR/NR	3.25
	0.550%			0.55%	245,000.00	4.34%	3.69	-27,980.23	NR	3.21
02007GXG3	Ally Bank	08/04/2026	245,000.00	08/04/2022	245,000.00	97.18	238,100.07	0.76%	NR/NR	3.85
	3.450%			3.45%	245,000.00	4.25%	1,343.14	-6,899.94	NR	3.55

CUSIP	Issuer Coupon Rate	Maturity Date Call Date	Remaining Par Value	Settle Date Book Yield	Original Value Book Value	Mkt Price Mkt YTM	Market Value Accrued Int.	% of Port Gain/Loss	Moody/S&P Fitch	WAM Eff. Dur.
Certificates of Deposit										
90348JR93	UBS Bank USA	08/11/2026	245,000.00	08/11/2021	245,000.00	88.27	216,250.23	0.76%	NR/NR	3.87
	0.950%			0.95%	245,000.00	4.26%	127.53	-28,749.77	NR	3.78
38149MYB3	Goldman Sachs Bank	08/11/2026	245,000.00	08/11/2021	245,000.00	88.51	216,855.14	0.76%	NR/NR	3.87
	1.000%			1.00%	245,000.00	4.26%	342.33	-28,144.87	NR	3.78
254673N44	Discover Bank	07/29/2027	245,000.00	08/03/2022	245,000.00	96.86	237,296.96	0.76%	NR/NR	4.83
	3.500%			3.50%	245,000.00	4.23%	1,503.56	-7,703.05	NR	4.38
87164XN93	Synchrony Bank	08/05/2027	245,000.00	08/05/2022	245,000.00	96.85	237,271.23	0.76%	NR/NR	4.85
	3.500%			3.50%	245,000.00	4.23%	1,339.11	-7,728.77	NR	4.40
02589ADQ2	American Express National Bank	08/10/2027	245,000.00	08/12/2022	243,775.00	96.62	236,718.51	0.76%	NR/NR	4.86
	3.450%			3.56%	243,775.00	4.23%	1,204.19	-7,056.49	NR	4.42
					5,873,671.65		**5,581,709.07**	**18.30%**		**2.43**
Total Certificates of Deposit			**5,880,000.00**	**1.75%**	**5,873,671.65**	**4.04%**	**20,393.73**	**-291,962.64**		**2.32**
Corporate Bonds										
594918BQ6	Microsoft	08/08/2023	500,000.00	12/06/2019	503,635.00	98.09	490,431.50	1.57%	Aaa/AAA	0.85
	2.000%	06/08/2023		1.79%	503,635.00	4.30%	1,472.22	-13,203.50	AAA	0.82
30231GBC5	Exxon Mobil	08/16/2024	500,000.00	12/12/2019	501,615.00	95.59	477,947.00	1.56%	Aa2/AA-	1.88
	2.019%	07/16/2024		1.95%	501,615.00	4.49%	1,261.88	-23,668.00	NR	1.80
037833DM9	Apple	09/11/2024	500,000.00	12/06/2019	497,165.00	95.47	477,337.50	1.55%	Aaa/AA+	1.95
	1.800%	08/11/2024		1.92%	497,165.00	4.25%	500.00	-19,827.50	NR	1.87
64952WDL4	New York Life	01/22/2025	500,000.00	01/22/2020	498,205.00	93.57	467,870.50	1.55%	Aaa/AA+	2.32
	2.000%			2.08%	498,205.00	4.98%	1,916.67	-30,334.50	AAA	2.20
					2,000,620.00		**1,913,586.50**	**6.23%**		**1.75**
Total Corporate Bonds			**2,000,000.00**	**1.93%**	**2,000,620.00**	**4.50%**	**5,150.77**	**-87,033.50**		**1.67**
LAIF										
9830007	LAIF	10/01/2022	7,772,843.81	07/27/2022	7,772,843.81	1.00	7,772,843.81	24.22%	NR/NR	0.00
	1.513%			1.51%	7,772,843.81	1.51%	0.00	0.00	NR	0.00
					7,772,843.81		**7,772,843.81**	**24.22%**		**0.00**
Total LAIF			**7,772,843.81**	**1.51%**	**7,772,843.81**	**1.51%**	**0.00**	**0.00**		**0.00**
U.S. Agencies										

CUSIP	Issuer Coupon Rate	Maturity Date Call Date	Remaining Par Value	Settle Date Book Yield	Original Value Book Value	Mkt Price Mkt YTM	Market Value Accrued Int.	% of Port Gain/Loss	Moody/S&P Fitch	WAM Eff. Dur.
U.S. Agencies										
3133ELZF4	FFCB	11/14/2022	500,000.00	05/14/2020	499,745.00	99.67	498,354.00	1.56%	Aaa/AA+	0.12
	0.270%			0.29%	499,745.00	2.97%	513.75	-1,391.00	AAA	0.11
313385U20	FHLB	12/22/2022	2,000,000.00	09/30/2022	1,984,552.78	99.99	1,999,860.00	6.18%	P-1/A-1+	0.23
	0.000%			3.38%	1,984,552.78	0.03%	0.00	15,307.22	F1+	0.23
3130AJ7E3	FHLB	02/17/2023	500,000.00	02/21/2020	499,080.00	99.19	495,939.00	1.56%	Aaa/AA+	0.38
	1.375%			1.44%	499,080.00	3.53%	840.28	-3,141.00	AAA	0.37
3130ASCC1	FHLB	06/23/2023	1,000,000.00	06/23/2022	1,000,000.00	98.73	987,306.00	3.12%	Aaa/AA+	0.73
	2.000%	12/23/2022		2.00%	1,000,000.00	3.77%	5,444.44	-12,694.00	AAA	0.70
3130A3VC5	FHLB	12/08/2023	500,000.00	02/20/2020	514,900.00	97.74	488,684.50	1.60%	Aaa/AA+	1.19
	2.250%			1.44%	514,900.00	4.22%	3,531.25	-26,215.50	AAA	1.14
3133ELNE0	FFCB	02/14/2024	500,000.00	02/14/2020	499,245.00	96.26	481,275.00	1.56%	Aaa/AA+	1.38
	1.430%			1.47%	499,245.00	4.27%	933.47	-17,970.00	AAA	1.33
3133ELG99	FFCB	06/10/2024	500,000.00	06/10/2020	498,220.00	93.92	469,585.00	1.55%	Aaa/AA+	1.70
	0.375%			0.46%	498,220.00	4.13%	578.12	-28,635.00	AAA	1.65
3133ELCP7	FFCB	12/03/2024	235,000.00	12/09/2019	233,926.05	94.67	222,485.08	0.73%	Aaa/AA+	2.18
	1.625%			1.72%	233,926.05	4.21%	1,251.70	-11,440.98	AAA	2.08
3137EAEX3	FHLMC	09/23/2025	500,000.00	10/20/2020	497,505.00	89.26	446,287.50	1.55%	Aaa/AA+	2.98
	0.375%			0.48%	497,505.00	4.25%	41.67	-51,217.50	AAA	2.90
3130ASD63	FHLB	06/28/2027	1,000,000.00	06/28/2022	1,000,000.00	94.36	943,610.00	3.12%	Aaa/AA+	4.75
	3.250%	06/28/2024		3.25%	1,000,000.00	4.58%	8,395.83	-56,390.00	AAA	3.11
					7,227,173.83		**7,033,386.08**	**22.52%**		**1.43**
Total U.S. Agencies			**7,235,000.00**	**2.10%**	**7,227,173.83**	**2.92%**	**21,530.51**	**-193,787.76**		**1.18**
U.S. Treasuries										
912796N96	U.S. Treasury	11/03/2022	2,000,000.00	06/28/2022	1,986,293.34	99.76	1,995,234.00	6.19%	P-1/A-1+	0.09
	0.000%			1.97%	1,986,293.34	2.56%	0.00	8,940.66	F1+	0.09
912796T33	U.S. Treasury	02/23/2023	2,000,000.00	06/29/2022	1,968,863.62	98.58	1,971,650.00	6.14%	P-1/A-1+	0.40
	0.000%			2.41%	1,968,863.62	3.59%	0.00	2,786.38	F1+	0.40
912796YK9	U.S. Treasury	03/09/2023	2,000,000.00	09/30/2022	1,967,467.56	98.36	1,967,274.00	6.13%	P-1/A-1+	0.44
	0.000%			3.77%	1,967,467.56	3.79%	0.00	-193.56	F1+	0.44
912828T91	U.S. Treasury	10/31/2023	500,000.00	12/09/2019	500,175.78	97.22	486,113.50	1.56%	Aaa/AA+	1.08
	1.625%			1.62%	500,175.78	4.27%	3,400.14	-14,062.28	AAA	1.04
91282CCF6	U.S. Treasury	05/31/2026	1,000,000.00	06/13/2022	915,976.56	88.53	885,273.00	2.85%	Aaa/AA+	3.67
	0.750%			3.01%	915,976.56	4.16%	2,520.49	-30,703.56	AAA	3.53
91282CCJ8	U.S. Treasury	06/30/2026	1,000,000.00	06/29/2022	913,125.00	88.76	887,578.00	2.85%	Aaa/AA+	3.75
	0.875%			3.20%	913,125.00	4.14%	2,211.28	-25,547.00	AAA	3.60

CUSIP	Issuer Coupon Rate	Maturity Date Call Date	Remaining Par Value	Settle Date Book Yield	Original Value Book Value	Mkt Price Mkt YTM	Market Value Accrued Int.	% of Port Gain/Loss	Moody/S&P Fitch	WAM Eff. Dur.
U.S. Treasuries										
912828X88	U.S. Treasury 2.375%	05/15/2027	1,000,000.00	06/29/2022 3.20%	962,851.56 962,851.56	92.99 4.05%	929,922.00 8,970.79	3.00% -32,929.56	Aaa/AA+ AAA	4.62 4.25
					9,214,753.42		**9,123,044.50**	**28.72%**		**1.48**
Total U.S. Treasuries			**9,500,000.00**	**2.78%**	**9,214,753.42**	**3.61%**	**17,102.70**	**-91,708.92**		**1.41**
					32,089,062.71		**31,424,569.96**	**100.00%**		**1.30**
TOTAL PORTFOLIO			**32,387,843.81**	**2.08%**	**32,089,062.71**	**3.08%**	**64,177.71**	**-664,492.82**		**1.20**
TOTAL MARKET VALUE PLUS ACCRUED INTEREST							**31,488,747.67**			

Transaction Report

City of Aliso Viejo

September 01, 2022 - September 30, 2022

Transaction Date	Transaction Type	Security ID	Security Description	Maturity Date	Purchases	Redemptions	Interest	Deposits	Withdrawals
09/01/2022	Interest	538036JN5	LIVOAK 1.65 08/28/24	08/28/2024	-	-	343.34	-	-
09/12/2022	Interest	037833DM9	AAPL 1.8 09/11/24	09/11/2024	-	-	4,500.00	-	-
09/12/2022	Interest	90348JR93	UBS 0.95 08/11/26	08/11/2026	-	-	197.68	-	-
09/13/2022	Interest	949495AA3	WFC 1.8 12/13/22	12/13/2022	-	-	374.55	-	-
09/15/2022	Interest	912828YF1	T 1 1/2 09/15/22	09/15/2022	-	-	3,750.00	-	-
09/15/2022	Maturity	912828YF1	T 1 1/2 09/15/22	09/15/2022	-	500,000.00	-	-	-
09/19/2022	Interest	15118RUV7	CELTIC 1.4 04/17/24	04/17/2024	-	-	291.32	-	-
09/20/2022	Interest	27002YEX0	EGBN 1.55 03/20/24	03/20/2024	-	-	322.53	-	-
09/22/2022	Interest	32110YPS8	FNAMER 1 1/4 04/22/24	04/22/2024	-	-	260.10	-	-
09/23/2022	Interest	3137EAEX3	FHLMC 0 3/8 09/23/25	09/23/2025	-	-	937.50	-	-
09/26/2022	Interest	05465DAK4	BOFI 1.65 03/26/24	03/26/2024	-	-	343.34	-	-
09/27/2022	Maturity	313385H41	FHLB DISCOUNT NT	09/27/2022	-	2,000,000.00	-	-	-
09/30/2022	Maturity	313385H74	FHLB DISCOUNT NT	09/30/2022	-	2,000,000.00	-	-	-
09/30/2022	Purchase	313385U20	FHLB DISCOUNT NT	12/22/2022	-1,984,552.78	-	-	-	-
09/30/2022	Purchase	912796YK9	TREASURY BILL	03/09/2023	-1,967,467.56	-	-	-	-
09/30/2022	Withdrawal		LAIF Withdrawal		-	-	-	-	-1,000,000.00
09/30/2022	Interest	59013KLQ7	MERICK 0.55 12/30/25	12/30/2025	-	-	114.45	-	-
Grand Total:					**-3,952,020.34**	**4,500,000.00**	**11,434.81**	**0.00**	**-1,000,000.00**

California State Treasurer
Fiona Ma, CPA



Local Agency Investment Fund
P.O. Box 942809
Sacramento, CA 94209-0001
(916) 653-3001

CITY OF ALISO VIEJO

DIRECTOR OF FINANCIAL SVCS/ CITY TREAS
12 JOURNEY, #100
ALISO VIEJO, CA 92656

Tran Type Definitions

Account Number: 98-30-007

September 2022 Statement

Effective Date	Transaction Date	Tran Type	Confirm Number	Web Confirm Number	Authorized Caller	Amount
9/30/2022	9/29/2022	RW	1713834	1674171	ANN EIFERT	-1,000,000.00

Account Summary

Total Deposit:	0.00	Beginning Balance:	8,772,843.81
Total Withdrawal:	-1,000,000.00	Ending Balance:	7,772,843.81

PMIA/LAIF Performance Report as of 10/06/22

PMIA Average Monthly Effective Yields[1]

September	**1.513**
August	1.276
July	1.090

Quarterly Performance Quarter Ended 06/30/22

LAIF Apportionment Rate[2]:	0.75
LAIF Earnings Ratio[2]:	0.00002057622201151
LAIF Fair Value Factor[1]:	0.987125414
PMIA Daily[1]:	0.99%
PMIA Quarter to Date[1]:	0.69%
PMIA Average Life[1]:	311

Pooled Money Investment Account Monthly Portfolio Composition [1] 08/31/22 $229.3 billion

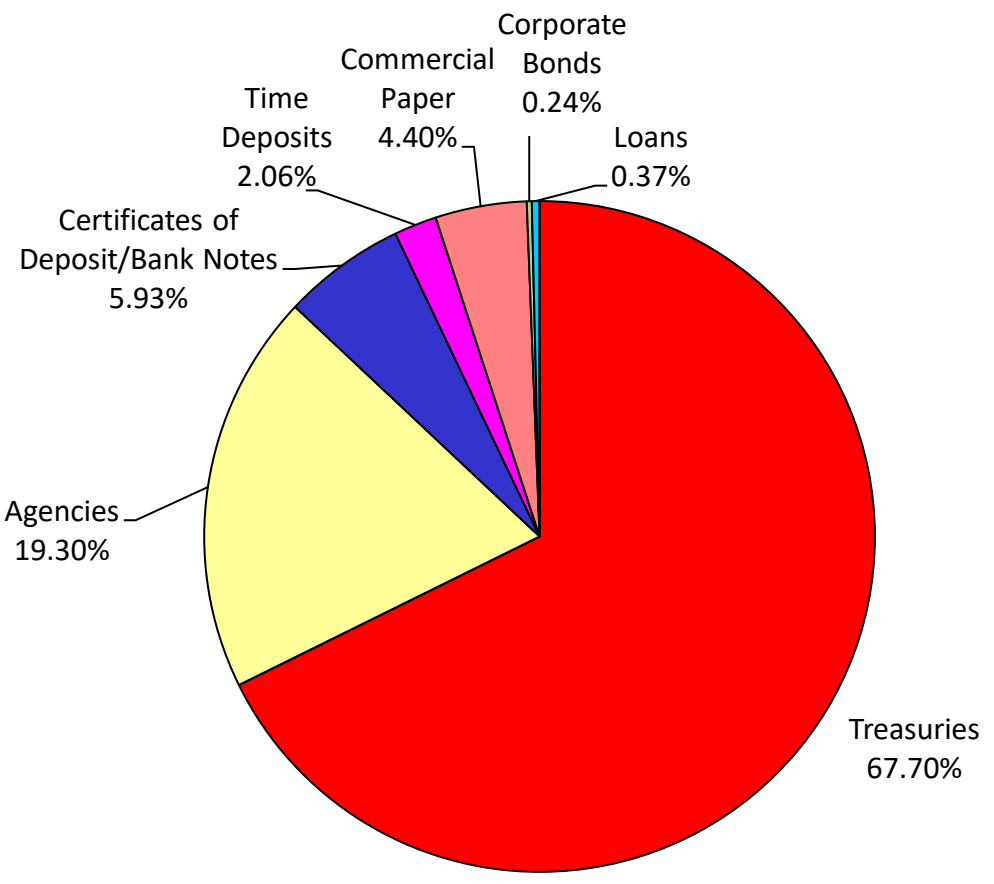


Chart does not include $4,017,000.00 in mortgages, which equates to 0.002%. Percentages may not total 100% due to rounding.

Daily rates are now available here. **View PMIA Daily Rates**

Notes: The apportionment rate includes interest earned on the CalPERS Supplemental Pension Payment pursuant to Government Code 20825 (c)(1) and interest earned on the Wildfire Fund loan pursuant to Public Utility Code 3288 (a).

Source:
[1] State of California, Office of the Treasurer
[2] State of Calfiornia, Office of the Controller

City of Aliso Viejo
AGENDA ITEM

DATE: November 16, 2022

TO: Mayor and City Council

FROM: So Kim, Director of Community Development

SUBJECT: THIRD AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT WITH CIVIC SOLUTIONS, INC. TO PROVIDE PLANNING CONSULTING SERVICES

Recommended Action:

Approve and authorize the City Manager to execute a Third Amendment to the Professional Services Agreement with Civic Solutions, Inc. for planning consulting services to increase the total compensation by an amount not to exceed $50,000 and extend the term to June 30, 2023.

Fiscal Impact:

The cost for the services provided under the third amendment is not to exceed $50,000. Funds for this project are available in the adopted FY 2022-23 budget.

Background:

In April 2022, the City entered into a professional services agreement with Civic Solutions, Inc. to temporarily fill the vacancy of the Director of Community Development position. In July 2022, the City executed two consecutive amendments to the agreement to allow additional funding to 1) continue staffing the vacant Director of Community Development position and 2) staff a newly vacated Planner position.

Discussion:

The Director of Community Development position was filled in mid-August; however, the Planner position has remained vacant and continuously staffed by Civic Solutions, Inc. Recently, another part-time staff member has left, leaving yet another vacancy in the department. While the recruitment for the Planner position is in the final stages, the department needs Civic Solutions, Inc to continue staffing the vacant positions to provide planning services without interruption.

Staff is recommending that the agreement term be extended to June 30, 2023, and the compensation amount for Civic Solutions, Inc. be increased by $50,000 to continue providing services, as needed, until the vacancies are filled.

Attachments:

1. Original Agreement with Civic Solutions, Inc.

2. Third Amendment with Civic Solutions, Inc.

CITY OF ALISO VIEJO
PROFESSIONAL SERVICES AGREEMENT
FOR
COMMUNITY DEVELOPMENT CONSULTING SERVICES

1. PARTIES AND DATE.

This Agreement is made and entered into this 21st day of April, 2022, by and between the City of Aliso Viejo, a municipal corporation organized under the laws of the State of California with its principal place of business at 12 Journey, Suite 100, Aliso Viejo, California 92656 ("City") and **CIVIC SOLUTIONS, INC.**, a **CORPORATION**, with its principal place of business at **27362 CALLE ARROYO, SAN JUAN CAPISTRANO, CA 92675** ("Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of professional **COMMUNITY DEVELOPMENT** consultant services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing professional **COMMUNITY DEVELOPMENT** consultant services to public clients, is licensed in the State of California, and is familiar with the plans of City.

2.2 Project.

City desires to engage Consultant to render such services for the **COMMUNITY DEVELOPMENT CONSULTANT SERVICES** project ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional **COMMUNITY DEVELOPMENT** consultant services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from **APRIL 22, 2022**, to **DECEMBER 31, 2022**, unless earlier terminated as provided herein. The City Manager shall have the unilateral option, at its sole discretion, to renew this Agreement annually for no more than one additional one-year term. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

3.2 Responsibilities of Consultant.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Consultant shall complete, execute, and submit to City a Request for Taxpayer Identification Number and Certification (IRS FormW-9) prior to commencement of any Services under this Agreement. Neither City, nor any of its officials, officers, directors, employees or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services.

3.2.2.1 Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, City shall respond to Consultant's submittals in a timely manner. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.2.2 Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing Party. For purposes of this Agreement, such circumstances include a Force Majeure Event. A Force Majeure Event shall mean an event that materially affects a Party's performance and is one or more of the following: (1) Acts of God or other natural disasters; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the Services); (4) strikes and other organized labor action occurring at the site and the effects thereof on the Services, only to the extent such strikes and other organized labor action are beyond the control of Consultant and its subcontractors, and to the extent the effects thereof cannot be avoided by use of replacement workers; and (5) pandemics, epidemics or quarantine restrictions. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of a public agency applicable to the Services and Agreement.

3.2.2.3 Should a Force Majeure Event occur, the non-performing Party shall, within a reasonable time of being prevented from performing, give written notice to the other Party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement. Force Majeure Events and/or delays, regardless of the Party responsible for the delay, shall not entitle Consultant to any additional compensation. Notwithstanding the foregoing in this section, the City may still terminate this Agreement in accordance with the termination provisions of this Agreement.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of City.

3.2.4 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the City. The key personnel for performance of this Agreement are as follows: **GEORGE BUELL**.

3.2.5 City's Representative. The City hereby designates the City Manager, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. The City Manager hereby designates **GOVERNMENT SERVICES DIRECTOR**, or his or her designee, as the City's contact for the implementation of the Services hereunder. Consultant shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.2.6 Consultant's Representative. Consultant hereby designates **GEORGE BUELL**, or his or her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants

shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10 Insurance.

3.2.10.1 Time for Compliance. Consultant shall not commence Work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section.

3.2.10.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder and without limiting the indemnity provisions of the Agreement, the Consultant in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement, the following policies of insurance. If the existing policies do not meet the Insurance Requirements set forth herein, Consultant agrees to amend, supplement or endorse the policies to do so.

(a) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 0001, with minimum limits of at least $1,000,000 per occurrence, and if written with an aggregate, the aggregate shall be double the per occurrence limit. Defense costs shall be paid in addition to the limits.

The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; or (3) contain any other exclusion contrary to the Agreement.

(b) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1) with minimum limits of $1,000,000 each accident.

(c) Professional Liability: Professional Liability insurance with minimum limits of $1,000,000. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusions that may potentially affect the work to be performed (for example, any exclusions relating to lead, asbestos, pollution, testing, underground storage tanks, laboratory analysis, soil work, etc.).

If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this Agreement.

(d) Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than $1,000,000 per accident for bodily injury and disease.

3.2.10.3 Endorsements. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval.

(a) The policy or policies of insurance required by Section 3.2.10.2 (a) Commercial General Liability and (c) Contractor's Pollution Liability shall be endorsed to provide the following:

(1) Additional Insured: The City of Aliso Viejo, its officials, officers, employees, agents, and volunteers shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement.

Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Consultant; or (4) contain any other exclusions contrary to the Agreement.

(2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(b) The policy or policies of insurance required by Section 3.2.10.2 (b) Automobile Liability and (d) Professional Liability shall be endorsed to provide the following:

(1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(c) The policy or policies of insurance required by Section 3.2.10.2 (e) Workers' Compensation shall be endorsed to provide the following:

(1) Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.

(2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

3.2.10.4 Primary and Non-Contributing Insurance. All insurance coverages shall be primary and any other insurance, deductible, or self-insurance maintained by the indemnified parties shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

3.2.10.5 Waiver of Subrogation. Required insurance coverages shall not prohibit Consultant from waiving the right of subrogation prior to a loss. Consultant shall waive all subrogation rights against the indemnified parties. Policies shall contain or be endorsed to contain such provisions.

3.2.10.6 Deductible. Any deductible or self-insured retention must be approved in writing by the City and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

3.2.10.7 Evidence of Insurance. The Consultant, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates and endorsements on forms approved by the City. The certificates and endorsements for each insurance policy shall be signed

by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

3.2.10.8 Failure to Maintain Coverage. Consultant agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the City. The City shall have the right to withhold any payment due Consultant until Consultant has fully complied with the insurance provisions of this Agreement.

In the event that the Consultant's operations are suspended for failure to maintain required insurance coverage, the Consultant shall not be entitled to an extension of time for completion of the Services because of production lost during suspension.

3.2.10.9 Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.2.10.10 Insurance for Subconsultants. All Subconsultants shall be included as additional insureds under the Consultant's policies, or the Consultant shall be responsible for causing Subconsultants to purchase the appropriate insurance in compliance with the terms of these Insurance Requirements, including adding the City as an Additional Insured to the Subconsultant's policies.

3.2.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions where applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subconsultants, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed **FIFTY THOUSAND DOLLARS ($50,000)** ("Total Compensation") without written

approval of City's **CITY MANAGER**. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation.

Consultant shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within 45 days of receiving such statement, review the statement and pay all non-disputed and approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the City.

3.3.5 Prevailing Wages; DIR Registration.

3.3.5.1 Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is $1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. It is the intent of the parties to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code within this Agreement, and Consultant shall therefore comply with such Labor Code sections to the fullest extent required by law. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.3.5.2 If the Services are being performed as part of an applicable "public works" or "maintenance" project, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations ("DIR"). Consultant shall maintain registration for the duration of the project and require the same of any subconsultants. This project may also be subject to

compliance monitoring and enforcement by the DIR. It shall be Contractor's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR.

3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.5 General Provisions.

3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause. The rights and remedies of the City provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law, equity or under this Agreement.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant:

CIVIC SOLUTIONS
27362 CALLE ARROYO
SAN JUAN CAPISTRANO, CA 92675
ATTN: THOMAS G. MERRELL, PRESIDENT

City:

City of Aliso Viejo
12 Journey, Suite 100
Aliso Viejo, CA 92656
Attn: **Mitzi Ortiz, Government Services Department**

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.3 Ownership of Materials and Confidentiality.

3.5.3.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by the City. City shall not be limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

3.5.3.2 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.5.3.3 Confidential Information. The City shall refrain from releasing Consultant's proprietary information ("Proprietary Information") unless the City's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the City shall notify Consultant of its intention to release Proprietary Information.

Consultant shall have five (5) working days after receipt of the Release Notice to give City written notice of Consultant's objection to the City's release of Proprietary Information. Consultant shall indemnify, defend and hold harmless the City, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. City shall not release the Proprietary Information after receipt of the Objection Notice unless either: (1) Consultant fails to fully indemnify, defend (with City's choice of legal counsel), and hold City harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that City release such information.

3.5.4 Fraud Policy. Consultant shall provide a copy of the City's Fraud Prevention Policy to each of its employees assigned to perform Services under this Agreement. Consultant shall submit to the City a statement signed by an authorized representative for Consultant certifying receipt of the City's Fraud Prevention Policy. A finding by the City that any of Consultant's employees have committed fraud against the City or have violated the City's Fraud Prevention Policy shall be grounds for appropriate discipline, up to and including such employee's removal from performance of this Agreement at City's request and/or termination of this Agreement. Consultant shall reimburse the City for any costs and expenses associated with fraud against the City.

3.5.5 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.6 Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.5.7 Indemnification.

3.5.7.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorneys fees and other related costs and expenses except such loss or damage caused by the sole negligence or willful misconduct of the City. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement and shall not be restricted to insurance proceeds, if any, received by the Consultant or the City, its officials, officers, employees, agents or volunteers.

3.5.7.2 If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined

under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

3.5.8 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.5.9 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Orange County.

3.5.10 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.6 City's Right to Employ Other Consultants. City reserves right to employ other consultants in connection with this Project.

3.7 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.8 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.9 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.10 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.11 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.12 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.13 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.14 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.15 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.16 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.17 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.18 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.19 Declaration of Political Contributions. Consultant shall, throughout the term of this Agreement, submit to City an annual statement in writing declaring any political contributions of money, in-kind services, or loan made to any member of the City Council within the previous twelve-month period by the Consultant and all of Consultant's employees, including any employee(s) that Consultant intends to assign to perform the Services described in this Agreement.

3.20 Subcontracting.

3.20.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

[Signatures on following page.]

SIGNATURE PAGE TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF ALISO VIEJO AND CIVIC SOLUTIONS

IN WITNESS WHEREOF, the parties have executed this Professional Services Agreement on this 25th day of April, 2023.

CITY OF ALISO VIEJO

Approved:

By: _____
David Doyle
City Manager

ATTEST:

By: _____
Mitzi Ortiz, MMC
City Clerk

APPROVED AS TO FORM:

_____
Best Best & Krieger LLP
City Attorney

APPROVED AS TO COMPLIANCE WITH BUDGET

By: _____
Financial Services Department

CIVIC SOLUTIONS

[If Corporation, TWO SIGNATURES, President OR Vice President AND Secretary OR Treasurer REQUIRED]

By: _____

Its: President

Printed Name: Thomas G. Merrell

By: _____

Its: Secretary

Printed Name: Thomas G. Merrell

CITY OF ALISO VIEJO

DECLARATION OF POLITICAL CONTRIBUTIONS

Using the space provided below, please list any political contributions of money, in-kind services, or loans made to any member of the City Council within the last twelve (12) months by Consultant and all of Consultant's employees, including any employee(s) that applicant intends to assign to perform the work or services described in this Agreement:

NONE

To the best of my knowledge, I declare under penalty of perjury that the foregoing is true and was executed at:

San Juan Capistrano/Orange/CA	April 22, 2022
City/County/State	Date
Civic Solutions, Inc.	Thomas G. Merrell
Name of Business	Print Name

Thomas G Merrell

Signature

NOTE: THIS DECLARATION IS INCLUDED AS PART OF THE AGREEMENT AND MUST BE SIGNED AND ATTACHED HERETO.

CITY OF ALISO VIEJO

ACKNOWLEDGMENT OF RECEIPT OF FRAUD POLICY

I hereby acknowledge that I have received a copy of the City's "Fraud Prevention Policy" dated October 1, 2008. I understand that I am to promptly read its contents and distribute copies to employees assigned to perform Services for the City of Aliso Viejo.

To the extent that provisions of this policy conflict with previously issued policies or practices, whether or not such policies and practices were contained in written policies, this policy shall prevail.

Civic Solutions, Inc.	Thomas G. Merrell
Name of Business	Print Name
Thomas G Merrell	
Signature	
April 22, 2022	
Date	

EXHIBIT "A"

SCOPE OF SERVICES

CIVIC SOLUTIONS

April 19, 2022

Mr. David Doyle
City Manager
City of Aliso Viejo
12 Journey, Suite 100
Aliso Viejo, CA 92656

Subject: Proposal to Provide Community Development Consultant Services

Dear Mr. Doyle:

This letter is provided to follow up on our meeting on April 18, 2022. As requested, this letter serves as a proposal to provide professional consulting services in your Community Development Department. As discussed, Civic Solutions will provide staff necessary to efficiently and effectively manage and operate the department while the City conducts a Community Development Director recruitment.

Under this proposal, I will be available to work as a Principal Management Consultant for up to twenty (20) hours per week and provide the following management services:

- Ensure the continued provision of excellent service for external and internal customers
- Ensure continued excellent working relationships among staff, both internal and external to the department
- Evaluate workload and assign work
- Advise and assist with human resource-related needs
- Review and approve written material
- Attend meetings
- Respond to communications
- Weekly, provide verbal updates to the City Manager on department operations and initiatives
- Other similar services

I look forward to working with you and your staff, as we serve in the public interest.

Sincerely,
CIVIC SOLUTIONS, INC.

George Buell
Senior Vice President

Attachments:

1. Company Profile
2. Resume of George Buell
3. Fee Schedule
4. Laguna Hills Contract

27362 Calle Arroyo
San Juan Capistrano, CA
949/489-1442
949/489-2408 FAX
www.civicsolutions.com

Company Profile

Civic Solutions, Inc. was established in 1991 and has maintained its focused commitment to serve public agencies for 30 years. We are a community development consulting firm that provides comprehensive planning, entitlement, and management services to municipalities, special districts and other public agencies. The firm is established around the principle that community planning and development ultimately serve the public interest.

The idea for Civic Solutions emanated from its founder Tom Merrell's passion for public service. After serving in various capacities in public Planning and Community Development departments as an employee, he started Civic Solutions by providing services for cities in the Southern California area and has grown the firm to provide urban planning and community development services state-wide.

We are a local business with company headquarters in San Juan Capistrano and a satellite office in the city of Ontario. The company is a California Corporation, and Tom Merrell serves as President and Chairman of the Board. Guided by the company philosophy that planning is for people, Civic Solutions is ideally equipped to successfully complete community development projects to the satisfaction of our clients and the communities we serve.

We provide "added value" service in all planning functions. The experienced professionals who staff our firm have extensive backgrounds in public sector service. Our services include all functions of a municipal planning department, including discretionary case processing, public information services, code compliance/plan checking, site visits, mitigation monitoring, code enforcement, zoning code amendments, architectural design guidelines, specific plans, policy planning, general plan updates, and management services. We provide support services in the form of graphics, design evaluation, analysis of alternatives, report writing, environmental impact documentation, annexations, grant writing, housing elements, citizen participation programs and other community development activities.

EXHIBIT "B"

SCHEDULE OF SERVICES

In the event that this Agreement is renewed pursuant to Section 3.1.2, the renewal period shall be from January 1, 2023 to December 31, 2023.

EXHIBIT "C"

COMPENSATION

In the event that this Agreement is renewed pursuant to Section 3.1.2, the rates set forth above may be adjusted each year at the time of renewal described in Exhibit "B" in accordance with the annual average Consumer Price Index of the prior calendar year, All Urban Consumers, Los Angeles-Long Beach-Anaheim up to a maximum percentage of five percent (5%)

Civic Solutions has a strategic team that has the experience and expertise to step in and immediately support Aliso Viejo's Community Development Department. It is anticipated that the City will only require service of a Principal Management Consultant at this time.

Position	Hourly Rate
Principal Management Consultant	$160

Reimbursable Expenses

- Reproductions of plans
- Large duplication or document publishing projects
- Specialized graphic projects
- Messenger and overnight deliveries

CITY OF ALISO VIEJO

FIRST AMENDMENT TO AGREEMENT FOR COMMUNITY DEVELOPMENT CONSULTING SERVICES

1. PARTIES AND DATE.

This First Amendment to the **AGREEMENT FOR COMMUNITY DEVELOPMENT CONSULTING SERVICES** ("First Amendment") is entered into on the **5th day of July 2022**, by and between the City of Aliso Viejo (hereinafter referred to as the "City") and **CIVIC SOLUTIONS, INC.** (hereinafter referred to as the "Consultant"). City and Consultant are sometimes collectively referred to herein as the "Parties."

2. RECITALS.

2.1 Agreement. The Parties entered into an agreement entitled **AGREEMENT FOR COMMUNITY DEVELOPMENT CONSULTING SERVICES** dated **APRIL 21, 2022** ("Agreement").

2.2 First Amendment. The Parties now desire to amend the Agreement in order to supplement the scope of services to be provided by Consultant.

3. TERMS.

3.1 Scope of Services. The Agreement is hereby amended to include the scope of services set forth in Exhibit "A," attached hereto and incorporated herein by reference.

3.2 Compensation. The total compensation for the Services provided pursuant to the Agreement and this First Amendment shall not exceed **FIFTY THOUSAND DOLLARS ($50,000)** without written approval of the City Manager. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this First Amendment at the rates set forth in Exhibit "B" attached hereto.

3.3 Declaration of Political Contributions. Prior to the City's approval of this Amendment, Consultant shall submit to City a statement in writing declaring any political contributions of money, in-kind services, or loan made to any member of the City Council within the previous twelve-month period by the Consultant and all of their employees, including any employee(s) that Consultant intends to assign to perform the Services described in this First Amendment.

3.4 Continuing Effect of Agreement. Except as otherwise specifically set forth in this First Amendment, the remaining provisions of the Agreement shall remain in full force and effect. From and after the date of this First Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this First Amendment.

3.5 Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this First Amendment.

3.6 Counterparts. This First Amendment may be executed in duplicate originals, each of which is deemed to be an original, but when taken together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this First Amendment to Agreement on this 6th day of July, 2022.

CITY OF ALISO VIEJO

Approved:

By: _____
David Doyle
City Manager

ATTEST:

By: _____
Mitzi Ortiz, MMC
City Clerk

APPROVED AS TO FORM:

_____
Best Best & Krieger LLP
City Attorney

APPROVED AS TO COMPLIANCE WITH BUDGET

By: _____
Ann Eifert
Director of Financial Services

CIVIC SOLUTIONS, INC.

[If Corporation, TWO SIGNATURES, President OR Vice President AND Secretary OR Treasurer REQUIRED]

By: Thomas G. Merrell

Its: President

Printed Name: Thomas G. Merrell

By: Thomas G. Merrell

Its: Secretary

Printed Name: Thomas G. Merrell

CITY OF ALISO VIEJO

DECLARATION OF POLITICAL CONTRIBUTIONS

Using the space provided below, please list any political contributions of money, in-kind services, or loans made to any member of the City Council within the last twelve (12) months by Consultant and all of Consultant's employees, including any employee(s) that applicant intends to assign to perform the work or services described in this Agreement:

NONE

To the best of my knowledge, I declare under penalty of perjury that the foregoing is true and was executed at:

San Juan Capistrano, Orange County, CA	July 6,2022
City/County/State	Date
Civic Solutions, Inc.	Thomas G. Merrell
Name of Business	Print Name

Thomas G. Merrell
Signature

NOTE: THIS DECLARATION IS INCLUDED AS PART OF THE AGREEMENT AND MUST BE SIGNED AND ATTACHED HERETO.

CITY OF ALISO VIEJO

ACKNOWLEDGMENT OF RECEIPT OF FRAUD POLICY

I hereby acknowledge that I have received a copy of the City's "Fraud Prevention Policy" dated October 1, 2008. I understand that I am to promptly read its contents and distribute copies to employees assigned to perform Services for the City of Aliso Viejo.

To the extent that provisions of this policy conflict with previously issued policies or practices, whether or not such policies and practices were contained in written policies, this policy shall prevail.

Civic Solutions, Inc.	Thomas G. Merrell
Name of Business	Print Name
Thomas G. Merrell	
Signature	
July 6, 2022	
Date	

EXHIBIT "A"
TO FIRST AMENDMENT TO AGREEMENT FOR
COMMUNITY DEVELOPMENT CONSULTING SERVICES

SCOPE OF SERVICES

The scope of services from the Agreement dated April 21, 2022, will remain in effect, and are augmented to include:

PLANNING STAFF

Zoning Review & Customer Service

- Work with applicants, residents, and industry professionals at the city public building counter,
- Perform planning application intake,
- Perform research and analysis,
- Review plans for construction projects,
- Calculate and provide fees relating to planning application review and permits,
- Respond to phone and email inquiries relating to the planning and permitting process,
- Provide information for outside individuals, organizations and agencies, and
- Maintain records including data entry.

Development Review

- Work with applicants on submittal requirements,
- Review and examine all residential and commercial projects including drawings, specifications, and supporting records to determine plan conformity,
- Perform residential zoning plan review to confirm compliance with the City's ordinances, policies and guidelines,
- Coordinate with staff to determine if additional permits and/or applications are required,
- Review plan revisions,
- Provide consultations on planning, zoning, and development process, and
- Write staff reports and present at public meetings.

EXHIBIT "B"
TO FIRST AMENDMENT TO AGREEMENT FOR
COMMUNITY DEVELOPMENT CONSULTING SERVICES

COMPENSATION

FEE SCHEDULE

POSITION	HOURLY RATE 2022
PRINCIPAL MANAGEMENT CONSULTANT	$160
PRINCIPAL PLANNER	$145
SENIOR PLANNER	$135
ASSOCIATE PLANNER	$120
ASSISTANT PLANNER	$110

The above hourly rates apply only to authorized services provided under the scope and contract, and do not apply to contract administration activities such as invoicing, contract performance discussions, etc. Work performed on a time and material basis will be billed monthly, and will be due in accordance with the terms of the contract.

REIMBURSABLE EXPENSES

- Reproductions of plans
- Large duplication or document publishing projects
- Specialized graphic projects
- Messenger and overnight deliveries

When the above fee schedule is made part of an on-call contract, fees are subject to annual review and adjustments, unless otherwise specified in the consulting services agreement.

CITY OF ALISO VIEJO

SECOND AMENDMENT TO AGREEMENT FOR COMMUNITY DEVELOPMENT CONSULTING SERVICES

1. PARTIES AND DATE.

This Second Amendment to the **AGREEMENT FOR COMMUNITY DEVELOPMENT CONSULTING SERVICES** ("Second Amendment") is entered into on the **20th day of July 2022**, by and between the City of Aliso Viejo (hereinafter referred to as the "City") and **CIVIC SOLUTIONS, INC.** (hereinafter referred to as the "Consultant"). City and Consultant are sometimes collectively referred to herein as the "Parties."

2. RECITALS.

2.1 Agreement. The Parties entered into an agreement entitled **AGREEMENT FOR COMMUNITY DEVELOPMENT CONSULTING SERVICES** dated **APRIL 21, 2022** ("Agreement").

2.2 First Amendment. The Parties amended the Agreement in order to supplement the scope of services to be provided by Consultant.

2.3 Second Amendment. The Parties now desire to amend the Agreement in order to increase the total compensation under the Agreement by **SEVENTY THOUSAND DOLLARS ($70,000).**

3. TERMS.

3.1 Compensation. The total compensation for the Services provided pursuant to the Agreement, the First Amendment, and this Second Amendment shall not exceed **ONE HUNDRED TWENTY THOUSAND DOLLARS ($120,000)** without written approval of the City Manager. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Second Amendment at the rates set forth in Exhibit "A" attached hereto.

3.2 Declaration of Political Contributions. Prior to the City's approval of this Amendment, Consultant shall submit to City a statement in writing declaring any political contributions of money, in-kind services, or loan made to any member of the City Council within the previous twelve-month period by the Consultant and all of their employees, including any employee(s) that Consultant intends to assign to perform the Services described in this Second Amendment.

3.3 Continuing Effect of Agreement. Except as otherwise specifically set forth in this Second Amendment, the remaining provisions of the Agreement and First Amendment shall remain in full force and effect. From and after the date of this Second Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by the First Amendment and this Second Amendment.

SIGNATURE PAGE FOR SECOND AMENDMENT TO COMMUNITY DEVELOPMENT CONSULTING SERVICES AGREEMENT BETWEEN THE CITY OF ALISO VIEJO AND CIVIC SOLUTIONS, INC.

IN WITNESS WHEREOF, the parties have executed this Second Amendment to Agreement on this 26th day of July, 2022.

CITY OF ALISO VIEJO

Approved:

By: Mitzi Ortiz (Jul 28, 2022 17:13 PDT)
for David Doyle
City Manager

ATTEST:

By: Charlene Cheng (Jul 28, 2022 17:19 PDT)
for Mitzi Ortiz, MMC
City Clerk

APPROVED AS TO FORM:

Best Best & Krieger LLP
City Attorney

APPROVED AS TO COMPLIANCE WITH BUDGET

By: Ann Eifert (Jul 28, 2022 16:55 PDT)
Ann Eifert
Director of Financial Services

CIVIC SOLUTIONS, INC.

[If Corporation, TWO SIGNATURES, President OR Vice President AND Secretary OR Treasurer REQUIRED]

By: Thomas G. Merrell

Its: PRESIDENT

Printed Name: THOMAS G. MERRELL

By: Thomas G. Merrell

Its: SECRETARY

Printed Name: THOMAS G. MERRELL

CITY OF ALISO VIEJO

ACKNOWLEDGMENT OF RECEIPT OF FRAUD POLICY

I hereby acknowledge that I have received a copy of the City's "Fraud Prevention Policy" dated October 1, 2008. I understand that I am to promptly read its contents and distribute copies to employees assigned to perform Services for the City of Aliso Viejo.

To the extent that provisions of this policy conflict with previously issued policies or practices, whether or not such policies and practices were contained in written policies, this policy shall prevail.

CIVIC SOLUTIONS, INC.
Name of Business

THOMAS G. MERRELL
Print Name

Thomas G. Merrell
Signature

7/14/22
Date

Agreement Amendment - Civic Solutions

Final Audit Report 2022-07-29

Created:	2022-07-28
By:	Mitzi Ortiz (mortiz@avcity.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAcx1KKo1DvIFMQISWVvKHojnkwiYUdloN

"Agreement Amendment - Civic Solutions" History

Document created by Mitzi Ortiz (mortiz@avcity.org)
2022-07-28 - 11:53:10 PM GMT- IP address: 70.183.28.2

Document emailed to Ann Eifert (aeifert@avcity.org) for signature
2022-07-28 - 11:54:21 PM GMT

Email viewed by Ann Eifert (aeifert@avcity.org)
2022-07-28 - 11:55:47 PM GMT- IP address: 104.47.56.254

Document e-signed by Ann Eifert (aeifert@avcity.org)
Signature Date: 2022-07-28 - 11:55:57 PM GMT - Time Source: server- IP address: 70.183.28.2

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2022-07-29 - 0:13:10 AM GMT- IP address: 104.47.58.254

Document e-signed by Mitzi Ortiz (mortiz@avcity.org)
Signature Date: 2022-07-29 - 0:13:29 AM GMT - Time Source: server- IP address: 70.183.28.2

Document emailed to Charlene Cheng (ccheng@avcity.org) for signature
2022-07-29 - 0:13:30 AM GMT

Email viewed by Charlene Cheng (ccheng@avcity.org)
2022-07-29 - 0:19:18 AM GMT- IP address: 12.159.99.2

Document e-signed by Charlene Cheng (ccheng@avcity.org)
Signature Date: 2022-07-29 - 0:19:41 AM GMT - Time Source: server- IP address: 70.183.28.2

Agreement completed.
2022-07-29 - 0:19:41 AM GMT

Adobe Acrobat Sign

CITY OF ALISO VIEJO

THIRD AMENDMENT TO
PROFESSIONAL SERVICES AGREEMENT
FOR PLANNING CONSULTANT SERVICES

1. PARTIES AND DATE.

This Third Amendment to the Professional Services Agreement for Planning Consultant Services ("Third Amendment") is entered into on the ____ day of _____, 2022, by and between the City of Aliso Viejo (hereinafter referred to as the "City") and **Civic Solutions, Inc.**, a **corporation** (hereinafter referred to as the "Consultant"). City and Consultant are sometimes collectively referred to herein as the "Parties."

2. RECITALS.

2.1 Agreement. The Parties entered into an agreement entitled Professional Services Agreement for Planning Consultant Services dated **April 21, 2022** ("Agreement").

2.2 First Amendment. On July 5, 2022, the Parties amended the Agreement in order to supplement the scope of services to be provided by Consultant.

2.3 Second Amendment. On July 20, 2022, the Parties amended the Agreement to increase the total compensation under the Agreement by seventy-thousand dollars ($70,000) for a cumulative amount not to exceed one hundred twenty thousand dollars ($120,000).

2.4 Third Amendment. The Parties now desire to amend the Agreement to increase the total compensation under the Agreement by **Fifty Thousand Dollars ($50,000)** and extend the term of the Agreement to June 30, 2023.

3. TERMS.

3.1 Term.

The term of this Agreement shall be from **April 22, 2022 to June 30, 2023**, unless earlier terminated as provided herein. The City Manager shall have the unilateral option, at its sole discretion, to renew this Agreement annually for no more than one additional one-year term.

3.2 Compensation.

Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "A" attached hereto and incorporated herein by reference. The total compensation shall not exceed **One Hundred and Seventy Thousand Dollars ($170,000)** ("Total Compensation") without written approval of the City Manager. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement."

3.3 Declaration of Political Contributions. Prior to the City's approval of this Amendment, Consultant shall submit to City a statement in writing declaring any political contributions of money, in-kind services, or loan made to any member of the City Council within the previous twelve-month period by the Consultant and all of their employees, including any employee(s) that Consultant intends to assign to perform the Services described in this Third Amendment.

3.4 Continuing Effect of Agreement. Except as otherwise specifically set forth in this Third Amendment, the remaining provisions of the Agreement shall remain in full force and effect. From and after the date of this Third Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this Third Amendment.

3.5 Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Third Amendment.

3.6 Counterparts. This Third Amendment may be executed in duplicate originals, each of which is deemed to be an original, but when taken together shall constitute but one and the same instrument.

SIGNATURE PAGE FOR THIRD AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT FOR PLANNING CONSULTANT SERVICES BETWEEN THE CITY OF ALISO VIEJO AND CIVIC SOLUTIONS, INC.

IN WITNESS WHEREOF, the parties have executed this Third Amendment to Agreement on this ____ day of _____, 2022.

CITY OF ALISO VIEJO

Approved:

By:_____
David Doyle
City Manager

ATTEST:

By:_____
Mitzi Ortiz, MMC
City Clerk

APPROVED AS TO FORM:

_____
Best Best & Krieger LLP
City Attorney

APPROVED AS TO COMPLIANCE WITH BUDGET

By:_____
Ann Eifert
Director of Financial Services

Civic Solutions, Inc., a corporation

[TWO SIGNATURES, President OR Vice President AND Secretary OR Treasurer REQUIRED]

By:_____

Its:_____

Printed Name:_____

By:_____

Its:_____

Printed Name:_____

CITY OF ALISO VIEJO

DECLARATION OF POLITICAL CONTRIBUTIONS

Using the space provided below, please list any political contributions of money, in-kind services, or loans made to any member of the City Council within the last twelve (12) months by Consultant and all of Consultant's employees, including any employee(s) that applicant intends to assign to perform the work or services described in this Agreement:

_____

_____

_____

_____

_____

_____

_____

To the best of my knowledge, I declare under penalty of perjury that the foregoing is true and was executed at:

_____ _____

City/County/State Date

_____ _____

Name of Business Print Name

_____

Signature

NOTE: THIS DECLARATION IS INCLUDED AS PART OF THE AGREEMENT AND MUST BE SIGNED AND ATTACHED HERETO.

CITY OF ALISO VIEJO

ACKNOWLEDGMENT OF RECEIPT OF FRAUD POLICY

I hereby acknowledge that I have received a copy of the City's "Fraud Prevention Policy" dated October 1, 2008. I understand that I am to promptly read its contents and distribute copies to employees assigned to perform Services for the City of Aliso Viejo.

To the extent that provisions of this policy conflict with previously issued policies or practices, whether or not such policies and practices were contained in written policies, this policy shall prevail.

Name of Business	Print Name
Signature	
Date	

EXHIBIT "A"
COMPENSATION

Fee Schedule

Position	Hourly Rate
Principal Management Consultant	$160
Principal Planner	$145
Senior Planner	$135
Associate Planner	$120
Assistant Planner	$110

The above hourly rates apply only to authorized services provided under the scope and contract, and do not apply to contract administration activities such as invoicing, contract performance discussions, etc. Work performed on a time and material basis will be billed monthly and will be due in accordance with the terms of the contract.

Reimbursable Expenses

- Reproduction of Plans
- Large duplication or document publishing projects
- Specialized graphic projects
- Messenger and overnight deliveries

When the above fee schedule is made part of an on-call contract, fees are subject to annual review and adjustments, unless otherwise specified in the consulting services agreement.

City of Aliso Viejo
AGENDA ITEM

DATE: November 16, 2022

TO: Mayor and City Council

FROM: Shaun Pelletier, City Engineer

SUBJECT: RESOLUTION AUTHORIZING THE CITY ENGINEER TO EXECUTE ALL RIGHT-OF-WAY CERTIFICATIONS AND OTHER DOCUMENTS FOR ALL STATE AND/OR FEDERALLY FUNDED PROJECTS

Recommended Action:

Adopt a resolution authorizing the City Engineer to execute all right-of-way certifications and other documents for all state and/or federally funded projects and to sign all state and/or federal funding documents associated with grant funding allocations between the City of Aliso Viejo and the State of California.

Fiscal Impact:

No Fiscal Impact.

Background:

On February 16, 2022 a resolution was adopted authorizing the Project List Submittal for Coronavirus Response and Relief Supplemental Appropriations Act of 2021 (CRRSAA) Funding through the Orange County Transportation Authority 2021 Pavement Management Relief Funding Program and the City of Aliso Viejo has been allocated $200,000 under the PMRF program.

Discussion:

Section 17.08.14.11 of Chapter 17 of the Caltrans Right-of-Way Manual requires that the right-of-way certification must be executed by an authorized official of the City of Aliso Viejo. This resolution authorizes the City Engineer to execute these documents.

Environmental:

This Resolution is not subject to the California Environmental Quality Act ("CEQA") because the Ordinance does not qualify as a "project" under CEQA and because the

Resolution will not result in a direct or reasonably foreseeable indirect physical change in the environment.

Attachment:

1. Resolution

RESOLUTION NO. 2022-___

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, APPROVING AND AUTHORIZING THE CITY ENGINEER TO EXECUTE ALL RIGHT-OF-WAY CERTIFICATIONS AND OTHER DOCUMENTS FOR ALL STATE AND/OR FEDERALLY FUNDED PROJECTS AND TO SIGN ALL STATE AND/OR FEDERAL FUNDING DOCUMENTS ASSOCIATED WITH GRANT FUNDING ALLOCATIONS BETWEEN THE CITY OF ALISO VIEJO AND THE STATE OF CALIFORNIA

WHEREAS, all federally funded, and state-funded projects require right-of-way certification prior to construction funding authorizations;

WHEREAS, the California Department of Transportation (Caltrans) administers the federally funded, as well as the state-funded projects; and

WHEREAS, pursuant to Section 17.08.14.11 of Chapter 17 of the Caltrans Right-of-Way Manual, “Right-of-Way” certification must be executed by an authorized official of the City of Aliso Viejo; and

WHEREAS, in accordance with said section of the Caltrans Right-of-Way Manual, a resolution giving a responsible agency official blanket authority to execute Right-of-Way certifications must be adopted by the City Council; and

WHEREAS, prior to requesting authorization to advertise and award a construction contract, the local agency responsible for the project must prepare, sign, and submit a right-of-way certification to Caltrans.

NOW, THEREFORE, BE IT FURTHER RESOLVED, by the City Council of the City of Aliso Viejo does hereby find and determine as follows:

- The City Council hereby authorizes the City Engineer to execute all right-of-way certifications for all state and/or federally funded projects.

- The City Council hereby authorizes the City Engineer to sign and submit all Funding Allocation Request letters and Documents for all state and/or federally funded projects.

- The City Clerk shall attest and certify to the passage and adoption of this Resolution, and it shall become immediately upon its approval.

PASSED, APPROVED AND ADOPTED this 16th day of November, 2022.

_____
Ross Chun
Mayor

ATTEST:

_____
Mitzi Ortiz, MMC
City Clerk

City of Aliso Viejo
AGENDA ITEM

DATE: November 16, 2022

TO: Mayor and City Council

FROM: So Kim, Director of Community Development
Rose Rivera, Senior Planner

SUBJECT: REQUEST TO APPROVE AN AMENDMENT TO SPECIFIC PLAN NO. 2 AND A DEVELOPMENT AGREEMENT TO ALLOW FOR THE SALES AND SERVICE OF NON-INTERNAL COMBUSTION ENGINE VEHICLES (SP-2022-0001 AND DA-2022-00001), A CONDITIONAL USE PERMIT TO ALLOW TESLA MOTORS, INC. TO OPERATE AT 26501 ALISO CREEK ROAD (USE-2022-00009), AND DETERMINE THE PROJECT IS CATEGORICALLY EXEMPT FROM CEQA UNDER CLASS 32

Recommended Actions:

1. Open and conduct a public hearing;

2. Find that the Project is exempt from the California Environmental Quality Act pursuant to State CEQA Guidelines Section 15332 (Infill Development);

3. Introduce and approve for first reading an Ordinance (Attachment 1) entitled:

   AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, TO AMEND SPECIFIC PLAN NO. 2 FOR THE COMMONS AT ALISO VIEJO TOWN CENTER AND DETERMINE THE PROJECT TO BE CATEGORICALLY EXEMPT FROM CEQA UNDER CLASS 32 (PLANNING APPLICATION SP-2022-00001);

4. Introduce and approve for first reading an Ordinance (Attachment 2) entitled:

   AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ALISO VIEJO AND VALUEROCK ALISO VIEJO, LLC FOR SPECIFIC PLAN NO. 2 (THE COMMONS AT ALISO VIEJO TOWN CENTER) PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65864 ET SEQ. AND DETERMINE THE PROJECT TO BE CATEGORICALLY EXEMPT FROM CEQA UNDER CLASS 32 (PLANNING APPLICATION DA-2022-00001); and

5. Adopt a Resolution (Attachment 3) approving a Conditional Use Permit for Tesla Motors, Inc. to sell, lease, and service its vehicles at 26501 Aliso Creek Road and determine the project to be categorically exempt from the California Environmental Quality Act under Class 32 (PLANNING APPLICATION USE-2022-00009).

Background:

In 1993, the County of Orange approved the development of 26501 Aliso Creek Road ("Site") and allowed Super K-Mart to occupy the entire building. In October 2003, the City approved Site Plan Amendment SPA03-19, which allowed for remodeling of the building and re-tenanting with Lowe's Home Improvement and Michael's craft store. In November 2005, the City Council adopted Ordinance No. 2005-080, which approved Specific Plan No. 2 for the Site (i.e. Commons at Aliso Town Center). The specific plan was developed to accommodate mixed-use development with retail, restaurant, and residential uses. In 2019, Lowe's ceased business operations, and the remaining tenants recently vacated, leaving the Site underutilized. On July 20, 2022, the City Council approved a Site Development Permit (SPA-2022-00001) to update the Site, including exterior building modifications and site development. The applicant was issued applicable building permits and improvements are currently underway.

On July 25, 2022, Troy Thomas, on behalf of Valuerock, Aliso Viejo submitted Specific Plan Amendment, Development Agreement, and Conditional Use Permit applications, to allow certain automotive uses on the Site and for Tesla Motors, Inc. to sell, lease, and service its vehicles.

Discussion:

The Applicant requests a Specific Plan Amendment and a Development Agreement to allow for the sale, lease, and service of new electric or non-internal combustion engine vehicles in the Commons at Aliso Viejo Town Center ("Site"). The Specific Plan currently prohibits certain vehicle-related uses. The Applicant also requests a Conditional Use Permit to allow for Tesla Motors, Inc. to occupy a portion of the vacant building to sell, lease, and service its vehicles. Together, the Specific Plan Amendment, Development Agreement, and Conditional Use Permit constitute the "Project" for purposes of the California Environmental Quality Act.

Tesla Motors, Inc. is requesting to occupy a 53,660 square foot tenant space in an existing building for the sale and delivery of new vehicles and equipment, the sale and delivery of used vehicles as an accessory use, vehicle service and repair, and the installation of 22 charging stations with incidental service and repair. Eight of the 14 charging stations will be dedicated as public charging stations on site.

Specific Plan Amendment

The City's General Plan was adopted by the City Council in 2004. The General Plan Land Use Element ("LUE") identifies the subject site as "Town Center Commercial" and "High

Density Residential," where higher intensity of professional office and residential development are allowed than in other parts of the City. The LUE further identifies the subject site as one of the five sites in the City with a "Community Benefit Overlay". The Community Benefit Overlay was established to allow "... alternative land uses to those shown on the map..." Subsequently, in 2005, the City adopted a Specific Plan for the subject site based on a concept plan and a 1998 pre-incorporation Master Development Agreement ("DA") that identified permitted levels of development on the Site. The Specific Plan also includes a use table that identifies permitted and prohibited uses, which was based on the Master DA. The Master DA was terminated in 2008 and certain uses originally intended through the Specific Plan have been eliminated or replaced by other uses.

The proposed project includes a request for Tesla to occupy a portion of the vacant building to sell, lease, and service its vehicles on site. The Specific Plan prohibits such uses. To allow Tesla or other non-internal combustion engine vehicle companies to occupy the site, the following amendments to the Specific Plan are proposed (deleted text shown with ~~strikethrough~~ and new text shown with **bold/underline** fonts).

Page No.	Section	Proposed Amendment
IV-3	4.2 Definitions	Energy Facility - Any public or private processing, producing, generating, storing, transmitting, or recovery facility for electricity, natural gas, ~~petroleum, coal~~ or other source of **alternative** energy.
IV-9	Table IV-1 (Use Table)	• ~~Gas or charge station~~ (associated footnote is also proposed to be removed) • ~~Gas or charge~~ **Charging** station with incidental service and repair (Permitted) • **Electric or non-internal combustion of new (used as an accessory use) engine vehicle and equipment** ~~S~~**s**ales, ~~and~~ lease ~~of on-site vehicles~~ and ~~equipment~~ **service** (Conditionally Permitted) • ~~Sale, vehicle parts, new~~ • ~~Tires, batteries, accessories, lube, oil change, smog check, air conditioning~~

Pursuant to AVMC Section 15.78.030.F (Specific Plan Required Findings), the following findings shall be made prior to approval of any Specific Plan Amendment:

1. Public Welfare. Approval of the specific plan or specific plan amendment will not create conditions materially detrimental to the public health, safety and general welfare.

   Approval of the proposed Specific Plan Amendment ("SPA") to permit electric or non-internal combustion engine vehicle sales, lease, and service will not create

adverse impacts to the public. Unlike traditional fuel-dependent vehicles, electric vehicles ("EV") have no tailpipe emissions, minimizing greenhouse gas and smog pollutants. Electric vehicles are naturally quieter than fuel-dependent vehicles as they lack internal combustion engines. Traditional vehicles make combustion noise while the only noise emitting from EVs may be minimal humming. Additionally, STC Traffic, Inc, City's traffic consultant, reviewed the proposed project and determined that the trip generation quantity resulting from auto sales (1,494 daily trips) will be significantly less than the existing shopping center use (3,622 daily trips for the former retail – Michaels, Tuesday Morning, and Lowe's). Furthermore, public chargers can be installed on or adjacent to any existing parking space with minimal space, unlike typical gas stations.

As for servicing EVs, the proposed plan shows all service activities to be conducted inside of the building, which will be limited to maintenance service and no paint or collision repair. Staff anticipates noise levels that are equivalent or less than the following uses that are already permitted or conditionally permitted under the Specific Plan: plant nurseries, dance halls, outdoor theaters, drive throughs, animal grooming and veterinary services, and printing and publishing. Further, automotive uses are permitted in the surrounding area, suggesting that a similar use in the Specific Plan area will not constitute a significant change for the community. For example, a Pep Boys tire shop is located in the Town Center, directly across the Specific Plan area. Beyond that, two car repair shops are located immediately south of the Town Center.

The proposed location is convenient for automotive uses, as it is bordered by CA-73 to the north and public right of ways to the east (Aliso Creek Road) and south (Enterprise). It is also located in the City's center near several retail and commercial areas like the Town Center. This location suggests that the proposed use may create an even more centralized location to accomplish other errands and activities, such as employment, food shopping, clothing retail, and dining. Newer tenants, such as Tesla Motors, Inc., may attract other types of tenants to lease the currently vacant and dilapidating shopping center.

Moreover, the surrounding area—and the City more broadly—lacks many essential vehicle services with no major car dealerships. Residents looking to buy or lease a vehicle inevitably must leave City boundaries to do so. Not only does this make purchasing a car more cumbersome for residents, but it also redirects revenue away from the City. For all the reasons above, the proposed SPA to allow electric or non-internal combustion engine vehicle sales, lease, and service will not create conditions materially detrimental to the public, and therefore, this finding can be made.

2. General Plan Consistency. The specific plan or amendment is consistent with the goals, objectives, and policies of the general plan.

The proposed SPA is consistent with the following goals, objectives, and policies of the General Plan and therefore, this finding can be made.

a. Goal LU-1: Provide a diverse mix of land uses to meet the future needs of all residents and the business community. The SPA expands the types of permitted uses in the Specific Plan area. Currently, the surrounding area—and the City more broadly—lacks essential car services. The SPA would thus diversify the available land uses by allowing a new type of use that may attract more tenants to the vacant shopping center.

b. Goal LU-3.1: Promote development of revenue-generating land uses to help defray the costs of other uses demanding City services. The SPA will allow automotive sales and leases, which creates a new type of revenue-generating land use that was previously prohibited. Additional revenue collected from vehicles sales or lease activity will help defray the costs of other uses demanding City services.

c. Goal LU-4: Ensure that future development is mutually beneficial to both the environment and the community. The SPA allows for the sales of EV or non-internal combustion engine vehicles have no tailpipe emissions, minimizing greenhouse gas and smog pollutants. Additionally, the number of vehicle trips generated by an auto use is only a third of the former shopping center use, further minimizing the carbon footprint and emissions. Electric charging stations are also relatively small, requiring only minimal space, eliminating the need to develop large areas, such as traditional gas stations.

3. Land Use Compatibility. The specific plan or amendment is compatible with the zoning and land use on nearby properties.

   The SPA to allow certain automotive uses is compatible with zoning and land uses on nearby properties. South of the Specific Plan area is the Town Center, which includes Pep Boys, an automotive parts store. Further south are two automotive repair shops. Northeast of the Specific Plan area is CA-73 and its entry and exit ramps. Northwest are professional office buildings, separated by approximately 140 of landscaped open space. While there is high density residential development to the east, they are separated by a six-lane major thoroughfare (Aliso Creek Road). As discussed in finding no. 1 above, given the type of automotive use provided by the SPA, there will be no adverse impacts as a result and thus compatible with land uses on adjacent properties. Therefore, this finding can be made.

4. Property Suitability. The specific plan or amendment is suitable for the location, access, visual character and topography of the subject property.

   The proposed automotive use in the Specific Plan area is suitable for the location as it is at the commercial core of the City, bordered by CA-73 to the north and

existing automotive uses to the south. Further, the Specific Plan area's location near retail would allow the community to accomplish multiple errands in one trip. Access is also suitable given its proximity to major City thoroughfares like the CA-73, Aliso Creek Road, and Aliso Viejo Parkway. The Specific Plan area is separated from its surrounding areas by large embankments and landscaping, including dozens of mature trees. For these reasons, the SPA is suitable for the location, access, visual character and topography of the subject property and this finding can be made.

Development Agreement

Pursuant to the City's Code ("AVMC") Section 15.78.040.D, project applications which require a zone change accompanied by a site development permit or a use permit require a concurrent development agreement. A zone change is an action by the City Council to change the zone designation of a property or properties on the Official Zoning Map. The Official Zoning Map designates the Site as The Commons Specific Plan (SP-2) for zoning requirements. As the proposed project includes an amendment to the Specific Plan and a Conditional Use Permit, a concurrent Development Agreement ("DA") is required.

The proposed DA would vest the Applicant with the authority to develop the proposed sales, delivery and service of new electric or non-internal combustion engine vehicles with a conditional use permit. In other words, if the land use laws, regulations, and ordinances change during the life of the DA, the Applicant would still have the right to develop the project in accordance with DA. In exchange, the Applicant would provide the first major car dealership in the City which could generate a significant increase in additional tax revenue from automobile sales. Additionally, the public will benefit from the eight publicly accessible electric vehicle charging stations on Site that the Applicant has agreed to provide as part of the DA.

Pursuant to AVMC Section 15.82.010.H (Required Findings), the following findings shall be made prior to approval of any Development Agreement:

1. Public Welfare. Approval of the development agreement will not create conditions materially detrimental to the public health, safety and general welfare.

   The DA is a binding development agreement that vest certain development rights to the property owner. The proposed DA assures the property owner of the Site the right to allow the sales, lease, and service of electric or non-internal combustion engine vehicles. In exchange, the City receives public benefits in the form of bringing a major car dealership into the City that would generate a new revenue stream to fund critical resources and provide access to additional publicly accessible electric vehicle charging stations. The proposed automotive use is limited to electric or non-internal combustion engine vehicles, which minimizes tailpipe emissions, smog, noise, and the number of trips as described under the Specific Plan Amendment section above. These improvements along with a new

revenue source improve, and do not degrade public health, safety and general welfare. Therefore, this finding can be made.

2. General Plan Consistency. The development agreement is consistent with the goals, objectives, and policies of the general plan and any applicable specific plan.

   This finding can be made as evidenced in Specific Plan Amendment finding no. 2 above.

Conditional Use Permit

The Applicant also requests a Conditional Use Permit ("CUP") to allow Tesla Motors, Inc. ("Tesla") to lease a portion of the existing building for the sale, lease, and service of its vehicles. Tesla is proposing to occupy 53,660 square feet of the existing tenant space that was formally occupied by Michael's, Tuesday Morning, and a portion of Lowe's. Electric vehicle charging stations are also proposed as part of this request. It should be noted that the requested CUP can only be approved if the proposed SPA is approved to allow such use.

Pursuant to AVMC Section 15.74.040.C (Required Findings), the following findings shall be made prior to approval of a Conditional Use Permit:

1. Consistency with General Plan. The land use is consistent with the general plan and any applicable specific plan.

   The land use is consistent with the General Plan as evidenced in Specific Plan Amendment finding no. 2 above. As for the Specific Plan, the proposed automotive use will be consistent with the approval of the SPA, then this finding can be made.

2. Consistency with Zoning Code. The land use and associated development conform to the permitted use provisions and development standards of this zoning code and are consistent with this code and any applicable specific plan.

   This finding can be made with the approval of the SPA. The proposed project meets all other development standards of the code.

3. Compliance with CEQA. Processing and approval of the permit application are in compliance with the requirements of the California Environmental Quality Act.

   The proposed project ("Project"), which includes the SPA, DA, and CUP, is categorically exempt from the requirements to prepare additional environmental documentation per California Environmental Quality Act (CEQA) Guidelines, Section 15332, Class 32 (In-fill Development). Class 32 consists of projects characterized as infill development meeting the conditions described in Section 15332. The Project complies with the applicable general plan and zoning regulations; furthers the goals of the General Plan, specifically by providing a

diverse mix of land uses to meet the future needs of the community and by promoting the development of revenue-generating land uses; occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses; and there are no habitat for endangered, rare or threatened species as it is currently developed with commercial buildings and a paved parking lot. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality. A traffic analysis prepared by the City's traffic consultant determined that the vehicle trips generated by the automotive sales and service use would be less than that of the previous shopping center use. The project will not result in significant noise impacts beyond other uses that are currently permitted in the specific plan. Further, the project would not result in significant effects on air and water quality since the electric vehicles ("EV") have no tailpipe emissions, minimizing greenhouse gas and smog pollutants. The Project involves interior tenant improvements consisting of the conversion of existing space into a vehicle showroom, employee offices, customer waiting areas, and vehicle service areas within an existing building located on a developed site that is already served by water, sewer, electric and gas utilities and public services.

None of the exceptions to the categorical exemptions set forth in State CEQA Guidelines section 15300.2 apply. Specifically, the Project is not located in a particularly sensitive environment; the cumulative impact of successive projects of this same type in the same place over time would not be significant because these types of conversions are limited in size and number; and there is a finite area that can accommodate commercial uses within this existing building. Additionally, the existing building is not located within an officially designated state scenic highway, on a site designated pursuant to Government Code section 65962.5 (Cal/EPA Hazardous Waste and Substances Site Lists) or listed as a historic resource.

For all of the foregoing reasons, the Project is categorically exempt from CEQA and this finding can be made.

4. Surrounding Uses. Approval of the application will not create conditions materially detrimental to the public health, safety and general welfare or injurious to or incompatible with other properties or land uses in the vicinity.

   <u>Operations</u>

   The proposed project consists of converting the existing 53,660 square foot tenant space into a sales, showroom, and service center for Tesla vehicles. The sales area, which is located in the storefront of the tenant space, will include a showroom to display Tesla vehicles, sample finishes and trims, and provide an interactive environment where potential customers can learn more about Tesla vehicles. No inventory of vehicles for purchase will be kept onsite as the vehicles are custom produced offsite. Once a vehicle is produced, a Tesla specialist will coordinate an appointment with the customer to go to the center to complete the paperwork and take delivery of the vehicle.

The service component of the operations consists of receiving and preparing new vehicles for delivery, in addition to maintenance service of Tesla vehicles. Service includes software updates, tire balancing and/or replacement, replacement of parts such as window regulators, door handles and bumpers, and some battery replacement as needed. No autobody paint or collision repair will occur onsite as Tesla's collision repair facility is located at 41 Columbia. Most service repairs can be completed in an hour.

Tesla estimates having 75 employees, with up to 50 employees onsite at any given time. Customer appointments for service are scheduled between 7:00 a.m. to 7:00 p.m. daily and employees will perform work on vehicles until 11:00 p.m. All work will be conducted within the building. Sales and showroom hours will be 10:00 a.m. to 7:00 p.m. daily. Approximately 40-50 customers per day are estimated to come to this facility. Tesla will have a dedicated parking lot to the north of the building which will be used for customer and employee parking, delivery of vehicles and storage of the loaner vehicle fleet. Of the 225 parking spaces, approximately 75 parking spaces will be allotted to employee parking, 125 for service and delivery vehicles and 25 for customers.

Parking

The shopping center shares parking spaces through a series of reciprocal agreements for parking, access, encroachments, and utilities; therefore, parking is evaluated on all uses within the shopping center at a rate of one space per 220 square feet. The shopping center, which consists of the former Lowe's building, perimeter buildings (e.g., Trader Joe's, Walgreens, Taco Bell, etc.) and proposed tenant outdoor patios, consists of a total of 236,631 square feet. Based on this square footage, the parking requirement is 1,076 parking spaces, and 1,090 parking spaces are provided. This parking calculation excludes the 225 parking spaces that are part of the Tesla project and the four (4) parking spaces in the front of the Tesla tenant space which will be used for charging their test-drive vehicles. As proposed, the proposed project will provide for adequate parking for the shopping center. The parking lot will be designed to meet development standards in relation to parking and circulation requirements of the specific plan and will be reviewed in coordination with the Orange County Fire Authority (OCFA).

Based on the operations and parking discussion above and the reasonings under Specific Plan Amendment finding no. 1 related to public health, safety and general welfare, this finding can be made.

Public Notice:

On November 3, 2022, a public hearing notice was published in the Laguna Niguel News and mailed to all owners of real properties within 300 feet of the subject real property. Additionally, on August 3, 2022, in compliance with Senate Bill (SB) 18, City staff notified

local tribes identified by the Native American Heritage Commission (NAHC) to give an opportunity to provide input on the Specific Plan Amendment. Staff received one formal request for consultation and on November 2, 2022, City staff discussed the proposed project with Andrew Salas, Chairperson of the Gabrielino Band of Mission Indians, Kizh Nation, who indicated he had no further concerns with the Project.

City Attorney:

The City Attorney has reviewed the staff report.

Attachments:

1. Ordinance – Specific Plan Amendment
2. Ordinance – Development Agreement
3. Resolution – Conditional Use Permit
4. Applicant Project Description and Justification Letter
5. Tesla Project Description Letter
6. Project Plans
7. Traffic Memorandum prepared by STC Traffic, Inc.
8. Presentation

ORDINANCE NO. 2022-_____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, TO AMEND SPECIFIC PLAN NO. 2 FOR THE COMMONS AT ALISO VIEJO TOWN CENTER AND DETERMINE THE PROJECT TO BE CATEGORICALLY EXEMPT FROM CEQA UNDER CLASS 32 (PLANNING APPLICATION SP22-00001)

WHEREAS, on November 12, 1993, the County of Orange approved Site Plan SP 93-099 for a major retail store and restaurant use development; and

WHEREAS, on November 16, 2005, the City Council adopted Ordinance 2005-080, approving the Commons at Aliso Viejo Town Center Specific Plan No. 2; and

WHEREAS, on July 20, 2022, the City Council approved Planning Application SDP-2022-00001 for a site development permit to allow for exterior modifications to the building and parking lot of the former Lowe's building, including redesign of the primary building elevations, modifications to the landscaping and parking lot; and

WHEREAS, on July, 25, 2022 Troy Thomas on behalf of ValueRock Aliso Viejo, LLC, submitted an application to initiate an amendment to the Commons at Aliso Viejo Town Center Specific Plan which would conditionally permit the sale, lease, and service of new (used as an accessory use) electric or non-internal combustion engine vehicles; and

WHEREAS, together, the Specific Plan Amendment, Conditional Use Permit, and Development Agreement constitute the "Project" for purposes of the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) ("CEQA"); and

WHEREAS, the City may amend a Specific Plan pursuant to Government Code Sections 65450 *et seq.* and Aliso Viejo Zoning Code Chapter 15.78; and

WHEREAS, pursuant to Title 14, California Code of Regulations, Section 15367, the City of Aliso Viejo ("City") is Lead Agency for purposes of the Project;

WHEREAS, the City has reviewed the proposed Project and has determined that it is Categorically Exempt from environmental review under CEQA pursuant to CEQA Guidelines Section 15332 (Infill Development);

WHEREAS, the City has determined that none of the Exceptions to the Categorical Exemptions outlined in Title 14, California Code of Regulations Section 15300.2 applies to the Project; and

WHEREAS, the foregoing exemption is sufficient to independently exempt the Project from CEQA;

WHEREAS, on November 3, 2022 a public notice was published in the Laguna Niguel News, providing a notice of a public hearing before the City Council on November 16, 2022: and

WHEREAS, the City held a public hearing on November 16, 2022, at which time all interested persons had the opportunity to appear and be heard on the matter of adopting the Codes as amended herein; and

WHEREAS, any and all other legal prerequisites relating to the adoption of this Ordinance have occurred.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Specific Plan. The City Council hereby approves an amendment to Specific Plan No. 2 to allow sale, lease, and service of new (used as an accessory use) vehicles and equipment and within a maximum area of 217,000 square feet of the Specific Plan area; and charging or alternative energy stations with incidental service and repair.

SECTION 2. Specific Plan. The following sections of the Specific Plan No. 2 is hereby amended to read as follows:

4.2 Definitions (Page IV-3)
Energy Facility - Any public or private processing, producing, generating, storing, transmitting, or recovery facility for electricity, natural gas, or other source of alternative energy.

Table IV-1 (Page IV-9)
Charging station with incidental service and repair – Permitted

Table IV-1 (Page IV-9)
Electric or non-internal combustion of new (used as an accessory use) engine vehicle and equipment sales, lease, and service – Conditionally Permitted

SECTION 3. Specific Plan. The following uses are hereby removed from Table IV-1: gas or charge station; sale, vehicle parts, new; tires, batteries, accessories, lube, oil change, smog check, and air conditioning.

SECTION 4. CEQA. Based on the review of the entire record, including the Staff Report, any public comments or testimony presented to the City Council, and the facts outlined below, the City Council hereby finds and determines that the proposed Project is categorically exempt from CEQA pursuant to State CEQA Guidelines section 15332 (Class 32: In-Fill Development Projects). The Class 32 exemption specifically exempts from further CEQA review projects characterized as in-fill development meeting each of the following conditions.

First, the project must be consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations. Here, the general plan designation is Town Center Commercial and High Density Residential. According to the General Plan's Land Use Element, the Town Center Commercial designation allows for " a mixture of uses within the Aliso Viejo Town Center including community retail and commercial services, theaters, art galleries and entertainment facilities, hotels/motels and restaurants, recreation and community facilities." The Project consists of a Conditional Use Permit ("CUP") to allow the Applicant to occupy a portion of the vacant building to sell, lease, and service its electric vehicles. Automotive use is compatible with zoning and land uses on nearby properties. South of the Specific Plan area is the Town Center, which includes Pep Boys, an automotive parts store. Further south are two auto repair shops. As such, the proposed use would be consistent with other commercial uses in the City, and thus, it would be consistent with the intent of the Town Center Commercial designation as outlined in the Land Use Element. Furthermore, the Project is consistent with the following goals, objectives, and policies of the General Plan and therefore, this finding can be made.

a. Goal LU-1: Provide a diverse mix of land uses to meet the future needs of all residents and the business community. The Project expands the types of permitted uses in the Specific Plan area. Currently, the surrounding area—and the City more broadly—lacks many essential car services. The Project would thus diversify the available land uses by allowing a new type of use that may attract more tenants in the vacant shopping center.

b. Goal LU-3.1: Promote development of revenue-generating land uses to help defray the costs of other uses demanding City services. The Project will allow automotive sales and leases, which creates a new type of revenue-generating land use that was previously prohibited. Additional revenue collected from vehicles sales or lease activity will help defray the costs of other uses demanding City services.

c. Goal LU-4: Ensure that future development is mutually beneficial to both the environment and the community. The Project allows for the sales of EV or non-internal combustion engine vehicles that have no tailpipe emissions, minimizing greenhouse gas and smog pollutants. Additionally, the number of vehicle trips generated by an auto use is only a third of the former shopping center use, further minimizing the carbon footprint and emissions. Electric charging stations are also relatively small, requiring only minimal space, eliminating the need to develop large areas, such as traditional gas stations.

The Project consists of a conditional use permit to allow for Tesla to occupy a portion of the vacant building to sell, lease, and service its vehicles. As such, the proposed use would be consistent with other commercial uses in the City, and thus, it would be consistent with the intent of the Town Center Commercial designation as outlined in the Land Use Element. Assuming that the City Council approves the specific plan amendment

and conditional use permit, the Project would be consistent with all applicable zoning designations and regulations.

Second, the proposed development must occur within city limits, on a Project site of no more than five acres and be substantially surrounded by urban uses. Here, the Project consists of a 53,660 square foot tenant space within an existing commercial building. This building is located within the City's limits and is substantially surrounded by urban uses, including professional offices to the west, State Route 73 to the north, high-density residential to the east, and commercial/retail uses to the south. Thus, the Project meets this finding.

Third, the project site must have no value has habitat for endangered, rare, or threatened species. Here, the Project site is located in a highly developed part of the City and is surrounded by a predominantly urbanized mix of land uses. The Project site has been disturbed as a result of past grading activities and primarily contains sparse ruderal vegetation and no natural drainage courses, wetlands, or woodlands. Based on the developed/disturbed nature of the Project site and surrounding area, the only wildlife species that are expected to occur on site include common species typically found in urbanized settings. Based on the specific habitat requirements, none of the endangered, rare, or threatened species can reasonably be expected to occur on the Project site. Therefore, the Project site has no habitat value.

Fourth, approval of the project must not result in any significant effects relating to traffic, noise, air quality, or water quality. A traffic analysis prepared by the City's traffic consultant determined that the vehicle trips generated by the automotive sales and service use would be less than that of the previous commercial use. The project will not result in significant noise impacts beyond other uses that are currently permitted in the specific plan. Furthermore, all sales and services uses will be conducted within the existing building. Thus, the Project would result in a less than significant impact related to both localized and regional air quality.

Fifth, the project site must be adequately served by all required utilities and public services. The Project site is already within the service area of the Orange County Fire Authority and Orange County Sheriff's Department. The Project would not directly or indirectly result in an increase in populations, and thus, would not increase demand for additional public services. In addition, the Project site is located in a developed portion of the City that is already served by existing utilities. Given the close proximity to existing utilities, including domestic and recycled water, sanitary sewer, and electricity, adjacent utilities can be extended onto the Project site with nominal environmental impacts.

Thus, the project qualifies for the Class 32 exemption.

None of the exceptions to the use of the Class 32 categorical exemption identified in State CEQA Guidelines section 15300.2 apply. The Project will not result in a cumulative impact from successive projects of the same type in the same place, over time. Due to the relatively minor scope of the Project, the developed/ disturbed nature of the Project site,

and mandatory adherence with all applicable federal, state, and local laws, regulations, and guidelines, any incremental, individual-level impact resulting from Project construction and operations would remain less than significant and would not constitute a considerable contribution to potential regional cumulative impacts in the greater Project region.

Additionally, all other related projects would presumably be required by the applicable lead agency to comply with all applicable federal, state, and local regulatory requirements and incorporate all feasible mitigation measures to further ensure that their potentially cumulative impacts would remain at less-than-significant levels. Moreover, there are no unusual circumstances surrounding the Project that result in a reasonably possibility of a significant effect on the environment. The proposed use does not represent a new or unique use or activity that does not already occur in the City and through the Project region. Additionally, there is no evidence of unique conditions (e.g., unique geotechnical characteristics that would result in impacts to either the project or adjacent land use), either on site or within the Project area, and no unusual circumstances have been identified by the City, other agencies, or local stakeholders. The Project is not expected to be affected by unusual circumstances or otherwise unforeseen conditions.

Further, the Project will not damage scenic resources, including trees, historic buildings, rock outcroppings, or similar resources because, according to the California Department of Transportation, the only “Officially Designated State Scenic Highway” in Orange County is the segment of SR-91 (Riverside Freeway) located approximately between SR-55 and the Orange County/Riverside County line, approximately 20 miles north of the Project site. In addition, although designated an “Eligible State Scenic Highway” and not an “Officially Designated State Scenic Highway,” the SR-1 (South Coast Highway), is located approximately 5 miles east of SR-1, due to natural topographical variations and intervening development, the Project site is not directly visible from SR-1.

Finally, the Project does not include any hazardous waste sites, and the Project will not cause a substantial adverse change in the significance of a historical resource. A review of both GeoTracker and EnviroStor found that no sites occur in the immediate vicinity of the Project site that currently have an “open” cleanup case and are presently undergoing remediation activities. The entirety of the Project site has been heavily disturbed over the years as a result of both the existing development on site and past grading activities. As such, significant surficial and subsurface archaeological and paleontological resources are unlikely to occur on site. Moreover, due to the relatively newer age of the existing onsite development, no structural improvements are old enough to be considered eligible for listing as a state and/or federal historic resource.

Thus, the Class 32 exemption applies, and no further environmental review is required.

SECTION 5. Findings. After receiving public testimony, reviewing the evidence submitted by staff and discussing the proposed ordinance, the City Council hereby finds that the amendment proposed to Specific Plan No. 2 herein are supported by the following findings:

A. Public Welfare. Approval of the specific plan or specific plan amendment will not create conditions materially detrimental to the public health, safety and general welfare. Approval of the proposed Specific Plan Amendment ("SPA") to permit new (used as an accessory use) electric or non-internal combustion engine vehicle sales, lease, and service will not create adverse impacts to the public. Unlike traditional fuel-dependent vehicles, electric vehicles ("EV") have no tailpipe emissions, minimizing greenhouse gas and smog pollutants. Electric vehicles are naturally quieter than fuel-dependent vehicles as they lack internal combustion engines. Traditional vehicles make combustion noise while the only noise emitting from EVs may be minimal humming. Additionally, STC Traffic, Inc, City's traffic consultant, reviewed the proposed project and determined that the trip generation quantity resulting from auto sales will be significantly less than the existing shopping center use. Furthermore, public chargers can be installed on or adjacent to any existing parking space with minimal space, unlike typical gas stations. As for servicing EVs, it is limited to maintenance service and no paint or collision repair. Therefore, the noise levels would be equivalent or less than the following uses that are already permitted or conditionally permitted under the Specific Plan: plant nurseries, dance halls, outdoor theaters, drive throughs, animal grooming and veterinary services, and printing and publishing. Further, automotive uses are permitted in the surrounding area, suggesting that a similar use in the Specific Plan area will not constitute a significant change for the community. For example, a Pep Boys tire shop is located in the Town Center, directly across the Specific Plan area. Beyond that, two car repair shops are located immediately south of the Town Center. The specific plan area is convenient for automotive uses, as it is bordered by CA-73 to the north and public right of ways to the east (Aliso Creek Road) and south (Enterprise). It is also located in the City's center near several retail and commercial areas like the Town Center. This location suggests that the proposed use may create an even more centralized location to accomplish other errands and activities, such as employment, food shopping, clothing retail, and dining. The City lacks many essential vehicle services with no major car dealerships. Residents looking to buy or lease a vehicle inevitably must leave City boundaries to do so. Not only does this make purchasing a car more cumbersome for residents, but it also redirects revenue away from the City.

B. General Plan Consistency. The specific plan or amendment is consistent with the following goals, objectives, and policies of the general plan:

1) Land Use Element, Goal 1: Provide a diverse mix of land uses to meet the future needs of all residents and the business community. The SPA expands the types of permitted uses in the Specific Plan area. Currently, the surrounding area—and the City more broadly—lacks many essential car services. The SPA would thus diversify the available land uses by allowing a new type of use that may attract more tenants in the vacant shopping center.

2) Land Use Element, Goal 3.1: Promote development of revenue-generating land uses to help defray the costs of other uses demanding City services. The

SPA will allow automotive sales and leases, which creates a new type of revenue-generating land use that was previously prohibited. Additional revenue collected from vehicles sales or lease activity will help defray the costs of other uses demanding City services.

3) Land Use Element, Goal 4: Ensure that future development is mutually beneficial to both the environment and the community. The SPA allows for the sales of EV or non-internal combustion engine vehicles have no tailpipe emissions, minimizing greenhouse gas and smog pollutants. Additionally, the number of vehicle trips generated by an auto use is only a third of the former shopping center use, further minimizing the carbon footprint and emissions. Electric charging stations are also relatively small, requiring only minimal space, eliminating the need to develop large areas, such as traditional gas stations.

C. Land Use Compatibility. The specific plan or amendment is compatible with the zoning and land use on nearby properties. The SPA to allow certain automotive uses is compatible with zoning and land uses on nearby properties. South of the Specific Plan area is the Town Center, which includes Pep Boys, an automotive parts store. Further south are two automotive repair shops. Northeast of the Specific Plan area is CA-73 and its entry and exit ramps. Northwest are professional office buildings, separated by approximately 140 of landscaped open space. While there is high density residential development to the east, they are separated by a six-lane major thoroughfare (Aliso Creek Road).

D. Property Suitability. The specific plan or amendment is suitable for the location, access, visual character and topography of the subject property. The proposed automotive use in the Specific Plan area is suitable for the location as it is at the commercial core of the City, bordered by CA-73 to the north and existing automotive uses to the south. Further, the Specific Plan area's location near retail would allow the community to accomplish multiple errands in one trip. Access is also suitable given its proximity to major City thoroughfares like the CA-73, Aliso Creek Road, and Aliso Viejo Parkway. The Specific Plan area is separated from its surrounding areas by large embankments and landscaping, including dozens of mature trees.

SECTION 6. Effective Date. This ordinance takes effect 30-days after its adoption.

SECTION 7. Notice of Exemption. The City Council hereby directs staff to prepare and file a Notice of Exemption with the Orange County Clerk within five (5) working days of the approval of the proposed Project.

SECTION 7. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court or competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby

declares that it would have adopted this ordinance, and each section, subsection, subdivision, sentence, clause, phrases, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof, be declared invalid or unconstitutional.

SECTION 8. City Clerk's Certification. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted at the duty designated posting places within the City and published once within fifteen days after passage and adoption as required by law; or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance in the Office of the City Clerk five days prior to the date of adoption of this Ordinance, and, within fifteen days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2022.

_____
Ross Chun
Mayor

APPROVED AS TO FORM:

_____
Scott C. Smith, City Attorney

ATTEST:

_____
Mitzi Ortiz, MMC, City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF ALISO VIEJO)

I, MITZI ORTIZ, City Clerk of the City of Aliso Viejo, California, DO HEREBY CERTIFY that foregoing Ordinance No. 2022_____ was duly passed and adopted by the City Council of the City of Aliso Viejo at their regular meeting held on the _____ day of _____, 2022, by the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

_____
MITZI ORTIZ, MMC
CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. 2022-_____ duly passed and adopted by the Aliso Viejo City Council at its regular meeting held _____, 2022 and that the Summary of the Ordinance was published on _____ and _____ in the Aliso Viejo News.

_____
MITZI ORTIZ, MMC
CITY CLERK

(SEAL)

ORDINANCE NO. 2022-____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ALISO VIEJO AND VALUEROCK ALISO VIEJO, LLC FOR SPECIFIC PLAN NO. 2 (THE COMMONS AT ALISO VIEJO TOWN CENTER) PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65864 ET SEQ. AND DETERMINE THE PROJECT TO BE CATEGORICALLY EXEMPT FROM CEQA UNDER CLASS 32 (PLANNING APPLICATION DA-2022-00001)

WHEREAS, the City of Aliso Viejo ("City") has found that development agreements strengthen the public planning process, encourage private participation in comprehensive planning by providing a greater degree of certainty in that process, reduce the economic costs of development, allow for the orderly planning of public improvements and services, allocate costs to achieve maximum utilization of public and private resources in the development process, and ensure that appropriate measures to enhance and protect the environment are achieved; and

WHEREAS, pursuant to California Government Code section 65864 et seq., the City is authorized to enter into development agreements providing for the development of land under terms and conditions set forth therein; and

WHEREAS, Valuerock Aliso Viejo, LLC ("Applicant") is the owner in fee of that certain real property located in the City of Aliso Viejo, County of Orange, State of California, more particularly described in Exhibit "A," attached hereto and incorporated herein ("Property"). Applicant desires to amend the Commons at Aliso Viejo Town Center Specific Plan to allow for the sales, delivery and service of new electric or non-internal combustion engine vehicles with a conditional use permit; and

WHEREAS, together, the Specific Plan Amendment, Conditional Use Permit, and Development Agreement constitute the "Project" for purposes of the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) ("CEQA"); and

WHEREAS, because of the logistics, magnitude of the expenditure and considerable lead time prerequisite to planning and developing the Project, Applicant has proposed to enter into a development agreement concerning the Project ("Development Agreement") to provide assurances that the Project can proceed without disruption caused by a change in the City's planning policies and requirements except as provided in the Development Agreement, which assurance will thereby reduce the actual or perceived risk of planning for and proceeding with development of the Project; and

WHEREAS, the City desires the timely, efficient, orderly and proper development of the Project in furtherance of the goals of the General Plan and the Specific Plan; and

WHEREAS, the City Council has found that this Development Agreement is consistent with the City's General Plan; and

WHEREAS, the City Council has determined that by entering into the Development Agreement: (i) the City will promote orderly growth and quality development on the Property in accordance with the goals and policies set forth in the General Plan; (ii) significant benefits will be created for City residents and the public generally from increased employment, parks and or park improvements, and the public gathering opportunities created by the Project; and

WHEREAS, it is the intent of the City and Applicant to establish certain conditions and requirements related to review and development of the Project which are or will be the subject of subsequent development applications and land use entitlements for the Project as well as the Development Agreement; and

WHEREAS, the City and Applicant have reached mutual agreement and desire to voluntarily enter into the Development Agreement to facilitate development of the Project subject to the conditions and requirements set forth therein; and

WHEREAS, on November 16, 2022, the City Council conducted a duly noticed public hearing and considered evidence concerning the Development Agreement; and

WHEREAS, the terms and conditions of the Development Agreement have undergone review by the City Council at a publicly noticed hearing and have been found to be fair, just, and reasonable, and consistent with the General Plan; and

WHEREAS, the City has reviewed the proposed Project and has determined that it is Categorically Exempt from environmental review under CEQA pursuant to CEQA Guidelines Section 15332 (Infill Development);

WHEREAS, the City has determined that none of the Exceptions to the Categorical Exemptions outlined in Title 14, California Code of Regulations Section 15300.2 applies to the Project; and

WHEREAS, the foregoing exemptions are sufficient to independently exempt the Project from CEQA;

WHEREAS, all other legal prerequisites to the adoption of this Ordinance have occurred.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ALISO VIEJO DOES ORDAIN AS FOLLOWS:

Section 1. The recitals above are each incorporated by reference and adopted as findings by the City Council.

Section 2. CEQA. Based on the review of the entire record, including the Staff Report, any public comments or testimony presented to the City Council, and the facts outlined below, the City Council hereby finds and determines that the proposed Project is categorically exempt from CEQA pursuant to State CEQA Guidelines section 15332 (Class 32: In-Fill Development Projects). The Class 32 exemption specifically exempts from further CEQA review projects characterized as in-fill development meeting each of the following conditions.

First, the project must be consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations. Here, the general plan designation is Town Center Commercial and High Density Residential. According to the General Plan's Land Use Element, the Town Center Commercial designation allows for " a mixture of uses within the Aliso Viejo Town Center including: community retail and commercial services, theaters, art galleries and entertainment facilities, hotels/motels and restaurants, recreation and community facilities." The Project consists of a Specific Plan Amendment ("SPA") to allow for the sale, lease, and service of new (used as an accessory use) electric or non-internal combustion engine vehicles in the Commons at Aliso Viejo Town Center. The SPA to allow automotive use is compatible with zoning and land uses on nearby properties. South of the Specific Plan area is the Town Center, which includes Pep Boys, an automotive parts store. Further south are two auto repair shops. As such, the proposed use would be consistent with other commercial uses in the City, and thus, it would be consistent with the intent of the Town Center Commercial designation as outlined in the Land Use Element. Furthermore, the Project is consistent with the following goals, objectives, and policies of the General Plan and therefore, this finding can be made.

a. Goal LU-1: Provide a diverse mix of land uses to meet the future needs of all residents and the business community. The Project expands the types of permitted uses in the Specific Plan area. Currently, the surrounding area—and the City more broadly—lacks many essential car services. The SPA would thus diversify the available land uses by allowing a new type of use that may attract more tenants in the vacant shopping center.

b. Goal LU-3.1: Promote development of revenue-generating land uses to help defray the costs of other uses demanding City services. The Project will allow automotive sales and leases, which creates a new type of revenue-generating land use that was previously prohibited. Additional revenue collected from vehicles sales or lease activity will help defray the costs of other uses demanding City services.

c. Goal LU-4: Ensure that future development is mutually beneficial to both the environment and the community. The Project allows for the sales of EV or non-internal combustion engine vehicles have no tailpipe emissions, minimizing greenhouse gas and smog pollutants. Additionally, the number of vehicle trips generated by an auto use is only a third of the former shopping center use, further minimizing the carbon footprint and emissions. Electric

charging stations are also relatively small, requiring only minimal space, eliminating the need to develop large areas, such as traditional gas stations.

The Project consists of a Specific Plan Amendment to allow for the sale, lease, and service of new (used as an accessory use) electric or non-internal combustion engine vehicles in the Commons at Aliso Viejo Town Center. As such, the proposed use would be consistent with other commercial uses in the City, and thus, it would be consistent with the intent of the Town Center Commercial designation as outlined in the Land Use Element. Assuming that the City Council approves the specific plan amendment, the Project would be consistent with all applicable zoning designations and regulations.

Second, the proposed development must occur within city limits, on a Project site of no more than five acres and be substantially surrounded by urban uses. Here, the Project consists of a 53,660 square foot tenant space within an existing commercial building. This building is located within the City's limits, and is substantially surrounded by urban uses, including professional offices to the west, State Route 73 to the north, high-density residential to the east, and commercial/retail uses to the south. Thus, the Project meets this finding.

Third, the project site must have no value has habitat for endangered, rare, or threatened species. Here, the Project site is located in a highly developed part of the City and is surrounded by a predominantly urbanized mix of land uses. The Project site has been disturbed as a result of past grading activities and primarily contains sparse ruderal vegetation and no natural drainage courses, wetlands, or woodlands. Based on the developed/disturbed nature of the Project site and surrounding area, the only wildlife species that are expected to occur on site include common species typically found in urbanized settings. Based on the specific habitat requirements, none of the endangered, rare, or threatened species can reasonably be expected to occur on the Project site. Therefore, the Project site has no habitat value.

Fourth, approval of the project must not result in any significant effects relating to traffic, noise, air quality, or water quality. A traffic analysis prepared by the City's traffic consultant determined that the vehicle trips generated by the automotive sales and service use would be less than that of the previous commercial use. The project will not result in significant noise impacts beyond other uses that are currently permitted in the specific plan. Furthermore, all sales and services uses will be conducted within the existing building. Thus, the Project would result in a less than significant impact related to both localized and regional air quality.

Fifth, the project site must be adequately served by all required utilities and public services. The Project site is already within the service area of the Orange County Fire Authority and Orange County Sheriff's Department. The Project would not directly or indirectly result in an increase in populations, and thus, would not increase demand for additional public services. In addition, the Project site is located in a developed portion of the City that is already served by existing utilities. Given the close proximity to existing

utilities, including domestic and recycled water, sanitary sewer, and electricity, adjacent utilities can be extended onto the Project site with nominal environmental impacts.

Thus, the project qualifies for the Class 32 exemption.

None of the exceptions to the use of the Class 32 categorical exemption identified in State CEQA Guidelines section 15300.2 apply. The Project will not result in a cumulative impact from successive projects of the same type in the same place, over time. Due to the relatively minor scope of the Project, the developed/ disturbed nature of the Project site, and mandatory adherence with all applicable federal, state, and local laws, regulations, and guidelines, any incremental, individual-level impact resulting from Project construction and operations would remain less than significant and would not constitute a considerable contribution to potential regional cumulative impacts in the greater Project region.

Additionally, all other related projects would presumably be required by the applicable lead agency to comply with all applicable federal, state, and local regulatory requirements and incorporate all feasible mitigation measures to further ensure that their potentially cumulative impacts would remain at less-than-significant levels. Moreover, there are no unusual circumstances surrounding the Project that result in a reasonably possibility of a significant effect on the environment. The proposed use does not represent a new or unique use or activity that does not already occur in the City and through the Project region. Additionally, there is no evidence of unique conditions (e.g., unique geotechnical characteristics that would result in impacts to either the project or adjacent land use), either on site or within the Project area, and no unusual circumstances have been identified by the City, other agencies, or local stakeholders. The Project is not expected to be affected by unusual circumstances or otherwise unforeseen conditions.

Further, the Project will not damage scenic resources, including trees, historic buildings, rock outcroppings, or similar resources because, according to the California Department of Transportation, the only “Officially Designated State Scenic Highway” in Orange County is the segment of SR-91 (Riverside Freeway) located approximately between SR-55 and the Orange County/Riverside County line, approximately 20 miles north of the Project site. In addition, although designated an “Eligible State Scenic Highway” and not an “Officially Designated State Scenic Highway,” the SR-1 (South Coast Highway), is located approximately 5 miles east of SR-1. Due to natural topographical variations and intervening development, the Project site is not directly visible from SR-1.

Finally, the Project does not include any hazardous waste sites, and the Project will not cause a substantial adverse change in the significance of a historical resource. A review of both GeoTracker and EnviroStor found that no sites occur in the immediate vicinity of the Project site that currently have an “open” cleanup case and are presently undergoing remediation activities. The entirety of the Project site has been heavily disturbed over the years as a result of both the existing development on site and past grading activities. As such, significant surficial and subsurface archaeological and paleontological resources are unlikely to occur on site. Moreover, due to the relatively newer age of the existing

onsite development, no structural improvements are old enough to be considered eligible for listing as a state and/or federal historic resource.

Thus, the Class 32 exemption applies, and no further environmental review is required.

Section 3. Findings. Pursuant to California Government Code Section 65867.5 and Aliso Viejo Municipal Code Section 15.82.010, and based on the entire record before the City Council and all written and oral evidence presented to the City Council, the City Council hereby makes and adopts the following findings:

A. Public health, safety and welfare. The Development Agreement ("DA") is a binding development agreement that vest certain development rights to the property owner. The proposed DA assures the property owner of the subject site the right to allow the sales, lease, and service of new (used as an accessory use) electric or non-internal combustion engine vehicles. In exchange, the City receives public benefits in the form of bringing a major car dealership into the City that would generate a new revenue stream to fund critical resources and provide access to additional publicly accessible electric vehicle charging stations. The proposed automotive use is limited to electric or non-internal combustion engine vehicles, which minimizes tailpipe emissions, smog, noise, and the number of trips. These improvements along with a new revenue source improve, and do not degrade public health, safety and general welfare.

B. The Project is consistent with the following goals, objectives, and policies of the General Plan and therefore, this finding can be made.

a. Goal LU-1: Provide a diverse mix of land uses to meet the future needs of all residents and the business community. The Project expands the types of permitted uses in the Specific Plan area. Currently, the surrounding area—and the City more broadly—lacks many essential car services. The SPA would thus diversify the available land uses by allowing a new type of use that may attract more tenants in the vacant shopping center.

b. Goal LU-3.1: Promote development of revenue-generating land uses to help defray the costs of other uses demanding City services. The Project will allow automotive sales and leases, which creates a new type of revenue-generating land use that was previously prohibited. Additional revenue collected from vehicles sales or lease activity will help defray the costs of other uses demanding City services.

c. Goal LU-4: Ensure that future development is mutually beneficial to both the environment and the community. The Project allows for the sales of EV or non-internal combustion engine vehicles have no tailpipe emissions, minimizing greenhouse gas and smog pollutants. Additionally, the number of vehicle trips generated by an auto use is only a third of the former shopping center use, further minimizing the carbon footprint and emissions. Electric charging stations are also relatively small, requiring only minimal space, eliminating the need to develop large areas, such as traditional gas stations.

SECTION 4. Compliance with Development Agreement Statute. The Development Agreement complies with the requirements of Government Code Sections 65864 through 65869.5 because the Agreement provides assurance to the Applicant for the development of the Project. The Development Agreement specifies the duration of the Agreement, permitted uses of the property, density and intensity of use, and provision of public benefits to the City. Specifically, the Development Agreement provides for a term that shall expire upon the issuance of the final Certificate of Occupancy for the Project, unless an extension of the term is negotiated by the parties. In exchange, the Development Agreement requires the Applicant to provide the City with a eight publicly accessible charging stations.

SECTION 5. Approval and Execution. The City Council hereby approves and adopts the Development Agreement, attached hereto as Exhibit "B" and incorporated herein by reference and any conforming changes acceptable to the Community Development Director. The Applicant's representatives shall sign the Development Agreement and return two conformed copies of it to the City Clerk within 30 days of the City Council's adoption of this Ordinance. The City's representatives shall sign the Development Agreement upon the expiration of the period provided by applicable law, including but not limited to Government Code Section 65009, for challenging the following land use approvals for development of the Project: Specific Plan Amendment (Planning Application SP-2022-00001).

SECTION 6. Effective Date. This Ordinance becomes effective on the date that is 30 days following the City Council's approval of a Specific Plan Amendment to allow for the sale and service of new (used as an accessory use) electric or non-internal combustion engine vehicles at the Property.

SECTION 7. Recording. Pursuant to California Government Code Section 65868.5, within ten (10) days following the execution of the Development Agreement by all parties, the City Clerk shall record with the Orange County Recorder a copy of the Development Agreement.

SECTION 8. Custodian of Records. The documents related to this Ordinance are on file and available for public review at Aliso Viejo City Hall, 12 Journey, Aliso Viejo, CA 92656. The City Clerk is the custodian of these documents.

SECTION 9. Notice of Exemption. The City Council hereby directs staff to prepare and file a Notice of Exemption with the Orange County Clerk within five (5) working days of the approval of the proposed Project.

SECTION 10. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance for any reason is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any

one or more sections, subsections, subdivisions, sentences, calluses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 11. Publication. The City Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published once within fifteen (15) days of adoption in a newspaper of general circulation printed and published within the City of Aliso Viejo, and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk in accordance with Government Code Section 36993.

PASSED, APPROVED AND ADOPTED this 16th day of November 2022.

_____
Ross Chun
Mayor

APPROVED AS TO FORM:

_____
Scott C. Smith, City Attorney

ATTEST:

_____
Mitzi Ortiz, MMC, City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF ALISO VIEJO)

I, MITZI ORTIZ, City Clerk of the City of Aliso Viejo, California, DO HEREBY CERTIFY that foregoing Ordinance No. 2022_____ was duly passed and adopted by the City Council of the City of Aliso Viejo at their regular meeting held on the _____ day of _____, 2022, by the following roll call vote, to wit:

AYES:
NOES:
ABSENT:

_____
MITZI ORTIZ, MMC
CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. 2022-_____ duly passed and adopted by the Aliso Viejo City Council at its regular meeting held _____, 2022 and that the Summary of the Ordinance was published on _____ and _____ in the Aliso Viejo News.

_____
MITZI ORTIZ, MMC
CITY CLERK

(SEAL)

EXHIBIT "A"

PROPERTY LOCATION



EXHIBIT “B”

DEVELOPMENT AGREEMENT

DEVELOPMENT AGREEMENT
BY AND BETWEEN
CITY OF ALISO VIEJO AND
VALUEROCK ALISO VIEJO, LLC

THIS AGREEMENT is entered into as of the ____ day of _____, 20____ by and between the CITY OF ALISO VIEJO, a municipal corporation (the "City"), and ValueRock Aliso Viejo, a Delaware limited liability company ("Owner").

RECITALS

A. Owner is the owner of certain real property in the City of Aliso Viejo, County of Orange, State of California more fully described in EXHIBIT "A" hereto ("Property") improved with buildings commonly known as the Commons at Aliso Viejo ("Building"). The Property is located within the boundaries of the Commons Specific Plan ("Specific Plan"). There are other owners in the Specific Plan but they are not party to this Agreement.

B. The City is authorized to enter into development agreements with any persons having legal or equitable development interests in real property located within the City pursuant to California Government Code Section 65864 *et seq*. The City has adopted rules and regulations for consideration of development agreements, pursuant to Government Code Section 65865, in Chapter 15.82 of the Aliso Viejo Municipal Code ("Code").

C. The terms and conditions of this Agreement have been found by the City to be fair, just, and reasonable. The project contemplated by this Agreement is a Specific Plan Amendment to allow the sale and delivery of new electric or non-internal combustion engine vehicles at the Property as set forth in Section 1.4 below ("Project"). The Project would permit these uses with the approval of a Conditional Use Permit. The public health, safety, and welfare of the residents of the City will be served by entering into this Agreement because the Project will further the goals of the Specific Plan to encourage the sale of best-in-class electric or non-internal combustion engine automobiles, promote and facilitate the usage of clean-energy vehicles, expand the City's charging infrastructure, and contribute to the vibrancy of the Commons.

D. This Agreement will serve to implement policies and objectives set forth in elements of the City of Aliso Viejo General Plan and the Specific Plan, and, with the approval of this Agreement and the Specific Plan Amendment ("Project Approval"), pursuant to the findings issued in connection with the Project Approval, the City confirms that the Project is consistent with the General Plan and the Specific Plan.

E. This Agreement will provide assurance to the Owner that it can implement the Project and continue its operation and that the conditions imposed by the City with respect to the construction and land use for the Project will not change after the approval of the Project.

NOW THEREFORE, in consideration of the above recitals, the mutual covenants and conditions herein contained, and other good and valuable considerations, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. THE DEVELOPMENT AGREEMENT PROCESS

1.1. Applicable Rules. For purposes of this Agreement, "Applicable Rules" shall mean:

(1) The ordinances, resolutions, rules, regulations, requirements, and official policies of the City governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, timing and phasing of development, the maximum height and size of buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement, construction, and initial occupancy standards and specifications applicable to the Project, including without limitation the General Plan, the Specific Plan, and the Zoning Ordinance, all as in force as of the date of effectiveness of Ordinance No. ____-_____, adopted by the City Council on _____, 20____ ("Approval Date") ; and

(2) All ordinances, resolutions, codes, rules, regulations and official policies of the City approving this Agreement by the City Council and shall also include the terms and conditions set forth in the Project Approval and this Agreement.

Applicable Rules do not include any City ordinance, resolution, code, rule, regulation or official policy governing:

(A) The conduct or taxation of businesses, professions, and occupations,
(B) The control and abatement of nuisances,
(C) The granting of encroachment permits and the conveyance of rights and interests which provides for the use of or the entry upon public property, as may be approved by mutual agreement between Owner and City, or
(D) The exercise of the power of eminent domain.

Owner would not enter into this Agreement or agree to provide the public benefits, commitments, and considerations, if it were not for the certainty provided by the agreement of the City that the Project can be operated during the Term of this Agreement in accordance with the Applicable Rules and the Project Approval.

1.2. Statement of Benefits and Considerations. In consideration of the substantial benefits, commitments and consideration to be provided by Owner pursuant to this Agreement and in order to strengthen the public planning process, the City hereby provides Owner assurance that it can proceed with the construction and use of the Property, Building, and Project for the Term of this Agreement pursuant to the Applicable Rules.

1.3. City Council Findings.

1.3.1. The City Council finds that review of the environmental impacts of the Agreement and the approval of the Specific Plan Amendment for the Project has been conducted in accordance with the provisions of the California Environmental Quality Act

("CEQA"), Public Resources Code §§ 21000 *et seq.*, and the State and local guidelines adopted thereunder, and the City Council has given consideration to such environmental review prior to its approval of this Agreement and the Project Approval and has undertaken all actions necessary to comply with CEQA.

1.3.2. The City Council finds that this Agreement and the Project Approval include public benefits which are intended to enhance the quality and diversity of the uses available within the Specific Plan.

1.3.3. The City Council further finds that this Agreement is consistent with the General Plan, the Specific Plan, and all other applicable plans, policies, and regulations, of the City of Aliso Viejo, as set forth in the Project Approval.

1.4. Project Approvals. The Project would provide an amendment to the text of Specific Plan, Table IV-1 such that the following uses be permitted with a Conditional Use Permit. Electric or non-internal combustion engine vehicles must comprise 100 percent of the total sales revenue of any approved Conditional Use Permit and no more than 217,000 square feet of automotive uses shall be permitted at the Property. The permitted uses include:

(1) Sale and delivery of new vehicles and equipment,
(2) Sale and delivery of used vehicles as an accessory use to the sale and delivery of new vehicles and equipment,
(3) Vehicle service, repair, and installation as an accessory use to the sale and delivery of new vehicles and equipment, and
(4) Charging or alternative energy station(s) with incidental service and repair.

1.5. Term. This Agreement shall commence on the date that is 30 days following the City Council's approval of a Conditional Use Permit to allow for the sale of electric or non-internal combustion engine vehicles at the Property or 30 days following the Approval Date, whichever is later ("Commencement Date"). The Term shall expire upon the issuance of the final Certificate of Occupancy for the Project. The parties may negotiate to extend the term of this Agreement for additional periods of length to be determined by the parties.

2. VESTED DEVELOPMENT RIGHTS

2.1. Vested Rights. Subject to the terms, conditions, and covenants of this Agreement, the Owner shall have a vested right to use the Property in accordance with, and to the extent of, the Project Approvals, and subject to the Applicable Rules.

2.2. Future Ministerial Permits. The Owner (or any Tenant) may seek additional ministerial permits as required by the City, including, without limitation, building permits, as needed to implement the Project Approvals. The City agrees that it will not unreasonably withhold or unreasonably condition any Ministerial Permits which must be issued by the City in order for the land use and construction of the Project to proceed.

3. PUBLIC BENEFITS

3.1. The City lacks essential car services that its residents seek. Significantly, the City has no major car dealerships. Aliso Viejo residents looking to buy or lease a new car often leave City boundaries to do so. Not only does this make buying a car more cumbersome for residents, it redirects revenue away from the City, which precludes the tax base growth and thus the general welfare. Therefore, the public will benefit from the Project by convenient access to new best-in-class automobiles and related accessory services. Moreover, the City will receive significant additional tax revenue from automobile sales, which will fund critical City services.

3.2. The Project is intended to bolster efforts to make the City a leader in clean-energy vehicles and spur growth in energy-efficient and green technology automobile companies. To this end, the City wants to increase access to publicly accessible clean-energy vehicle charging stations, some of which support faster charging than are available from existing domestic supplies. The project is committed to enabling the City to increase its commercial charging infrastructure and to create a robust charging experience for residents and visitors alike. Therefore, the Owner shall install and provide at least eight (8) publicly accessible electric vehicle charging stations at the Property, of which two (2) charging stations shall provide ports with either CHAdeMO and/or SAE connectors. The electric vehicle charging stations shall include at least Alternating Current ("AC") Level 2 equipment, which offers charging through a 208 volt or 240 volt AC plug. These stations will be located in the existing public parking lot adjacent to the Building.

4. GENERAL PROVISIONS

4.1. Assignment**.** Owner shall have the right to sell, transfer, convey, mortgage, encumber or assign the Property in whole or in part to any person, partnership, joint venture, firm, trust corporation or other entity at any time during the Term in Owner's sole and absolute discretion and without consent of the City.

4.2. Termination. As to the Property and all of the rights of Owner hereunder, and except as otherwise provided in this Agreement, this Agreement shall be deemed terminated and of no further effect upon the expiration of the Term of this Agreement.

4.3. Cooperation and Implementation. City represents that it will cooperate in good faith with Owner to the fullest extent reasonable and feasible to implement this Agreement. Upon satisfactory completion by Owner of all of preliminary actions to be initially taken by Owner and payment of all applicable fees to be initially paid by Owner, in both cases pursuant to this Agreement, City shall promptly commence and diligently proceed to complete all steps necessary for the implementation of this Agreement and the development of the Project in accordance with the terms of this Agreement, including, but not limited to, the processing and checking of any and all of the following which may be filed or submitted by or on behalf of Owner: (i) Project Approvals, agreements, covenants and related matters to the extent required under the terms of this Agreement, (ii) plans, specifications and other documents necessary for the implementation of the Project, and

(iii) requests for inspections. Owner shall, in a timely manner, provide City with all documents, plans and other information reasonably necessary for the City to carry out its obligations hereunder.

4.4. Continued Processing. The filing of any lawsuit(s) by a third party (not a party to this Agreement) after the Approval Date against the City and/or Owner relating to this Agreement or to other development issues affected the Project shall not delay or stop the processing or issuance of any permit or authorization necessary for development of Project, unless the City reasonably and in good faith determines that such delay is legally required.

4.5. Notices. All notices or other communications required hereunder shall be in writing and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt required, or by electronic PDF transmission followed by delivery of a "hard" copy, and shall be deemed received on the date of receipt personally, by registered or certified mail or by email.

If to the City:

City Manager
City of Aliso Viejo
12 Journey
Aliso Viejo, California 92656
Email: ddoyle@avcity.org

With a copy to:

Scott C. Smith
Best Best & Krieger
18101 Von Karman Avenue #1000
Irvine, California 92612
Email: scott.smith@bbklaw.com

If to Owner:
Dennis Vaccaro
ValueRock Realty Partners
18301 Von Karman Avenue, Suite 850
Irvine, California 92612
Email: dvaccaro@valuerockpartners.com

With a copy to:
Spencer B Kallick
Allen Matkins LLP
1901 Avenue of the Stars, Suite 1800
Los Angeles, California 90067-6019
Email: skallick@allenmatkins.com

4.6. Modification, Amendment, or Extension. Subject to any notice and hearing requirements imposed by law, this Agreement may be modified, amended and/or extended from time to time by mutual written consent of the City and Owner in the same manner as its adoption by ordinance as set forth in Government Code Sections 65867, 65867.5 and 65868.

4.7. Governing State Law. This Agreement shall be construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties have each executed this Agreement on the date first written above.

CITY OF ALISO VIEJO	OWNER
_____	_____
By:_____	By:_____
Name:_____	Name:_____
Title:_____	Title:_____

RESOLUTION NO. 2022- ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, APPROVING A CONDITIONAL USE PERMIT FOR TESLA MOTORS, INC. TO SELL, LEASE, AND SERVICE ITS VEHICLES AT 26501 ALISO CREEK ROAD AND DETERMINE THE PROJECT TO BE CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT UNDER CLASS 32 (PLANNING APPLICATION USE-2022-0009)

WHEREAS, on November 12, 1993, the County of Orange approved Site Plan SP 93-099 for a major retail store and restaurant use development; and

WHEREAS, on November 16, 2005, the City Council adopted Ordinance 2005-080, Specific Plan No. 2 for the subject site (i.e. Commons at Aliso Town Center); and

WHEREAS, on July 20, 2022, the City Council approved a Site Development Permit (SPA-2022-00001) to update the subject site, including exterior building modifications and site development; and

WHEREAS, on July, 25, 2022 Troy Thomas on behalf of ValueRock Aliso Viejo, LLC, submitted Specific Plan Amendment, Development Agreement, and Conditional Use Permit applications, to allow certain automotive uses on the Site and for Tesla Motors, Inc. to sell, lease, and service its vehicles; and

WHEREAS, together, the Specific Plan Amendment, Conditional Use Permit, and Development Agreement constitute the "Project" for purposes of the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) ("CEQA"); and

WHEREAS, pursuant to Title 14, California Code of Regulations, Section 15367, the City of Aliso Viejo ("City") is Lead Agency for purposes of the Project;

WHEREAS, the City has reviewed the proposed Project and has determined that it is Categorically Exempt from environmental review under CEQA pursuant to CEQA Guidelines Sections 15332 (Infill Development);

WHEREAS, the City has determined that none of the Exceptions to the Categorical Exemptions outlined in Title 14, California Code of Regulations Section 15300.2 applies to the Project; and

WHEREAS, the foregoing exemptions are sufficient to independently exempt the whole of the action from CEQA;

WHEREAS, on November 16, 2022, the City Council held a duly noticed public hearing as prescribed by law and considered public testimony and evidence and recommendations presented by staff in the agenda report and oral presentation related to Planning Application USE-2022-00009 (Conditional Use Permit); and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. Determination of Recitals. The City Council hereby finds and determines that all of the recitals set forth above are true and correct. The above recitals are hereby incorporated as substantive findings of this Resolution.

SECTION 2. Compliance with CEQA. Based on the review of the entire record, including the Staff Report, any public comments or testimony presented to the City Council, and the facts outlined below, the City Council hereby finds and determines that the proposed Project is categorically exempt from CEQA pursuant to State CEQA Guidelines section 15332 (Class 32: In-Fill Development Projects). The Class 32 exemption specifically exempts from further CEQA review projects characterized as in-fill development meeting each of the following conditions.

First, the project must be consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations. Here, the general plan designation is Town Center Commercial and High Density Residential. According to the General Plan's Land Use Element, the Town Center Commercial designation allows for " a mixture of uses within the Aliso Viejo Town Center including community retail and commercial services, theaters, art galleries and entertainment facilities, hotels/motels and restaurants, recreation and community facilities." The Project consists of a Conditional Use Permit ("CUP") to allow the Applicant to occupy a portion of the vacant building to sell, lease, and service its electric vehicles. Automotive use is compatible with zoning and land uses on nearby properties. South of the Specific Plan area is the Town Center, which includes Pep Boys, an automotive parts store. Further south are two auto repair shops. As such, the proposed use would be consistent with other commercial uses in the City, and thus, it would be consistent with the intent of the Town Center Commercial designation as outlined in the Land Use Element. Furthermore, the Project is consistent with the following goals, objectives, and policies of the General Plan and therefore, this finding can be made.

a. Goal LU-1: Provide a diverse mix of land uses to meet the future needs of all residents and the business community. The Project expands the types of permitted uses in the Specific Plan area. Currently, the surrounding area—and the City more broadly—lacks many essential car services. The Project would thus diversify the available land uses by allowing a new type of use that may attract more tenants in the vacant shopping center.

b. Goal LU-3.1: Promote development of revenue-generating land uses to help defray the costs of other uses demanding City services. The Project will allow automotive sales and leases, which creates a new type of revenue-generating land use that was previously prohibited. Additional revenue

collected from vehicles sales or lease activity will help defray the costs of other uses demanding City services.

c. Goal LU-4: Ensure that future development is mutually beneficial to both the environment and the community. The Project allows for the sales of EV or non-internal combustion engine vehicles have no tailpipe emissions, minimizing greenhouse gas and smog pollutants. Additionally, the number of vehicle trips generated by an auto use is only a third of the former shopping center use, further minimizing the carbon footprint and emissions. Electric charging stations are also relatively small, requiring only minimal space, eliminating the need to develop large areas, such as traditional gas stations.

The Project consists of a conditional use permit to allow for Tesla to occupy a portion of the vacant building to sell, lease, and service its vehicles. As such, the proposed use would be consistent with other commercial uses in the City, and thus, it would be consistent with the intent of the Town Center Commercial designation as outlined in the Land Use Element. Assuming that the City Council approves the specific plan amendment and conditional use permit, the Project would be consistent with all applicable zoning designations and regulations.

Second, the proposed development must occur within city limits, on a Project site of no more than five acres and be substantially surrounded by urban uses. Here, the Project consists of a 53,660 square foot tenant space within an existing commercial building. This building is located within the City's limits and is substantially surrounded by urban uses, including professional offices to the west, State Route 73 to the north, high-density residential to the east, and commercial/retail uses to the south. Thus, the Project meets this finding.

Third, the project site must have no value has habitat for endangered, rare, or threatened species. Here, the Project site is located in a highly developed part of the City and is surrounded by a predominantly urbanized mix of land uses. The Project site has been disturbed as a result of past grading activities and primarily contains sparse ruderal vegetation and no natural drainage courses, wetlands, or woodlands. Based on the developed/disturbed nature of the Project site and surrounding area, the only wildlife species that are expected to occur on site include common species typically found in urbanized settings. Based on the specific habitat requirements, none of the endangered, rare, or threatened species can reasonably be expected to occur on the Project site. Therefore, the Project site has no habitat value.

Fourth, approval of the project must not result in any significant effects relating to traffic, noise, air quality, or water quality. A traffic analysis prepared by the City's traffic consultant determined that the vehicle trips generated by the automotive sales and service use would be less than that of the previous commercial use. The project will not result in significant noise impacts beyond other uses that are currently permitted in the specific plan. Furthermore, all sales and services uses will be conducted within the existing

building. Thus, the Project would result in a less than significant impact related to both localized and regional air quality.

Fifth, the project site must be adequately served by all required utilities and public services. The Project site is already within the service area of the Orange County Fire Authority and Orange County Sheriff's Department. The Project would not directly or indirectly result in an increase in populations, and thus, would not increase demand for additional public services. In addition, the Project site is located in a developed portion of the City that is already served by existing utilities. Given the close proximity to existing utilities, including domestic and recycled water, sanitary sewer, and electricity, adjacent utilities can be extended onto the Project site with nominal environmental impacts.

None of the exceptions to the use of the Class 32 categorical exemption identified in State CEQA Guidelines section 15300.2 apply. The Project will not result in a cumulative impact from successive projects of the same type in the same place, over time. Due to the relatively minor scope of the Project, the developed/ disturbed nature of the Project site, and mandatory adherence with all applicable federal, state, and local laws, regulations, and guidelines, any incremental, individual-level impact resulting from Project construction and operations would remain less than significant and would not constitute a considerable contribution to potential regional cumulative impacts in the greater Project region.

Additionally, all other related projects would presumably be required by the applicable lead agency to comply with all applicable federal, state, and local regulatory requirements and incorporate all feasible mitigation measures to further ensure that their potentially cumulative impacts would remain at less-than-significant levels. Moreover, there are no unusual circumstances surrounding the Project that result in a reasonably possibility of a significant effect on the environment. The proposed use does not represent a new or unique use or activity that does not already occur in the City and through the Project region. Additionally, there is no evidence of unique conditions (e.g., unique geotechnical characteristics that would result in impacts to either the project or adjacent land use), either on site or within the Project area, and no unusual circumstances have been identified by the City, other agencies, or local stakeholders. The Project is not expected to be affected by unusual circumstances or otherwise unforeseen conditions.

Further, the Project will not damage scenic resources, including trees, historic buildings, rock outcroppings, or similar resources because, according to the California Department of Transportation, the only "Officially Designated State Scenic Highway" in Orange County is the segment of SR-91 (Riverside Freeway) located approximately between SR-55 and the Orange County/Riverside County line, approximately 20 miles north of the Project site. In addition, although designated an "Eligible State Scenic Highway" and not an "Officially Designated State Scenic Highway," the SR-1 (South Coast Highway), is located approximately 5 miles east of SR-1. Due to natural topographical variations and intervening development, the Project site is not directly visible from SR-1.

Finally, the Project does not include any hazardous waste sites, and the Project will not cause a substantial adverse change in the significance of a historical resource. A review of both GeoTracker and EnviroStor found that no sites occur in the immediate vicinity of the Project site that currently have an "open" cleanup case and are presently undergoing remediation activities. The entirety of the Project site has been heavily disturbed over the years as a result of both the existing development on site and past grading activities. As such, significant surficial and subsurface archaeological and paleontological resources are unlikely to occur on site. Moreover, due to the relatively newer age of the existing onsite development, no structural improvements are old enough to be considered eligible for listing as a state and/or federal historic resource.

Thus, the Class 32 exemption applies, and no further environmental review is required.

SECTION 3. Approval of Project and Findings for Conditional Use Permit ("CUP") for Tesla Motors, Inc. to occupy 53,660 square feet of the existing tenant space and sell, lease, and service its vehicles. In accordance with the Commons at Aliso Viejo Town Center Specific Plan, the City Council hereby approves the CUP for Planning Application USE-2022-00009 subject to the conditions set forth in Exhibit "A," attached hereto and incorporated herein by reference and any conforming changes acceptable to the Community Development Director.

The City Council, sitting as the legislative body and based upon the entire record, including all written and oral evidence presented, finds that:

1. Consistency with General Plan. The land use is consistent with the following general plan goals and any applicable specific plan.

    a. Goal LU-1: Provide a diverse mix of land uses to meet the future needs of all residents and the business community. The SPA expands the types of permitted uses in the Specific Plan area. Currently, the surrounding area—and the City more broadly—lacks essential car services. The SPA would thus diversify the available land uses by allowing a new type of use that may attract more tenants to the vacant shopping center.

    b. Goal LU-3.1: Promote development of revenue-generating land uses to help defray the costs of other uses demanding City services. The SPA will allow automotive sales and leases, which creates a new type of revenue-generating land use that was previously prohibited. Additional revenue collected from vehicles sales or lease activity will help defray the costs of other uses demanding City services.

    c. Goal LU-4: Ensure that future development is mutually beneficial to both the environment and the community. The SPA allows for the sales of EV or non-internal combustion engine vehicles have no tailpipe emissions, minimizing greenhouse gas and smog pollutants. Additionally, the number of vehicle trips generated by an auto use is only a third of the former shopping center

use, further minimizing the carbon footprint and emissions. Electric charging stations are also relatively small, requiring only minimal space, eliminating the need to develop large areas, such as traditional gas stations.

2. Consistency with Zoning Code. The land use and associated development conform to the permitted use provisions and development standards of this zoning code and are consistent with this code and any applicable specific plan. The Project consists of a conditional use permit to allow for sales and service of non-internal combustion engine vehicles. As such, the proposed use would be consistent with other commercial uses in the City, and thus, it would be consistent with the intent of the Town Center Commercial designation as outlined in the Land Use Element. The Project complies with the Specific Plan allowed use of electric or non-internal combustion engine vehicle sales, lease, and service on the site. The Project also complies with development standards of the Commons at Aliso Viejo Town Center Specific Plan and provisions in the Zoning Code in regard to building height, parking, setbacks, screening, etc. and will not change the footprint of the existing building.

3. Compliance with CEQA. Processing and approval of the permit application are in compliance with the requirements of the California Environmental Quality Act. The proposed Project is categorically exempt from the requirements to prepare additional environmental documentation per California Environmental Quality Act (CEQA) Guidelines, Section 15332, Class 32 (In-fill Development). Class 32 consists of projects characterized as infill development meeting the conditions described in Section 15332. The Project complies with the applicable general plan and zoning regulations; furthers the goals of the General Plan, specifically by providing a diverse mix of land uses to meet the future needs of the community and by promoting the development of revenue-generating land uses; occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses; and there are no habitat for endangered, rare or threatened species as it is currently developed with commercial buildings and a paved parking lot. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality. A traffic analysis prepared by the City's traffic consultant determined that the vehicle trips generated by the automotive sales and service use would be less than that of the previous shopping center use. The project will not result in significant noise impacts beyond other uses that are currently permitted in the specific plan. Further, the project would not result in significant effects on air and water quality since the electric vehicles ("EV") have no tailpipe emissions, minimizing greenhouse gas and smog pollutants. The Project involves interior tenant improvement within an existing building located on a developed site that is already served by water, sewer, electric and gas utilities and public services. None of the exceptions to the categorical exemptions set forth in State CEQA Guidelines section 15300.2 apply. Specifically, the Project is not located in a particularly sensitive environment; the cumulative impact of successive projects of this same type in the same place over time would not be significant because these types of conversions are limited in size and number; and there is a

finite area that can accommodate commercial uses within this existing building. Additionally, the existing building is not located within an officially designated state scenic highway, on a site designated pursuant to Government Code section 65962.5 (Cal/EPA Hazardous Waste and Substances Site Lists) or listed as a historic resource.

4. Surrounding Uses. Approval of the application will not create conditions materially detrimental to the public health, safety, and general welfare, or injurious to or incompatible with other properties or land uses in the vicinity.

   Approval of the proposed CUP to permit electric or non-internal combustion engine vehicle sales, lease, and service will not create adverse impacts to the public. Unlike traditional fuel-dependent vehicles, electric vehicles ("EV") have no tailpipe emissions, minimizing greenhouse gas and smog pollutants. Electric vehicles are naturally quieter than fuel-dependent vehicles as they lack internal combustion engines. Traditional cars make combustion noise while the only noise emitting from EVs may be minimal humming. Additionally, STC Traffic, Inc, City's traffic consultant, reviewed the proposed project and determined that the trip generation quantity resulting from auto sales (1,494 daily trips) will be significantly less than the existing shopping center use (3,622 daily trips for the former retail – Michaels, Tuesday Morning, and Lowe's). Furthermore, public chargers can be installed on or adjacent to any existing parking space with minimal space, unlike typical gas stations.

   The shopping center shares parking spaces through a series of reciprocal agreements for parking, access, encroachments, and utilities; therefore, parking is evaluated on all uses within the shopping center at a rate of one space per 220 square feet. The parking requirement is 1,077 parking spaces and 1,090 parking spaces are provided. This parking calculation excludes the 225 parking spaces that are part of the Tesla project and the four (4) parking spaces in the front of the Tesla tenant space which will be used for charging their test-drive vehicles. As proposed, the proposed project will provide for adequate parking for the shopping center.

   As for servicing EVs, the proposed plan shows all service activities to be conducted inside of the building, which will be limited to maintenance such as tire balancing and software updates. No autobody pain or collision repair is proposed. Noise levels will be equivalent or less than the following uses that are already permitted or conditionally permitted under the Specific Plan: plant nurseries, dance halls, outdoor theaters, drive throughs, animal grooming and veterinary services, and printing and publishing. Further, automotive uses are permitted in the surrounding area, suggesting that a similar use in the Specific Plan area will not constitute a significant change for the community. For example, a Pep Boys tire shop is located in the Town Center, directly across the Specific Plan area. Beyond that, two car repair shops are located immediately south of the Town Center.

The proposed location is convenient for automotive uses, as it is bordered by CA-73 to the north and public right of ways to the east (Aliso Creek Road) and south (Enterprise). It is also located in the City's center near several retail and commercial areas like the Town Center. This location suggests that the proposed use may create an even more centralized location to accomplish other errands and activities, such as employment, food shopping, clothing retail, and dining. Newer tenants, such as Tesla, may attract other types of tenants to lease the currently vacant and dilapidating shopping center.

Moreover, the surrounding area—and the City more broadly—lacks many essential vehicle services with no major car dealerships. Residents looking to buy or lease a vehicle inevitably must leave City boundaries to do so. Not only does this make purchasing a car more cumbersome for residents, but it also redirects revenue away from the City.

SECTION 4. Filing of Notice of Exemption. The City Council hereby authorizes and directs staff to prepare, execute and file with the Orange County Clerk a Notice of Exemption for the proposed Project within five working days of this approval.

SECTION 5. Location of Documents. The administrative record for the Project is maintained at City Hall located at 12 Journey, Suite 100, Aliso Viejo, CA 92656. The custodian of records is the City Clerk.

PASSED, APPROVED AND ADOPTED this 16th day of November 2022.

_____
Ross Chun
Mayor

APPROVED AS TO FORM:

_____
Scott C. Smith
City Attorney

ATTEST:

_____
Mitzi Ortiz, MMC
City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF ALISO VIEJO)

I, MITZI ORTIZ, City Clerk of the City of Aliso Viejo, California, DO HEREBY CERTIFY that foregoing Resolution No. 2022-___ was duly passed and adopted by the City Council of the City of Aliso Viejo at their regular meeting held on the 16st day of November 2022, by the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

_____
MITZI ORTIZ
CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Resolution No. 2020-__ duly passed and adopted by the Aliso Viejo City Council at its regular meeting held November 16, 2022.

_____
MITZI ORTIZ
CITY CLERK

(SEAL)

EXHIBIT "A"
PLANNING APPLICATION USE-22-00009
CONDITIONS OF APPROVAL

1. Project Description. This approval is for the following:

    a. Tesla Motors, Inc. to occupy a maximum of 53,660 square feet of tenant area in an existing building located at 26501 Aliso Creek Road ("Property") for the following uses:

        i. Sale and delivery of new vehicles and equipment
        ii. Sale and delivery of used vehicles as an accessory use to the sale and delivery of new vehicles and equipment,
        iii. Vehicle service, repair, and installation as an accessory use to the sale and delivery of new vehicles and equipment, and
        iv. Charging or alternative energy stations with incidental service and repair.

    b. Installation of at least eight publicly accessible electric vehicle charging stations at the Property, of which two charging stations shall provide ports with either CHAdeMO and/or SAE connectors. The electric vehicle charging stations shall include at least Alternating Current ("AC") Level 2 equipment, which offers charging through a 208 volt or 240 volt AC plug.

2. Period of Validity. The period of validity for Planning Application USE-22-00009 shall run indefinitely, unless the use is not established within two years of the permit's effective date pursuant to AVMC Section 15.74.100.

3. Time Extensions. Upon application before expiration of the period of validity, the City Council may grant or conditionally grant an extension to the period of validity for up to one year per extension if it finds that such an extension is justified by the circumstances of the original findings for the project can still be made with, if necessary, the imposition of conditions not originally imposed on the project. The filing of an application for extension shall stay expiration of the permit until action is taken on the time extension by the decision-making authority. No more than two one-year extensions may be granted or conditionally granted.

4. Development Per Approved Plans. This approval constitutes a precise plan for location and design of uses, structures, features and materials submitted with this application. Development shall occur substantially as shown on the plans and description letter approved for this Project and on file in with the Community Development Department, subject to any modifications imposed by the conditions of approval herein, as confirmed by the Community Development Director. Any land use, construction or improvement not specifically approved by this use permit is not permitted and must be addressed in a separate and subsequent application and review. Relocation, alteration or addition to any use, structure, feature or material not

specifically approved shall require an amendment to the approved plans unless the Community Development Director determines such modifications are minor and consistent with the spirit and intent of the original approving action, and that the action would have been the same for the modifications as for the approved plans. The Community Development Director may approve such minor modifications in accordance with AVMC Section 15.74.110.

5. Applicant Designation. For the purpose of Planning Application USE-22-00009 and as referenced in the conditions, "Applicant" shall apply to Troy Thomas on behalf of Tesla Motors, Inc., owner, operator, and future successors of the approved establishment.

6. Payment of Fees. The Applicant shall be responsible for payment of all applicable fees along with reimbursement for all City expenses in ensuring compliance with conditions. All fees and expenses shall be paid in full prior to issuance of a certificate of occupancy. Prior to issuance of applicable City approvals or permits, the applicant shall be fully responsible for reimbursing the City of Aliso Viejo for all expenses incurred to process the application and assure compliance with all conditions of approval.

7. Compliance with Conditions. The Applicant shall be fully responsible for knowing and complying with all conditions of approval, including making conditions known to City staff for future governmental permits or actions on the project site. Failure to abide by and faithfully comply with any and all conditions attached to the granting of these permits may constitute grounds for revocation of the permit(s) in accordance with AVMC Section 15.74.120.

8. Indemnification. The Applicant shall indemnify, protect, defend, and hold the City, and/or any of its officials (appointed or elected), officers, employees, agents, departments, agencies, and instrumentalities thereof, harmless from any and all claims, demands, lawsuits, writs of mandamus, and other actions and proceedings (whether legal, equitable, declaratory, conditional or adjudicatory in nature), and alternative dispute resolution procedures (including, but not limited to arbitrations, mediations, and other such procedures), judgments, orders, and decisions (collectively 'Actions'), brought against the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, any action of, or any permit or approval issued by the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City) for or concerning the project, whether such Actions are brought under the Ralph M. Brown Act, California Environmental Quality Act, the Planning and Zoning Law, the Subdivision Map Act, Community Redevelopment Law, Code of Civil Procedure Sections 1085 or 1094.5, or any other federal, state, or local constitution, statute, law, ordinance, charter, rule, regulation, or any decision of a court of competent jurisdiction. It is expressly agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the City's defense, and that Applicant shall reimburse City for any costs and expenses directly and necessarily incurred by the City

in the course of the defense. City shall promptly notify the Applicant of any Action brought and City shall cooperate with applicant in the defense of the Action.

9. Compliance with Building Codes. Tenant improvements shall be submitted for review, approved and permits issued, and shall comply with standards, regulations and requirements of current editions of the California Building Code, California Plumbing Code and California Mechanical Code, California Electrical Code, including any local amendments adopted by the City of Aliso Viejo.

10. Building Plans. The Applicant shall submit plans to the Building Department reflecting the change in floor plan uses. The Resolution, as approved by City Council shall be printed within the updated plan set.

11. Conditions of Approval. Prior to the issuance of necessary building permits, the Applicant shall list all conditions of approval on the title sheet.

12. Orange County Fire Authority. Prior to the issuance of necessary building permits, the Applicant or responsible party shall submit the plan(s) listed below to the Orange County Fire Authority for review.

    a. Fire Master Plan PR 1452
    b. Completed B, F, M, S, U Screening Form
    c. Fire Sprinklers PR440 as applicable for the tenant improvement
    d. Fire Alarm/Monitoring PR500-530 as applicable for the tenant improvement
    e. Motor Vehicle Repair Garage PR 236

13. Temporary/Final Occupancy Inspections: Prior to issuance of temporary or final certificate of occupancy, all OCFA inspections shall be completed to the satisfaction of the OCFA inspector and be in substantial compliance with codes and standards applicable to the project and commensurate with the type of occupancy (temporary or final) requested. Inspections shall be scheduled at least five days in advance by calling OCFA Inspection Scheduling at 714-573-6150.

14. State and Federal Permits. All necessary State and Federal permits, including the South Coast Air Quality Management District permit, shall be obtained prior to operations.

15. Solid Waste Management Plan (Construction Phase). Prior to issuance of a Building Permit, a construction phase Solid Waste Management Plan shall be prepared and submitted to the Director of Public Works for review and approval. This plan shall include specific measures to reduce refuse generated by construction of the proposed project. The Owner/Developer, property Owner/Developer, or successor in interest shall prepare a waste management plan, which shows how construction materials will be recycled, consistent with the City of Aliso Viejo Waste Reduction Ordinance.

16. Solid Waste Management Plan. Prior to issuance of a Building Permit, a Solid Waste Management Plan for continuous solid waste handling shall be submitted to the Director of Public Works for review and approval. This Plan shall assure compliance with AB 939, AB 1594 and AB 1826 provisions to maximize recovery and recycling of solid waste generated on-site including green waste and organics. The plan shall include provisions for storing and handling of solid waste, including location and design of solid waste storage areas. Each area shall conform to the City's Municipal Code and be designed and constructed in such a manner to be properly screened to prevent precipitation from entering waste containers and to assure water quality standards are maintained for any storm water which may enter a solid waste enclosure, and to provide adequate space for separation of wastes for recycling. The plan shall be reviewed by the City's franchise solid waste hauler and appropriately modified to assure effective operations. The Project shall require that the Solid Waste Management Plan reduces waste to landfills by a minimum of 75 percent.

17. Pollution Prevention Requirements. The facility shall comply with the City's Pollution Prevention requirements (Stormwater Program Management, AVMC Chapter 7.35). An annual water quality inspection will be conducted by City staff to verify compliance.

18. Hazardous Materials. All hazardous materials shall be stored and disposed of in compliance with Local, State and Federal regulations. The business owner and/or manager shall be required to show proof of clearance or permit from Orange County Health Care Agency (OCHCA) and Orange County Fire Authority (OCFA) for the collection and disposal of hazardous materials including used batteries.

19. Signs. All signs proposed for this development are under separate permit and shall be designed in accordance with the Municipal Code and any adopted Sign Program for the property and shall require review and approval of Planning Services and Building Department prior to installation.

20. Mechanical Equipment. All roof-top equipment shall be screened as shown on the approved CUP plans and exhibits to the satisfaction of the Community Development Director. Such screening shall be architecturally consistent with the building and an integral part of the building design.

21. Hours of Operation. The hours of operation for the sales and service facility use shall be limited to the following:

    - 10:00 a.m. to 7:00 p.m. daily for sales and showroom
    - 7:00 a.m. to 7:00 p.m. daily for customer appointments for service
    - 7:00 p.m. to 11:00 p.m. daily for service repairs

    Any request to modify hours of operation or use shall be submitted in writing to the Director for review and approval. Furthermore, based on substantiated complaints or concerns, the Director may modify the hours of operation as deemed necessary.

22. CPTED Inspection. The project is subject to a final CPTED inspection by the Crime Prevention Specialist prior to issuance of permit of occupancy. Based on the Crime Prevention Specialist review and inspection of the Project, the Applicant shall make the required improvements and submit the necessary documentation showing compliance to the satisfaction of the Crime Prevention Specialist.

23. Cameras. Security cameras shall be installed per the satisfaction of the Director of Police Services. The security camera footage shall be kept for at least 30 days and available to the Orange County Sheriff Department (OCSD) within 24 hours if such usage is necessary.

24. The Applicant shall submit a detailed parking plan which shall be reviewed and approved by the Community Development Director, Director of Public Works and Orange County Fire Authority (OCFA). The parking plan shall include the number of parking spaces, dimensions of parking spaces and drive aisle widths. The parking plan shall meet the development standards and regulations of the Commons Specific Plan and OCFA requirements.

25. Parking. All employee vehicles, service vehicles, loaner fleet vehicles and test-drive vehicles shall be parked in the private parking lot on the north side of the building. Except for the four (4) parking spaces dedicated to test-drive vehicle charging, no parking for these vehicles shall be permitted in the shopping center parking lot.

26. Vehicle Delivery. All vehicles delivered to the premises shall be driven to the private parking lot on the north side of the building or offloaded to the interior of the building only.

27. Outdoor Storage or Repair. No outdoor storage of materials or outdoor activities including but not limited to vehicle cleaning, washing, painting, repair or material storage, shall occur outside of any building or structure.

28. Maintenance. The Applicant shall be responsible for maintaining the entire site as a blight and nuisance-free condition at all times. This shall include but not be limited to ensuring the site is free of litter, unpermitted signage, odors, and excessive noise generated from the business operations.

29. Noise. The use shall not generate noise that exceeds ambient noise levels established in AVMC Chapter 8.12. Doors shall remain closed during hours of operation except while cars enter and exit the building. Furthermore, based on substantiated complaints or concerns, the Director may modify conditions relative to facility operations as deemed necessary.

30. Adverse Impacts. In the event of adverse impacts on the health, safety or welfare of the neighborhood or public, or receipt of substantiated complaints directly related to the Applicant's operations, the Community Development Director shall investigate and, if significant adverse impacts directly related to the Applicant's business are

found to exist, the Director or Chief of Police shall have the discretion to bring this Permit back to the City Council for the consideration of additional improvements and protective measures, additional conditions, amended conditions, or permit revocation. Modifications may include but not be limited to the restriction of operations.

The Commons at Aliso Viejo
Specific Plan Amendment, Development Agreement and Conditional Use Permit Findings

ValueRock Realty Partners ("**Applicant**") seeks a Specific Plan Amendment, Development Agreement, and Conditional Use Permit to allow for specific automotive uses within the Commons at Aliso Town Center Specific Plan (the "**Specific Plan**") in the City of Aliso Viejo ("**City**") (the "**Specific Plan Area**").

A. THE SPECIFIC PLAN AREA

The Specific Plan Area is at the heart of Aliso Viejo's commercial core, and is bordered by Enterprise to the west, Aliso Creek Road to the southeast, and California State Route 73 ("**CA-73**") to the northeast. It is currently developed with four commercial buildings. The largest structure was built in approximately 1995 and comprises approximately 183,245 gross square feet of commercial space. Much of the building is currently untenanted, although the craft store, Michaels, currently occupies a portion of the building. Immediately south of this is are multi-tenant retail buildings anchored by Trader Joe's and Walgreens. The final structure is a Taco Bell drive-thru. Asphalt surface parking constitutes the remaining improved area. The Specific Plan Area is separated from its adjacent parcels by large embankments and landscaping.

In the surrounding area are several commercial, retail, and multifamily housing structures. This includes the area immediately south of the Specific Plan Area across Enterprise; the Aliso Viejo Town Center ("**Town Center**"), a multi-tenant retail facility anchored by Regal Edwards, Barnes & Noble, Ralphs, CVS, Staples, and Pep Boys, a tire store. Across Aliso Creek Road is a multifamily residential complex. The unimproved acreage on the northern side of the Specific Plan Area slopes up to Enterprise and an office park to the northwest.

B. ENTITLEMENTS

a. Specific Plan Amendment

The Applicant requests a Specific Plan Amendment ("**SPA**") pursuant to Aliso Viejo Municipal Code ("**AVMC**") § 15.78.030 to allow for the sale and delivery of new electric or non-internal combustion engine vehicles in the Specific Plan Area. The Specific Plan currently prohibits certain vehicle-related uses. The Applicant respectfully requests that the text of Specific Plan, Table IV-1, be amended such that the following uses be permitted with a Conditional Use Permit. Please note that non-internal combustion engine vehicles must comprise 100 percent of the total sales revenue of any approved Conditional Use Permit and that no more than 217,000 square feet of automotive uses shall be permitted at the Property.

(1) sale and delivery of new vehicles and equipment;

(2) sale and delivery of used vehicles as an accessory use to the sale and delivery of new vehicles and equipment;

(3) vehicle service, repair, and installation as an accessory use to the sale and delivery of new vehicles and equipment; and

(4) charging or alternative energy station(s) with incidental service and repair.

b. Development Agreement

The Applicant requests a Development Agreement ("**DA**") with the City under AVMC § 15.74.040. The terms and conditions of the DA are available in a separate document.

c. Conditional Use Permit

The Applicant requests a Conditional Use Permit ("**CUP**") under AVMC §§ 15.82 to allow automotive uses in the Specific Plan Area under the Specific Plan Amendment. Specifically, the Applicant is working with Tesla Motors, Inc. ("**Tesla**") to lease a portion of the Specific Plan Area for the sale and delivery of 100 percent non-internal combustion engine vehicles in a space no more than 217,000 square feet. Ancillary automotive uses such as service, repair and installation and charging stations will also be included in the proposed CUP area.

Tesla is an automotive company that produces electric, environmentally-friendly electric vehicles. Its planned operations in the Specific Plan Area (the "**Town Center Tesla** ") will include a sales area and service presence. Tesla will employ roughly 75 people at Town Center Tesla, with approximately 50 employees on-site at a time. Service working hours will be 7:00 am to 11:00 pm daily, with customer service operating from 7:00 am to 7:00 pm daily. Automotive sales will be available from 10:00 am to 7:00 pm daily. Based on information from other Tesla centers, approximately 40-50 customers are expected each day across sales and vehicle service.

The customer experience at Town Center Tesla is unique among typical automotive dealerships. Like more traditional dealerships, customers entering Town Center Tesla will be able to ask questions of staff and view and test drive vehicles. Moving Tesla vehicles within an interior space is environmentally safe, as the vehicles have no exhaust. Each purchased Tesla vehicle is custom produced offsite in Fremont, California where it will eventually be delivered to Town Center Tesla, with pickup timing coordinated with the buyer. Unlike other traditional dealerships, therefore, Tesla does not keep inventory vehicles ready for sale dwelling on the site premises, but rather each customer picks-up a pre-ordered and custom-built Tesla vehicle.

The associated service presence will allow Tesla owners and customers to meet their previously-scheduled service needs. Although most repairs will be handled in less than an hour, Town Center Tesla will keep between 10-20 cars on site to loan to customers while staff services their Tesla vehicles. No oil, gasoline, or other hazardous substances traditionally part of internal combustion vehicle repairs will be found at this service center. Trash and waste collection will happen 4-5 times per week, depending on the volume of repairs.

Tesla is expanding its customer base throughout California, and anticipates that the planned operations in Aliso Viejo will be vital to its presence in Orange County.

C. FINDINGS

a. Specific Plan Findings

i. Public Welfare. Approval of the specific plan or specific plan amendment will not create conditions materially detrimental to the public health, safety and general welfare.

Approval of the SPA will not harm public health and safety because the proposed change of permissible uses conforms with existing uses both in the Specific Plan Area and the broader commercial area along Aliso Creek Road. For instance, retail sales of alternative energy vehicles would have no discernable impact on the public health and safety as the Specific Plan Area already permits several retail uses. (*See* Specific Plan, Table IV-1.) The accessory sale of automotive accessories and parts poses no additional risk to health and safety than the sale of general goods and merchandise. Similarly, uses that might increase noise or odor—as may be a concern with other automotive uses like service and repair—are already permitted or conditionally permitted, including plant nurseries, dance halls, outdoor theaters, drive thrus, animal grooming and veterinary services, printing and publishing.

Further, automotive uses are permitted in the surrounding area, suggesting that a similar use on the adjacent property will not constitute a significant change for the community. For instance, a Pep Boys tire shop is located in the Town Center, directly across Enterprise from the Specific Plan Area. Beyond that, two car repair shops are located immediately south of the Town Center.

Allowing new automotive uses in the Specific Plan Area would potentially make room for the installation of new green automotive technologies, which broadly improves public health through smog reduction and climate change mitigation. Because the proposed use change in the SPA conforms with the existing use in the Specific Plan Area and surrounding vicinity, approval of the SPA will not create conditions materially detrimental to public health and safety.

In addition, the SPA will increase, not diminish, the general welfare. The proposed location is convenient for automotive uses, given the Specific Plan Area's adjacency to CA-73's entrance and exit ramps and between major thoroughfares Aliso Creek Road and Aliso Viejo Parkway. It is also located in the City's center near several retail and commercial areas like the Town Center. This location suggests the SPA would open up opportunities for automotive companies to provide the surrounding community and region with convenient car services in an area in which they can accomplish other errands and activities, such as employment, food shopping, clothing retail, and dining.

The SPA will also increase the general welfare by expanding the types of tenants who may want to lease space in the centrally-located Specific Plan Area. This is particularly true as the Town Center has several vacancies, which does not serve the community.

Moreover, the surrounding area—and the City more broadly—lacks many essential car services that its residents may seek. Significantly, the City has no major car dealerships. Aliso Viejo residents looking to buy or lease a new or used car inevitably must leave City boundaries to do so. Not only does this make buying a car more cumbersome for residents, it potentially redirects revenue away from the City, which hurts the tax base and thus the general welfare. Additionally,

the City contains only a handful of automotive shops and stores. In short, allowing automotive uses in the Specific Plan Area would increase the community's general welfare by expanding opportunities for residents, and people in neighboring jurisdictions, to meet their automotive needs within City boundaries.

Finally, any automotive use in the Specific Plan Area would still require a Conditional Use Permit. This will provide an opportunity for City officials to ensure that conditions of approval are in place to guard against any specific uses that could materially harm public health, safety and general welfare.

ii. General Plan Consistency. The specific plan or amendment is consistent with the goals, objectives, and policies of the general plan.

The SPA is consistent with the goals, objectives, and policies of the general plan. Specifically, it advances the following General Plan objectives outlined in its Land Use Element.

1. *Goal LU-1: Provide a diverse mix of land uses to meet the future needs of all residents and the business community.*

The SPA helps to provide a diverse mix of land uses to meet the future needs of all residents and the business community by expanding the types of uses currently available in the Specific Plan Area. Currently, the surrounding area—and the City more broadly—lacks many essential car services its residents may seek. Significantly, the City has no major car dealerships, and it only has a handful of automotive shops and stores. The SPA would thus diversify the available land uses by creating space for an underrepresented, essential use to residents and the business community. The SPA also opens the Specific Plan Area up to a new class of tenants, which is significant because portions of the commercial centers in the Specific Plan Area currently sit empty.

2. *Goal LU-3.1: Promote development of revenue-generating land uses to help defray the costs of other uses demanding City services.*

The SPA promotes development of revenue-generating land uses by creating space for, among other uses, automotive sales and leasing. Automobiles are often the most expensive purchase a household will make. Being able to capture tax revenues from these significant purchases, not just from City residents but those in the surrounding region, will help defray the costs of other uses demanding City services. Providing opportunities for other automotive-related retail uses and services will also, of course, promote development of revenue-generating land uses.

3. *Goal LU-4: Ensure that future development is mutually beneficial to both the environment and the community.*

Automobile technologies have advanced drastically in the last two decades, and today's cars are greener and more fuel-efficient than ever. Not only will providing new automotive opportunities benefit the community, it will allow automobile manufacturers to offer technological advancements that are essential to combatting climate change and other environmental risks.

iii. Land Use Compatibility. The specific plan or amendment is compatible with the zoning and land use on nearby properties.

The SPA is compatible with the zoning and land uses on nearby properties. South of the Specific Plan Area is the Town Center, a commercial space offering, among other uses, Pep Boys, an automotive parts store. Northeast of the Specific Plan Area is CA-73 and its ramps. Abutting the Specific Plan Area to the Northwest is a zone for professional office. No residential low density zones abut the Specific Plan Area. The Specific Plan Area is also separated from adjacent parcels by large embankments and landscaping on all sides, including dozens of mature trees.

A change in usage to allow certain automotive uses by permit would thus be compatible with the zoning and land use on nearby properties. None of these uses appear particularly sensitive to potential increases in noise and odor that may come from automotive uses given their largely commercial uses. Indeed, the largely retail and commercial uses are compatible with the retail and commercial use change proposed in the SPA.

iv. Property Suitability. The specific plan or amendment is suitable for the location, access, visual character and topography of the subject property.

The SPA is suitable for the location, access, visual character and topography of the subject property. The location adjacent to the CA-73 in City's core is ideal for a range of automotive uses. Further, the Specific Plan Area's location near retail would allow the community to accomplish multiple errands in one trip. Access is also suitable given its proximity to major City thoroughfares like the CA-73, Aliso Creek Road, and Aliso Viejo Parkway. The Specific Plan Area's visual character and topography also accommodate the SPA as the Specific Plan Area is separated from its surrounding areas by large embankments and landscaping, including dozens of mature trees that conceal large portions of the Specific Plan Area from adjacent streets and properties. For these reason, the Specific Plan Area is well suited for the SPA based on its location, access, visual character and topography.

b. Development Agreement Findings

i. Public Welfare. Approval of the development agreement will not create conditions materially detrimental to the public health, safety and general welfare.

Approval of the DA will not harm public health and safety because the proposed change of permissible uses under the accompanying SPA (the "**Project**") furthers the goals of the Specific Plan to encourage the sale of best-in-class electric or non-internal combustion engine automobiles, promote and facilitate the usage of clean-energy vehicles, expand the City's charging infrastructure, and contribute to the vibrancy of the Commons.

For instance, retail sales of alternative energy vehicles permitted under the Project would have no discernable impact on the public health and safety as the Specific Plan Area already permits several retail uses. (*See* Specific Plan, Table IV-1.) The accessory sale of automotive accessories and parts under the Project poses no additional risk to health and safety than the sale of general goods and merchandise. Similarly, uses that might increase noise or odor—as may be a concern with other automotive uses like service and repair—are already permitted or conditionally permitted, including plant nurseries, dance halls, outdoor theaters, drive thrus, animal grooming and veterinary services, printing and publishing.

Further, automotive uses are permitted in the surrounding area, suggesting that a similar use on the adjacent property under the Project will not constitute a significant change for the community. For instance, a Pep Boys tire shop is located in the Town Center, directly across Enterprise from the Specific Plan Area. Beyond that, two car repair shops are located immediately south of the Town Center.

Allowing new automotive uses in the Specific Plan Area would potentially make room for the installation of new green automotive technologies, which broadly improves public health through smog reduction and climate change mitigation. Because the Project conforms with the existing use in the Specific Plan Area and surrounding vicinity, approval of the SPA will not create conditions materially detrimental to public health and safety.

In addition, the Project will increase, not diminish, the general welfare. The proposed location is convenient for automotive uses, given the Specific Plan Area's adjacency to CA-73's entrance and exit ramps and between major thoroughfares Aliso Creek Road and Aliso Viejo Parkway. It is also located in the City's center near several retail and commercial areas like the Town Center. This location suggests the Project would open up opportunities for automotive companies to provide the surrounding community and region with convenient car services in an area in which they can accomplish other errands and activities, such as employment, food shopping, clothing retail, and dining.

The Project will also increase the general welfare by expanding the types of tenants who may want to lease space in the centrally-located Specific Plan Area. This is particularly true as the Town Center has several vacancies, which does not serve the community.

Moreover, the surrounding area—and the City more broadly—lacks many essential car services that its residents may seek. Significantly, the City has no major car dealerships. Aliso Viejo residents looking to buy or lease a new or used car inevitably must leave City boundaries to do so. Not only does this make buying a car more cumbersome for residents, it potentially redirects revenue away from the City, which hurts the tax base and thus the general welfare. Additionally, the City contains only a handful of automotive shops and stores. In short, allowing automotive uses in the Specific Plan Area would increase the community's general welfare by expanding opportunities for residents, and people in neighboring jurisdictions, to meet their automotive needs within City boundaries.

Any automotive use in the Specific Plan Area would still require a Conditional Use Permit under the Project. This will provide an opportunity for City officials to ensure that conditions of approval are in place to guard against any specific uses that could materially harm public health, safety and general welfare.

In addition to the aforementioned public benefits, the DA provides for the installation of publicly-accessible electric vehicle charging stations in the Specific Plan Area, which advances the public welfare.

ii. General Plan Consistency. The development agreement is consistent with the goals, objectives, and policies of the general plan and any applicable specific plan. [Ord. 2012-140 § 3 (Exh. A); Ord. 2010-126 § 1 (Exh. A); Ord. 2010-123 § 3 (Exh. A)].

The DA is consistent with the goals, objectives, and policies of the general plan. Specifically, it advances the following General Plan objectives outlined in its Land Use Element.

a. *Goal LU-1: Provide a diverse mix of land uses to meet the future needs of all residents and the business community.*

The DA helps to provide a diverse mix of land uses to meet the future needs of all residents and the business community by expanding the types of uses currently available in the Specific Plan Area through the Project. Currently, the surrounding area—and the City more broadly—lacks many essential car services its residents may seek. Significantly, the City has no major car dealerships, and it only has a handful of automotive shops and stores. The Project would thus diversify the available land uses by creating space for an underrepresented, essential use to residents and the business community. The Project also opens the Specific Plan Area up to a new class of tenants, which is significant because portions of the commercial centers in the Specific Plan Area currently sit empty.

b. *Goal LU-3.1: Promote development of revenue-generating land uses to help defray the costs of other uses demanding City services.*

The DA promotes development of revenue-generating land uses by creating space for, among other uses, automotive sales and leasing through the Project. Automobiles are often the most

expensive purchase a household will make. Being able to capture tax revenues from these significant purchases, not just from City residents but those in the surrounding region, will help defray the costs of other uses demanding City services. Providing opportunities for other automotive-related retail uses and services will also, of course, promote development of revenue-generating land uses.

c. *Goal LU-4: Ensure that future development is mutually beneficial to both the environment and the community.*

Automobile technologies have advanced drastically in the last two decades, and today's cars are greener and more fuel-efficient than ever. Not only will providing new automotive opportunities benefit the community, it will allow automobile manufacturers to offer technological advancements that are essential to combatting climate change and other environmental risks. Additionally, the DA provides for the installation of publicly-accessible electric vehicle charging stations in the Specific Plan Area, is beneficial to both the environment and the community.

c. Conditional Use Permit Findings

i. Consistency with General Plan. The land use is consistent with the general plan and any applicable specific plan.

The proposed land use, allowing an automotive dealership to sell 100 percent electric or non-internal combustion engine vehicles under a CUP in the Specific Plan Area, is consistent with the goals, objectives, and policies of the general plan. Specifically, it advances the following General Plan objectives outlined in its Land Use Element.

d. Goal LU-1: Provide a diverse mix of land uses to meet the future needs of all residents and the business community.

The CUP helps to provide a diverse mix of land uses to meet the future needs of all residents and the business community by expanding the types of uses currently available in the Specific Plan Area. Currently, the surrounding area—and the City more broadly—lacks many essential car services its residents may seek. Significantly, the City has no major car dealerships, and it only has a handful of automotive shops and stores. The CUP would thus diversify the available land uses by creating space for an underrepresented, essential use to residents and the business community. The CUP also opens the Specific Plan Area up to a new class of tenants, which is significant because portions of the commercial centers in the Specific Plan Area currently sit empty.

e. Goal LU-3.1: Promote development of revenue-generating land uses to help defray the costs of other uses demanding City services.

The CUP promotes development of revenue-generating land uses by creating space for, among other uses, automotive sales and leasing. Automobiles are often the most expensive purchase a household will make. Being able to capture tax revenues from these significant purchases, not just from City residents but those in the surrounding region, will help defray the costs of other uses demanding City services. Providing opportunities for other automotive-related retail uses and services will also, of course, promote development of revenue-generating land uses.

f. Goal LU-4: Ensure that future development is mutually beneficial to both the environment and the community.

Automobile technologies have advanced drastically in the last two decades, and today's cars are greener and more fuel-efficient than ever. Not only will providing new automotive opportunities benefit the community, it will allow automobile manufacturers to offer technological advancements that are essential to combatting climate change and other environmental risks.

ii. Consistency with Zoning Code. The land use and associated development conform to the permitted use provisions and development standards of this zoning code and are consistent with this code and any applicable specific plan.

The CUP is compatible with the zoning code. The Specific Plan Area is zoned as part of the Specific Plan. Under the SPA, up to 217,000 square feet of automotive uses are permitted at the

Property so long as electric or non-internal combustion engine vehicles must comprise 100 percent of the total sales revenue. The SPA further allows for (1) sale and delivery of new vehicles and equipment; (2) sale and delivery of used vehicles as an accessory use to the sale and delivery of new vehicles and equipment; (3) vehicle service, repair, and installation as an accessory use to the sale and delivery of new vehicles and equipment; and (4) charging or alternative energy station(s) with incidental service and repair, so long as the applicant obtains a CUP.

Here, the Applicant is applying for a CUP to open an automotive dealership for Tesla to sell 100 percent electric and non-internal combustion engine vehicles, with various accessory uses such as service and repair. This use will occupy a portion of the largest commercial building not to exceed 217,000 square feet. The proposed use is otherwise within an existing, previously-entitled structure, and the applicant seeks no other additional exterior changes apart from the use change. As such, the CUP is consistent with zoning code.

iii. Compliance with CEQA. Processing and approval of the permit application are in compliance with the requirements of the California Environmental Quality Act.

The CUP will comply with all requirements of the California Environmental Quality Act. The Applicant will seek a Class 1 Categorical Exemption or the appropriate CEQA documentation that the City permits.

iv. Surrounding Uses. Approval of the application will not create conditions materially detrimental to the public health, safety and general welfare or injurious to or incompatible with other properties or land uses in the vicinity.

Approval of the CUP will not create conditions materially detrimental to the public health, safety and general welfare or injurious to or incompatible with other properties or land uses in the vicinity.

First, CUP approval will not harm public health and safety because the proposed change of permissible uses conforms with existing uses both in the Specific Plan Area and the broader commercial area along Aliso Creek Road. For instance, retail sales of alternative energy vehicles would have no discernable impact on the public health and safety as the Specific Plan Area already permits several retail uses. (*See* Specific Plan, Table IV-1.) The accessory sale of automotive accessories and parts poses no additional risk to health and safety than the sale of general goods and merchandise. Similarly, uses that might increase noise or odor—as may be a concern with other automotive uses like service and repair—are already permitted or conditionally permitted, including plant nurseries, dance halls, outdoor theaters, drive thrus, animal grooming and veterinary services, printing and publishing.

Further, automotive uses are permitted in the surrounding area, suggesting that a similar use on the adjacent property will not constitute a significant change for the community. For instance, a

Pep Boys tire shop is located in the Town Center, directly across Enterprise from the Specific Plan Area. Beyond that, two car repair shops are located immediately south of the Town Center.

Granting the CUP also makes room for the installation of new green automotive technologies, which broadly improves public health through smog reduction and climate change mitigation.

In addition, the CUP will increase, not diminish, the general welfare. The proposed location is convenient for automotive uses, given the Specific Plan Area's adjacency to CA-73's entrance and exit ramps and between major thoroughfares Aliso Creek Road and Aliso Viejo Parkway. It is also located in the City's center near several retail and commercial areas like the Town Center. Granting the CUP provides a conveniently-located car sales center with publicly-accessible vehicle charging stations in an area in which residents and visitors can accomplish other errands and activities, such as employment, food shopping, clothing retail, and dining.

Further, approval of the CUP will not create conditions that are incompatible with other properties or land uses in the vicinity. Indeed, the proposed use is compatible with its surroundings.

First, the City lacks many essential car services that its residents may seek. Significantly, the City has no major car dealerships. Aliso Viejo residents looking to buy or lease a new or used car inevitably must leave City boundaries to do so. Additionally, the City contains only a handful of automotive shops and stores. Granting the CUP increases the community's general welfare by expanding opportunities for residents, and people in neighboring jurisdictions, to meet their automotive shopping and charging needs within City boundaries. The Specific Plan Area's location near retail would allow the community to accomplish multiple errands in one trip, and to charge their electric vehicles in between.

Further, the land uses on nearby properties would accommodate a new automotive use. South of the Specific Plan Area is the Town Center, a commercial space offering, among other uses, Pep Boys, an automotive parts store. Northeast of the Specific Plan Area is CA-73 and its ramps. Abutting the Specific Plan Area to the Northwest is a zone for professional office. No residential low density zones abut the Specific Plan Area. The Specific Plan Area is also separated from adjacent parcels by large embankments and landscaping on all sides, including dozens of mature trees.

A change in usage to allow certain automotive uses by permit would thus be compatible with the zoning and land use on nearby properties. None of these uses appear particularly sensitive to potential increases in noise and odor that may come from granting a CUP to allow automotive uses given their largely commercial uses.

d. Categorical Exemption Findings (Class 32)

The Applicant requests that the City determine that the Project qualifies for a Class 32 exemption, an exemption which applies to projects characterized as in-fill development. As analyzed below, the Project qualifies for a Class 32 exemption as it complies with the five criteria enumerated and analyzed below.

i. The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.

The proposed land use for the Project would allow an automotive dealership to sell 100 percent electric or non-internal combustion engine vehicles with a CUP under a new SPA in the Specific Plan Area. This is consistent with the goals, objectives, and policies of the general plan and the applicable zoning designation.

The Project advances the following General Plan objectives outlined in the City's Land Use Element:

g. *Goal LU-1: Provide a diverse mix of land uses to meet the future needs of all residents and the business community.*

The Project helps to provide a diverse mix of land uses to meet the future needs of all residents and the business community by expanding the types of uses currently available in the Specific Plan Area. Currently, the surrounding area—and the City more broadly—lacks many essential car services its residents may seek. Significantly, the City has no major car dealerships, and it only has a handful of automotive shops and stores. The Project would thus diversify the available land uses by creating space for an underrepresented, essential use to residents and the business community. The Project also opens the Specific Plan Area up to a new class of tenants, which is significant because portions of the commercial centers in the Specific Plan Area currently sit empty.

h. *Goal LU-3.1: Promote development of revenue-generating land uses to help defray the costs of other uses demanding City services.*

The Project promotes development of revenue-generating land uses by creating space for, among other uses, automotive sales and leasing. Automobiles are often the most expensive purchase a household will make. Being able to capture tax revenues from these significant purchases, not just from City residents but those in the surrounding region, will help defray the costs of other uses demanding City services. Providing opportunities for other automotive-related retail uses and services will also, of course, promote development of revenue-generating land uses.

i. *Goal LU-4: Ensure that future development is mutually beneficial to both the environment and the community.*

Automobile technologies have advanced drastically in the last two decades, and today's cars are greener and more fuel-efficient than ever. Not only will providing new automotive opportunities

benefit the community, it will allow automobile manufacturers to offer technological advancements that are essential to combatting climate change and other environmental risks.

j. Zoning

The Project conforms with the zoning code and the Commons Specific Plan. The Specific Plan Area is zoned as part of the Specific Plan. The Project will allow an automotive dealership(s) to sell 100 percent electric or non-internal combustion engine vehicles with a CUP so long as no more than 217,000 square feet is used in this manner. The automotive use is consistent with other retail uses within the Commons Specific Plan. The proposed use is otherwise within an existing, previously-entitled structure, and the applicant seeks no other additional exterior changes apart from the use change. As such, the Project is consistent with zoning code.

ii. The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.

The proposed development occurs within City limits on a project site of no more than five acres substantially surrounded by urban uses. The Project is located in the heart of an urban area, Aliso Viejo. Additionally, it will be located on less than 217,000 square feet, or approximately 4.98 acres. Because the proposed development is surrounded by urban uses within City limits and will involve less than five acres of development, it complies with this requirement.

iii. The project site has no value as habitat for endangered, rare or threatened species.

The Project site has no value as a habitat for endangered, rare or threatened species. It is not a wildland area, and is not inhabited by endangered, rare, or threatened species. Indeed, the Project site is located within an existing commercial shopping center within a developed urban area that lacks habitat that would be suitable for sensitive animal or plant species. The Project site itself is already developed with the structure that would be used for automotive purposes. As such, the Property has no value as a habitat for endangered, rare or threatened species.

iv. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.

Approval of the Project would not result in any significant effects relating to traffic, noise, air quality, or water quality. The Project does not propose any new development, but rather a change in uses to allow for the sales of 100 percent electric or non-internal combustion engine vehicles.

Traffic associated with an automotive use will not have a significantly larger effect than other, existing permitted sales uses. Traffic associated with the Tesla use will be in keeping with typical retail tenants in an existing shopping center. Further, the specific model of the Tesla dealership does not involve having a large number of cars on the property, unlike other automotive dealerships, because Tesla does not keep inventory vehicles ready for sale dwelling on the site premises. The only inventory vehicles stored are for test drives. Finally, the Project would comply with all City requirements for traffic and traffic-related measures.

Similarly, the Project will not result in any significant effects related to noise as all sales and service uses will be conducted within the existing enclosed structure. Similarly, hours of operations will be in keeping with the surrounding retail uses at the Property. Therefore, no noise impacts are anticipated.

As for air and water quality, all automotive sales will be for electric or non-internal combustion vehicles, which will have no impact on air or water quality, particularly when compared with traditional combustion vehicles. Further, any operational emissions derived from the Project would be minimal due to its small size and scope, which largely involves converting existing retail space to accommodate a new use. For these reasons, approval of the Project will not result in any significant effects related to traffic, noise, air quality, or water quality.

v. The site can be adequately served by all required utilities and public services.

The Project can be accommodated by the existing utilities infrastructure and by existing public services. The Project Site area is fully developed and existing adjacent businesses are currently served by water, sewer, electric and gas utilities. The area surrounding the Project is developed with a mix of commercial buildings, thereby making the Project Site contiguous with and in close proximity to existing developed areas that are served by utilities and public services.

Therefore, the Project meets the qualifications of the Class 32 Exemption.

e. No Exception Applies to Overcome the Project's Eligibility for the Class 32 Categorical Exemption

CEQA Guidelines Section 15300.2 lists exceptions which render a project ineligible for a categorical exemption that would otherwise apply, and none of the exceptions apply to the Project for the reasons below.

i. Location.

This exception applies to Categorical Exemption Classes 3, 4, 5, 6, and 11. The Project is exempt under Class 32 and therefore the location exception does not apply.

ii. Cumulative Impact.

A categorical exemption shall not be used if the cumulative impact of successive projects of the same type in the same place, over time, is significant. There is no evidence that the Project would create a cumulative impact. There are no known projects proposing similar uses in the immediate Project vicinity. Moreover, any successive Project would be required to conduct its own project-level CEQA compliance. Therefore, it is not anticipated that any successive projects of the same type in the immediate vicinity would create cumulative impacts.

iii. Significant Effect/Unusual Circumstances.

A categorical exemption shall not be used if there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. An unusual

circumstance may result if a project "has some feature that distinguishes it from others in the exempt class." No unusual circumstances exist in this case. The Project area is located in an existing commercial shopping center, and only involves a change of use. Nothing about the Property would differentiate it from other Class 32 infill developments that would create a significant impact. Therefore, no fair argument or substantial evidence that the Project would create a significant impact exists.

iv. Scenic Highways.

A categorical exemption shall not be used for a project which may result in damage to scenic resources within a highway officially designated as a state scenic highway. There is no evidence that the Project may result in damage to scenic resources within a highway officially designated as a State scenic highway. The Project Site is not designated as being on a scenic highway, nor are there any designated scenic highways located near the Project Site.

v. Hazardous Waste Sites.

A categorical exemption shall not be used for a project located on a site which is included on a designated list of hazardous waste sites. According to Envirostor, the State of California's database of hazardous waste sites, neither the Project Site, nor any site in the vicinity, is identified as a hazardous waste site.

vi. Historic Resources.

A categorical exemption may not be used for a project which may cause a substantial adverse change in the significance of a historical resource. The Project Site has not been identified as a historic resource by local or state agencies, and the Project Site has not been determined to be eligible for listing in the National Register of Historic Places or California Register of Historical Resources. As such, the Project would not adversely affect historic resources on the Project Site or in the vicinity.

Therefore, none of the exceptions to a Class 32 categorical exemption apply to the Project.

August 29, 2022

Tesla Center Narrative: 26501 Aliso Creek Rd, Aliso Viejo, CA

Description of the Tesla Concept:
Tesla's mission statement is to accelerate the world's transition to sustainable energy. We strive to achieve an uncompromising approach to vehicle sales and service. We are quickly expanding our customer base in the state of California and expect this new center in Aliso Viejo to be vital to our presence in Orange County. Our goal is to increase Tesla ownership in the surrounding area, provide customers convenient and reliable access to our brand services and contribute to the city's high standards for quality lifestyle.

On our Sales and Delivery Model:
The sales area of this center will function primarily to showcase the Tesla Vehicle, display sample finishes and trims and provide an interactive learning environment where potential customers can learn more about Tesla vehicles, Tesla energy products, and provide customers an opportunity to design and customize their own Tesla vehicle. This experience for the customer will be much like traditional auto sales where staff will answer questions and ultimately help the customer place an order. Once ordered a Tesla vehicle is custom produced offsite in Fremont, California where it will eventually be delivered to this center in Aliso Viejo, CA for customer pick up. The delivery of the vehicle is coordinated with the buyer. An appointment is made so that the buyer will arrive on site to receive their vehicle as it is delivered from Fremont or a nearby logistics hub. This is one of the biggest differences with our operations - Tesla does not keep inventory vehicles ready for sale dwelling on the site premises. Each customer picks-up a pre-ordered custom-built Tesla, and the only inventory vehicles stored are for test drives.

The delivery area of the center functions as follows We will receive truck transporters to the center with new vehicles from our factory daily. Each transporter will hold 8-10 vehicles and most likely be dropped after hours in the back area of the building. Delivery volume will vary throughout the quarter. Customers arrive by appointment to receive their vehicle. They are greeted by a receptionist at the door who introduces them to a delivery specialist. The specialist will lead them to a document signing area to finalize their paperwork. This is where the final point of sale is made. Before this point the customer has only paid a deposit. After payment and document signings, they are then led to a delivery bay where they will receive a brief overview of the vehicle prior to taking possession. For customers that prefer a more touchless experience, we can offer the vehicle orientation virtually as well.

On Tesla Vehicles
Our vehicles are unlike traditional automobiles in several ways:

1. Tesla only builds electric vehicles, which inherently require very little service
2. There are no oil changes or tune ups, and no exhaust system work is required
3. Since there are few moving parts, traditional items such as hoses, belts or clutches do not need to be replaced
4. Zero tailpipe emissions means no smog checks
5. Regenerative braking means that you could go over 100k miles before replacing brake pads.
6. Our vehicles can be connected to the Internet, so technicians can remotely download vehicle logs to provide quick and accurate solutions for arising problems and upload the latest software to ensure that vehicles are equipped with the "latest and greatest"
6. We own and operate all Tesla service centers, which allows technicians to work closely with the research and development teams in Silicon Valley.

Tesla produces electric vehicles that solely use electric and no gasoline; it is not a hybrid vehicle. Our vehicles don't have internal combustion engines (ICE); thus, the vehicle doesn't have a fuel tank, use oil, an exhaust system, transmission, or many of the other components that require the storage and use of hazardous materials on site or traditional vehicle ventilation. Our vehicles are extremely environmentally friendly. Our batteries are completely enclosed and don't give off any chemical vapors. When replaced, there are four points

to uncouple the battery from the car and then it is sent to one of our Remanufacturing locations for refurbishment.

On our Service operations:
For this center in Aliso Viejo, Tesla will have a count of roughly 75 employees, with 50 employees on-site at any given time. Service working hours will be 7:00 am to 11:00 pm Monday through Sunday. Customer service hours 7am to 7pm Monday through Sunday for service appts. Sales hours will be 10:00am to 7:00 pm, Monday through Sunday. Between Sales, Service & Delivery, we expect about 40-50 customers per day at this center. Of the 225 parking spaces they will be utilized for customer parking, employee parking and sales and delivery customers. About 75 of the parking spaces allotted to employee parking, 125 for service and new delivery vehicles and 25 for sales customers.

Service is responsible for receiving and preparing new vehicles for delivery and supporting sales to bring the best possible experience. Having a service presence at a Tesla Center gives customers pace of mind for addressing any concerns of their vehicle. A typically customer journey for service repairs will be as follows: Customers will arrive at the Aliso Viejo Tesla center with their repair work detailed previously through a phone conversation or the Tesla mobile app. Customers will be able to do a touchless drop off or will drive through the front roll-up door labeled "SERVICE" and be greeted by a Service Advisor inside the building. Depending on the category of repair, the customer will either be brought into our customer lounge to wait their repair or be given alternate transportation to use while their vehicle is in for repair. We will keep a loaner fleet (all Tesla vehicles) of about 10-20 cars for customer use. After the service advisor intakes the customer, the vehicle will be moved to a repair bay for the work to be performed. Generally, the site will have between 50-60 customer vehicles on-site. Doors will remain unlocked during operating hours and they are designed to automatically shut off once car enters or exits the building and will remain operational during business hours. Service repairs are completed in the shop which is not a customer facing area. The operation is not a noise concern, and you will not hear machinery outside of the building, The occasional honking of a horn is the loudest noise created in the service shop.

Most Tesla repairs are handled in under an hour. In this case, customers may make use of the customer lounge while their vehicle is repaired. Water and coffee are provided for customers who chose to wait in the lounge. In the case where vehicle repairs will take several hours, customers have the option of waiting at the center, receiving Uber credits, or taking a vehicle from our loaner fleet while they await their repair.

Prevention protocols consistent with Tesla Environmental Health & Safety operational guidelines will be used to manage hazardous waste streams, noise, and odor generated by operations. Hazardous waste such as solvents, metal shavings, contaminated solids, oil absorbents, coolant and lubricating oils will be managed to minimize adverse effects on the environment and be in compliance with the Federal Resource Conservation and Recover act (RCARA) and California State hazardous waste requirements. Moving Tesla vehicles within an interior space is environmentally safe, as the vehicles have no exhaust. We anticipate trash and waste collection will happen 4-5 times per week, depending on the volume of repairs. We will also receive vehicles towed in 4-5 times a day by tow truck as well as supply trucks once a day.

All Tesla Centers are arranged and spaced according to CDC guidelines and local mandates.

Should you have any questions at all, please do not hesitate to contact us.

Thank you,

Stephen Li | Senior Design Manager | stli@tesla.com

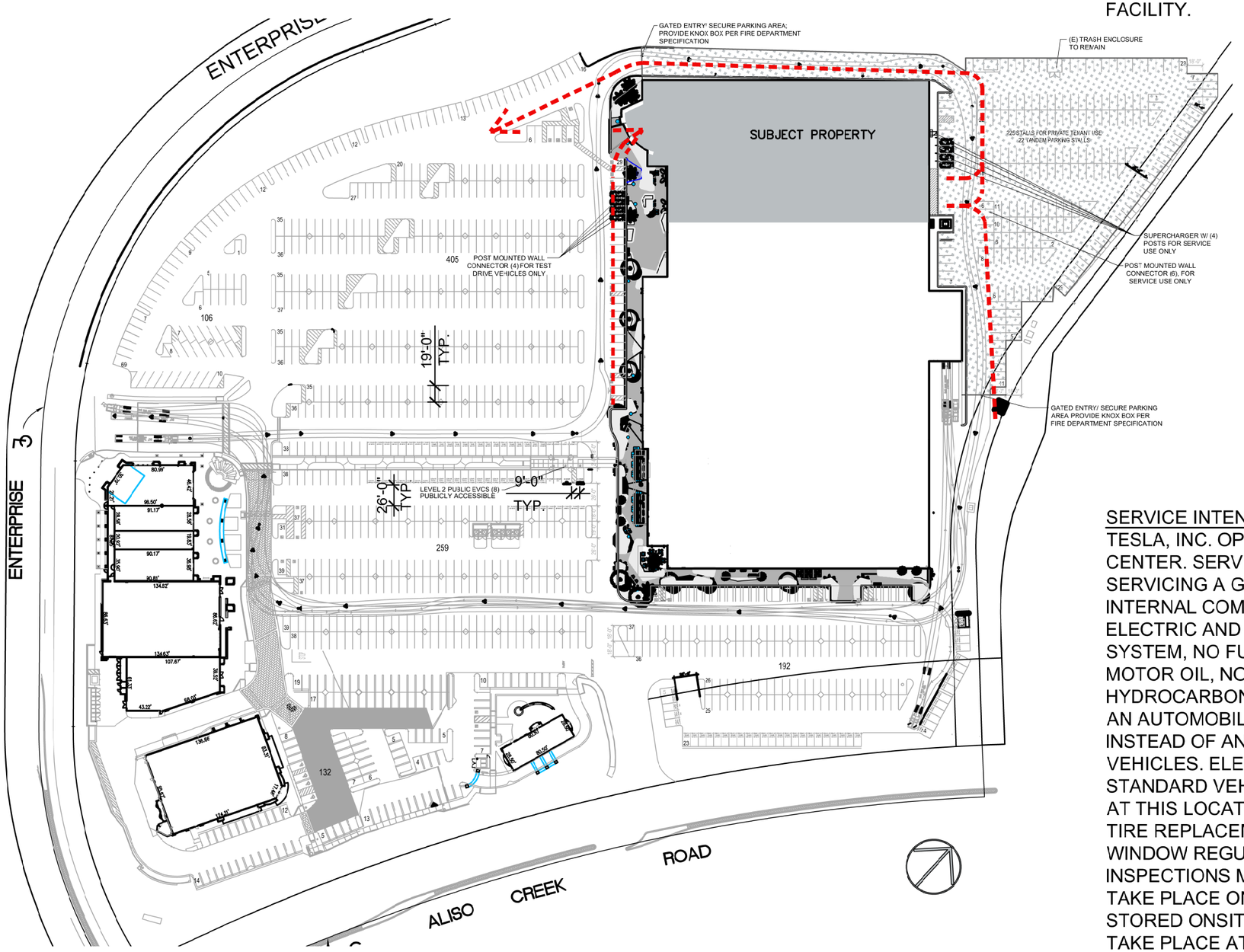
Kristina Holt | Regional Manager | kholt@tesla.com

ALISO VIEJO – TESLA CENTER – WARM CLIMATE

SITE PLAN

TRT ID – 17573

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SCOPE OF WORK DESCRIPTION:

TESLA MOTORS INC. IS PROPOSING TENANT IMPROVEMENT AND USE OF EXISTING 53,660 SF BUILDING AS AN AUTO SALES, SERVICE AND DELIVERY FACILITY.

PROJECT SUMMARY

	EXISTING	NEW
BUILDING AREA	234,044 SF	236,631 SF
FORMER LOWE'S	186,678 SF	186,357 SF
APPROVED AREA W/O LOADING		183,245 SF
LOADING AREA		3,112 SF
(CANCEL DEMOLITION FROM PREVIOUS APPROVED PLAN)		
PERIMETER BUILDINGS	47,366 SF	47,366 SF
NEW TENANT DINING AREAS	-	2,908 SF

PARKING PROVIDED (EXCLUDING TESLA TEST DRIVE & TESLA LOT)			1,090 STALLS
TESLA TEST DRIVE			4 STALLS
TESLA LOT			225 STALLS
PARKING REQUIREMENT	236,631 SF	@1/220	1,076 STALLS
ACCESSIBLE PARKING REQUIREMENT (PER TABLE 11B-208.2)			24 STALLS
ACCESSIBLE PARKING PROVIDED			30 STALLS
		EXISTING	12 STALLS
		NEW	18 STALLS
ACCESSIBLE VAN PARKING REQUIREMENT			5 STALLS
ACCESSIBLE VAN PARKING PROVIDED			8 STALLS
		EXISTING	4 STALLS
		NEW	4 STALLS

SERVICE INTENT/DESCRIPTION:

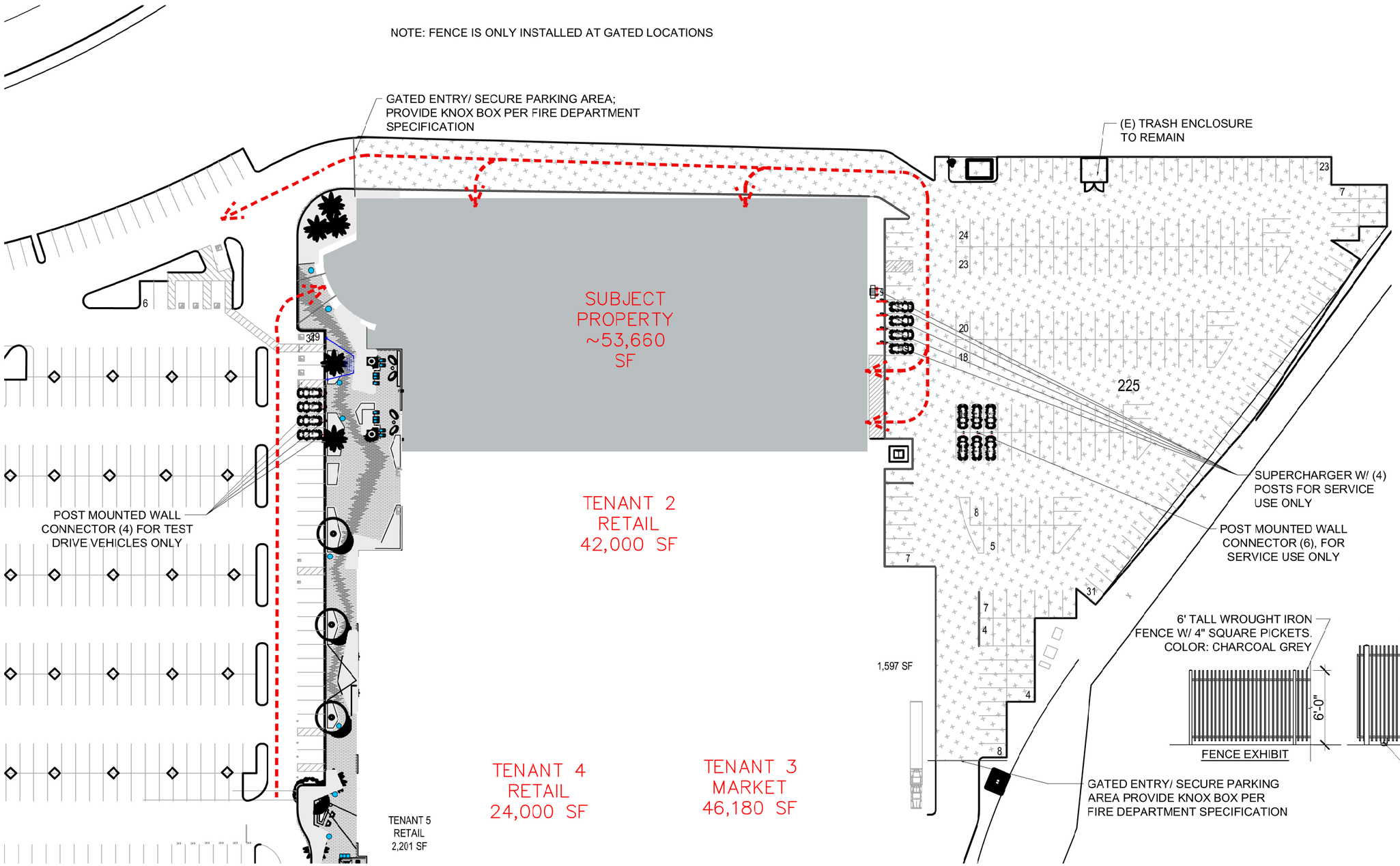
TESLA, INC. OPERATES AN ELECTRIC AUTOMOBILE REPAIR / SERVICE CENTER. SERVICING AN ELECTRIC AUTOMOBILE IS DIFFERENT FROM SERVICING A GAS-POWERED CAR. TESLA'S VEHICLES HAVE NO INTERNAL COMBUSTION ENGINE. THIS VEHICLE IS EXCLUSIVELY ELECTRIC AND IS NOT HYBRID. ACCORDINGLY, THERE IS NO EXHAUST SYSTEM, NO FUEL TANKS, NO LIQUID FUEL USAGE, NO NEW OR USED MOTOR OIL, NO NOISE FROM THE VEHICLE, AND NO EMISSIONS LIKE HYDROCARBON AND CARBON MONOXIDE THAT ARE EMITTED FROM AN AUTOMOBILE POWERED BY AN INTERNAL COMBUSTION ENGINE. INSTEAD OF AN ENGINE, AN ELECTRIC MOTOR POWERS TESLA'S VEHICLES. ELECTRIC MOTORS REQUIRE LITTLE TO NO MAINTENANCE. STANDARD VEHICLE SALES, SERVICE AND DELIVERY WILL BE PERFORMED AT THIS LOCATION. SERVICE INCLUDES SOFTWARE UPDATES, TIRE REPLACEMENT, TIRE BALANCING, REPLACEMENT PARTS SUCH AS WINDOW REGULATORS, DOOR HANDLES AND BUMPERS. BATTERY INSPECTIONS MAY OCCUR, HOWEVER BATTERY REPLACEMENT WILL ONLY TAKE PLACE ON AN "AS NEEDED" BASIS AND BATTERIES WILL NOT BE STORED ONSITE FOR MORE THAN 24 HOURS. NO AUTOBODY PAINT WILL TAKE PLACE AT THIS LOCATION.

ALISO VIEJO – TESLA CENTER – WARM CLIMATE

SITE PLAN
TRT ID – 17573

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NOTE: FENCE IS ONLY INSTALLED AT GATED LOCATIONS



TESLA

SEPT 7, 2022

TRAFFIC FLOW

SECURED PARKING AREA (FENCED)

NA I 26501 ALISO CREEK ROAD, ALISO VIEJO, CA I US

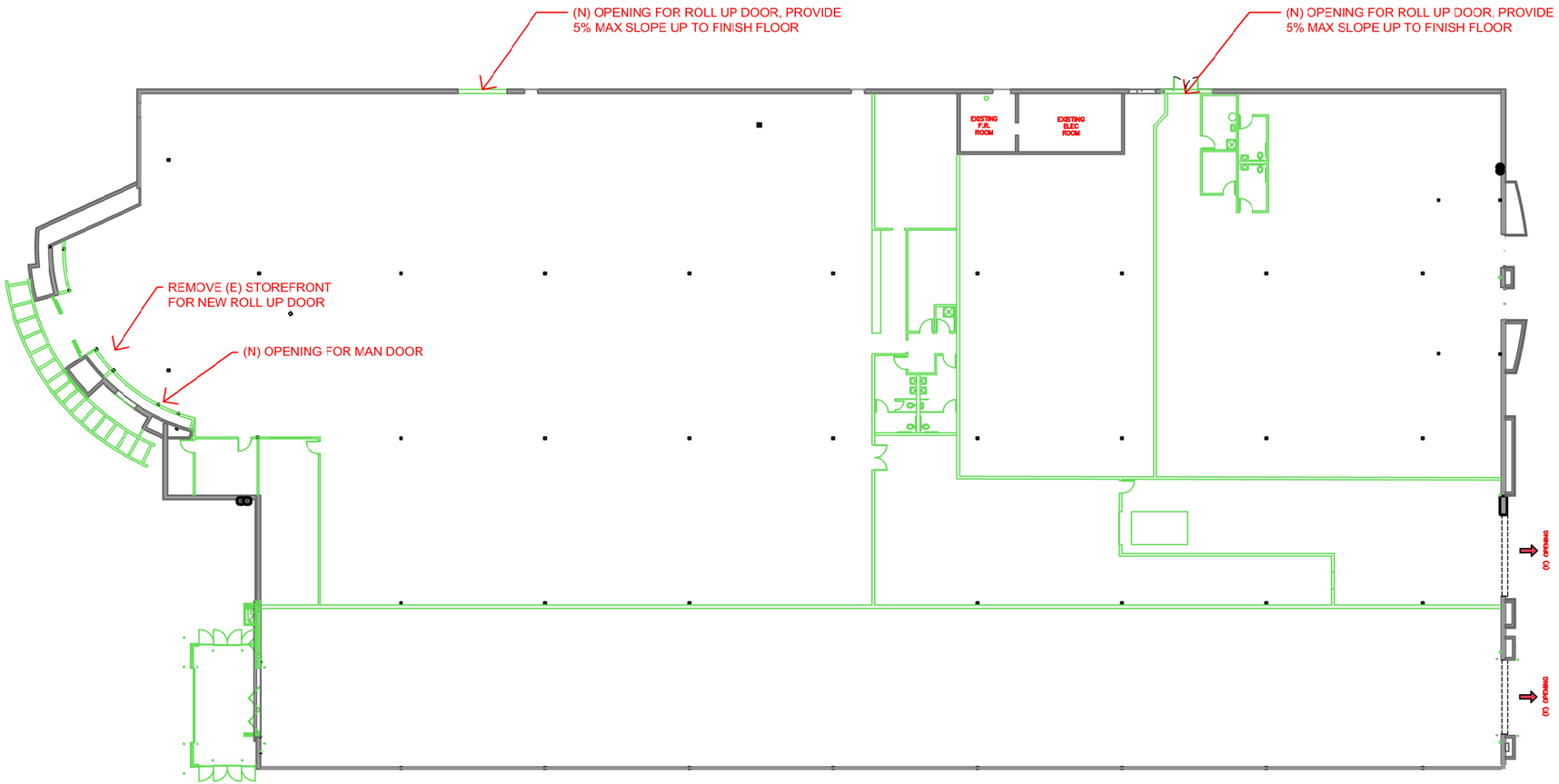
*PLEASE NOTE: ANY SUBSEQUENT REVISION TO AN APPROVED CONCEPT WILL CAUSE DELAY AND IMPACT COST

CPT-2

ALISO VIEJO – TESLA CENTER – WARM CLIMATE

EXISTING FLOOR PLAN
TRT ID – 17573

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SCALE: 1/32" = 1'–0"

TESLA SEPT 7, 2022

EXISTING WALL
DEMO
STRUCTURAL/LOAD BEARING

NA I 26501 ALISO CREEK ROAD, ALISO VIEJO, CA I US

*PLEASE NOTE: ANY SUBSEQUENT REVISION TO AN APPROVED CONCEPT WILL CAUSE DELAY AND IMPACT COST

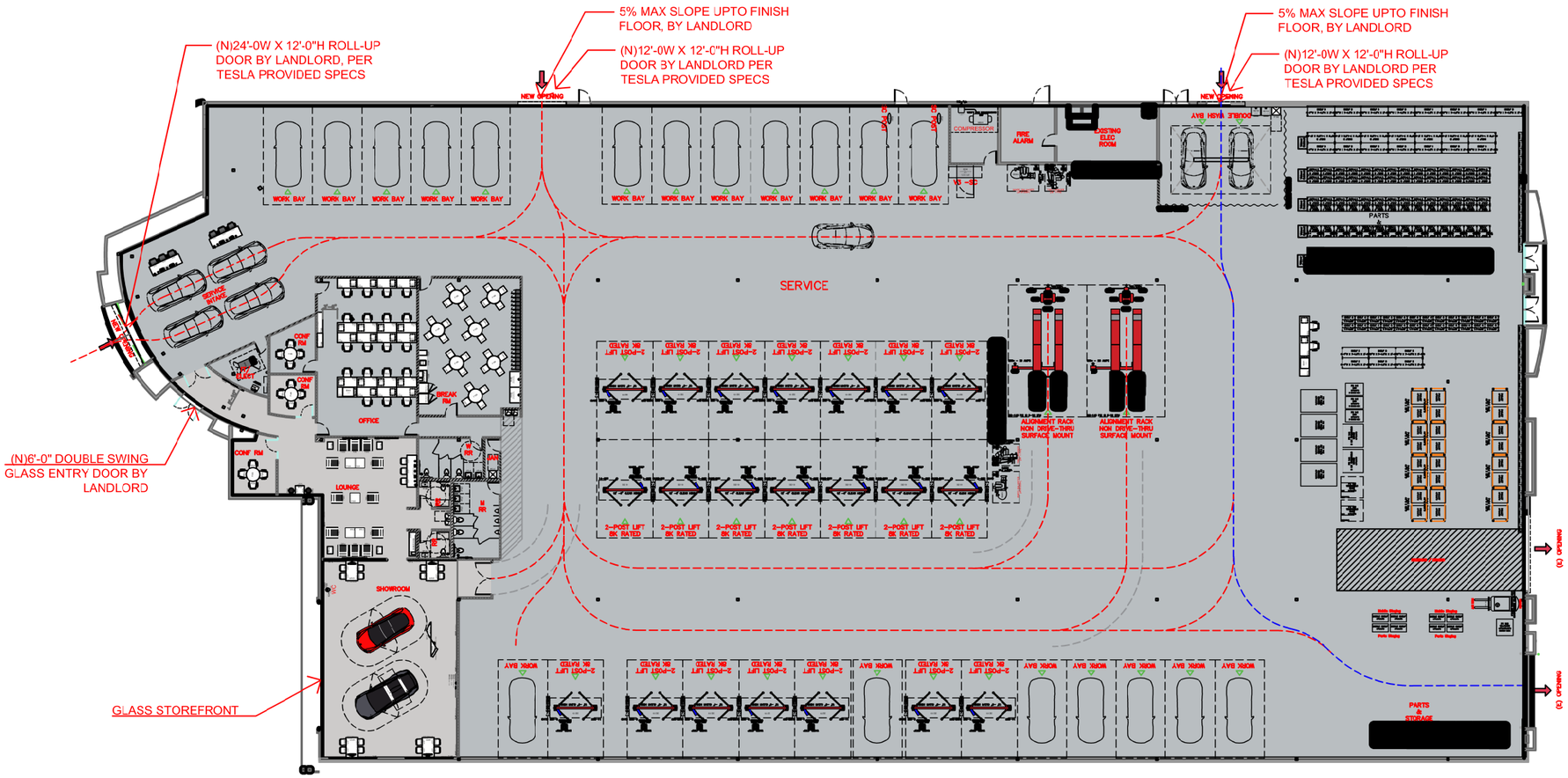
CPT-3

ALISO VIEJO – TESLA CENTER – WARM CLIMATE

CONCEPT FLOOR PLAN
TRT ID – 17573

PARKING SPACES: 225

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PROJECT SPECIFIC NOTES:

1. CONDITIONAL USE PERMIT REQUIRED
2. LL IS RENOVATING THE ENTIRE MALL COMPLEX TO PROVIDE NEW EXTERIOR FACELIFT AND SITE WORK; COORDINATION WITH LL SITE WORK IS CRITICAL
3. NEW EXTERIOR FINISHED DOORS AND STOREFRONT AS AND WHERE NOTED ON PLAN, BY LANDLORD

WORKBAY COUNT

2–POST LIFTS		21
FUTURE 2–POST LIFTS		0
SCISSOR LIFTS		0
OPEN BAYS (SERVICE)		19
	SUBTOTAL	40
PDI BAYS (SALES)		0
	TOTAL	40

AREA BREAKDOWN (SF):

GROSS TOTAL:	53,660	SF	–	%
FIRST FLOOR:	53,660	SF	–	%
NET TOTAL:	53,660	SF	100	%
SERVICE SHOP:	37,698	SF	70	%
PARTS AND STORAGE:	9,357	SF	2511	%
LOUNGE:	1,590	SF	427	%
BOH:	2,710	SF	727	%
SHOWROOM:	1,750	SF	470	%
DELIVERY:	0	SF	0	%
UNBUILT/OTHER:	554	SF	149	%

TESLA

SEPT 7, 2022

EXISTING WALL
NEW WALL
SERVICE CIRCULATION
DELIVERY CIRCULATION

NA I 26501 ALISO CREEK ROAD, ALISO VIEJO, CA I US

*PLEASE NOTE: ANY SUBSEQUENT REVISION TO AN APPROVED CONCEPT WILL CAUSE DELAY AND IMPACT COST

CPT-4

ALISO VIEJO – TESLA CENTER – WARM CLIMATE

ELEVATION
TRT ID – 17573

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SOUTH ELEVATION



ENTRANCE ELEVATION SCALE : 1/8" = 1'-0"

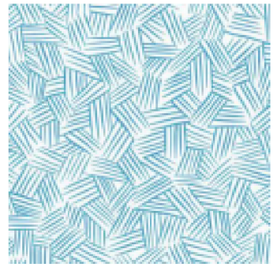


PT-01
STUCCO
SW 7072
ONLINE



PT-02
STUCCO
SW 7075
WEB GRAY

PT-03
STUCCO
SW 7005
PURE WHITE



PT-06
OPPORTUNITY ACCENT
WALL TO BE REVIEWED
W/S IGN CRITERIA PACKAGE
W/ PLANNING STAFF TO
FINALIZE.



MT-03
METAL SALES
RIBBED METAL PANEL
"CHARCOAL"

ALISO VIEJO – TESLA CENTER – WARM CLIMATE

ELEVATION
TRT ID – 17573

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WEST ELEVATION

ALISO VIEJO – TESLA CENTER – WARM CLIMATE

SITE PHOTOS
TRT ID – 17573

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ACCESSIBLE PARKING NEAR MAIN ENTRY FACADE



MAIN ENTRY AWNING AND STOREFRONT



EXISTING SEATING AND LANDSCAPING AT FRONT FACADE



FUTURE ENTRY FOR SERVICE (NOTE GAS METER ON RIGHT)



REAR PARKING



SIDE ACCESS FACADE



FACADE AT REAR PARKING



EXISTING ROLL UP DOORS AT REAR PARKING LOT

ALISO VIEJO – TESLA CENTER – WARM CLIMATE

SITE PHOTOS
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ROOF STRUCTURE AT MICHAELS


LOWES SPACE


MICHAELS SPACE


FACP


SWITCHGEAR AT ELEC ROOM


RWL RISERS AT UTIL ROOM


ROOF STRUCTURE AT TUESDAY MORNINGS


INTERIOR OF FAUX ROOF STRUCTURE


ROOF HATCH


MICHAELS ENTRY


RESTRMS (MICHAELS)


JANITOR'S CLOSET (TUES MORN)


TUESDAY MORNINGS

Memorandum

Date: November 7, 2022

To: So Kim, Director of Community Development, City of Aliso Viejo

From: Stephen Manganiello T.E., Senior Principal Manager, STC Traffic, Inc.
Philip Wragg, AICP, Project Planner, STC Traffic, Inc.

Project: Tesla, 26501 Aliso Creek Road, Aliso Viejo, California

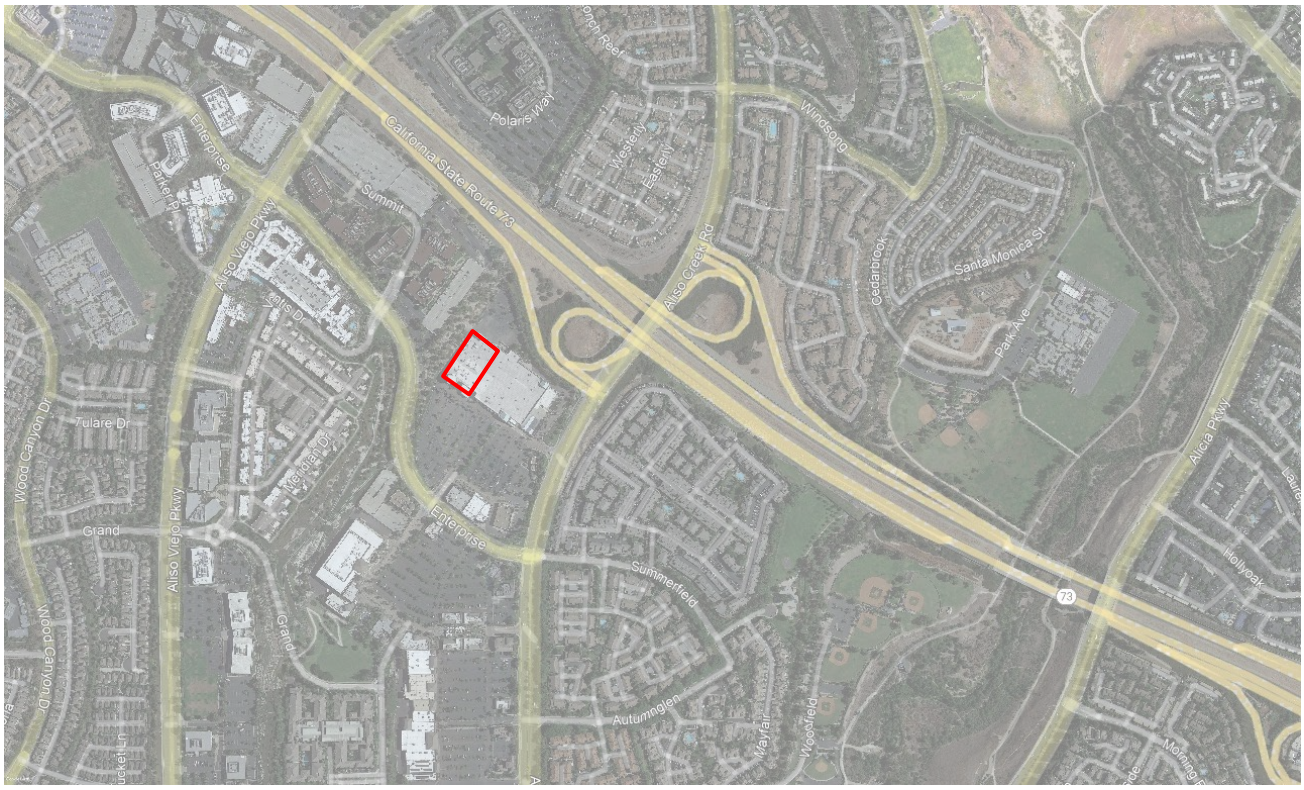
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STC Traffic Inc. (STC) has reviewed Tesla's proposed 53,660 SF project located at 26501 Aliso Creek Road, Aliso Viejo, California. This memo summarizes our assessment of whether the project screens out from needing to perform a Vehicle Miles Traveled (VMT) Analysis and Level of Service (LOS) analysis based on the City of Aliso Viejo Transportation Impact Guidelines for CEQA and General Plan Consistency (May 2020).

Project Description

The proposed project is to provide a Tesla showroom and repair facility at 26501 Aliso Creek Road. The proposed facility will replace 53,660 SF of entitled retail land uses most recently used as a Michaels arts and craft store (25,000 SF), a Tuesday Morning discount store (8,000 SF), part of the former Lowes home improvement store (16,660 SF) and a vacant retail unit (4,000 SF). The site location is shown in **Figure 1**.

Figure 1 Location Map



The proposed facility will occupy a northern section of the building which includes part of the former Lowes store. A 112,180 SF southern section of the building will remain as retail land uses per the existing entitlement. There will be no extension to the building. **Attachment A** and **Attachment B** show the existing and proposed site plans respectively.

Trip Generation

STC has completed a trip generation analysis to compare the existing entitled land uses to the proposed project using the Institute of Transportation Engineers (ITE) Trip Generation Manual 11th Edition. ITE land use 821 Shopping Plaza (40-150k) was determined to be the most appropriate category for the existing entitled land use. The ITE description for a Shopping Plaza states that many survey sites are anchored by home improvement stores, which is consistent with the former Lowes store. Trip generation for the existing entitled land use is shown below in **Table 1.**

Table 1 Existing Entitled Land Use Trip Generation

Description	Quantity	Daily	AM Peak Hour			PM Peak Hour		
			Total	In	Out	Total	In	Out
ITE LU 821 Shopping Plaza								
Trip Rate (per 1,000 SF of Gross Leasable Area)		67.52	1.73	62%	38%	5.19	49%	51%
1,000 SF of Gross Leasable Area	53.66							
Existing Entitled Trips		3,623	93	58	35	278	136	142

Table 1 shows that the existing entitled land uses generate 3,623 daily trips, 93 AM peak hour trips and 278 PM peak hour trips.

Table 2 below shows the proposed project trip generation and the net trip generation (proposed land use trip generation – existing entitled land use trip generation). ITE land use 840 Auto Sales (New) was determined to be the most appropriate category for the proposed project. According to the ITE land use description this category includes both auto sales and service. As previously stated, the proposed project will occupy the existing 53,660 square feet of building.

Table 2 Project and Net Trip Generation

Description	Quantity	Daily	AM Peak Hour			PM Peak Hour		
			Total	In	Out	Total	In	Out
ITE LU 840 Auto Sales (New)								
Trip Rate (per 1,000 SF of Gross Floor Area)		27.84	1.86	73%	27%	2.42	40%	60%
1,000 SF of Gross Floor Area	53.66							
Project Trips		1,494	100	73	27	130	52	78
Existing Entitled Trips		-3,623	-93	-58	-35	-278	-136	-142
Net Trip Generation		**-2,129**	**7**	**15**	**-8**	**-148**	**-84**	**-64**

Table 2 shows that the project will result in a decrease of 2,129 daily trips, an increase of 7 AM peak hour trips and a decrease of 148 PM peak hour trips. The ITE Trip Generation Manual descriptions for the entitled and proposed land uses are provided in **Attachment C**.

VMT Analysis

Following the implementation of Senate Bill 743 (SB 743), the Office of Planning and Research (OPR) recommends the use of VMT as the preferred CEQA transportation metric. Consistent with OPR guidelines, the City of Aliso Viejo Transportation Impact Guidelines for CEQA and General Plan Consistency state that projects which generate less than 110 daily vehicle trips can be presumed to have a less than significant impact. As summarized in Table 2 the project will generate significantly less daily trips when compared to the existing entitled land uses. Therefore, the project can be presumed to have a less than significant impact on VMT and no further VMT analysis is required.

Level of Service Analysis

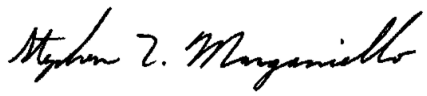
The City's Guidelines state that a traffic impact analysis which includes LOS analysis shall be required for a project that meets any of the following criteria:

- When either the AM or PM peak hour trip generation is expected to exceed 100 vehicle trips from the proposed development.
- Projects on the Arterial Highway System which generate 1,600 Average Daily Trips (ADT).
- Projects that will add 51 or more trips during either the AM or PM peak hours to any intersection.
- Any project where variations from the standards and guidelines provided in this manual are being proposed.

As summarized in Table 2 the net trip generation falls well below all of the daily and peak hour trip thresholds. It is our understanding that the project does not propose any variation from the standards and guidelines. Therefore, an LOS analysis is not required.

Please feel free to contact either myself or Phil Wragg (philip.wragg@stctraffic.com) with any questions or comments regarding this memo.

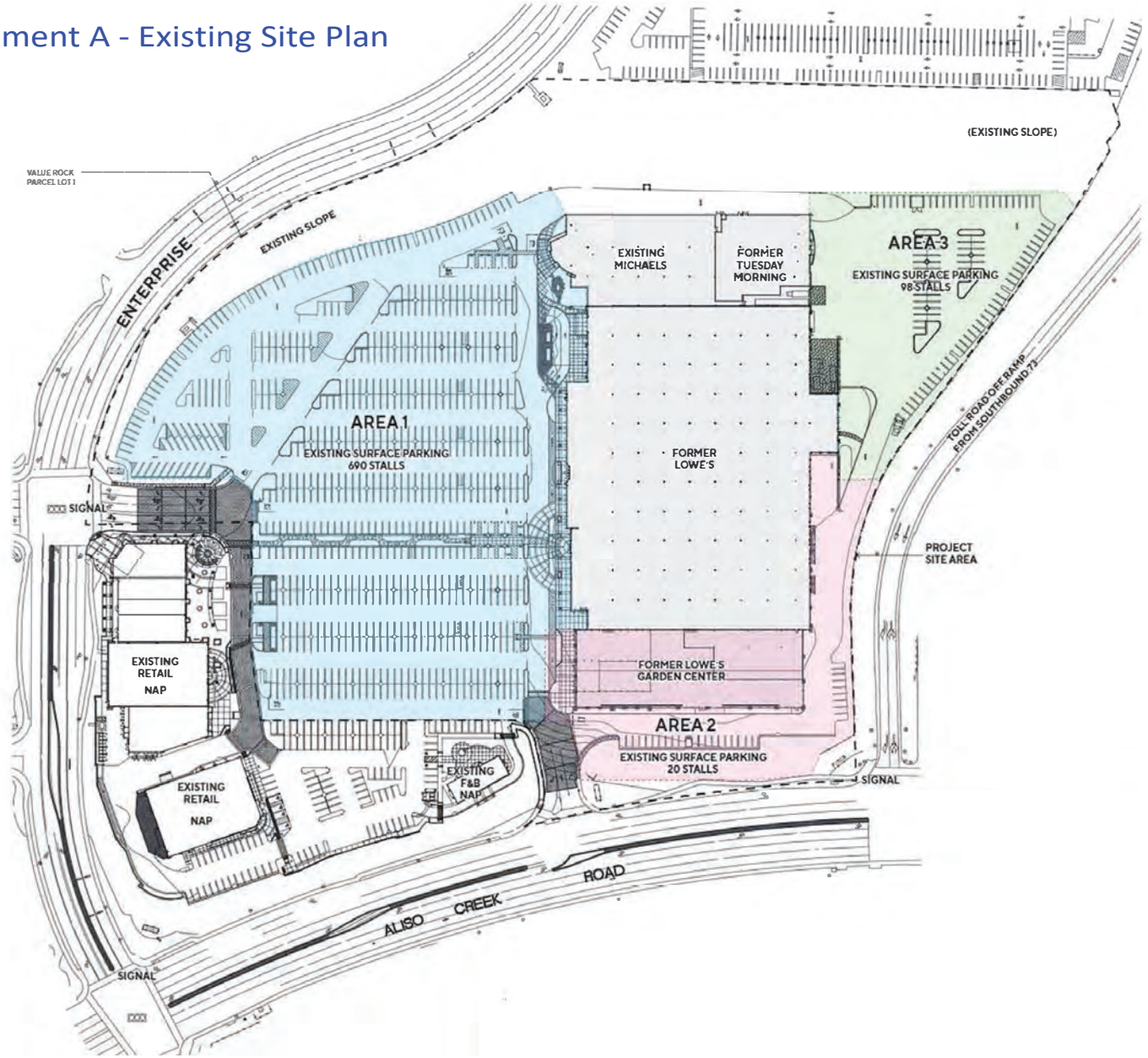
Sincerely,



Stephen Manganiello, T.E. #2973
Principal, STC Traffic
Stephen.Manganiello@stctraffic.com

Attachment A: Existing Site Plan
Attachment B: Proposed Site Plan
Attachment C: ITE Trip Generation Manual Land Use Descriptions

Attachment A - Existing Site Plan



BUILDING AREA	234,044 SF
LOWE'S BUILDING:	186,678 SF
PERIMETER BUILDINGS:	47,366 SF
PARKING PROVIDED	938 STALLS

AREA 1	STALL RESTRIPING AREA
AREA 2	NEW PARKING LOT & PERIMETER BOUNDARY ALONG ALISO CREEK RD
AREA 3	STALL RESTRIPING AREA
EXISTING BUILDING	

VALUEROCK

THE COMMONS AT ALISO VIEJO

ALISO VIEJO, CA

PROJECT ADDRESS: 26501 ALISO CREEK

EXISTING SITE PLAN

0 70' 140'

Architecture. Design. Relationships.

02

Scale 1" = 70'-0"
Job No. 2020-203
Date 2022-06-12

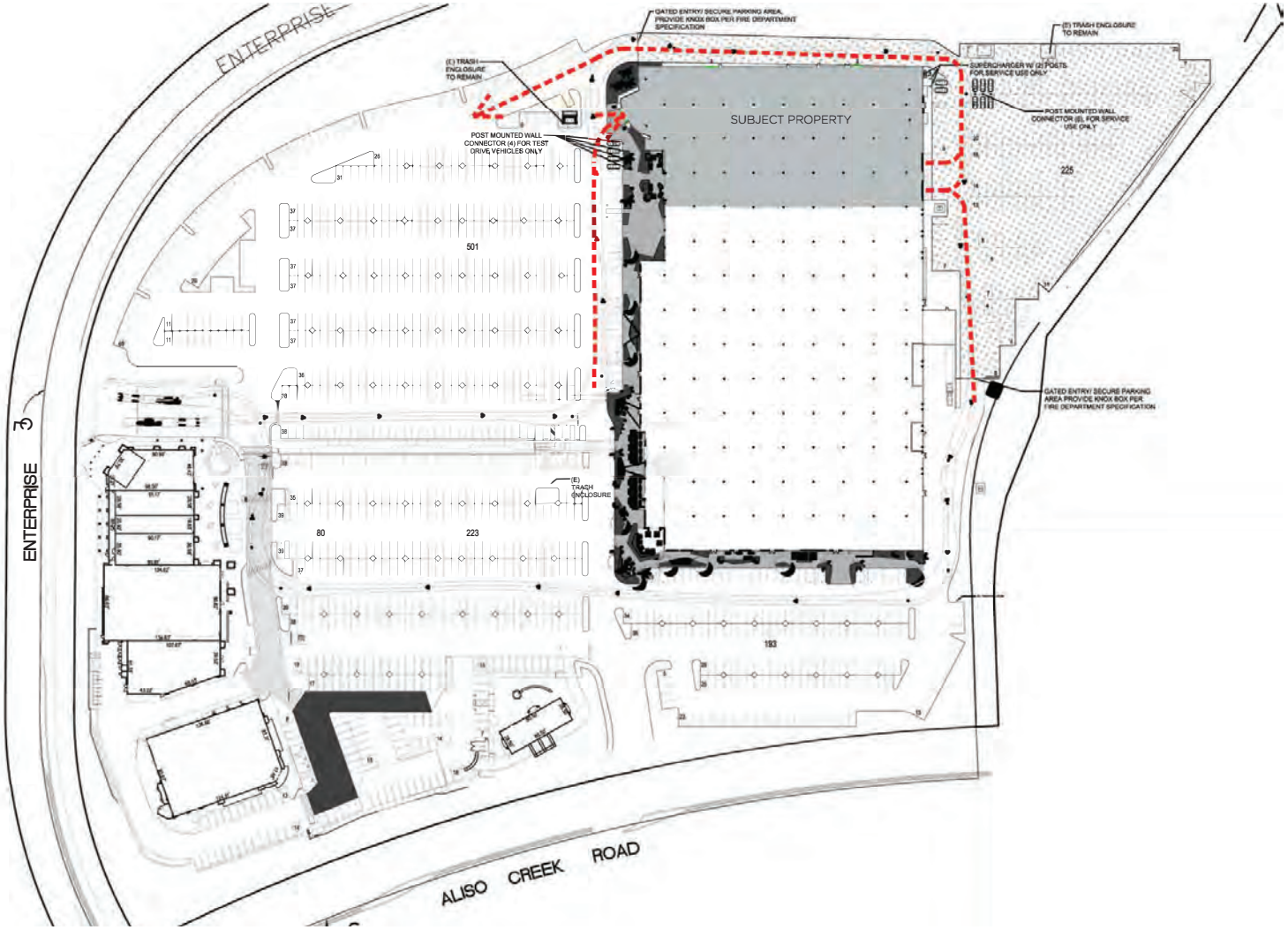
ALISO VIEJO - TESLA CENTER - WARM CLIMATE

SITE PLAN
TRT ID - 17573

PARKING SPACES: 225 SECURED

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Attachment B - Proposed Site Plan



NOT TO SCALE

TESLA SEPT 7, 2022

TRAFFIC FLOW

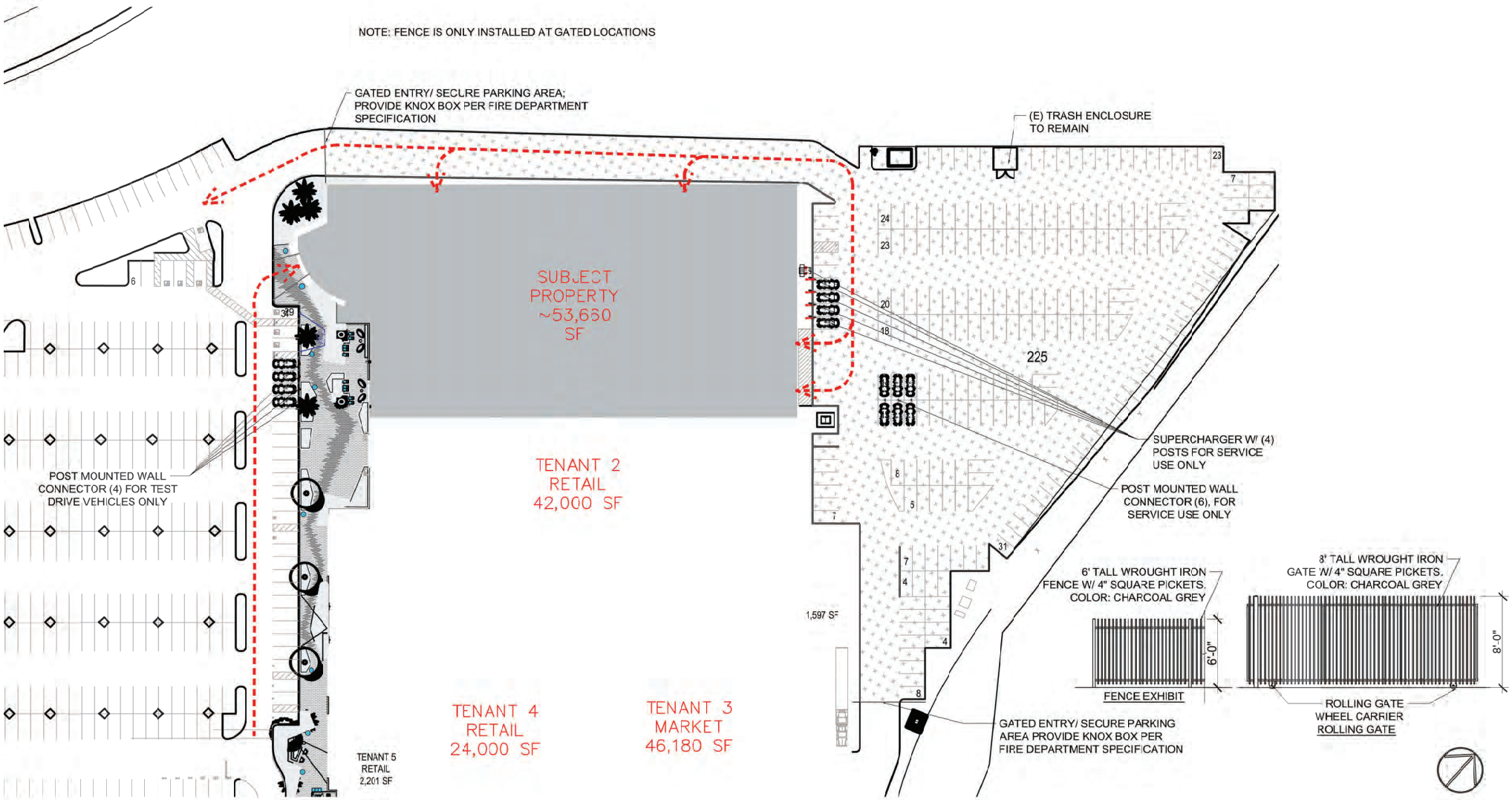
NA I 26502 ALISO CREEK RD, ALISO VIEJO, CA I US

*PLEASE NOTE: ANY SUBSEQUENT REVISION TO AN APPROVED CONCEPT WILL CAUSE DELAY AND IMPACT COST

ALISO VIEJO – TESLA CENTER – WARM CLIMATE

SITE PLAN
TRT ID – 17573

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TESLA

SEPT 7, 2022

TRAFFIC FLOW

SECURED PARKING AREA (FENCED)

NA I 26501 ALISO CREEK ROAD, ALISO VIEJO, CA I US

CPT-2

*PLEASE NOTE: ANY SUBSEQUENT REVISION TO AN APPROVED CONCEPT WILL CAUSE DELAY AND IMPACT COST

Land Use: 821
Shopping Plaza (40-150k)

Description

A shopping plaza is an integrated group of commercial establishments that is planned, developed, owned, and managed as a unit. Each study site in this land use has between 40,000 and 150,000 square feet of gross leasable area (GLA). The term "plaza" in the land use name rather than "center" is simply a means of distinction between the different shopping center size ranges. Various other names are commonly used to categorize a shopping plaza within this size range, depending on its specific size and tenants, such as neighborhood center, community center, and fashion center.

Its major tenant is often a supermarket but many sites are anchored by home improvement, discount, or other stores. A shopping plaza typically contains more than retail merchandising facilities. Office space, a movie theater, restaurants, a post office, banks, a health club, and recreational facilities are common tenants. A shopping plaza is almost always open-air and the GLA is the same as the gross floor area of the building.

The 150,000 square feet GLA threshold value between shopping plaza and shopping center (Land Use 820) is based on an examination of trip generation data. For a shopping plaza that is smaller than the threshold value, the presence or absence of a supermarket within the plaza has a measurable effect on site trip generation. For a shopping center that is larger than the threshold value, the trips generated by its other major tenants mask any effects of the presence or absence of an on-site supermarket.

The 40,000 square feet GFA threshold between shopping plaza and strip retail plaza (Land Use 822) was selected based on an examination of the overall shopping center/plaza database. No shopping plaza with a supermarket as its anchor is smaller than 40,000 square feet GLA.

Shopping center (>150k) (Land Use 820), strip retail plaza (<40k) (Land Use 822), and factory outlet center (Land Use 823) are related uses.

Land Use Subcategory

The presence or absence of a supermarket in a shopping plaza has been determined to have a measurable effect on site trip generation. Therefore, data are presented for two subcategories for this land use: sites with a supermarket anchor and sites without a supermarket.

Additional Data

The technical appendices provide supporting information on time-of-day distributions for this land use. The appendices can be accessed through either the ITETripGen web app or the trip generation resource page on the ITE website (https://www.ite.org/technical-resources/topics/trip-and-parking-generation/).

The sites were surveyed in the 1980s, the 1990s, the 2000s, and the 2010s in Alberta (CAN), British Columbia (CAN), California, Connecticut, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New York, Ontario (CAN), Oregon, Pennsylvania, South Dakota, Texas, Vermont, Virginia, Washington, and Wisconsin.

Source Numbers

105, 110, 156, 159, 186, 198, 204, 211, 213, 239, 259, 260, 295, 301, 304, 305, 307, 317, 319, 358, 376, 390, 400, 404, 437, 444, 446, 507, 580, 598, 658, 728, 908, 926, 944, 946, 960, 973, 974, 1004, 1009, 1025, 1069

Shopping Plaza (40-150k) - Supermarket - No (821)

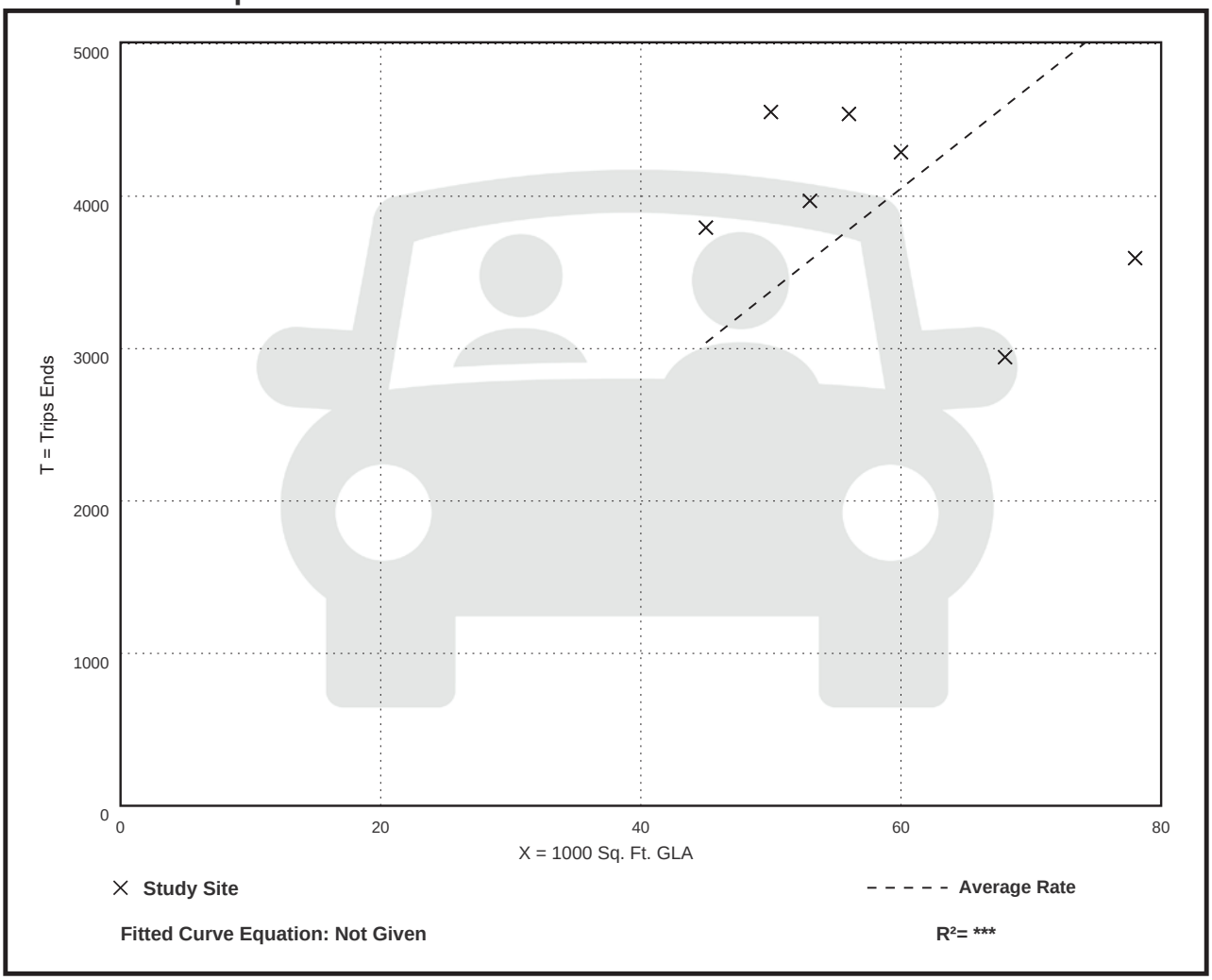
Vehicle Trip Ends vs: 1000 Sq. Ft. GLA
On a: Weekday

Setting/Location: General Urban/Suburban
Number of Studies: 7
Avg. 1000 Sq. Ft. GLA: 59
Directional Distribution: 50% entering, 50% exiting

Vehicle Trip Generation per 1000 Sq. Ft. GLA

Average Rate	Range of Rates	Standard Deviation
67.52	43.29 - 91.06	19.25

Data Plot and Equation



Fitted Curve Equation: Not Given

R^2= *

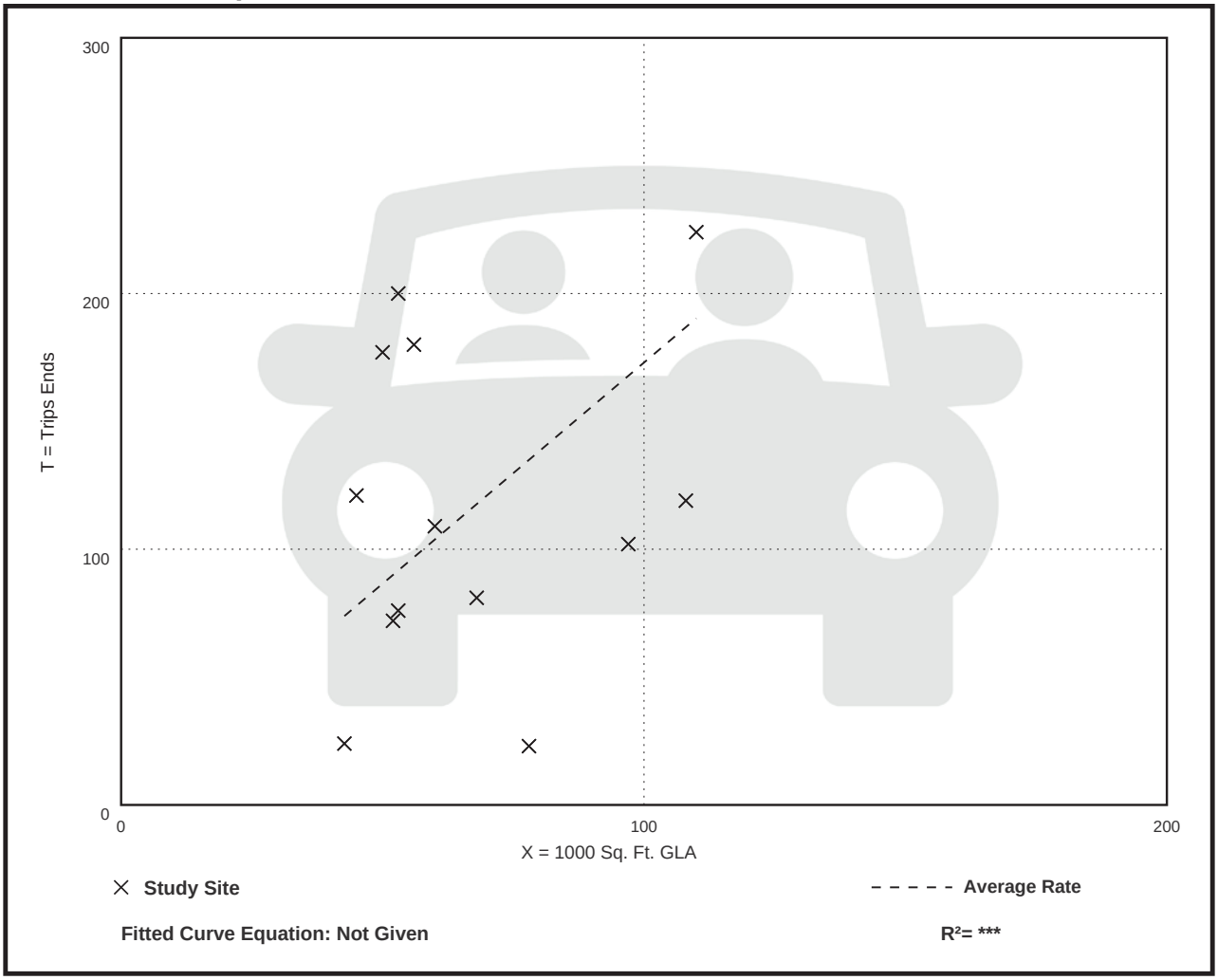
Shopping Plaza (40-150k) - Supermarket - No (821)

Vehicle Trip Ends vs: 1000 Sq. Ft. GLA
On a: Weekday,
Peak Hour of Adjacent Street Traffic,
One Hour Between 7 and 9 a.m.
Setting/Location: General Urban/Suburban
Number of Studies: 13
Avg. 1000 Sq. Ft. GLA: 67
Directional Distribution: 62% entering, 38% exiting

Vehicle Trip Generation per 1000 Sq. Ft. GLA

Average Rate	Range of Rates	Standard Deviation
1.73	0.29 - 3.77	1.06

Data Plot and Equation



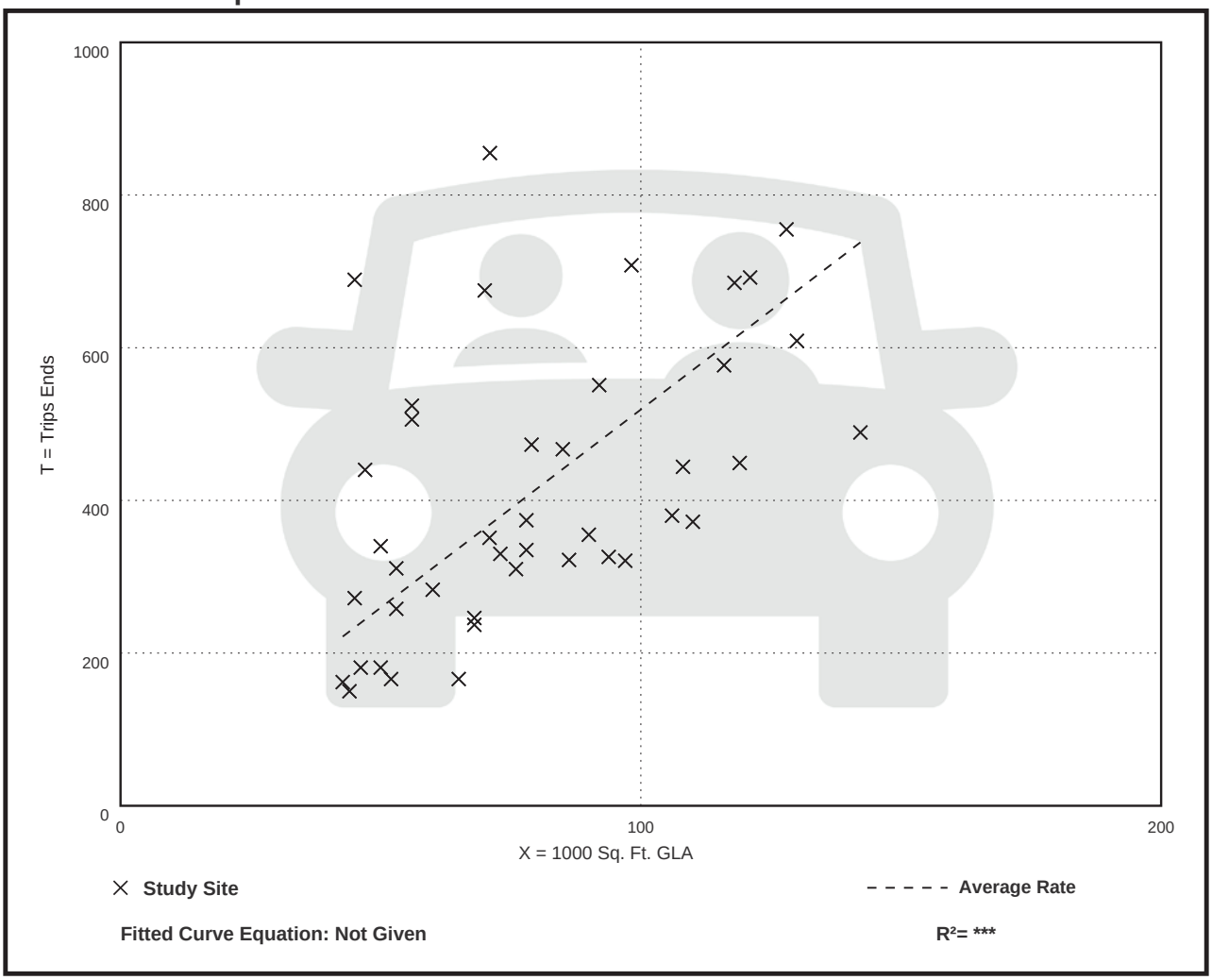
Shopping Plaza (40-150k) - Supermarket - No (821)

Vehicle Trip Ends vs: 1000 Sq. Ft. GLA
On a: Weekday,
Peak Hour of Adjacent Street Traffic,
One Hour Between 4 and 6 p.m.
Setting/Location: General Urban/Suburban
Number of Studies: 42
Avg. 1000 Sq. Ft. GLA: 79
Directional Distribution: 49% entering, 51% exiting

Vehicle Trip Generation per 1000 Sq. Ft. GLA

Average Rate	Range of Rates	Standard Deviation
5.19	2.55 - 15.31	2.28

Data Plot and Equation



Land Use: 840
Automobile Sales (New)

Description

A new automobile sales dealership is typically located along a major arterial street characterized by abundant commercial development. The sale or leasing of new cars is the primary business at these facilities. However, the land use also commonly provides automobile servicing, parts sales, and used car sales. The dealerships may also provide truck sales and servicing. Automobile sales (used) (Land Use 841) and recreational vehicle sales (Land Use 842) are related uses.

Additional Data

The technical appendices provide supporting information on time-of-day distributions for this land use. The appendices can be accessed through either the ITETripGen web app or the trip generation resource page on the ITE website (https://www.ite.org/technical-resources/topics/trip-and-parking-generation/).

The sites were surveyed in the 1980s, the 1990s, the 2000s, and the 2010s in Alberta (CAN), California, Delaware, Florida, Georgia, Indiana, New York, North Carolina, Ontario (CAN), Oregon, Texas, Vermont, and Virginia.

Source Numbers

260, 271, 280, 328, 414, 424, 427, 438, 440, 507, 571, 583, 612, 715, 728, 880, 881, 936, 974, 975, 1036

Automobile Sales (New)
(840)

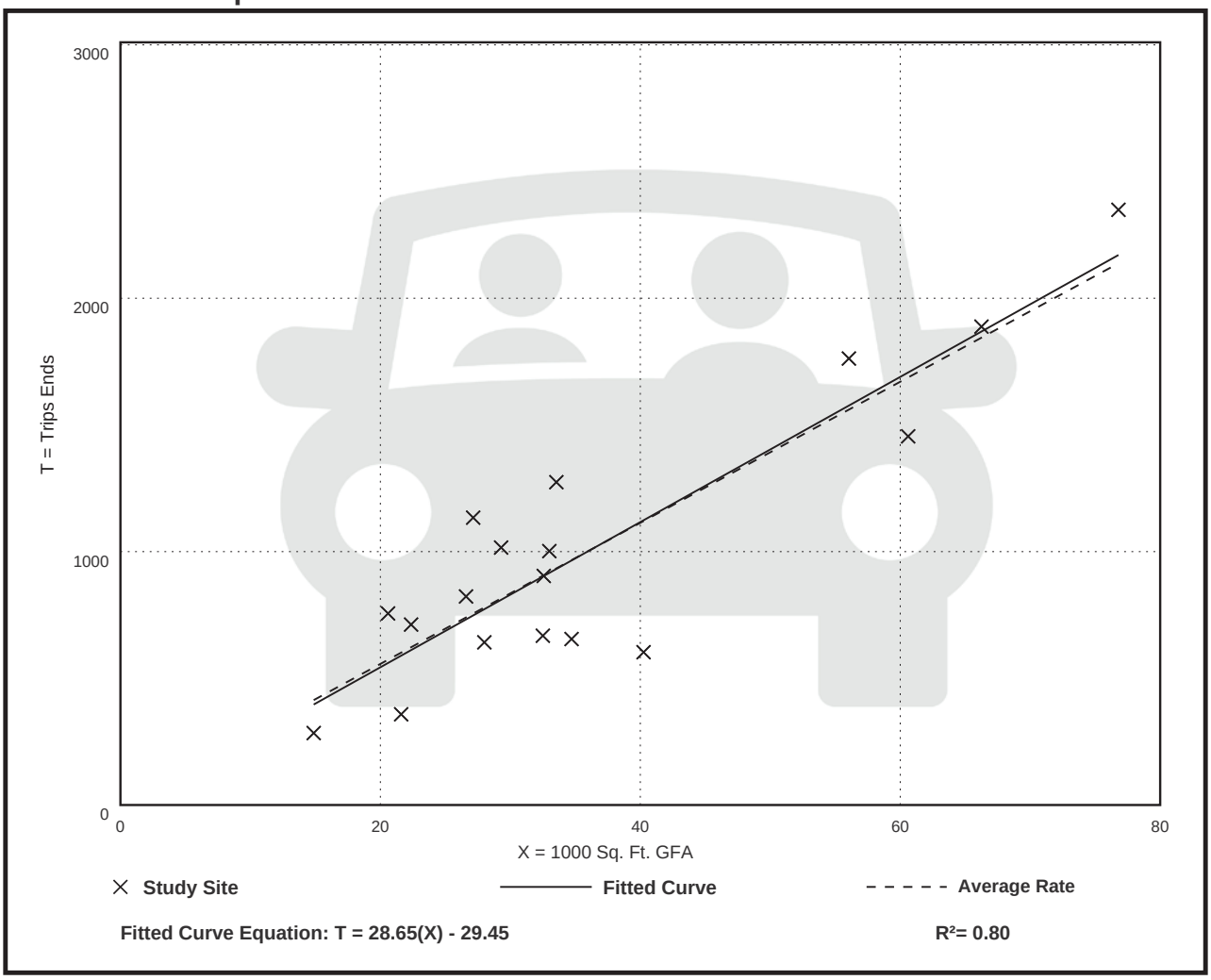
Vehicle Trip Ends vs: 1000 Sq. Ft. GFA
On a: Weekday

Setting/Location: General Urban/Suburban
Number of Studies: 18
Avg. 1000 Sq. Ft. GFA: 36
Directional Distribution: 50% entering, 50% exiting

Vehicle Trip Generation per 1000 Sq. Ft. GFA

Average Rate	Range of Rates	Standard Deviation
27.84	14.98 - 41.78	7.01

Data Plot and Equation



Fitted Curve Equation: T = 28.65(X) - 29.45

R^2= 0.80

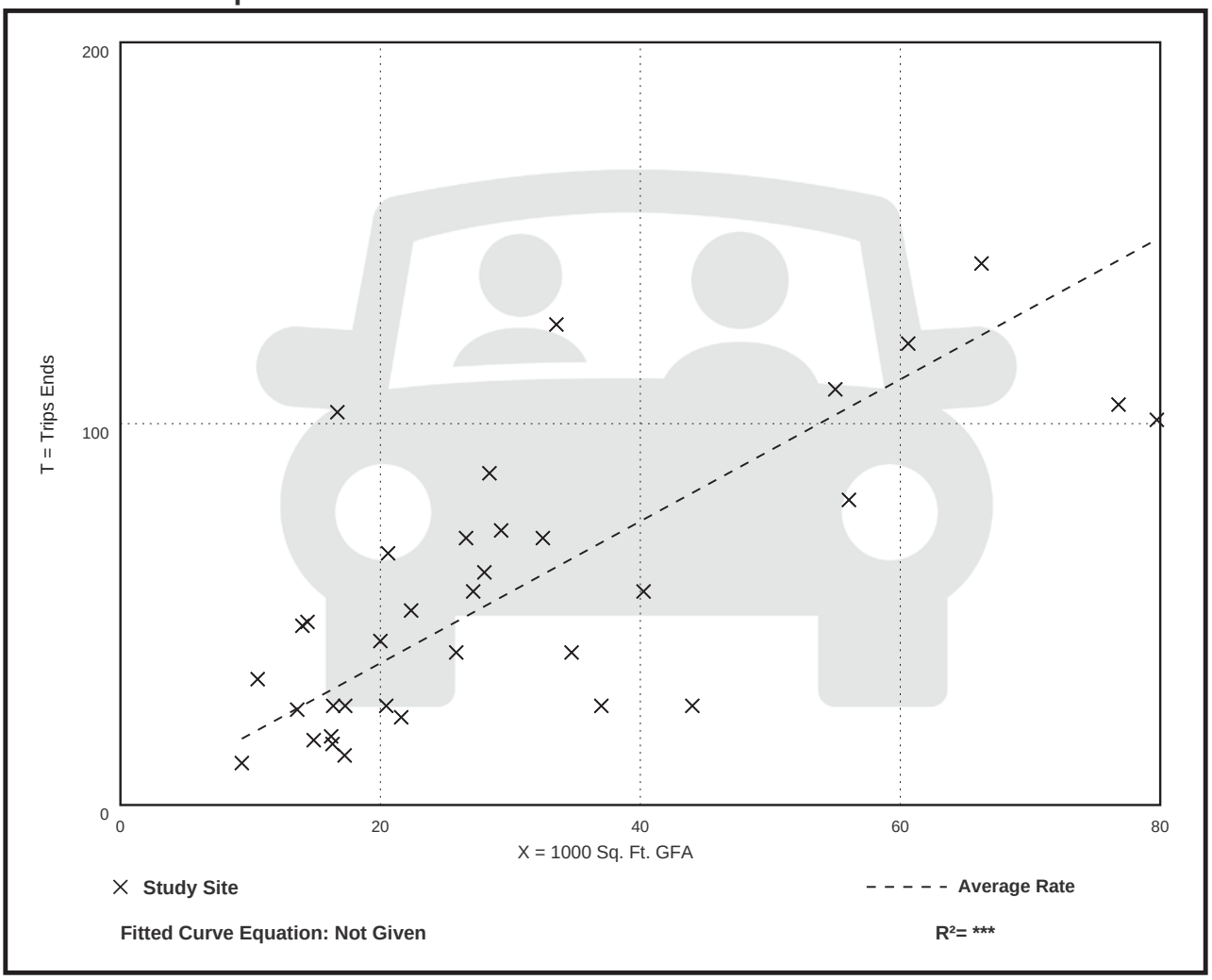
Automobile Sales (New)
(840)

Vehicle Trip Ends vs: 1000 Sq. Ft. GFA
On a: Weekday,
Peak Hour of Adjacent Street Traffic,
One Hour Between 7 and 9 a.m.
Setting/Location: General Urban/Suburban
Number of Studies: 35
Avg. 1000 Sq. Ft. GFA: 30
Directional Distribution: 73% entering, 27% exiting

Vehicle Trip Generation per 1000 Sq. Ft. GFA

Average Rate	Range of Rates	Standard Deviation
1.86	0.59 - 6.17	0.94

Data Plot and Equation



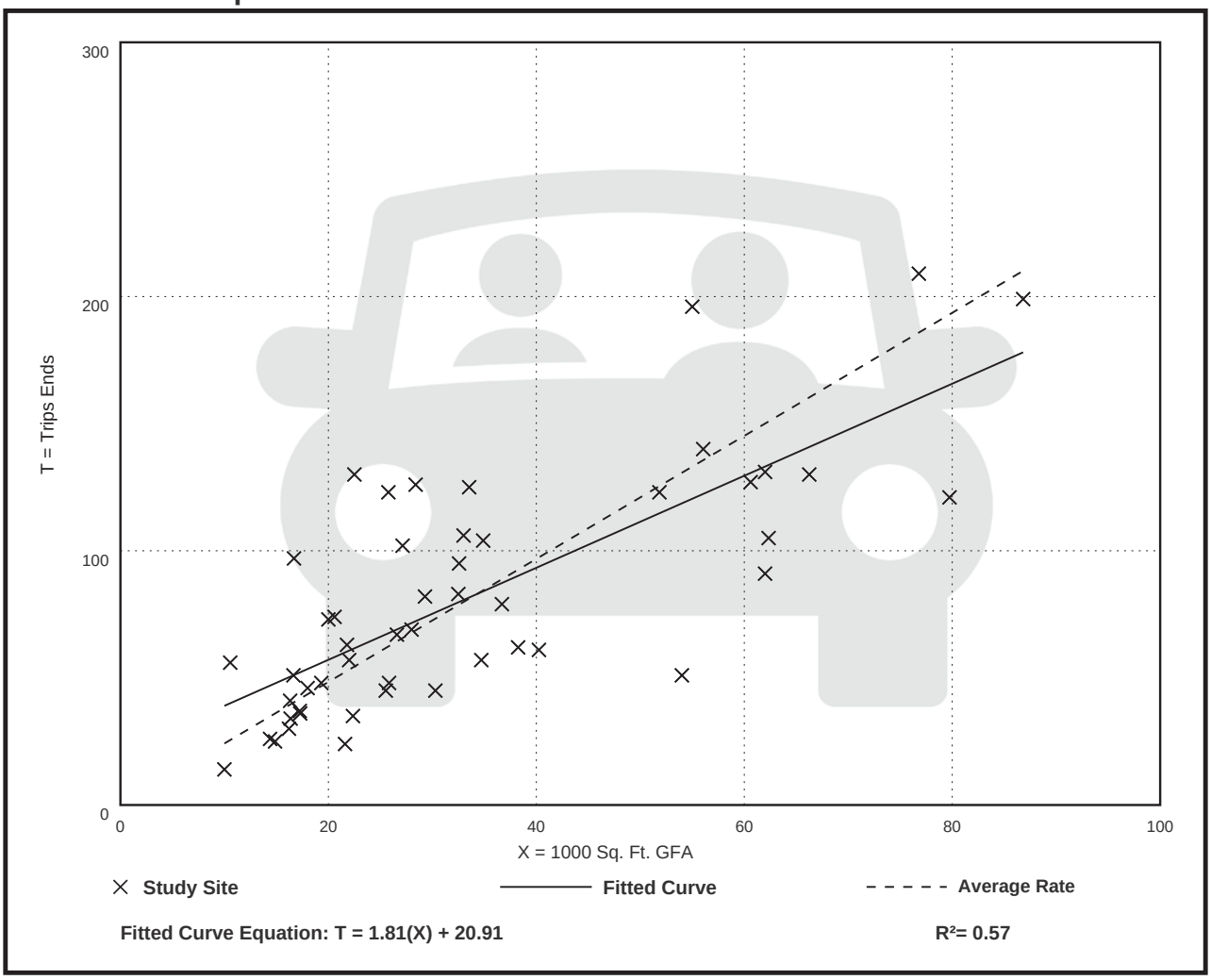
Automobile Sales (New)
(840)

Vehicle Trip Ends vs: 1000 Sq. Ft. GFA
On a: Weekday,
Peak Hour of Adjacent Street Traffic,
One Hour Between 4 and 6 p.m.
Setting/Location: General Urban/Suburban
Number of Studies: 50
Avg. 1000 Sq. Ft. GFA: 34
Directional Distribution: 40% entering, 60% exiting

Vehicle Trip Generation per 1000 Sq. Ft. GFA

Average Rate	Range of Rates	Standard Deviation
2.42	0.94 - 5.81	0.98

Data Plot and Equation



Fitted Curve Equation: T = 1.81(X) + 20.91

R^2= 0.57

ALISO VIEJO

The Commons at Aliso Viejo Town Center

26501 Aliso Creek Road

Project Applications: SP-2022-00001 Specific Plan Amendment
DA-2022-00001 Development Agreement
USE-2022-00009 Conditional Use Permit

City Council

November 16, 2022

Project Request

Request includes:

- An amendment to the Commons at Aliso Viejo Town Center Specific Plan to allow for the sale, lease, delivery and service of new electric or non-internal combustion engine vehicles
- A Development Agreement between the City of Aliso Viejo and Valuerock Aliso Viejo LLC
- A Conditional Use Permit for Tesla to occupy a 53,660 square foot portion of the vacant building to sell, lease, and service its vehicles on site

Site Summary



Rendering from Site Development Permit Approved by City Council on July 20,2022

Property Information	
Square Footage (Existing Building)	186,678 square feet
Square Footage (Proposed Tesla use)	53,660 square feet
Existing Conditions	Vacant building formerly occupied by Michael's Craft Store and Lowe's Home Improvement Center
Zoning Designation	Specific Plan No. 2 Commercial-Town Center (SP2-CTC)
General Plan Designation	Town Center Commercial (CT)/High Density Residential (HDR)



ALISO VIEJO

Specific Plan Amendment

- Specific Plan prohibits automotive uses

- Amend Specific Plan to allow for the sales and service of electric and non-internal combustion engine vehicles

Page No.	Section	Proposed Amendment
IV-3	4.2 Definitions	Energy Facility - Any public or private processing, producing, generating, storing, transmitting, or recovery facility for electricity, natural gas, ~~petroleum, coal~~ or other source of alternative energy.
IV-9	Table IV-1 (Use Table)	• ~~Gas or charge station~~ (associated footnote is also proposed to be removed) • ~~Gas or charge~~ Charging station with incidental service and repair (Permitted) • Electric or non-internal combustion new (used as an accessory use) engine vehicle and equipment S~~s~~ales, ~~and~~ lease ~~of on-site vehicles~~ and ~~equipment~~ service (Conditionally Permitted) • ~~Sale, vehicle parts, new~~ • ~~Tires, batteries, accessories, lube, oil change, smog check, air conditioning~~

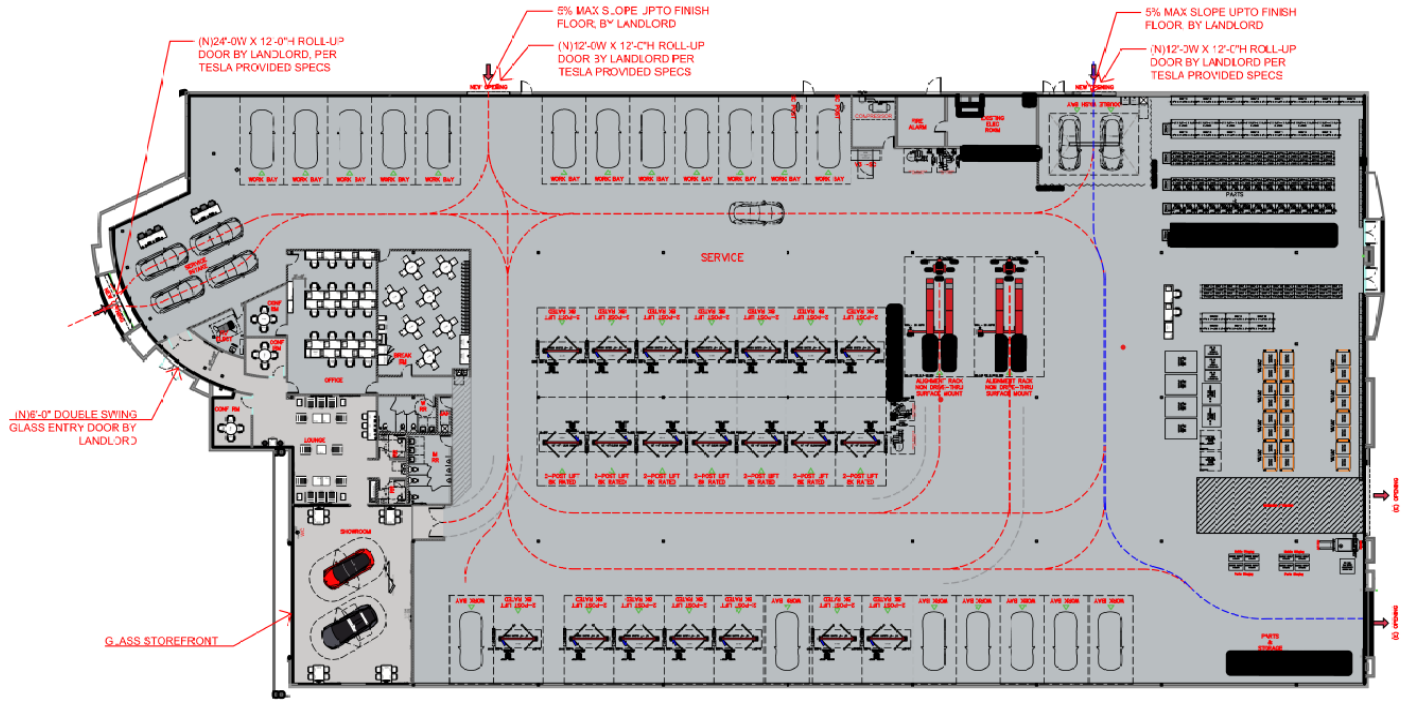
Development Agreement ("DA")

- AVMC Section 15.78.040.D requires that a DA be processed concurrently for projects that include a zone change and conditional use permit

- The proposed DA vests the Applicant with the authority to develop the proposed sales, delivery and service of new electric or non-internal combustion engine vehicles with a conditional use permit

- The Applicant to provide the first major car dealership in the City and eight publicly accessible electric vehicle charging stations on site

Conditional Use Permit ("CUP")



PROJECT SPECIFIC NOTES:

1. CONDITIONAL USE PERMIT REQUIRED
2. LL IS RENOVATING THE ENTIRE MALL COMPLEX TO PROVIDE NEW EXTERIOR FACELIFT AND SITE WORK; COORDINATION WITH LL SITE WORK IS CRITICAL.
3. NEW EXTERIOR FINISHED DOORS AND STOREFRONT AS AND WHERE NOTED ON PLAN, BY LANDLORD

WORKBAY COUNT		
2-POST LIFTS		21
FUTURE 2-POST LIFTS		0
SCISSOR LIFTS		0
OPEN BAYS (SERVICE)		19
	SUBTOTAL	40
PDI BAYS (SALES)		0
	TOTAL	40

AREA BREAKDOWN (SF):

GROSS TOTAL:	53,660	SF	–	%
FIRST FLOOR:	53,660	SF	–	%
NET TOTAL:	53,660	SF	100	%
SERVICE SHOP:	37,698	SF	70	%
PARTS AND STORAGE:	9,357	SF	2511	%
LOUNGE:	1,590	SF	427	%
BOH:	2,710	SF	727	%
SHOWROOM:	1,750	SF	470	%
DELIVERY:	0	SF	0	%
UNBUILT/OTHER:	554	SF	149	%

TESLA SEPT 7, 2022

EXISTING WALL
NEW WALL
SERVICE CIRCULATION
DELIVERY CIRCULATION

NA | 26501 ALISO CREEK ROAD, ALISO VIEJO, CA | US

*PLEASE NOTE: ANY SUBSEQUENT REVISION TO AN APPROVED CONCEPT WILL CAUSE DELAY AND IMPACT COST

CPT-4

Building Elevations



SOUTH ELEVATION



ENTRANCE ELEVATION SCALE : 1/8" = 1'-0"



PT-01
STUCCO
SW 7072
ONLINE



PT-02
STUCCO
SW 7075
WEB GRAY

PT-03
STUCCO
SW 7005
PURE WHITE



PT-06
OPPORTUNITY ACCENT
WALL TO BE REVIEWED
W/S IGN CRITERIA PACKAGE
W/ PLANNING STAFF TO
FINALIZE.

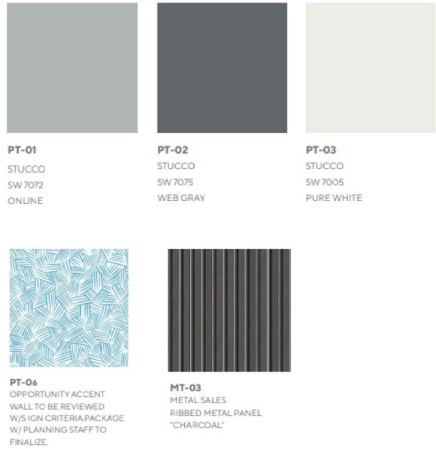


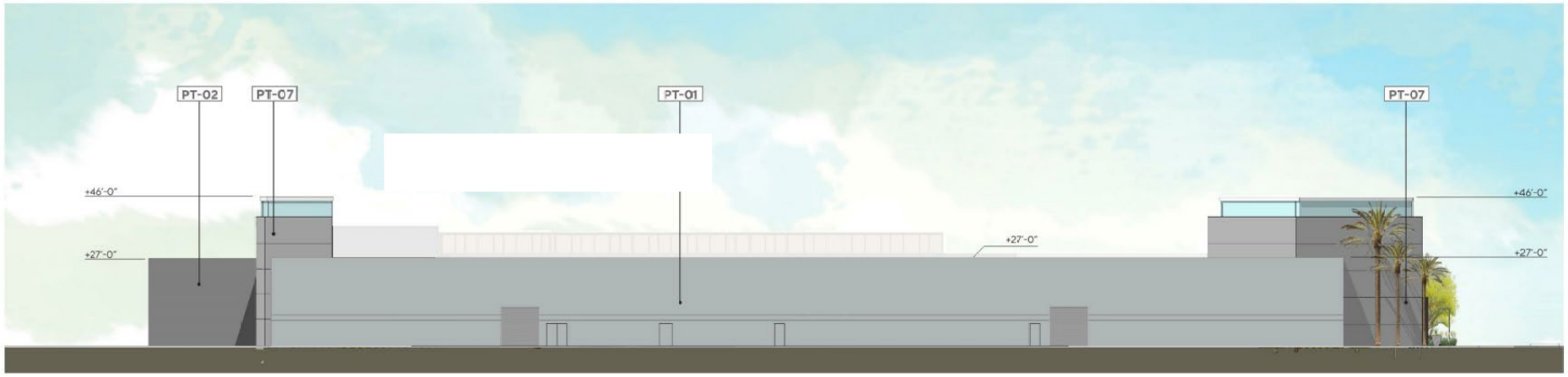
MT-03
METAL SALES
RIBBED METAL PANEL
"CHARCOAL"

Building Elevations



NORTH ELEVATION





WEST ELEVATION

Staff Recommendation to City Council:

- Open and conduct a public hearing;
- Find that the request is exempt from the California Environmental Quality Act pursuant to State CEQA Guidelines Sections 15332 (Infill Development);
- Introduce and approve for first reading an Ordinance entitled:

  AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, TO AMEND SPECIFIC PLAN NO. 2 FOR THE COMMONS AT ALISO VIEJO TOWN CENTER AND DETERMINE THE ORDINANCE TO BE EXEMPT FROM CEQA (PLANNING APPLICATION SP-2022-00001)

- Introduce and approve for first reading an Ordinance entitled:

  AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ALISO VIEJO AND VALUEROCK ALISO VIEJO, LLC FOR CERTAIN REAL PROPERTY LOCATED WITHIN THE CITY OF ALISO VIEJO PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65864 ET SEQ. AND DETERMINE THE ORDINANCE TO BE EXEMPT FROM CEQA (PLANNING APPLICATION DA-2022-00001);

- Adopt a Resolution approving Planning Application USE-2022-00009 to allow for the sales and service of non-internal combustion engine vehicles at 26501 Aliso Creek Road.

City of Aliso Viejo
AGENDA ITEM

DATE: November 16, 2022

TO: Mayor and City Council

FROM: Elizabeth McCann, Building Official
So Kim, Director of Community Development

SUBJECT: SECOND READING AND ADOPTION OF AN ORDINANCE TO ADOPT UPDATED 2022 BUILDING CODES

Recommended Actions:

1. Find that the Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15378(a) and 15061(b)(3) as the activity does not qualify as a project and is covered by the general rule that CEQA applies only to projects which have the potential for causing significant effect on the environment.

2. Conduct a public hearing to consider and adopt an Ordinance entitled:

   AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, AMENDING CHAPTERS 13.02 & 13.04 OF TITLE 13 OF THE ALISO VIEJO MUNICIPAL CODE AND ADOPTING BY REFERENCE THE FOLLOWING MODEL CODES INTO THE ALISO VIEJO MUNICIPAL CODE: (1) CALIFORNIA BUILDING CODE, VOLUMES 1 & 2, 2022 EDITION; WITH AMENDMENTS; (2) CALIFORNIA ELECTRICAL CODE, 2022 EDITION; (3) CALIFORNIA PLUMBING CODE, 2022 EDITION; (4) CALIFORNIA MECHANICAL CODE, 2022 EDITION; (5) INTERNATIONAL PROPERTY MAINTENANCE CODE; 2021 EDITION (6) CALIFORNIA ADMINISTRATIVE CODE, 2022 EDITION; (7) CALIFORNIA ENERGY CODE, 2022 EDITION; (8) CALIFORNIA REFERENCED STANDARDS CODE, 2022 EDITION; (9) CALIFORNIA EXISTING BUILDING CODE, 2022 EDITION (10) CALIFORNIA RESIDENTIAL CODE, 2022 EDITION; WITH AMENDMENTS; (11) CALIFORNIA GREEN BUILDING STANDARDS CODE, 2022 EDITION; AND (12) CALIFORNIA FIRE CODE, 2022 EDITION, WITH AMENDMENTS.

Discussion:

On November 2, 2022, the City Council had the introduction and first reading of the subject Ordinance. In addition, the City Council set the public hearing date for November 16, 2022, to consider the second reading and adoption of said ordinance. If adopted, the

Ordinance will take effect upon the later of (1) 30 days after adoption or (2) January 1, 2023.

Attachment:

1. Ordinance

ORDINANCE NO. 2022-_____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, AMENDING CHAPTERS 13.02 & 13.04 OF TITLE 13 OF THE ALISO VIEJO MUNICIPAL CODE AND ADOPTING BY REFERENCE THE FOLLOWING MODEL CODES INTO THE ALISO VIEJO MUNICIPAL CODE: (1) CALIFORNIA BUILDING CODE, VOLUMES 1 & 2, 2022 EDITION; WITH AMENDMENTS (2) CALIFORNIA ELECTRICAL CODE, 2022 EDITION; (3) CALIFORNIA PLUMBING CODE, 2022 EDITION; (4) CALIFORNIA MECHANICAL CODE, 2022 EDITION; (5) INTERNATIONAL PROPERTY MAINTENANCE CODE, 2021 EDITION; (6) CALIFORNIA ADMINISTRATIVE CODE, 2022 EDITION; (7) CALIFORNIA ENERGY CODE, 2022 EDITION; (8) CALIFORNIA REFERENCED STANDARDS CODE, 2022 EDITION; (9) CALIFORNIA EXISTING BUILDING CODE, 2022 EDITION; (10) CALIFORNIA RESIDENTIAL CODE, 2022 EDITION, WITH AMENDMENTS (11) CALIFORNIA GREEN BUILDING STANDARDS CODE, 2022 EDITION; AND (12) CALIFORNIA FIRE CODE, 2022 EDITION, WITH AMENDMENTS.

WHEREAS, pursuant to California Government Code Section 50022.1 *et seq*. the City of Aliso Viejo ("City") may adopt by reference the California Building Standards Code, 2022 Edition as provided in Title 24 of the California Code of Regulations and other model codes; and

WHEREAS, the California Building Standards Commission ("Commission") recently adopted the 2022 Edition of the California Building Standards Code; and

WHEREAS, California Health and Safety Code Sections 17958.7 and 18941.5 authorize cities to adopt the California Building Standards Code with modifications determined to be reasonably necessary because of local climatic, geological or topographical conditions; and

WHEREAS, the City desires to adopt the California Building Standards Code and other model codes with the necessary amendments to assure the Codes are tailored to the particular safety needs of the City as required by its unique climatic, geological and topographical conditions; and

WHEREAS, the Fire Marshal and Building Official have recommended that changes and modifications be made to the California Building Standards Code, and have advised that certain changes and modifications to said Code are reasonably necessary due to local conditions within the City of Aliso Viejo, and have further advised that the remainder of the said changes and modifications are of an administrative or procedural nature, or concern themselves with subjects not covered by the Code, or are reasonably necessary to safeguard life and property within the City of Aliso Viejo; and

WHEREAS, the Fire Marshal and Building Official have also recommended that changes and modifications be made to the California Building Standards Code, which are necessary for administrative clarification and to establish administrative standards for the effective enforcement of the building standards of the City of Aliso Viejo and do not modify a building standard pursuant to California Health & Safety Code Sections 17958, 17958.7, and/or 18941.5; and

WHEREAS, the City held a public hearing on November 16, 2022, at which time all interested persons had the opportunity to appear and be heard on the matter of adopting the Codes as amended herein; and

WHEREAS, the City published notice of the aforementioned public hearing pursuant to California Government Code Section 6066 on November 3, 2022 and November 10, 2022; and

WHEREAS, any and all other legal prerequisites relating to the adoption of this Ordinance have occurred.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Authority. The City Council enacts this Ordinance under the authority granted to the City as follows:

A. California Government Code Section 50022 *et seq*. authorizes the City to adopt by reference the California Building Standards Code and authorizes the City to adopt other uniform codes by reference;

B. California Health & Safety Code Sections 17958.7 and 18941.5 authorize the City to adopt the California Building Standards Code with modifications determined to be reasonably necessary because of local climatic, geological or topographical conditions.

SECTION 2. CEQA. The City Council finds that this Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to Sections 15378(a) and 15061(b)(3) as the activity does not qualify as a project and is covered by the general rule that CEQA applies only to projects which have the potential for causing significant effect on the environment. The City Council finds that the changes in this Ordinance are enacted to mitigate the threats posed to public peace, health and safety from earthquakes, storms, flooding, high winds and fire. Therefore, it can be seen with certainty that adoption of this Ordinance will not have a significant adverse effect on the environment and is therefore exempt from CEQA.

SECTION 3. Findings. After receiving public testimony, reviewing the evidence submitted by staff and discussing the proposed ordinance, the City Council hereby finds that the amendment proposed to the California Building Code, California Residential Code, California Plumbing Code and California Fire Code, 2022 editions herein are supported by the following findings:

I. Climatic Conditions:

Amendments to Sections 202, 701A.3, 710A.3.2, 710A.4, and 3109F.1 of the 2022 Edition of the California Building Code; Sections R202, R301.2, R337.1.3, and R1001.13 of the 2022 Edition of the California Residential Code; and Sections 1014.1.4 and 1014.1.2 of the 2022 Edition of the California Plumbing Code are reasonably necessary due to the following climatic conditions:

1. Orange County and the City of Aliso Viejo are located in a semi-arid Mediterranean type climate. It annually experiences extended periods of high temperatures with little or no precipitation. The warm climate encourages the proliferation of swimming pool construction which make modifications to the CBC relating to swimming pools desirable to adequately protect small children from drowning hazards. Furthermore, hot, dry (Santa Ana) winds, which may reach speeds of 70 M.P.H. or greater, are also common to the area. These climatic conditions cause extreme drying of vegetation and common building materials. Frequent periods of drought and low humidity add to the fire danger. This predisposes the area to large destructive fires (conflagration). In addition to directly damaging or destroying buildings, these fires are also prone to disrupting utility services throughout the County. Obstacles generated by a strong wind, such as fallen trees, streetlights and utility poles will greatly impact the response time to reach an incident scene. Additionally, there is a significant increase in the amount of wind force at 60 feet above the ground. Use of aerial type fire-fighting apparatus above this height would place rescue personnel at increased risk of injury.

2. The climate alternates between extended periods of drought and brief flooding conditions. Flood conditions may affect the Orange County Fire Authority's (Fire Department) ability to respond to a fire or emergency condition. Floods also disrupt utility services to buildings and facilities within the County.

3. Water demand in this densely populated area far exceeds the quantity supplied by natural precipitation; and although the population continues to grow, the already-taxed water supply does not. California is projected to increase in population by nearly 10 million over the next quarter of a century with 50 percent of that growth centered in Southern California. Due to storage capacities and consumption, and a limited amount of rainfall, future water allocation is not fully dependable. This necessitates the need for additional and on-site fire protection features. It would also leave tall buildings vulnerable to uncontrolled fires due to a lack of available water and the inability to pump sufficient quantities of available water to floors in a fire.

4. These dry climatic conditions and winds contribute to the rapid spread of even small fires originating in high-density housing or vegetation. These fires spread very quickly and create a need for increased levels of fire protection. The added protection of fire sprinkler systems and other fire protection

methods will supplement normal Fire Department response by providing immediate protection for the building occupants and by containing and controlling the fire spread to the area of origin. Fire sprinkler systems will also reduce the use of water for firefighting by as much as 50 to 75 percent. In addition, untreated wood roofs cause or contribute to serious fire hazard and to the rapid spread of fires when such fires are accompanied by high winds. Pieces of burning wood roofs are carried by the wind to other locations and spread fire quickly.

II. Topographical Conditions:

Amendments to Sections 710A.3, 710A.3.2, 710A.4, 903.2, 903.2.8, and 903.3.1.1.1 of the 2022 Edition of the California Building Code and Sections R319.1, R337.1.3, and R1001.13 of the 2022 Edition of the California Residential Code are reasonably necessary due to the following topographical conditions:

1. Natural slopes of 15 percent or greater generally occur throughout the foothills of Orange County. The elevation change caused by the hills creates the geological foundation on which communities within Orange County are built and will continue to be built on. With much of the populated flatlands already built upon, future growth will occur in areas with steeper slopes and greater constraints in terrain.

2. Located through the County are major roadways, highways and flood control channels that create barriers and slow response times. Hills, slopes, street and storm drain design, accompanied with occasional heavy rainfall, causes roadway flooding and landslides and at times may make an emergency access route impassable. There are areas in Orange County with extended Fire Department emergency response times that exceed the 5-minute goal.

3. Placement of multiple occupancy buildings, location of arterial roads, and fire department staffing constraints due to recent revenue-limiting state legislation have made it difficult for the fire department to locate additional fire stations and provide manpower sufficient to concentrate fire companies and personnel to control fires in high density apartment or condominium buildings. Fire Department equipment does not allow easy access to areas of buildings greater than 55 feet above the level of Fire Department vehicle access. These conditions create the need for built-in on-site fire protection systems to protect occupants and property until fire-fighting apparatus and personnel arrive on the scene.

4. These topographical conditions combine to create a situation which places Fire Department response time to fire occurrences at risk and makes it necessary to provide automatic on-site fire-extinguishing systems and other protection measures to protect occupants and property.

III Geological conditions:

Amendments to Sections R301.2, R301.9, R309.6, R313.1, R313.2, and R313.3.6.2.2 of the 2022 Edition of the California Residential Code are reasonably necessary due to the following geological conditions:

1. Orange County and the City of Aliso Viejo are located in a highly active seismic area. There are earthquake faults that run along both the northeastern and southwestern boundaries of Orange County. The Newport-Inglewood Fault Zone (NIFZ), which runs through Orange County, was the source of the destructive 1933 Long Beach earthquake (6.3 magnitude, hypocenter off Newport Beach coast), which took 120 lives. The quake damaged areas from Laguna Beach to Marina del Rey and inland to Whittier and poses one of the greatest hazards to lives and property in the nation. Regional planning for reoccurrence is recommended by the State of California, Department of Conservation. There was also an earthquake in December 1989, with the epicenter located near the City of Irvine. The fault on which this quake occurred was unknown prior to this activity. The October 17, 1989, Santa Cruz earthquake resulted in only one major San Francisco fire in the Marina District, but when combined with the 34 other fires and over 500 responses, the Fire Department was taxed to its full capabilities. The Marina District fire was difficult to contain because mains supplying water to the district burst during the earthquake. If more fires had been ignited by the earthquake, it would have been difficult for the fire department to contain them. Experts predict a major earthquake in the Orange County area within the next 50 years. This situation creates the need for both additional fire protection measures and automatic on-site fire protection for building occupants since a multitude of fires may result from breakage of gas and electric lines as a result of an earthquake. As noted by “Planning Scenario on a Major Earthquake on the Newport-Inglewood Fault Zone, 1988, State Department of Conservation,” page 59; “unfortunately, barely meeting the minimum earthquake standards of building codes places a building on the verge of being legally unsafe.”

2. Traffic and circulation congestion presently existing in the City of Aliso Viejo often places fire department response time to fire occurrences at risk. This condition will be exacerbated by any major disaster, including any earthquake wherein damage to the highway system will occur. This condition makes the need for additional on-site protection for property occupants necessary.

3. The City of Aliso Viejo is located in a seismically active area. The viability of the public water system would be questionable at best after a major seismic event. This would leave tall buildings vulnerable to uncontrolled fires due to a lack of available water and an inability to pump sufficient quantities of any available water to floors above the 55-foot-level. A severe seismic event has the potential to negatively impact any rescue or fire suppression activities

because it is likely to create obstacles similar to those indicated under the high wind section above. With the probability of strong aftershocks there exists a need to provide increased protection for occupants on upper floors.

4. Soils throughout the County possess corrosive properties that reduce the expected usable life of water services when metallic pipes in contact with soils are utilized.

5. Portions of the County contain active or former oil production fields. These areas contain a variety of naturally occurring gasses, liquids and vapors. These compounds present toxicity or flammability hazards to building occupants. Evaluation of these hazards and the risks they pose to development is necessary to implement appropriate mitigation.

The City Council finds that the following table sets forth the sections of the 2019 Edition of the California Fire Code that have been modified and the associated local climatic, topographical and/or geological conditions described below supporting the modifications.

2022 California Fire Code
Amendment Findings Legend

CODE SECTION	TITLE (Clarification)	FINDINGS
110.4	Violation penalties	Administrative
110.4.2	Infraction & Misdemeanor	Administrative
202	General definitions	Administrative
304.1.2	OCFA Vegetation Management	I
305.6	Hazardous conditions	I & II
305.7	Disposal of rubbish	I & II
307	Open burning, recreational fires, fire pits, fire rings, and outdoor fireplaces	Administrative
307.6	Fire Pits, Fire Rings, & Outdoor Fireplaces	Administrative
307.6.1	Gas-fueled devices	I & II
307.6.2	Devices using wood or fuels other than natural gas or LPG	I & II
307.6.2.1	Where prohibited	I & II
308.1.6.3	Sky lanterns	I & III
321	Fuel modification requirements for new construction	I
322	Clearance of brush or vegetation growth from roadways	I
323	Unusual circumstances	Administrative
324	Use of equipment	I
324.1	Use of equipment and devices generating heat, sparks or open flames	I
324.2	Spark arresters	I

407.5	Hazardous material inventory statement	I & II
501.1	Scope	Administrative, I, II & III
510.1	Emergency responder radio coverage	Administrative
903.2	Where required (Sprinklers)	I, II & III
903.2.8	Group R (Sprinklers)	I, II & III
903.3.5.3	Hydraulically calculated systems	I & II
1201.1.1	Energy systems, battery charging devices	I & II
2801.2	Permit	Administrative
2808.2	Storage site	Administrative
2808.3	Size of piles	I
2808.4	Pile separation	I
2808.7	Pile fire protection	I
2808.9	Material-handling equipment	I
2808.11	Temperature control	I
2808.11.1	Pile temperature control	I
2808.11.2	New material temperature control	I
2808.12	Water availability for piles	I
2808.13	Tipping area	I
2808.14	Emergency contact	Administrative
4906.3	OCFA Vegetation Management Guideline	I
4908	Fuel modification requirements for new construction	I
5001.5.2	Hazardous materials inventory statement	Administrative
5003.1.1.1	Extremely hazardous substances	I & III
5608.2	Retail fireworks	Administrative
5608.3	Application for permit	Administrative
5701.1.1	On-Demand Mobile Fueling	N/A
5801.1	Scope	N/A
Chapter 80	Reference Standards	N/A
	2016 NFPA 13 (Sprinkler Systems)	Administrative, II & III
	2016 NFPA 13-D (Single Family Sprinkler Systems)	I & II
	2013 NFPA 14 (Standpipe Systems)	Administrative
	2016 NFPA 24 (Underground Water Supply Systems)	Administrative & III

Other amendments:

All other changes to the codes referenced in this Ordinance are hereby found, declared and determined by the City Council to be primarily procedural and non-substantive, and therefore to be equivalent for the purposes intended by the original codes. These amendments are necessary for administrative clarification,

and do not modify a building standard pursuant to California Health & Safety Code Sections 17958, 17958.7 and/or 18941.5. They establish standards for the effective enforcement of the building standards in the City of Aliso Viejo.

SECTION 4. Chapter 13.02 Building Regulations. Chapter 13.02 of Title 13 entitled "Building Regulations" is hereby removed in its entirety and replaced with the following:

"**CHAPTER 13.02 BUILDING REGULATIONS**"

13.02.010 Adoption of 2022 California Building Code and Related Codes.

13.02.020 Violations.

13.02.030 Board of Appeals.

13.02.040 Fees.

13.02.050 Administration.

13.02.060 Amendments to Chapter 1 of the California Building Code.

13.02.065 Amendments to Chapter 2 of the California Building Code.

13.02.070 Amendments to Chapter 5 of the California Building Code.

13.02.075 Amendments to Chapter 7A of the California Building Code.

13.02.080 Amendments to Chapter 9 of the California Building Code.

13.02.090 Amendments to Chapter 15 of the California Building Code.

13.02.095 Amendments to Chapter 18 of the California Building Code

13.02.100 Amendments to Chapter 31 of the California Building Code

13.02.120 Amendments to the California Residential Code.

13.02.130 Amendments to the California Electrical Code.

13.02.140 Amendments to the California Plumbing Code.

13.02.150 Building deposits.

The City Council, for the purpose of prescribing regulations for the erecting, construction, enlargement, alteration, repair, improving, removal, conversion, demolition, occupancy, equipment, use, height, area and maintenance of all buildings and structures in the city, hereby adopts the following codes by reference and the amendment to these codes as set forth in Chapters 13.02 of the Aliso Viejo Municipal Code:

A. The California Building Code, 2022 Edition, Vol. 1&2, with amendments, based on the 2021 International Building Code as published by the International Code Council,

B. The California Residential Code, 2022 Edition, with amendments based on the 2021 International Residential Code as published by the International Code Council;

C. The California Electrical Code, 2022 Edition, based on the 2020 National Electrical Code as published by the National Fire Protection Association;

D. The California Mechanical Code, 2022 Edition, based on the 2021 Uniform Mechanical Code as published by the International Association of Plumbing and Mechanical Officials;

E. The California Plumbing Code, 2022 Edition, based on the 2021 Uniform Plumbing Code as published by the International Association of Plumbing and Mechanical Officials;

F. The California Green Building Standards Code, 2022 Edition, as published by the California Building Standards Commission;

G. The California Energy Code, 2022 Edition, as published by the International Code Council;

H. The California Administrative Code, 2022 Edition, as published by the International Code Council;

I. The California Referenced Standards, 2022 Edition, as published by the International Code Council;

J. The California Existing Building Code, 2022 Edition as published by the International Code Council;

K. The International Property Maintenance Code, 2021 Edition, as published by the International Code Council;

L. The California Fire Code, 2022 Edition, as published by the International Code Council.

The provisions of these codes as amended by Chapters 13.02 and 13.04 of the Aliso Viejo Municipal Code (“Codes”) shall constitute the Building Regulations of the City of Aliso Viejo. The primary codes and the Codes as adopted by reference and amended by the City are on file for public examination in the office of the Building Official. Such Codes are hereby adopted and incorporated as though set forth in full in this section.

13.02.020 Violations.

For all sections of the Codes including any and all amendments to these Codes included within this chapter, the following shall apply pertaining to violations and shall replace any sections of those codes that pertain to violation.

It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy, or maintain any building or structure in the City, or cause same to be done, contrary to or in violation of any of the provisions of this chapter.

Any person, firm, or corporation violating any of the provisions of this chapter, shall be deemed guilty of a misdemeanor, and each such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this chapter is committed, continued, or permitted, and upon conviction of any such violation such persons shall be punished by a fine of not more than $1,000.00 or by imprisonment for not more than six months, or by both such fine and imprisonment.

13.02.030 Board of Appeals.

For all sections of the Codes, including any and all amendments included within this chapter, the following shall apply pertaining to board of appeals and shall replace any sections of those codes that pertain to board of appeals.

In order to determine the suitability of alternate materials and methods of construction and provisions of these Codes, there shall be a board of appeals, consisting of five members, composed of the mayor and the other members of the city council. Said members shall hold their respective membership on said board of appeals by reason of, and concurrently with their terms of service as council members and shall cease to be such members upon their ceasing to be such council members. The building official shall be the secretary of the board. The board may adopt reasonable rules and regulations for conducting its investigations and shall render all its decisions and findings on contested matters, in writing to the building official, with a duplicate copy thereof to any appellant or contestant affected by any such decision or finding and may recommend to the city council such new legislation, if any, as is consistent therewith.

Three members of the board shall constitute a quorum. The mayor shall be the presiding officer of the board and in the mayor's absence the mayor pro-tem shall preside. Meetings shall be conducted in accordance with the Brown Act.

The board shall have the right, subject to such limits as the city council may prescribe by resolution, to employ at the cost and expense of the city, such qualified individuals as the board, in its discretion, may deem reasonably necessary in order to assist it in its investigations and making its findings and decisions.

13.02.040 Fees.

All fees set forth in sections of the Codes adopted by reference and amended by the City in Chapters 13.02 and 13.04 of the Aliso Viejo Municipal Code shall be as set forth by resolution of the city council

13.02.050 Administration.

Chapter 1 of the 2022 California Building Code, as amended by the City in this Chapter, is hereby adopted as the administrative provisions of all the Codes in Chapters 13.02 and 13.04 of the Aliso Viejo Municipal Code.

13.02.060 Amendments to Chapter 1 of the California Building Code.

Chapter 1, Division II, Scope and Administration, is amended as follows:

SECTION 101.1, Title is amended to include the following:

> These regulations shall be known as the Building Code of the City of Aliso Viejo, hereinafter referred to as “this code.”

SECTION 101.4, Referenced Codes is deleted in its entirety and replaced with the following:

> 101.4. Referenced Codes. The 2022 California Building Standards Code shall be considered part of the requirements of this code to the extent of each such reference.

SECTION 104.8 Liability is amended to include the following:

> The provisions of this section shall apply if the Building Official or his/her authorized representative are employees of this jurisdiction and shall also apply if the Building Official or his/her authorized representatives acting under contract as agents of this jurisdiction.

SECTION 105.2, Work Exempt from Permit, under Subsection Building is amended to revise Item 2 and add Item 14:

> Section 105.2. Work Exempt from Permit.
>
> Building:
>
> 2. Walls and fences less than 72 inches in height.
>
> 14. Decks not exceeding 200 square feet (18.58m^2) in area, that are not more 30 inches (762mm) above

grade at any point, are not attached to a dwelling and do not serve the exit door required by Section R311.2.

SECTION 105.5 is amended as follows:

Section 105.5. Expiration. Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced with 12 months after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The Building Official is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 each. The extension shall be requested in writing and justifiable cause demonstrated.

Time limitation for permit expiration as the result of code enforcement shall be as per notice of violation or as otherwise determined by the Building Official.

SECTION 105.8 is added to read as follows:

Section 105.8. Reconstruction. If the value of the reconstruction (or renovations) of a building is equal to or exceeds 75 percent of the value of the building, the entire building shall comply with the code provisions for new construction. The value of the reconstruction (or renovation) for a property shall include the value of all construction stemming from construction-related permits issued within the last two years.

SECTION 107.3, Examination of Documents, is amended to add a paragraph as follows:

An expedited review and permit issuance process shall be provided for EV Charging Stations and simplified forms for submittal will be made available on City's website.

SECTION 109.4, Fees, is amended to read as follows:

Failure to pay fees and obtain a permit before commencing work shall be deemed a violation of this chapter. At the Building Official's discretion, a violation may result in an assessment, which includes the required permit fees, of up to double the permit fees for work on a building, structure, mechanical, gas, electrical or plumbing system before obtaining the necessary permits. Payment of assessed fees shall not relieve any person from fully complying with the requirements of this chapter nor from any other penalties prescribed herein.

SECTION 111.5. Declaration of Intended Use is added to read as follows:

When required by the fire chief, with the concurrence of the building official, any or all owners of any occupancy may be required to record with the county recorder of the County of Orange a legal instrument of intended use. This legal instrument shall be called a declaration of intended use. The declaration of intended use shall be in accordance with the requirements of this section. It shall specifically state, by occupancy classification, all intended uses of all portions of the occupancy and may not be modified or withdrawn without the approval of the fire chief with the concurrence of the building official. Unapproved changes of occupancy or use can be cause for an immediate hearing before the building official and the fire chief or their designees. Such hearing shall be conducted to rule on the revocation of the certificate of occupancy and the revocation of all permits issued to all owners, tenants, operators and occupants of all portions of the occupancy. The declaration of intended use shall be binding on all present and future owners, tenants, operators and occupants.

SECTION 111.5.1, Certified Copies, is added to read as follows:

Section 111.5.1 Certified Copies. A certified copy of the recorded declaration of intended use may be required to be filed with the building official and the fire chief before any certificate of occupancy and/or any permits are issued to any or all owners, tenants, operators or occupants of the occupancy.

13.02.065 Amendments to Chapter 2 of the California Building Code.

Chapter 2, Definitions, is amended as follows:

SECTION 202 Definitions is revised, to add the following definitions:

BARRIER Barrier is a fence, wall, building wall, or any combination of these that completely surrounds the swimming pool and obstructs access to the swimming pool.

SPARK ARRESTER. A listed device constructed of noncombustible material specifically for the purpose of meeting one of the following conditions:

1. Removing and retaining carbon and other flammable particles/debris from the exhaust flow of an internal combustion engine in accordance with California Vehicle Code Section 38366.

2. Fireplaces that burn solid fuel in accordance with California Building Code Chapter 28.

SWIMMING POOL. Any body of water created by artificial means which is designed, intended for use, or used for swimming or immersion purposes, which has a water depth exceeding 18 inches. The term, “pool,” includes swimming pools, spas, hot tubs, above-and below-ground, and vinyl-lined pools; pool does not include plumbing fixtures such as bathtubs nor does it apply to man-made lakes, reservoirs, farm ponds, or ponds used primarily for public park purposes, water conservation purposes, irrigation purposes or for the watering of livestock.

13.02.070 Amendments to Chapter 5 of the California Building Code.

Chapter 5, General Building Heights and Areas is amended to read as follows:

SECTION 502.1 Address Identification

502.1. New and existing buildings shall be provided with approved address identification. The address identification shall be legible and placed in a position that is visible from the street or road fronting the property. Address identification characters shall contrast with their background. Address numbers shall be Arabic numbers or alphabetical letters. Numbers shall not be spelled out. Each character shall be not less than 4 inches in height with a stroke width of not less than 0.5 inch. For R-3 and other occupancies, the numbers shall be a minimum of 6 inches high with a minimum stroke width of 1 inch. Where required by the fire official, address identification shall be provided in additional approved locations to facilitate emergency response. Where access is by means of a private road and the building address cannot be viewed from the public way, a monument, pole or other sign or means shall be used to identify the structure. Address identification shall be maintained.

13.02.075 Amendments to Chapter 7A of the California Building Code.

Chapter 7A, Materials and Construction Methods for Exterior Wildfire Exposure. Adopt Chapter 7A in its entirety with the following amendments:

SECTION 701A.3 is amended to read as follows:

701A.3 Application**.** New buildings located in any Fire Hazard Severity Zone or any Wildland-Urban Interface Fire Area designated by the enforcing agency constructed after the application date, and additions to and remodel of buildings constructed before 2012 located in areas currently designated as such, shall comply with the provisions of this chapter. The provisions shall also apply to additions, remodels, and accessory structures located within 100 feet of a fuel modification zone, vegetation management area, or similar area containing hazardous combustible vegetation, regardless of whether the property is currently located in a designated Fire Hazard Severity Zone or Wildland-Urban

Interface Fire Area, when materials and/or construction methods for exterior wildfire exposure were previously required at the property by the Building or Fire Code Official.

Exceptions:

1. Buildings of an accessory character classified as a Group U occupancy and not exceeding 120 square feet in floor area, when located at least 30 feet from the applicable building.

2. Buildings of an accessory character classified as a Group U occupancy of any size located least 50 feet from an applicable building.

3. Buildings classified as a Group U Agricultural Building, as defined in Section 202 of this code (see also Appendix C – Group U Agricultural Buildings), when located at least 50 feet from an applicable building.

SECTION 710A.3.3 is amended to read as follows:

710A.3.3 Detached Miscellaneous Structure Requirements. Detached accessory structures within 50 feet of an applicable building shall comply with the requirements of this section.

SECTION 710A.4 Requirements, is amended to read as follows:

710A.4 Requirements. Accessory structures shall be constructed of non-combustible or ignition-resistant materials..

13.02.080 Amendments to Chapter 9 of the California Building Code.

Chapter 9, Fire Protection and Life Systems, is amended as follows:

SECTION 903.2, Where Required, is amended to read as follows:

903.2 Approved automatic sprinkler systems in buildings and structures shall be provided when one of the following conditions exists:

1. New buildings: Notwithstanding any applicable provisions of Sections 903.2.1 through 903.2.19, an automatic fire-extinguishing system shall also be installed in all occupancies when the total building area exceeds 5,000 square feet as defined in Section 202 of the California Building Code, regardless of fire areas or allowable area, or is more than two stories in height.

Exception: Subject to approval by the Fire Code Official, open parking garages in accordance with Section 406.5 of the California Building Code.

2. Existing Buildings: Notwithstanding any applicable provisions of this code, an automatic sprinkler system shall be provided in an existing building when an addition occurs and one of the following conditions exists:

    a. When an addition is 33% or more of the existing building area, and the resulting building area exceeds 5000 square feet

    b. When an addition exceeds 2000 square feet and the resulting building area exceeds 5000 square feet.

    c. An additional story is added above the second floor regardless of fire areas or allowable area.

    Exception: Additions to Group R-3 occupancies shall comply with Section 903.2.8 (2).

SECTION 903.2.8, Group R, is amended to read as follows:

903.2.8 Group R. An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area as follows:

1. New Buildings: An automatic sprinkler system shall be installed throughout all new buildings, with the exception of accessory dwelling units where automatic fire extinguishing systems have not been required for the primary residence.

2. Existing R-3 Buildings: An automatic sprinkler system shall be installed throughout when one of the following conditions exists:

    a. When an addition is 33% or more of the existing building area as defined in Section 202, and the final area is larger than 3,600 square feet within a two-year period.

    b. An addition when the existing building is already provided with automatic sprinklers; or,

    c. When an existing Group R Occupancy is being substantially renovated, and where the scope of the renovation is such that the Building Code Official determines that the complexity of installing a sprinkler system would be similar as in a new building.

Exceptions:

1. Existing Group R-3 occupancies converted to Group R-3.1 occupancies and not housing bedridden clients, not housing nonambulatory clients above the first floor, and not housing clients above the second floor.

2. Existing Group R-3 occupancies converted to Group R-3.1 occupancies housing only one bedridden client and complying with Section 435.8.3.3 of the California Building Code.

3. Pursuant to Health and Safety Code, Section 13113, occupancies housing ambulatory children only, none of whom are mentally ill children or children with intellectual disabilities, and the buildings or portions thereof in which such children are housed are not more than two stories in height, and building or portions thereof housing such children have an automatic fire alarm system activated by approved smoke detectors.

4. Pursuant to Health and Safety Code, Section 13143.6, occupancies licensed for protective social care which house ambulatory clients only, none of whom is a child (under the age of 18 years) or who is elderly (65 years of age or over).

When not used in accordance with Section 504.2 or 506.3 of the California Building Code, an automatic sprinkler system installed in accordance with Section 903.3.1.2 shall be allowed in Group R-2.1 occupancies.

An automatic sprinkler system designed in accordance with Section 903.3.1.3 shall not be utilized in Group R-2.1 or R-4 occupancies.

SECTION 903.3.1.1.1, Exempt Locations, is amended by revising Item 5 as follows:

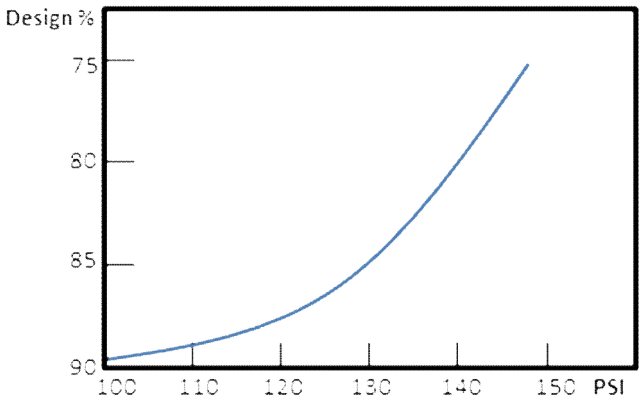
5. When approved by the fire code official, spaces or areas in telecommunications buildings used exclusively for telecommunications equipment, and associated electrical power distribution equipment, provided those spaces or areas are equipped throughout with an automatic smoke detection system in accordance with Section 907.2 and are separated from the remainder of the building by fire barriers consisting of not less than 1-hour fire barriers constructed in accordance with Section 707 or not less than 2 hour horizontal assemblies constructed in accordance with Section 712, or both.

SECTION 903.3.5.3, Hydraulically Calculated Systems, is hereby added as follows:

Section 903.3.5.3 Hydraulically calculated systems. The design of hydraulically calculated fire sprinkler systems shall not exceed 90% of the water supply capacity.

Exception: When static pressure exceeds 100 psi, and required by the Fire Code Official, the fire sprinkler system shall not exceed water supply capacity specified by Table 903.3.5.3.

TABLE 903.3.5.3
Hydraulically Calculated Systems



13.02.090 Amendments to Chapter 15 of the California Building Code

Chapter 15, Roof Assemblies and Rooftop Structures

TABLE 1505.1 is amended, by deletion of Table 1501.1 and the addition of a new Table 1505.1 thereto, to read as follows:

TABLE 1505.1[a]
MINIMUM ROOF COVERING CLASSIFICATIONS
TYPES OF CONSTRUCTION

IA	IB	IIA	IIB	IIIA	IIIB	IV	VA	VB
B	B	B	B	B	B	B	B	B

For SI: 1 foot = 304.8 mm, 1 square foot = 0.0929 m^2.
a. Unless otherwise required in accordance with Chapter 7A.

1505.1.3 Roof coverings within all other areas. The entire roof covering of every existing structure where more than 50 percent of the total roof area is replaced within any one-year period, the entire roof covering of every new structure, and any roof covering applied in the alteration, repair or replacement of the roof of every existing structure, shall be a fire-retardant roof covering that is at least Class B.

13.02.095 Amendment to Chapter 18 of the California Building Code

Chapter 18, Soils and Foundations

SECTION 1807.1.6 is amended to read as follows:

1807.1.6 Prescriptive design of concrete and masonry foundation walls. Concrete and masonry foundation walls that are laterally supported at the top and bottom shall be permitted to be designed and constructed in accordance with this section. Prescriptive design of foundation walls shall not be used for structures assigned to Seismic Design Category D, E or F.

13.02.100 Amendments to Chapter 31 of the California Building Code.

Chapter 31, Special Construction

SECTION 3109 Swimming Pools, Spas and General

3109.3 Residential swimming pools is added to the CBC to read Residential swimming pools shall be completely enclosed by a barrier complying with Sections 3109.3.1 through 3109.3.3.

3109.3.1 Barrier height and clearances. The top of the barrier must be at least 60 inches above grade measured on the side of the barrier that faces away from the swimming pool. The maximum vertical clearance between grade and the bottom of the barrier must be two inches measured on the side of the barrier that faces away from the swimming pool. Where the top of the pool structure is above grade, the barrier is authorized to be at ground level or mounted on top of the pool structure, at the maximum vertical clearance between the top of the pool structure and the bottom of the barrier must be four inches.

3109.3.1.1 Openings. Openings in the barrier must not allow passage of a 4-inch-diameter sphere.

3109.3.1.2 Solid barrier surfaces. Solid barrier surfaces which do not have openings shall not contain indentations or protrusions except for normal construction tolerances and tooled masonry joints.

3109.3.1.3 Closely spaced horizontal members. Where the barrier is composed of horizontal and vertical members and the distance between the tops of the horizontal members is less than 45 inches, the horizontal members shall be located on the swimming pool side of the fence. Spacing between vertical members shall not be greater than 1 ¾ inches in width. Where there are decorative cutouts within vertical members, spacing with the cutouts shall not be greater than 1 ¾ inches in width.

3109.3.1.4 Widely spaced horizontal members. Where the barrier is composed of horizontal members and the distance between the tops of the horizontal members is 45 inches or more, spacing between vertical members must not be greater than 4 inches. Where there are decorative cutouts within vertical members, spacing must not be greater than 1 ¾ inches in width.

3109.3.1.5 Chain link dimensions. Mesh size for chain link fences must not be greater than 1 ¾ inches in width, unless the fence is provided with slats fastened at the top or bottom that reduce the openings to not more than 1 ¾ in width.

3109.3.1.6 Diagonal members. Where the barrier is composed of diagonal members shall not be greater than 1 ¾ inches.

3109.3.1.7 Gates. Access gates must comply with the requirements of Sections 3109.3.1 through 3109.3.1.6 and must be equipped to accommodate a locking device. Pedestrian access gates must open outward away from the pool and must be self-closing and have a self-latching device. Doors or gates other than pedestrian access gates must have a self-latching device and must be equipped with lockable hardware or padlocks and must remain locked at all times when not in use. Release mechanisms must comply with Sections 1010.1.9 and 1109.13. Where release mechanisms of the self-latching device are located less than 60 inches above grade measured on the side of the barrier that faces away from the swimming pool, the release mechanism must be located on the pool side of the gate at least three inches below the top of the gate and the gate barrier may have no opening greater than one-half inch within 18 inches of the release mechanism.

3109.3.1.8 Dwelling wall as a barrier. Where a wall of a dwelling serves as part of the barrier, two safety devices must be provided in accordance with Section 115922 of the California Health and Safety Code.

3109.3.1.9 Pool structure as barrier. Where an above-ground pool structure, and the means of access is a ladder or steps, then the ladder or steps either shall be capable of being secured, locked or removed to prevent access, or the ladder or steps shall be surrounded by a barrier that meets the requirements of Sections 3109.3.1.1 through 3109.3.1.8. Where the ladder or steps are secured, locked or removed, any opening shall not allow the passage of a 4-inch-diameter sphere.

3109.3.2 Indoor swimming pools. Wall surrounding indoor swimming pools shall not be required to comply with Section 3109.3.1.8. through 3109.3.3.

3109.3.3 Prohibited Locations. Barriers shall be located as to prohibit permanent structures, equipment or similar objects from being used to climb the barriers. There shall be a clear zone of not less than 36” between the exterior of the enclosure and any permanent structures or equipment such as pumps,

filters and heaters that can be used to climb the enclosure.

13.02.120 Amendments to the California Residential Code.

Chapter 1, Scope and Application, is amended as follows:

SECTION R105.5 is amended as follows:

R105.5. Expiration. Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced with 12 months after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The Building Official is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 each. The extension shall be requested in writing and justifiable cause demonstrated.

Time limitation for permit expiration as the result of code enforcement shall be as per notice of violation or as otherwise determined by the Building Official.

Chapter 2, Definitions, is amended as follows:

SECTION R202 Definitions is amended by adding “Barrier,” OCFA” and “Spark Arrester” as follows:

BARRIER. Barrier is a fence, wall, building wall, or any combination of these that completely surrounds the swimming pool and obstructs access to the swimming pool.

OCFA. Orange County Fire Authority, fire authority having jurisdiction.

SPARK ARRESTER. A listed device constructed of noncombustible material specifically for the purpose of meeting one of the following conditions:

1. Removing and retaining carbon and other flammable particles/debris from the exhaust flow of an internal combustion engine in accordance with California Vehicle Code Section 38366.

2. Fireplaces that burn solid fuel in accordance with California Building Code Chapter 28 combustible vegetation.

Chapter 3, Building Planning, is amended as follows:

SECTION R301.2, Climatic and Geographic Design Criteria, is amended as follows:

R301.2 Climatic and Geographic Design Criteria, Table R301.2(1) Climatic and Geographic Design Criteria.

TABLE R301.2(1)
CLIMATIC AND GEOGRAPHIC DESIGN CRITERIA

GROUND SNOW LOAD	WIND DESIGN Speed [d] (mph)	WIND DESIGN Topographic effects [k]	SEISMIC DESIGN CATEGORY [f]	SUBJECT TO DAMAGE FROM Weathering [a]	SUBJECT TO DAMAGE FROM Frost line Depth [b]	SUBJECT TO DAMAGE FROM Termite [c]	WINTER DESIGN TEMP [e]	ICE BARRIER UNDERLAYMENT REQUIRED [h]	FLOOD HAZARDS [g]	AIR FREEZING INDEX [i]	MEAN ANNUAL TEMP [j]
Zero	110	No	D_2 or E	Severe	12-24"	Very Heavy	50	No	04-19-2006 2006-082	0	64

MANUAL J DESIGN CRITERIA [n]

ELEVATION	LATITUDE	WINTER HEATING	SUMMER COOLING	ALTITUDE CORRECTION FACTOR	INDOOR DESIGN TEMPERATURE	DESIGN TEMPURATURE COOLING	HEAT TEMPERATURE DIFFERENCE
390	34	41	85		70	75	
COOLING TEMURATURE DIFFERENCE	WIND VELOCITY HEATING	WIND VELOCITY COOLING	COINCIDENT WET BULB	DAILY RANGE	WINTER HUMIDITY	SUMMER HUMIDITY	
7			68	22		11 (50% RH)	

For SI: 1 pound per square foot = 0.0479 kPa, 1 mile per hour = 0.447 m/s.

a. Weathering may require a higher strength concrete or grade of masonry than necessary to satisfy the structural requirements of this code. The grade of masonry units shall be determined from ASTM C 34, C 55, C 62, C 73, C 90, C 129, C 145, C 216 or C 652.

b. The City of Aliso Viejo does not have any Flood Hazards Zones.

Section R301.9, Fuel Modification Requirements for New Construction, is hereby added as follows:

R301.9 Fuel Modification Requirements for New Construction. All new structures and facilities adjoining land containing hazardous combustible vegetation shall be approved and in accordance with the requirements of OCFA Guideline C-05 "Vegetation Management Guideline – Technical Design for new Construction Fuel Modification Plans and Maintenance Program."

Section R309.6, Fire sprinkler attached garages, and carports with habitable space above, is hereby amended by modifying the exception to read as follows:

Exception: An automatic residential fire sprinkler system shall not be required when additions or alterations are made to existing carports and/or garages that do not have an automatic fire sprinkler system installed

unless a sprinkler system is required in accordance with California Fire Code Section 903.2.8.

SECTION R313.1, Townhouse automatic fire sprinkler systems, is hereby amended by modifying the exception as follows:

Exception: An automatic residential fire sprinkler system shall not be required when additions or alterations are made to existing townhouses that do not have an automatic fire sprinkler system installed unless a sprinkler system is required in accordance with California Fire Code Section 903.2.8.

SECTION R313.2, One and two-family dwellings automatic fire sprinkler systems, is hereby amended by modifying the exception as follows:

Exception: An automatic residential fire sprinkler system shall not be required for additions or alterations to existing buildings that are not already provided with an automatic sprinkler system unless a sprinkler system is required in accordance with California Fire Code Section 903.2.8.

SECTION R313.3.6.2.2, Calculation procedure, is hereby revised as follows:

R313.3.6.2.2 Calculation procedure. Determination of the required size for water distribution piping shall be in accordance with the following procedure and California Fire Code Section 903.3.5.3.

SECTION R319.1, Address identification, is hereby revised as follows:

R319.1 Address Identification. New and existing buildings shall be provided with approved address identification. The address identification shall be legible and placed in a position that is visible from the street or road fronting the property. Address identification characters shall contrast with their background. Address numbers shall be Arabic numbers or alphabetical letters. Numbers shall not be spelled out. Each character shall be not less than 4 inches in height with a stroke width of not less than 0.5 inch. Where required by the fire code official, address identification shall be provided in additional approved locations to facilitate emergency response. Where access is by means of a private road and the building address cannot be viewed from the public way, a monument, pole or other sign or means shall be used to identify the structure. Address identification shall be maintained.

SECTION R337.1.3, Application, is hereby revised to read as follows:

R337.1.3 Application. New buildings located in any Fire Hazard Severity Zone or any Wildland-Urban Interface Fire Area designated by the enforcing agency constructed after the application date, and additions to

and remodel of buildings constructed before 2012 located in areas currently designated as such, shall comply with the provisions of this chapter. The provisions shall also apply to additions, remodels, and accessory structures located within 100 feet of a fuel modification zone, vegetation management area, or similar area containing hazardous combustible vegetation, regardless of whether the property is currently located in a designated Fire Hazard Severity Zone or Wildland-Urban Interface Area, when materials and/or construction methods for exterior wildfire exposure were previously required at the property by the Building or Fire Code Official.

Exceptions:

1. Buildings of an accessory character classified as a Group U occupancy and not exceeding 120 square feet in floor area, when located at least 30 feet from an applicable building.

2. Buildings of an accessory character classified as a Group U occupancy of any size located at least 50 feet from an applicable building.

3. Buildings classified as a Group U Agricultural Building, as defined in Section 202 of this code (see also Appendix C – Group U Agricultural Buildings), when located at least 50 feet from an applicable building.

SECTION R337.1.6, Fuel Modification Requirements for New Construction, is hereby added as follows:

R337.1.6 Fuel Modification Requirements for New Construction. All new buildings to be built or installed in hazardous fire areas shall comply with the following:

1. Preliminary fuel modification plans shall be submitted to and approved by the fire code official concurrent with the submittal for approval of any tentative map.

2. Final fuel modification plans shall be submitted to and approved by the fire code official prior to the issuance of a grading permit. The fuel modification plan shall include provisions for the maintenance of the fuel modification for perpetuity.

3. The fuel modification plans shall meet the criteria set forth in the Fuel Modification Section of the Orange County Fire Authority Vegetation Management Guidelines.

4. The fuel modification plan may be altered if conditions change. Any alterations to the fuel modification areas shall have prior approval from the fire code official.

5. All elements of the fuel modification plan shall be maintained in accordance with the approved plan and are subject to the enforcement process outlined in the Fire Code.

Chapter 9, Roof Assemblies, is amended as follows:

SECTION R902.1 is amended by revising it to allow only class A or B roofs as follows:

R902.1 Roofing covering materials. Roofs shall be covered with materials as set forth in Sections R904 and R905. A minimum Class A or B roofing shall be installed in areas designated by this section. Classes A or B roofing required by this section to be listed shall be tested in accordance with UL 790 or ASTM E 108.

Exceptions:

1. Class A roof assemblies include those with coverings of brick, masonry and exposed concrete roof deck.

2. Class A roof assemblies also include ferrous or copper shingles or sheets, metal sheets and shingles, clay or concrete roof tile, or slate installed on noncombustible decks.

SECTION R902.1.3 is amended by revising it to require a minimum Class B roof as follows:

R902.1.3 Roof coverings within all other areas. The entire roof covering of every existing structure where more than 50 percent of the total roof area is replaced within any one-year period, the entire roof covering of every new structure, and any roof covering applied in the alteration, repair or replacement of the roof of every existing structure, shall be a fire-retardant roof covering that is at least Class B.

SECTION R902.2, first paragraph is amended by revising it to allow only Class A or B treated wood roofs as follows:

R902.2 Fire-retardant-treated shingles and shakes. Fire-retardant-treated wood shakes and shingles are wood shakes and shingles complying with UBC Standard 15-3 or 15-4 which are impregnated by the full-cell vacuum-pressure process with fire-retardant chemicals, and which have been qualified by UBC Standard 15-2 for use on Class A or B roofs.

Chapter 10, Chimneys and Fireplaces, is amended as follows:

Section R1001.13, Outdoor Fireplaces, Fire Pits, Fire Rings, or similar devices, is hereby added as follows:

R1001.13 Outdoor Fireplaces, Fire Pits, Fire Rings, or similar devices. Outdoor fireplaces, fire pits, fire rings, or similar exterior devices shall comply with this section.

Exception: Barbeques, grills, and other portable devices intended solely for cooking.

Section R1001.13.1, Gas-fueled devices, is hereby added as follows:

R1001.13.1 Gas-fueled devices. Outdoor fireplaces, fire pits and similar devices fueled by natural gas or liquefied-petroleum gas are allowed when approved by the Building Department and the device is designed to only burn a gas flame and not wood or other solid fuel. At R-3 occupancies, combustible construction shall not be located within three feet of an atmospheric column that extends vertically from the perimeter of the device. Where a permanent Building Department approved hood and vent is installed, combustible construction may encroach upon this column between the bottom of the hood and the vent opening. Where chimneys or vents are installed, they shall have a spark arrester in accordance with Section R1003.9.2.

Section R1001.13.2, Devices using wood or fuels other than natural gas or liquefied-petroleum gas, is hereby added as follows:

R1001.13.2 Devices using wood or fuels other than natural gas or liquefied-petroleum gas. Fireplaces burning wood or other solid fuel shall be constructed in accordance with Section R1001. Fires in a fireplace shall be contained within a firebox with an attached chimney. The opening in the face of the firebox shall have an installed and maintained method of arresting sparks. The burning of wood or other solid fuel in a device is not allowed within 15 feet of combustible structures, unless within a permanent or portable fireplace.

Section R1001.13.3, Devices using wood or fuels other than natural gas or liquefied-petroleum gas, is hereby added as follows:

R1001.13.3 Where prohibited. The burning of wood and other solid fuels shall not be conducted within a fuel modification zone. Wood and other solid fuel burning fires in devices other than permanent fireplaces are not allowed within Wildfire Risk Areas (WRA) and adopted Fire Hazard Severity Zones (FHSZ) or in locations where conditions could cause the spread of fire to the WRA or FHSZ, unless determined by the Fire Code

Official that the location or design of the device should reasonably prevent the start of a wildfire.

13.02.135 Amendments to the California Electrical Code

Article 310.106(B) Conductor Material is amended by the addition of a second paragraph to read as follows:

Copper wire shall be used for wiring No. 6 and smaller in all installations. Consideration for use of aluminum wiring can be made by the Building Official for feeder lines only on an individual basis where adequate safety measures can be ensured.

Article 310 Conductors for General Wiring is amended by the addition of Article 310.121 to read as follows:

310.121 Continuous inspection of aluminum wiring. Aluminum conductors of No. six (6) or smaller used for branch circuits shall require continuous inspection by an independent testing agency approved by the Building Official for proper torque of connections at their termination point.

13.02.140 Amendments to the California Plumbing Code.

SECTION 1014.1.4 is added to read as follows:

Grease interceptors/traps in new construction shall comply with one of the following standards:

1. Laterals must be oversized two pipe diameter increments at the point of connection with the interceptor discharge downstream to the sewer main; or

2. Grease interceptors/traps must connect directly to the sewer main with no additional connections.

SECTION 1014.1.2, Maintenance is amended by adding the following paragraph:

In locations where a grease interceptor/trap is present, and the discharge of the interceptor/traps is connected to the building lateral, such laterals must be cleaned on a semi-annual basis by a qualified professional. Verification of such cleaning shall be submitted to the Building Department for approval on an annual basis. Verification shall be in the form of a statement and/or invoice from the person performing the cleaning. Premises that have had an overflow within the last 24 months shall clean the laterals and verify such cleaning as often as deemed necessary by the Building Official.

13.02.150 Building deposits.

A. As a part of any application for, and prior to the issuance of, any building permit such as where damage may occur to public property, the applicant, if required, shall post a cash deposit in an amount established to cover the city's cost of opening and closing of the necessary files, administration of the permit status, and code enforcement, if necessary. The current deposit amount established for an encroachment permit is $3,000.

   a. Any remaining portion of the deposit required by this section shall be returned to the applicant, without interest, upon completion of the work for which the building permit was issued, or upon the request of the applicant if the building permit application is withdrawn prior to commencement of work.

   b. The deposit required by this section shall be forfeited entirely, and retained by the city as a penalty, if the applicant fails to comply with any provision of this code as it applies to the work for which the building permit was issued or if the applicant fails to request a refund of the deposit within 30 days of either expiration of the building permit or completion of the work for which the building permit was issued.

   c. Nothing in this section shall preclude the city from initiating any enforcement or legal action for violation of any provision of this code.

   d. For purposes of this section, "completion of the work" shall mean final inspection approval or issuance of a certificate of occupancy, as applicable.

SECTION 5. Chapter 13.04 2022 California Fire Code. Chapter 13.04 of Title 13 entitled "2022 Edition of the California Fire Code" is hereby amended to read in full as follows:

"CHAPTER 13.04 2022 EDITION OF THE CALIFORNIA FIRE CODE"

13.04.005 Adoption of the 2022 Edition of the California Fire Code.

13.04.010 Chapter 1, Scope and Administration, amended.

13.04.020 Chapter 2, Definitions, amended.

13.04.030 Chapter 3, General Requirements, amended.

13.04.040 Chapter 4, Emergency Planning and Preparedness, amended.

13.04.050 Chapter 5, Fire Service Features, amended.

13.04.070 Chapter 9, Fire Protection and Life Safety Systems, amended.

13.04.080 Chapter 11, Construction Requirements for Existing Buildings, amended.

13.04.085 Chapter 12, Energy Systems, amended.

13.04.100 Chapter 28, Lumber Yards and Agro-Industrial, Solid Biomass and Woodworking Facilities, amended.

13.04.110 Chapter 49, Requirements for Wildland-Urban Interface Fire Areas, amended.

13.04.120 Chapter 50, Hazardous Materials – General Provisions, amended.

13.04.130 Chapter 55, Cryogenic Fluids, adopted.

13.04.140 Chapter 56, Explosives and Fireworks, amended.

13.04.150 Chapter 57, Flammable and Combustible Liquids, adopted.

13.04.160 Chapter 60, Highly Toxic and Toxic Materials, adopted.

13.04.170 Chapter 80, Referenced Standards, amended.

13.04.180 Appendices

The City Council, for the purpose of prescribing regulations for the erecting, construction, enlargement, alteration, repair, improving, removal, conversion, demolition, occupancy, equipment, use, height, area and maintenance of all buildings and structures in the city, hereby adopts the following codes by reference and the amendment to these codes as set forth in Chapters 13.04 of the Aliso Viejo Municipal Code:

13.04.005 Adoption of the 2022 Edition of the California Fire Code.

Except as hereinafter provided, the 2022 Edition of the California Fire Code, including Chapter 1 and Appendices B, BB, C, CC, based on the 2018 Edition of the International Fire Code, as published by the International Code Council, is hereby adopted by the city of Aliso Viejo for the purpose of prescribing regulations governing conditions hazardous to life and property from fire and explosion hazards, save and except such portions as are hereinafter added, deleted, modified or amended. One copy of all the above is now on file in the office of the clerk for public inspection. This code is adopted with the same force and effect as though set out herein in full.

13.04.010 Chapter 1, Scope and Administration, amended.

110.4 Violation penalties. Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or shall fail to comply with any issued orders or notices or who shall erect, install, alter, repair or do work in violation of the approved construction documents or directive of the fire code official, or of a permit or certificate used under provisions of this code, shall be subject to penalties assessed as prescribed in the OCFA Prevention Field Services adopted fee schedule. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

SECTION 110.4.2 Infraction and misdemeanor, is hereby added as follows:

110.4.2 Infraction and misdemeanor. Persons operating or maintaining any occupancy, premises or vehicle subject to this code that shall permit any fire or life safety hazard to exist on premises under their control shall be guilty of an infraction. Persons who fail to take immediate action to abate a fire or life safety hazard when ordered or notified to do so by the chief or a duly authorized representative are guilty of a misdemeanor.

13.04.020 Chapter 2, Definitions, amended.

SECTIONS 202 General Definitions is hereby revised by adding “OCFA” and “Spark Arrester” as follows:

202 General Definitions

OCFA: Orange County Fire Authority, fire authority having jurisdiction.

SPARK ARRESTER. A listed device constructed of noncombustible material specifically for the purpose of meeting one of the following conditions:

1. Removing and retaining carbon and other flammable particles/debris from the exhaust flow of an internal combustion engine in accordance with California Vehicle Code Section 38366.

2. Fireplaces that burn solid fuel in accordance with California Building Code Chapter 28.

13.04.030 Chapter 3, General Requirements, amended.

Chapter 3 General Requirements**.** Adopt Chapter 3 in its entirety, with the exception of Sections 308.1.4, 311.5 through 311.5.5, 318, and 319, and with the following amendments:

SECTION 304.1.2 Vegetation is hereby revised as follows:

304.1.2 Vegetation**.** Weeds, grass, vines or other growth that is capable of being ignited and endangering property, shall be cut down and removed by the owner or occupant of the premises. Vegetation clearance requirement in urban-wildland interface areas shall be in accordance with Chapter 49. Type, amount, arrangement, and maintenance of vegetation in a fuel modification area, interior slope, or similarly hazardous area shall be in accordance with OCFA Guideline C-05 "Vegetation Management Guideline—Technical Design for New Construction, Fuel Modification Plans, and Maintenance Program."

SECTION 305.6 Hazardous Conditions is hereby added as follows:

SECTION 305.6 Hazardous conditions. Outdoor fires burning wood or other solid fuel are not allowed when any of the following conditions applies:

1. When predicted sustained winds exceed 8 MPH and relative humidity is less than 25%, or a red flag condition has been declared.

2. When an official sign was caused to be posted by the fire code official, or a public announcement is made.

No outdoor fires using any fuel type are permitted when predicted sustained winds exceed 20 MPH or when such fires present a hazard as determined by the fire code official.

SECTION 305.7 Disposal of rubbish is hereby added as follows:

305.7 Disposal of rubbish. Rubbish, trash or combustible waste material shall be burned only within an approved incinerator and in accordance with Section 307.2.1.

Section 307 OPEN BURNING, RECREATIONAL FIRES AND PORTABLE OUTDOOR FIREPLACES is hereby revised as follows:

SECTION 307 OPEN BURNING, RECREATIONAL FIRES, FIRE PITS, FIRE RINGS, AND PORTABLE OUTDOOR FIREPLACES

Sections 307.6 Outdoor Fireplaces, Fire Pits, Fire Rings, or similar devices used at Group R Occupancies is hereby added as follows:

307.6 Outdoor Fireplaces, Fire Pits, Fire Rings, or similar devices used at Group R Occupancies. Outdoor fireplaces, fire pits, fire rings, or similar exterior devices used at Group R occupancies shall comply with this section.

Exception: Barbeques, grills, and other portable devices intended solely for cooking.

SECTION 307.6.1 Gas-fueled devices is hereby added as follows:

307.6.1 Gas-fueled devices. Outdoor fireplaces, fire pits and similar devices fueled by natural gas or liquefied-petroleum gas are allowed when approved by the Building Department and the device is designed to only burn a gas flame and not wood or other solid fuel. At R-3 occupancies, combustible construction and vegetation shall not be located within three feet of an atmospheric column that extends vertically from the perimeter of the device. At other R occupancies, the minimum distance shall be ten feet. Where a permanent Building Department approved hood and vent is installed, combustible construction may encroach upon this column between the bottom of the hood and the vent opening. Where chimneys or vents are installed, they shall have a spark arrester as defined in Section 202.

Section 307.6.2 Devices using wood or fuels other than natural gas or liquefied-petroleum gas is hereby added as follows:

307.6.2 Devices using wood or fuels other than natural gas or liquefied-petroleum gas. Permanent outdoor fireplaces burning wood or other solid fuel shall be constructed in accordance with the California Building Code with clearance from combustible construction and building openings as required therein. Fires in a fireplace shall be contained within a firebox with an attached chimney. The opening in the face of the firebox shall have an installed and maintained method of arresting sparks.

The burning of wood or other solid fuel in a device is not allowed within 25 feet of combustible structures unless within an approved permanent fireplace, Conditions which could cause a fire to spread within 25 feet of a structure or to vegetation shall be eliminated prior to ignition. Fires in devices burning wood or solid fuel shall be in accordance with Sections 305, 307, and 308.

Exceptions:

1. Portable fireplaces and fire rings/pits equipped with a device to arrest sparks shall be located at least 3 feet from combustible construction at R-3 occupancies,

2. Portable fireplaces, and fire pits/rings equipped with a device to arrest sparks, shall be located at least 15 feet from combustible structures at other R occupancies.

Section 307.6.2.1 Where prohibited, is hereby added as follows:

307.6.2.1 Where prohibited. The burning of wood and other solid fuels shall not be conducted within a fuel modification zone, Wildfire Risk Area (WRA), Wildland-Urban Interface Area (WUI), or in locations where conditions could cause the spread of fire to the WRA or WUI.

Exceptions:

1. Permanent fireplaces that are not located in a fuel modification zone.

2. Where determined by the Fire Code Official that the location or design of the device should reasonably prevent the start of a wildfire.

Section 308.1.6.3 Sky lanterns is hereby revised as follows:

308.1.6.3 Sky lanterns. A person shall not ignite, release, or cause to be released a sky lantern.

Section 321 Fuel Modification Requirements for New Construction is hereby added as follows:

321 Fuel Modification Requirements for New Construction. All new structures and facilities adjoining land containing hazardous combustible vegetation shall be approved and in accordance with the requirements of OCFA Guideline C-05 “Vegetation Management Guideline – Technical Design for New Construction Fuel Modification Plans and Maintenance Program.”

Section 322 Clearance of brush or vegetation growth from roadways is hereby added as follows:

322 Clearance of brush or vegetation growth from roadways. The fire code official is authorized to cause areas within 10 feet (3048 mm) on each side of portions of highways and private streets which are improved, designed or ordinarily used for vehicular traffic, to be cleared of flammable vegetation and other combustible growth. Measurement shall be from the flow-line or the end of the improved edge of the roadway surfaces.
Exception: Single specimens of trees, ornamental shrubbery or cultivated ground cover such as green grass, ivy, succulents or similar plants used as ground covers, provided that they do not form a means of readily transmitting fire.

Section 323 Unusual Circumstances is hereby added as follows:

323 Unusual circumstances. The fire code official may suspend enforcement of the vegetation management requirements and require reasonable

alternative measures designed to advance the purpose of this code if determined that in any specific case that any of the following conditions exist:

1. Difficult terrain.

2. Danger of erosion.

3. Presence of plants included in any state and federal resources agencies, California Native Plant Society and county-approved list of wildlife, plants, rare, endangered and/or threatened species.

4. Stands or groves of trees or heritage trees.

5. Other unusual circumstances that make strict compliance with the clearance of vegetation provisions undesirable or impractical.

Section 324 Use of Equipment is hereby added as follows:

324 Use of equipment. Except as otherwise provided in this section, no person shall use, operate, or cause to be operated in, upon or adjoining any hazardous fire area any internal combustion engine which uses hydrocarbon fuels, unless the engine is equipped with a spark arrester as defined in Section 202 maintained in effective working order, or the engine is constructed, equipped and maintained for the prevention of fire.

Exceptions:

1. Engines used to provide motor power for trucks, truck tractors, buses, and passenger vehicles, except motorcycles, are not subject to this section if the exhaust system is equipped with a muffler as defined in the Vehicle Code of the State of California.

2. Turbocharged engines are not subject to this section if all exhausted gases pass through the rotating turbine wheel, there is no exhaust bypass to the atmosphere, and the turbocharger is in good mechanical condition.

Section 324.1 Use of Equipment and Devices Generating Heat, Sparks or Open Flames is hereby added as follows:

324.1 Equipment and devices generating heat, sparks or open flames. During any time of the year within Wildfire Risk Areas, within or immediately adjacent to any forest- or brush-covered land or non-irrigated grass-covered land, no person shall use or operate any welding equipment, cutting torches, tar pots, grinding devices, or other tools or equipment that may produce a spark, fire, or flame that could result in a wildfire without doing the following:

1. First clearing away all flammable material, including snags, from the area around such operation for a distance of 30 feet or other approved method to reduce fire spread into the wildlands. If 30-foot clearing cannot be achieved, then an alternate method shall be approved by the AHJ prior to work starting.

2. Maintain one serviceable round point shovel with an overall length of not less than 46 inches and one backpack pump water-type fire extinguisher fully equipped and ready for use at the immediate area during the operation.

3. Stop work when winds are 8 MPH or greater during periods when relative humidity is less than 25%, or a red flag condition has been declared or public announcement is made, when an official sign was caused to be posted by the fire code official, or when such fires present a hazard as determined by the fire code official.

4. Keep a cell phone nearby and call 911 immediate in case of fire.

Section 324.2 Spark Arresters is hereby added as follows:

> 324.2 Spark arresters. Spark arresters shall comply with Section 202, and when affixed to the exhaust system of engines or vehicles subject to Section 324 shall not be placed or mounted in such a manner as to allow flames or heat from the exhaust system to ignite any flammable material.

13.04.040 Chapter 4, Emergency Planning and Preparedness, amended.

Chapter 4: Emergency Planning and Preparedness**.** Adopt only the sections, subsections, and amendment listed below:

401 – 401.9
402
403.2
403.5 – 403.5.4
403.10.2.1.1
403.13 – 403.13.3
404.5 – 404.6.6
407

Section 407.5 is revised as follows:

> 407.5 Hazardous Materials Inventory Statement. Where required by the fire code official, each application for a permit shall OCFA's Chemical Classification Packet in accordance with Section 5001.5.2.

13.04.050 Chapter 5, Fire Service Features, amended.

Chapter 5 Fire Service Features is adopted in its entirety with the following amendments:

SECTION 501.1 Scope is revised as follows:

501.1 Scope. Fire service features for buildings, structures and premises shall comply with this chapter and, where required by the fire code official, with OCFA Guideline B-09, “Fire Master Plan for Commercial & Residential Development.” Fire service features for buildings, structures and premises located in State Responsibility Areas, and Local Responsibility Areas designated as Very High Hazard Fire Severity Zone shall also comply with OCFA Guideline B-09a, “Fire Safe Development in State Responsibility Areas, and Local Responsibility Areas designated as Very High Hazard Fire Severity Zone.”

Section 510.1 Emergency responder radio coverage in new buildings is revised as follows:

510.1 Emergency responder radio coverage in new buildings. All new buildings shall have approved radio coverage for emergency responders within the building based upon the existing coverage levels of the public safety communication systems utilized by the jurisdiction, measured at the exterior of the building. This section shall not require improvement of the existing public safety communication systems. he Emergency Responder Radio Coverage System shall comply with the Orange County Sheriff’s Department, Communications and Technology Division guidelines and specifications and, where the functionality or performance requirements in the California Fire Code are more stringent, this code.

Exceptions:

1. In buildings or structures where it is determined by the fire code official that the radio coverage system is not needed, including but not limited to the following:

    a. Existing buildings or structures, unless required by the Building Official and OCFA for buildings and structures undergoing extensive remodel and/or expansion.

    b. Elevators.

    c. Structures that meet all of the following:

        i. Three stories or less, and

ii. Do not have subterranean storage or parking, and
iii. Do not exceed 50,000 square feet on any single story.

d. Structures that meet all of the following:

i. Residential structures four stories or less, and
ii. Constructed of wood, and
iii. Do not have subterranean storage or parking, and
iv. Are not built integral to an above ground multi-story parking structure.

Should a structure that is three stories or less and 50,000 square feet or smaller on any single story include subterranean storage or parking, then this ordinance shall apply only to the subterranean areas.

2. In facilities where emergency responder radio coverage is required and such systems, components or equipment required could have a negative impact on the normal operations of the facility, the fire code official shall have the authority to accept an automatically activated emergency radio coverage system.

Section 510.2 Emergency responder radio coverage in existing buildings is deleted without replacement:

Section 510.3 Permit required is deleted without replacement.

13.04.070 Chapter 9, Fire Protection and Life Safety Systems, amended.

Adopt Chapter 9 Fire Protection and Life Safety Systems is adopted in its entirety with the following amendments:

Section 903.2 Where required is hereby revised as follows:

903.2 Where required. Approved automatic sprinkler systems in buildings and structures shall be provided when one of the following conditions exists:

1. New Buildings: Notwithstanding any applicable provisions of Sections 903.2.1 through 903.2.19 an automatic fire-extinguishing system shall also be installed in all occupancies when the total building area exceeds 5,000 square feet (465 m2) as defined in Section 202, regardless of fire areas or allowable area, or is more than two stories in height.

   Exception: Subject to approval by the Fire Code Official, open parking garages in accordance with Section 406.5 of the California Building Code.

2. Existing Buildings: Notwithstanding any applicable provisions of this code,

an automatic sprinkler system shall be provided in an existing building when an addition occurs and when one of the following conditions exists:

a. When an addition is 33% or more of the existing building area, and the resulting building area exceeds 5,000 square feet.

b. When an addition exceeds 2,000 square feet and the resulting building area exceeds 5,000 square feet.

c. An additional story is added above the second floor regardless of fire areas or allowable area.

Exception: Additions to Group R-3 occupancies shall comply with Section 903.2.8 (2).

903.2.8 Group R. An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area as follows:

1. New Buildings: An automatic sprinkler system shall be installed throughout all new buildings.

2. Existing R-3 Buildings: An automatic sprinkler system shall be installed throughout when one of the following conditions exists:

    a. When an addition is 33% or more of the existing building area as defined in Section 202, and the final area > 3600 sq./ft, within a two-year period, or,

    b. An addition when the existing building is already provided with automatic sprinklers; or,

    c. When an existing Group R Occupancy is being substantially renovated, and where the scope of the renovation is such that the Building Code Official determines that the complexity of installing a sprinkler system would be similar as in a new building.

    d. When not used in accordance with Section 504.2 or 506.3 of the California Building Code, an automatic sprinkler system installed in accordance with Section 903.3.1.2 shall be allowed in Group R-2.1 occupancies.

    e. An automatic sprinkler system designed in accordance with Section 903.3.1.3 shall not be utilized in Group R-2.1 or R-4 occupancies.

Exceptions:

1. Existing Group R-3 occupancies converted to Group R-3.1 occupancies and not housing bedridden clients, not housing non-ambulatory clients above the first floor, and not housing clients above the second floor.

2. Existing Group R-3 occupancies converted to Group R-3.1 occupancies housing only one bedridden client and complying with Section 435.8.3.3 of the California Building Code.

3. Pursuant to Health and Safety Code, Section 13113, occupancies housing ambulatory children only, none of whom are mentally ill children or children with intellectual disabilities, and the buildings or portions thereof in which such children are housed are not more than two stories in height, and building or portions thereof housing such children have an automatic fire alarm system activated by approved smoke detectors.

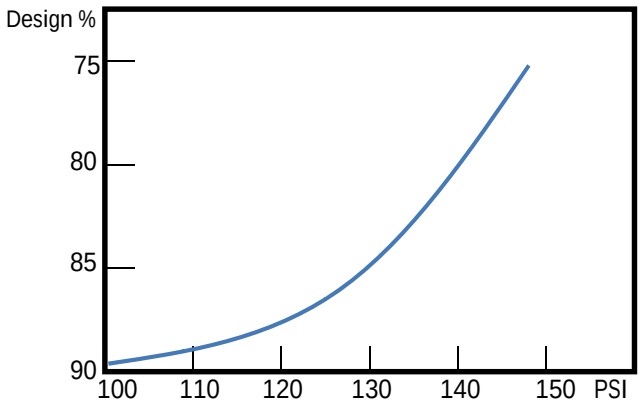
4. Pursuant to Health and Safety Code, Section 13143.6, occupancies licensed for protective social care which house ambulatory clients only, none of whom is a child (under the age of 18 years), or who is elderly (65 years of age or over).

Section 903.3.5.3 Hydraulically calculated systems is hereby added as follows:

903.3.5.3 Hydraulically calculated systems. The design of hydraulically calculated fire sprinkler systems shall not exceed 90% of the water supply capacity.

Exception: When static pressure exceeds 100 psi, and when required by the fire code official, the fire sprinkler system shall not exceed the water supply capacity specified by Table 903.3.5.3.

TABLE 903.3.5.3
Hydraulically Calculated Systems



13.04.080 Chapter 11, Construction Requirements for Existing Buildings, amended.

Chapter 11 Construction Requirements for Existing Buildings. Adopt only those sections and subsections listed below:

1103.7
1103.7.3
1103.7.3.1
1103.7.8 – 1103.7.8.2
1103.7.9 – 1103.7.9.10
1103.8 – 1103.8.5.3
1103.9.1
1107
1113
1114
1115
1116

13.04.085 Chapter 12, Energy Systems, amended.

Chapter 12 Energy Systems is adopted in its entirety with the following amendment added:

1201.1.1 Other Systems Where required by the fire code official, other systems and operations including but not limited to battery systems assembly, battery reconditioning and storage, research and development of battery storage systems, electric vehicle manufacturing and testing, and battery charging systems for cars and carts inside of buildings or structures, shall comply with this chapter.

Exception: When approved by the fire code official, charging stations for electric vehicles located in open parking garages of Type I or II construction.

13.04.100 Chapter 28, Lumber Yards and Agro-Industrial, Solid Biomass and Woodworking Facilities, amended.

Chapter 28, Lumber Yards and Woodworking Facilities, is hereby amended as follows:

SECTION 2801.2, Permit, is hereby revised by adding the following statement to the last sentence:

2801.2 Permit. Permits shall be required as set forth in Section 105.6.

SECTION 2808.2, Storage site, is hereby revised as follows:

2808.2 Storage site. Storage sites shall be level and on solid ground or other all-weather surface. Sites shall be thoroughly cleaned and approval from the fire code official obtained before transferring products to the site.

SECTION 2808.3, Size of piles, is hereby revised as follows:

2808.3 Size of piles. Piles shall not exceed 15 feet (4572 mm) in height, 50 feet (15 240 mm) in width and 100 feet (30 480 mm) in length.

Exception: The fire code official is authorized to allow the pile size to be increased where a fire protection plan is provided for approval that includes, but is not limited to, the following:

1. Storage yard areas and materials-handling equipment selection, design and arrangement shall be based upon sound fire prevention and protection principles.

2. Factor that lead to spontaneous heating shall be identified in the plan, and control of the various factors shall be identified and implemented, including provisions for monitoring the internal condition of the pile.
3. The plan shall include means for early fire detection and reporting to the public fire department; and facilities needed by the fire department for fire extinguishment including a water supply and fire hydrants.

4. Fire apparatus access roads around the piles and access roads to the top of the piles shall be established, identified and maintained.

5. Regular yard inspections by trained personnel shall be included as part of an effective fire prevention maintenance program.

Additional fire protection called for in the plan shall be provided and shall be installed in accordance with this code. The increase of the pile size shall be based upon the capabilities of the installed fire protection system and features.

SECTION 2808.4, Pile Separation is hereby revised to read as follows:

2808.4 Pile separation. Piles shall be separated from adjacent piles by minimum distance of 20 feet. Additionally, piles shall have a minimum separation of 100 feet from combustible vegetation.

SECTION 2808.7, Pile fire protection, is hereby revised to read as follows:

2808.7 Pile fire protection. Automatic sprinkler protection shall be provided in conveyor tunnels and combustible enclosures that pass under a pile. Combustible conveyor systems and enclosed conveyor systems shall be

equipped with an approved automatic sprinkler system. Oscillating sprinklers with a sufficient projectile reach are required to maintain a 40% to 60% moisture content and wet down burning/smoldering areas.

SECTION 2808.9, Material-handling equipment, is hereby revised by adding the following sentence at the beginning of the section:

2808.9 Material-handling equipment. All material handling equipment operated by an internal combustion engine shall be provided and maintained with an approved spark arrester. Approved material-handling equipment shall be available for moving wood chips, hogged material, wood fines and raw product during fire-fighting operations.

SECTION 2808.11, Temperature control, is hereby added as follows:

2808.11 Temperature control. The temperature shall be monitored and maintained as specified in Sections 2808.11.1 and 2808.11.2.

SECTION 2808.11.1, Pile temperature control, is hereby added as follows:

2808.11.1 Pile temperature control. Piles shall be rotated when the internal temperature readings are in excess of 165 degrees Fahrenheit.

SECTION 2808.11.2, New material temperature control, is hereby added as follows:

2808.11.2 New material temperature control. New loads delivered to the facility shall be inspected and tested at the facility entry prior to taking delivery. Material with temperature exceeding 165 degrees Fahrenheit shall not be accepted on the site. New loads shall be monitored to verify that the temperature remains stable.

SECTION 2808.12, Water availability, is hereby added as follows:

2808.12 Water Availability. Facilities with over 2500 cubic feet shall provide a water supply. The minimum fire flow shall be no less than 500 GPM @ 20 psi for a minimum of 1-hour duration for pile heights up to 6 feet and 2-hour duration for pile heights over 6 feet. If there is no water purveyor, an alternate water supply with storage tank(s) shall be provided for fire suppression. The water supply tank(s) shall provide a minimum capacity of 2500 gallons per pile (maximum 30,000 gallons) for piles not exceeding 6 feet in height and 5000 gallons per pile (maximum 60,000) for piles exceeding 6 feet in height. Water tank(s) shall not be used for any other purpose unless the required fire flow is left in reserve within the tank at all times. An approved method shall be provided to maintain the required amount of water within the tank(s).

SECTION 2808.13, Tipping area, is hereby added as follows:

2808.13 Tipping areas shall comply with the following:

1. Tipping areas shall not exceed a maximum area of 50 feet by 50 feet.

2. Material within a tipping area shall not exceed 5 feet in height at any time.

3. Tipping areas shall be separated from all piles by a 20-foot-wide fire access lane.

4. A fire hydrant or approved fire water supply outlet shall be located within 150 feet of all points along the perimeter of the tipping area.

5. All material within a tipping area shall be processed within 5 days of receipt.

SECTION 2808.14, Emergency Contact, is hereby added as follows:

2808.14 Emergency Contact. The contact information of a responsible person or persons shall be provided to the Fire Department and shall be posted at the entrance to the facility for responding units. The responsible party should be available to respond to the business in an emergency situation.

13.04.110 Chapter 49, Requirements for Wildland-Urban Interface Fire Areas, amended.

Chapter 49, Requirements for Wildland-Urban Interface Fire Areas, is hereby amended as follows:

Section 4906.3, Requirements, is hereby revised to read as follows:

4906.3 Requirements. Hazardous vegetation and fuels around all applicable buildings and structure shall be maintained in accordance with the following laws and regulations:

1. Public Resources Code, Section 4291.

2. California Code of Regulations, Title 14, Division 1.5, Chapter 7, Subchapter 3, Section 1299 (see guidance for implementation “General Guideline to Create Defensible Space”).

3. California Government Code, Section 51182.

4. California Code of Regulations, Title 19, Division 1, Chapter 7, Subchapter 1, Section 3.07.

5. OCFA Guideline C-05 “Vegetation Management Guideline – Technical Design for New Construction Fuel Modification Plans and Maintenance Program.”

SECTION 4908, Fuel Modification Requirements for New Construction, is hereby added as follows:

4908 Fuel Modification Requirements for New Construction. All new buildings to be built or installed in a Wildfire Risk Area shall comply with the following:

1. Preliminary fuel modification plans shall be submitted to and approved by the fire code official prior to or concurrently with the approval of any tentative map.

2. Final fuel modification plans shall be submitted to and approved by the fire code official prior to the issuance of a grading permit.
3. The fuel modification plans shall meet the criteria set forth in the Fuel Modification Section of OCFA Guideline C-05 “Vegetation Management Guideline – Technical Design for New Construction Fuel Modification Plans and Maintenance Program.” The fuel modification plan shall include provisions for the maintenance of the fuel modification in perpetuity.

4. The fuel modification plan may be altered if conditions change. Any alterations to the fuel modification areas shall have prior approval from the fire code official.

5. All elements of the fuel modification plan shall be maintained in accordance with the approved plan and are subject to the enforcement process outlined in the Fire Code.

SECTION 4909, Explosives and Blasting, is hereby added as follows:

Section 4909 Explosives and Blasting. Explosives shall not be possessed, kept, stored, sold, offered for sale, given away, used, discharged, transported or disposed of within wildland-urban interface areas, or hazardous fire areas except by permit from the fire code official.

13.04.120 Chapter 50, Hazardous Materials – General Provisions, amended.

Chapter 50, Hazardous Materials – General Provisions, is adopted in its entirety with the following amendments.

SECTION 5001.5.2, Hazardous Materials Inventory Statement (HMIS), is hereby amended by modifying the first paragraph as follows:

5001.5.2 Hazardous Materials Inventory Statement (HMIS). Where required by the fire code official, an application for a permit shall include Orange County Fire Authority's Chemical Classification Packet, which shall be completed and approved prior to approval of plans, and/or the storage, use or handling of chemicals on the premises. The Chemical Classification Packet shall include the following information:

1. Product Name;

2. Component;

3. Chemical Abstract Service (CAS) number;

4. Location where stored or used;

5. Container size;

6. Hazard classification;

7. Amount in storage;

8. Amount in use-closed systems;

9. Amount in use-open systems.

SECTION 5003.1.1.1, Extremely Hazardous Substances, is hereby added as follows:

5003.1.1.1 Extremely Hazardous Substances. No person shall use or store any amount of extremely hazardous substances (EHS) in excess of the disclosable amounts (see Health and Safety Code Section 25500 et al) in a residential zoned or any residentially developed property.

13.04.130 Chapter 55, Cryogenic Fluids, adopted.

Chapter 55, Cryogenic Fluids, is adopted in its entirety without amendments.

13.04.140 Chapter 56, Explosives and Fireworks, amended.

Chapter 56, Explosives and Fireworks, is hereby amended as follows:

SECTION 5608.2, Firing, is hereby added as follows:

5608.2 Firing. All fireworks displays, regardless of mortar, device, or shell size, shall be electrically fired.

SECTION 5608.3, Application for Permit, is hereby added as follows

Section 5608.3 Application for Permit. A diagram of the grounds on which the display is to be held showing the point at which the fireworks are to be discharged, the fallout area based on 100 feet per inch of shell size, the location of all buildings, roads, and other means of transportation, the lines behind which the audience will be restrained, the location of all nearby trees, telegraph or telephone line, or other overhead obstructions shall be provided to OCFA.

13.04.150 Chapter 57, Flammable and Combustible Liquids, adopted.

Chapter 57, Flammable and Combustible Liquids, is adopted in its entirety without amendments.

13.04.160 Chapter 60, Highly Toxic and Toxic Materials, adopted.

Chapter 60, Highly Toxic and Toxic Materials, is adopted in its entirety without any amendments.

13.04.170 Chapter 80, Referenced Standards, amended.

Chapter 80, Referenced Standards, is hereby amended as follows:

NFPA 13, 2016 Edition, Standard for the Installation of Sprinkler Systems, is hereby amended as follows:

SECTION 6.7.3 is hereby revised as follows:

6.7.3 Fire department connections (FDC) shall be of an approved type. The FDC shall contain a minimum of two 2 1/2 inch inlets. The location shall be approved and be no more than 150 feet from a public hydrant. The FDC may be located within 150 feet of a private fire hydrant when approved by the fire code official. The size of piping and the number of inlets shall be approved by the fire code official. If acceptable to the water authority, it may be installed on the backflow assembly. Fire department inlet connections shall be painted OSHA safety red. When the fire sprinkler density design requires 500 gpm

(including inside hose stream demand) or greater, or a standpipe system is included, four 2 1/2 inch inlets shall be provided.

SECTION 8.3.3.1 is hereby revised as follows:

8.3.3.1. When fire sprinkler systems are installed in shell buildings of undetermined use (Spec Buildings) other than warehouses (S occupancies), fire sprinklers of the quick-response type shall be used. Use is considered undetermined if a specific tenant/occupant is not identified at the time the fire sprinkler plan is submitted. Sprinklers in light hazard occupancies shall be one of the following:

1. Quick-response type as defined in 3.6.4.8;

2. Residential sprinklers in accordance with the requirements of 8.4.5;

3. Quick response CMSA sprinklers;

4. SFR sprinklers;

5. Standard-response sprinklers used for modifications or additions to existing light hazard systems equipped with standard-response sprinklers;

6. Standard-response sprinklers used where individual standard-response sprinklers are replaced in existing light hazard systems.

SECTION 11.1.1.1 is hereby added as follows:

11.1.1.1 When fire sprinkler systems are required in buildings of undetermined use other than warehouses, they shall be designed and installed to have a fire sprinkler density of not less than that required for an Ordinary Hazard Group 2 use, with no reduction(s) in density or design area. Warehouse fire sprinkler systems shall be designed to Figure 16.2.1.3.2(d) curve “G”. Use is considered undetermined if a specific tenant/occupant is not identified at the time the sprinkler plan is submitted. Where a subsequent occupancy requires a system with greater capability, it shall be the responsibility of the occupant to upgrade the system to the required density for the new occupancy.

SECTION 11.2.3.1.1.1 is hereby added as follows:

11.2.3.1.1.1 The available water supply for fire sprinkler system design shall be determined by one of the following methods, as approved by the Fire Code Official:

1. Subtract the project site elevation from the low water level for the appropriate pressure zone and multiply the result by 0.433;

2. Use a maximum of 40 psi, if available;

3. Utilize the Orange County Fire Authority water-flow test form/directions to document a flow test conducted by the local water agency or an approved third party licensed in the State of California.

NFPA 13D, 2016 Edition, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes is hereby amended as follows:

SECTION 7.1.2 is hereby revised as follows:

7.1.2 The system piping shall not have a separate control valve unless supervised by a central station, proprietary, or remote station alarm service.

NFPA 14, 2016 Edition, Installation of Standpipe and Hose Systems, is hereby amended as follows:

SECTION 7.3.1.1 is hereby deleted in its entirety and replaced as follows:

7.3.1.1 Class I and III Standpipe hose connections shall be unobstructed and shall be located not less than 18 inches or more than 24 inches above the finished floor. Class II Standpipe hose connections shall be unobstructed and shall be located not less than 3 feet or more than 5 feet above the finished floor.

NFPA 24, 2016 Edition, Standard for the Installation of Private Fire Service Mains and Their Appurtenances, is hereby amended as follows:

SECTION 6.2.8.1 is hereby added as follows:

6.2.8.1 All indicating valves controlling fire suppression water supplies shall be painted OSHA red.

Exceptions:

1. Brass or bronze valves on sprinkler risers mounted to the exterior of the building may be left unpainted.

2. Where OS&Y valves on the detector check assembly are the only control valves, at least one OS&Y valve shall be painted red.

SECTION 6.2.9 is hereby revised to read as follows:

6.2.9 All connections to private fire service mains for fire protection systems shall be arranged in accordance with one of the following so that they can be isolated:

1. A post indicator valve installed not less than 40 feet (12 meters) from the building

   a. For buildings less than 40 feet (12 meters) in height, a post indicator valve shall be permitted to be installed closer than 40 feet (12 meters) but at least as far from the building as the height of the wall facing the post indicator valve.

2. A wall post indicator valve.

3. An indicating valve in a pit, installed in accordance with Section 6.4.

4. A backflow preventer with at least one indicating valve not less than 40 feet (12 meters) from the building.

   a. For buildings less than 40 feet (12 meters) in height, a backflow preventer with at least one indicating valve shall be permitted to be installed closer than 40 feet (12 meters) but at least as far from the building as the height of the wall facing the backflow preventer.

5. Control valves installed in a fire-rated room accessible from the exterior.

6. Control valves in a fire-rated stair enclosure accessible from the exterior

SECTION 10.1.5 IS HEREBY ADDED AS FOLLOWS:

10.1.5 All ferrous pipe and joints shall be polyethylene encased per AWWA C150, Method A, B, or C. All fittings shall be protected with a loose 8-mil polyethylene tube or sheet. The ends of the tube or sheet

shall extend past the joint by a minimum of 12 inches and be sealed with 2-inch wide tape approved for underground use. Galvanizing does not meet the requirements of this section.

Exception: 304 or 316 Stainless Steel pipe and fittings

SECTION 10.4.1.1 is hereby revised as follows:

10.4.1.1 All bolted joint accessories shall be cleaned and thoroughly coated with asphalt or other corrosion-retarding material after installation.

Exception: Bolted joint accessories made from 304 or 316 stainless steel.

SECTION 10.4.1.1.1 is hereby added as follows:

10.4.1.1.1 All bolts used in pipe-joint assembly shall be 316 stainless steel.

SECTION 10.4.3.2 is hereby deleted and replaced as follows:

10.4.3.2 Where fire service mains enter the building adjacent to the foundation, the pipe may run under a building to a maximum of 24 inches, as measured from the interior face of the exterior wall to the center of the vertical pipe. The pipe under the building or building foundation shall be 304 or 316 stainless steel and shall not contain mechanical joints or it shall comply with 10.6.2.

13.04.180 Appendices

Appendix A is deleted in its entirety without amendments.

Appendix B is adopted in its entirety without amendments.

Appendix BB is adopted in its entirety without amendments.

Appendix C is adopted in its entirety without amendments.

Appendix CC is adopted in its entirety without amendments.

Appendix D is deleted in its entirety without amendments.

Appendix E is deleted in its entirety without amendments.

Appendix F is deleted in its entirety without amendments.

Appendix G is deleted in its entirety without amendments.

Appendix H is adopted in its entirety without amendments.

Appendix I is deleted in its entirety without amendments.

Appendix J is deleted in its entirety without amendments.

Appendix K is deleted in its entirety without amendments.

Appendix L is deleted in its entirety without amendments.

Appendix M is deleted in its entirety without amendments.

Appendix N is deleted in its entirety without amendments.

SECTION 7. Effective Date. This ordinance and all codes referenced in this ordinance shall take effect upon the later of (1) 30 days from the adoption of this ordinance or (2) January 1, 2023.

SECTION 8. Repeal of Conflicting Ordinances. Upon the effective date of this ordinance, all former ordinances or parts thereof that conflict with or are inconsistent with the provisions of this ordinance or of the 2022 California Building Standards Code, as adopted and amended herein, are hereby repealed.

SECTION 9. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court or competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each section, subsection, subdivision, sentence, clause, phrases, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof, be declared invalid or unconstitutional.

SECTION 10. City Clerk's Certification. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted at the duty designated posting places within the City and published once within fifteen days after passage and adoption as required by law; or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance in the Office of the City Clerk five days prior to the date of adoption of this Ordinance, and, within fifteen days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

PASSED, APPROVED AND ADOPTED this 16th day of November 2022.

_____
Ross Chun
Mayor

APPROVED AS TO FORM:

_____
Scott C. Smith, City Attorney

ATTEST:

_____
Mitzi Ortiz, MMC, City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF ALISO VIEJO)

I, MITZI ORTIZ, City Clerk of the City of Aliso Viejo, California, DO HEREBY CERTIFY that foregoing Ordinance No. 2022_____ was duly passed and adopted by the City Council of the City of Aliso Viejo at their regular meeting held on the 16th day of November 2022, by the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

_____
MITZI ORTIZ, MMC
CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. 2022-_____ duly passed and adopted by the Aliso Viejo City Council at its regular meeting held November 16, 2022 and that the Summary of the Ordinance was published on November 3, 2022 and November 10, 2022 in the Aliso Viejo News.

_____
MITZI ORTIZ, MMC
CITY CLERK

(SEAL)

City of Aliso Viejo
AGENDA ITEM

DATE: November 16, 2022

TO: Mayor and City Council

FROM: So Kim, Director of Community Development

SUBJECT: APPLICATION FOR THE PERMANENT LOCAL HOUSING ALLOCATION (PLHA) FUNDING FROM THE CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT FOR ELIGIBLE HOUSING-RELATED PROJECTS AND PROGRAMS

Recommended Action:

Conduct a public hearing and adopt a resolution authorizing the application submittal for the Permanent Local Housing Allocation (PLHA) funding from the California Department of Housing and Community Development (HCD) for housing-related eligible activities.

Fiscal Impact:

In the event the City is awarded the PLHA funding, applicable funds will be appropriated at that time to cover initial costs until reimbursed by the HCD.

Background:

In 2017, Governor Brown signed a 15-bill housing package aimed at addressing the state's housing shortage and high housing costs. Specifically, it included the Building Homes and Jobs Act (SB 2, 2017), which established a $75 recording fee on real estate documents to increase the supply of affordable homes in California. The revenue from SB 2 will vary from year to year, as revenue is dependent on real estate transactions with fluctuating activity.

The legislation directs the California Department of Housing and Community Development (HCD) to use 70% of the revenue collected to provide financial assistance to local governments for eligible housing-related projects and programs to assist in addressing the unmet housing needs of their local communities. This program is hereafter referred to as the Permanent Local Housing Allocation (PLHA) program.

Discussion:

The PLHA funding for the City is approximately $700,000, distributed over five years. In order to receive PLHA funding, the City must submit a plan as part of its application package that identifies how it will use the funding. Provided below is a list of proposed eligible activities.

1. Aliso Viejo Town Center: 85% of the PLHA funding will be allocated towards the predevelopment efforts of the Aliso Viejo Town Center (AVTC) concept plan. Specifically, the consulting efforts to further develop and implement the AVTC concept plan for the future mixed-use building, which will include a percentage of affordable housing at varying income levels. To date, the consultants and City attorney reviewed feasibility studies, conducted additional research, prepared revised design concepts and detailed proforma, and participated in meetings with City staff and certain Town Center property owners. These meetings have recently gained more traction and the team is now at the stage of finding opportunities to incentivize the remaining property owners to participate in the future implementation of the Town Center Vision Plan. Additional work will be needed over the next few years to partner with private property owners, hire a developer, and go through the local entitlement process leading to eventual construction.

2. Repair and Maintenance of City-Owned Affordable Units: 10% of the PLHA funding will be allocated towards the annual maintenance of the two City-owned affordable units, HOA dues, and property taxes.

3. Administrative Costs: 5% of the PLHA funding will be allocated for associated administrative costs.

Environmental:

CEQA Guidelines Section 15378 defines a project as an action which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. The proposed request is to apply for state funding. Any future projects associated with PLHA funding will be reviewed independently for compliance with CEQA.

Public Notice:

A public hearing notice was published in the Laguna Niguel News on November 3, 2022.

Attachments:

1. Resolution

2. PLHA Plan

RESOLUTION NO. 2022-___

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, AUTHORIZING THE APPLICATION AND ADOPTING THE PLHA PLAN FOR THE PERMANENT LOCAL HOUSING ALLOCATION PROGRAM

WHEREAS, the Department is authorized to provide up to $335 million under the SB 2 Permanent Local Housing Allocation Program Formula Component from the Building Homes and Jobs Trust Fund for assistance to Cities and Counties (as described in Health and Safety Code section 50470 et seq. (Chapter 364, Statutes of 2017 (SB 2)); and

WHEREAS, the State of California (the "State"), Department of Housing and Community Development ("Department") issued a Notice of Funding Availability ("NOFA") dated August 17, 2022 and amended October 18, 2022 under the Permanent Local Housing Allocation (PLHA) Program; and

WHEREAS, the City of Aliso Viejo is an eligible Local government who has applied for program funds to administer one or more eligible activities, or a Local or Regional Housing Trust Fund to whom an eligible Local government delegated its PLHA formula allocation; and

WHEREAS, the Department may approve funding allocations for PLHA Program, subject to the terms and conditions of the Guidelines, NOFA, Program requirements, the Standard Agreement, and other contracts between the Department and PLHA grant recipients.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ALISO VIEJO AS FOLLOWS:

Section 1: If Applicant receives a grant of PLHA funds from the Department pursuant to the above referenced PLHA NOFA, it represents and certifies that it will use all such funds in a manner consistent and in compliance with all applicable state and federal statutes, rules, regulations, and laws, including without limitation all rules and laws regarding the PLHA Program, as well as any and all contracts Applicant may have with the Department.

Section 2: Applicant is hereby authorized and directed to receive a PLHA grant, in an amount not to exceed the five-year estimate of the PLHA formula allocations ($715,062), as stated in Appendix C of the current NOFA, in accordance with all applicable rules and laws.

Section 3: Applicant hereby agrees to use the PLHA funds for eligible activities as approved by the Department and in accordance with all Program requirements, Guidelines, other rules and laws, as well as in a manner consistent and in compliance with the Standard Agreement and other contracts between the Applicant and the Department.

Section 4: Pursuant to Section 302(c)(4) of the Guidelines, Applicant's PLHA Plan for the 2019-2023 Allocations is attached to this resolution, and Applicant hereby adopts this PLHA Plan and certifies compliance with all public notice, public comment, and public hearing requirements in accordance with the Guidelines.

Section 5: Pursuant to Applicant's certification in this resolution, the PLHA funds will be expended only for eligible Activities and consistent with all program requirements.

Section 6: Applicant certifies that, if funds are used for the acquisition, construction or rehabilitation of for-sale housing projects or units within for-sale housing projects, the grantee shall record a deed restriction against the property that will ensure compliance with one of the requirements stated in Guidelines Section 302(c)(6)(A), (B) and (C).

Section 7: Applicant certifies that, if funds are used for the development of an Affordable Rental Housing Development, the Local government shall make PLHA assistance in the form of a low-interest, deferred loan to the Sponsor of the Project, and such loan shall be evidenced through a Promissory Note secured by a Deed of Trust and a Regulatory Agreement shall restrict occupancy and rents in accordance with a Local government-approved underwriting of the Project for a term of at least 55 years.

Section 8: Applicant shall be subject to the terms and conditions as specified in the Standard Agreement, the PLHA Program Guidelines and any other applicable SB 2 Guidelines published by the Department.

Section 9: The City Treasurer of the City of Aliso Viejo is authorized to execute the PLHA Program Application, the PLHA Standard Agreement and any subsequent amendments or modifications thereto, as well as any other documents which are related to the program or the PLHA grant awarded to Applicant, as the Department may deem appropriate.

PASSED, APPROVED AND ADOPTED this 16th day of November, 2022.

_____
Ross Chun
Mayor

APPROVED AS TO FORM:

_____
Scott C. Smith, City Attorney

ATTEST:

_____
Mitzi Ortiz, MMC, City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF ALISO VIEJO)

I, MITZI ORTIZ, City Clerk of the City of Aliso Viejo, California, DO HEREBY CERTIFY that the foregoing is the original of Resolution No. 2022-__ duly passed and adopted by the City Council of the City of Aliso Viejo at their regular meeting held on the 16th day of November 2022, by the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

_____
MITZI ORTIZ, MMC
CITY CLERK

(SEAL)

§302(c)(4) Plan

Rev. 2/16/22

§302(c)(4)(A) Describe the manner in which allocated funds will be used for eligible activities.

The City of Aliso Viejo (City) plans on utilizing its allocated PLHA funds for the following two activities:
1) preservation of rental housing opportunities for low-income households; and
2) development of rental housing opportunities.

§302(c)(4)(B) Provide a description of the way the Local government will prioritize investments that increase the supply of housing for households with incomes at or below 60 percent of Area Median Income (AMI).

The City's PLHA funds will focus on subsidizing rental housing for households at or below 60% of the AMI.

§302(c)(4)(C) Provide a description of how the Plan is consistent with the programs set forth in the Local Government's Housing Element.

This Plan is consistent with the following programs identified in the City's Housing Element which outline housing goals and policies:
1) Policy H-1.1: Identify sites appropriate for the development of a variety of housing types and price ranges to meet the needs of all socioeconomic segments of the community;
2) Policy H-1.4: Ensure that a portion of future residential development is affordable to low- and very low-income households;
3) Policy H-1.6: Encourage the use of grant funds to purchase available residential units in order to increase the supply of units affordable to low- and moderate- income households; and
4) Goal H-3b: Increase the supply of affordable housing in high opportunity areas.

Activities Detail (Activities Detail (Must Make a Selection on Formula Allocation Application worksheet under Eligible Activities, §301))

§301(a)(1) The predevelopment, development, acquisition, rehabilitation, and preservation of multifamily, residential live-work, rental housing that is affordable to extremely low-,very low-, low-, or moderate-income households, including necessary Operating subsidies.

§302(c)(4)(E)(i) Provide a detailed and complete description of how allocated funds will be used for each proposed Affordable Rental Housing Activity.

The City will allocate 10% of their PLHA allocation towards Activity #1 for the repair and maintenance of two recently purchased single family rental housing units which will be affordable for households earning 60% of Area Median Income (AMI) or below.

Complete the table below for each proposed Affordable Rental Housing Activity to be funded with 2019-2023 PLHA allocations. If a single Activity will be assisting households at more than one level of Area Median Income, please list the Activity as many times as needed to capture all of the AMI levels that will be assisted, but only show the percentage of annual funding allocated to the Activity one time (to avoid double counting).

Funding Allocation Year	2019	2020	2021	2022	2023										
§302(c)(4)(E)(i) Percentage of Funds Allocated for the Proposed Affordable Rental Housing Activity	10.0%	10.0%	10.0%	10.0%	10.0%										
§302(c)(4)(E)(ii) Area Median Income Level Served	60%	60%	60%	60%	60%										**TOTAL**
§302(c)(4)(E)(ii) Unmet share of the RHNA at the AMI Level **Note: complete for years 2019, 2020, 2021 only**	16	16	16	n/a	n/a										48
§302(c)(4)(E)(ii) Projected Number of Households Served	0	0	0	1	1										2
§302(c)(4)(E)(iv) Period of Affordability for the Proposed Affordable Rental Housing Activity **(55 years required for rental housing projects)**	55 Years	55 Years	55 Years	55 Years	55 Years	55 Years	55 Years	55 Years	55 Years	55 Years	55 Years	55 Years	55 Years	55 Years	

§302(c)(4)(E)(iii) A description of major steps/actions and a proposed schedule for the implementation and completion of the Activity.

The project will include the following stages:
1. Rehabilitation design for rental property;
2. Publish an RFP for construction rehabilitation; and
3. Construction over a 6-month period.

§301(a)(2) The predevelopment, development, acquisition, rehabilitation, and preservation of Affordable rental and ownership housing, including Accessory Dwelling Units (ADUs), that meets the needs of a growing workforce earning up to 120 percent of AMI, or 150 percent of AMI in high-cost areas. ADUs shall be available for occupancy for a term of no less than 30 days.

§302(c)(4)(E)(i) Provide a detailed and complete description of how allocated funds will be used for each proposed Affordable Rental and Ownership Housing Activity.	**Enter Percentage of Funds Allocated for Affordable Owner-occupied Workforce Housing**	**0%**

The City is working on the Aliso Viejo Town Center (AVTC) Concept Plan, which includes a mixed-use building and affordable rental housing at varying income levels. Currently, the consultants and City attorney have reviewed feasibility studies, conducted additional research, prepared revised design concepts and detailed proforma, and participated in meetings with City staff and AVTC property owners. These meetings have recently gained more traction and the team is now at the stage of finding opportunities to incentivize the remaining property owners to participate in the future implementation of the Town Center Vision Plan.

Complete the table below for each proposed Affordable Rental and Ownership Housing Activity to be funded with 2019-2023 PLHA allocations. If a single Activity will be assisting households at more than one level of Area Median Income, please list the Activity as many times as needed to capture all of the AMI levels that will be assisted, but only show the percentage of annual funding allocated to the Activity one time (to avoid double counting).

Funding Allocation Year	2019	2020	2021	2022	2023										
Type of Affordable Housing Activity	Rental: Predevelopment	Rental: Predevelopment	Rental: Development	Rental: Development	Rental: Development										
§302(c)(4)(E)(i) Percentage of Funds Allocated for Each Affordable Housing Activity	85%	85%	85%	85%	85%										
§302(c)(4)(E)(ii) Area Median Income Level Served	60%	60%	60%	60%	60%										**TOTAL**
§302(c)(4)(E)(ii) Unmet share of the RHNA at AMI Level **Note: complete for years 2019, 2020, 2021 only**	16	16	16	n/a	n/a										48
§302(c)(4)(E)(ii) Projected Number of Households Served	0	0	0	0	20										20
§302(c)(4)(E)(iv) Period of Affordability for the Proposed Activity **(55 years required for rental housing projects)**	55 Years	55 Years	55 Years	55 Years	55 Years										

§302(c)(4)(E)(iii) A description of major steps/actions and a proposed schedule for the implementation and completion of each Affordable Rental and Ownership Housing project.

Anticipated major steps:
1. Prepare an MOU with property owners;
2. Publish an RFP for project developer procurement; and
3. Construct the AVTC project.

City of Aliso Viejo
AGENDA ITEM

DATE: November 16, 2022

TO: Mayor and City Council

FROM: Scott C. Smith, City Attorney

SUBJECT: SECOND AMENDMENT TO CITY MANAGER EMPLOYMENT AGREEMENT

Recommended Action:

Approve the Second Amendment to Employment Agreement between the City of Aliso Viejo and David A. Doyle.

Fiscal Impact:

The salary increase in compensation would not affect this Fiscal Year and not change the budget until 2025-2026.

Background:

David A. Doyle has served as the City Manager for the City of Aliso Viejo since 2014. The City Council recently concluded its annual evaluation of Mr. Doyle, and the City Council directed the City Attorney's office to prepare an amendment to Mr. Doyle's employment agreement, as provided in the attached Second Amendment to Employment Agreement for Mr. Doyle.

Discussion:

The attached Second Amendment to Employment Agreement between the City of Aliso Viejo and David A. Doyle provides for a 1.5% increase in the City Manager's base compensation in fiscal year 2025-26. This provision does not alter the term or termination provisions of the agreement.

Attachments:

1. Second Agreement Amendment

2. Employment Agreement and 2020 First Amendment

CITY MANAGER
SECOND AMENDMENT TO EMPLOYMENT AGREEMENT

This Second Amendment to the City Manager Restated and Amended Employment Agreement ("Agreement") is made and entered into on November 16, 2022, effective on July 1, 2022, by and between the City of Aliso Viejo, a municipal corporation, hereinafter referred to as "City," and David A. Doyle, hereinafter referred to as "Doyle."

RECITALS

1. Doyle has been employed by the City as the City Manager since 2014.

2. On January 17, 2018, City and Doyle entered into a Restated and Amended Employment Agreement ("Employment Agreement").

3. On November 18, 2020 City and Doyle entered into a First Amendment to the Employment Agreement making adjustments to Doyle's base salary effective on July 1, 2020 and July 1, 2022, and providing a one-time cash payout or deferred compensation on July 1, 2022.

4. Subsections IV(D) and (E) of the Employment Agreement provide, in part, that the City Council may increase Doyle's base salary and/or other benefits based on Doyle's performance as the City Council deems appropriate, and Subsection VII(C) of the Employment Agreement provides that the parties may amend the Employment Agreement in writing by mutual agreement.

5. The City Council has concluded its annual evaluation of Doyle, and as a result of the evaluation, the City and Doyle desire to amend the Employment Agreement in order to provide adjustments to Doyle's base salary as set forth below, while leaving all other terms the same.

6. The Employment Agreement and its First Amendment are hereby incorporated into this Agreement by reference.

7. Doyle desires to continue employment as the City Manager of the City of Aliso Viejo on the terms and conditions provided in this Employment Agreement.

NOW, THEREFORE, IN CONSIDERATION OF PERFORMANCE BY THE PARTIES OF THE COVENANTS AND CONDITIONS HEREIN CONTAINED, THE PARTIES AGREE AS FOLLOWS:

I. <u>Compensation</u>. Section IV(A) of the Employment Agreement is hereby amended in its entirety to read as follows:

"Effective July 1, 2022, City agrees to pay Doyle an annual base salary of Three Hundred Thirteen Thousand Five Hundred Eighty-Five dollars ($313,585) payable in installments at the same time as other employees of the City are paid. In addition, on July 1, 2025, City agrees to increase said base salary in an amount equal to one and a half percent (1.5%) of Doyle's then-current base salary."

IV. Remaining Provisions of Employment Agreement. Except as otherwise specifically set forth in this Second Amendment and the First Amendment to the Employment Agreement, the remaining provisions of the Employment Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the City has caused this agreement to be signed and executed on its behalf by its Mayor and approved as to form by its City Attorney and Doyle has signed and executed this agreement, both in duplicate, as of the date first written above.

CITY:

By:_____
Ross Chun, Mayor

Attest:

By:_____
Mitzi Ortiz, City Clerk

Approved as to Form:

By:_____
Scott C. Smith, City Attorney

DOYLE:

By:_____
David A. Doyle

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CITY MANAGER
FIRST AMENDMENT TO EMPLOYMENT AGREEMENT

This First Amendment to the City Manager Restated and Amended Employment Agreement ("Agreement") is made and entered into on November 18, 2020, effective on July 1, 2020, by and between the City of Aliso Viejo, a municipal corporation, hereinafter referred to as "City," and David A. Doyle, hereinafter referred to as "Doyle."

RECITALS

1. Doyle has been employed by the City as the City Manager since 2014.

2. On January 17, 2018, City and Doyle entered into a Restated and Amended Employment Agreement ("Employment Agreement").

3. Section IV(D) and (E) of the Employment Agreement provides, in part, that the City Council may increase Doyle's base salary and/or other benefits based on Doyle's performance as the City Council deems appropriate, and Section VII(C) of the Employment Agreement provides that the parties may amend the Employment Agreement in writing by mutual agreement.

4. The City Council has concluded its annual evaluation of Doyle, and as a result of the evaluation, the City and Doyle desire to amend the Employment Agreement in order to clarify provisions related to termination and to adjust the severance and compensation under the Employment Agreement as set forth herein, while leaving all other terms the same.

5. The Employment Agreement is hereby incorporated into this Agreement by reference.

6. Doyle desires to continue employment as the City Manager of the City of Aliso Viejo on the terms and conditions provided in this Employment Agreement.

NOW, THEREFORE, IN CONSIDERATION OF PERFORMANCE BY THE PARTIES OF THE COVENANTS AND CONDITIONS HEREIN CONTAINED, THE PARTIES AGREE AS FOLLOWS:

I. Termination. Section III(A) of the Employment Agreement is hereby amended in its entirety to read as follows:

> "Doyle shall serve at the will and pleasure of the City Council and may be removed from office (terminated) at any time for any reason, consistent with the time limits and procedures set forth in this Agreement and Chapter 6.04 of the Aliso Viejo Municipal Code as codified on the date of termination. Doyle will be provided thirty (30) days written notice of any decision by the City Council to terminate his employment; except that Doyle will not be entitled to such notice if Doyle is terminated because of his conviction of any illegal act involving personal gain or is convicted of any felony or any misdemeanor involving moral turpitude (as defined by California State Law)."

II. **Severance Pay**. Section III(B) of the Employment Agreement is hereby amended in its entirety to read as follows:

> "In accordance with Section III, paragraph A above, upon termination by the City Council, Doyle shall be entitled to a lump sum cash payment equal to twelve (12) months annual base salary. Doyle shall also be entitled to six (6) months city-paid medical, dental, and vision coverage; provided however, that in the event Doyle is terminated because of his conviction of any illegal act involving personal gain or is convicted of any felony or any misdemeanor involving moral turpitude (as defined by California State Law), then, in that event, the City shall have no obligation to pay the aggregate severance sum designated in this paragraph, nor will the City's decision to terminate be subject to the time limit in Section II above or the notice requirements of Section III, paragraph A above. Doyle shall be paid for all accrued and unused vacation and annual leave balances."

III. **Compensation**. Section IV(A) of the Employment Agreement is hereby amended in its entirety to read as follows:

> "Effective July 1, 2020, City agrees to pay Doyle an annual base salary of Two Hundred Eighty-Two Thousand Two Hundred Thirty-Two dollars ($282,232) payable in installments at the same time as other employees of the City are paid. In addition, on July 1, 2022, City agrees to increase said base salary in an amount equal to one and a half percent (1.5%) of Doyle's then-current base salary. Also on July 1, 2022, City agrees to pay Doyle an additional one-half (0.5%) percent of Doyle's then-current base salary, which Doyle may elect as an automatic cash payout or deferred compensation."

IV. **Remaining Provisions of Employment Agreement.** Except as otherwise specifically set forth in this First Amendment, the remaining provisions of the Employment Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the City has caused this agreement to be signed and executed on its behalf by its Mayor and approved as to form by its City Attorney and Doyle has signed and executed this agreement, both in duplicate, as of the date first written above.

[Signatures on following page.]

CITY:

By: _____
Mike Munzing, Mayor

Attest:

By: _____
Mitzi Ortiz, City Clerk

Approved as to Form:

By: _____ for
Scott C. Smith, City Attorney

DOYLE:

By: _____
David A. Doyle

CITY MANAGER
RESTATED AND AMENDED EMPLOYMENT AGREEMENT

This Restated and Amended Employment Agreement ("Agreement") is made and entered into on January 17, 2018, effective on July 1, 2017, by and between the City of Aliso Viejo, a municipal corporation, hereinafter referred to as "City" and David A. Doyle, hereinafter referred to as "Doyle."

RECITALS

1. The City and Doyle entered into an Employment Agreement dated December 18, 2013 ("Employment Agreement"). The City and Doyle entered into a First Amendment to Employment Agreement, dated August 19, 2015 ("First Amendment"), and the City and Doyle entered into a Second Amendment to Employment Agreement, dated November 16, 2016.

2. Section IV(B) of the Employment Agreement provides, in part, that the City Council may increase Doyle's base salary and/or other benefits based on Doyle's performance as the City Council deems appropriate, and Section VII(C) of the Employment Agreement provides that the parties may amend the Employment Agreement in writing by mutual agreement.

3. The City Council has concluded its annual evaluation of Doyle, and as a result of the evaluation, the City and Doyle desire to amend the compensation and benefits provisions of the Employment Agreement as set forth herein, while leaving all other terms of the Employment Agreement the same.

4. The Employment Agreement, as amended by the First Amendment and Second Amendment, are hereby incorporated into this Agreement.

5. Doyle desires to accept employment as the City Manager of the City of Aliso Viejo on the terms and conditions provided in this Agreement.

NOW, THEREFORE, IN CONSIDERATION OF PERFORMANCE BY THE PARTIES OF THE COVENANTS AND CONDITIONS HEREIN CONTAINED, THE PARTIES AGREE AS FOLLOWS:

SECTION I. DUTIES

City engages Doyle as City Manager to perform the functions and duties specified in Article 7 of the AVMC as referred to in recital 1 hereinabove and to perform such other legally permissible and proper duties and functions as the City Council shall from time to time assign.

SECTION II. TERM AND EXTENSION

A. This Agreement shall be for three (3) years, from July 1, 2017 through June 30, 2020, unless terminated in accordance with Section III, paragraphs A or C, and Chapter 2.06 of the AVMC as codified on the date of termination. On June 30,

2018, the term of this Agreement shall automatically be extended through June 30, 2021. On June 30, 2019 and on each succeeding June 30 while this Agreement is in effect, this Agreement shall be automatically extended for one additional year unless prior to such date by a majority vote of the entire City Council in attendance at any lawfully called meeting, the City declares its intention not to extend this Agreement for one additional year. Such decision shall not constitute a termination for purposes of Section III of this Agreement. In any event, during the 120-day period immediately preceding or following the date of a regular or special municipal election, the Council shall take no action, whether immediate or prospective, to remove, suspend, request the resignation of, or reduce the salary of Doyle. The City acknowledges that this period is longer than that specified in Chapter 2.06 of the AVMC, but provides said period as an additional inducement for Doyle to enter into this Agreement.

B. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City Council to terminate the services of Doyle at any time, with or without cause, subject to the notice provisions set forth in Section III, paragraph A of this Agreement, the time limits specified in Section II of this Agreement, and Chapter 2.06 of the AVMC as codified on the date of termination.

C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the rights of Doyle to resign at any time from his position with the City, subject only to the provisions set forth in Section III, paragraph C of this Agreement.

D. Doyle agrees to remain in the exclusive employ of the City, and shall not become employed by any other employer, until this Agreement is terminated by the City according to the provisions set forth in Section III, paragraph A, or is terminated by Doyle in accordance with Section III, paragraph C. The term "employed" shall not be construed to include teaching, writing, consulting, or pursuing other vocational interests performed outside of normal business hours which may occasionally pay a stipend or wage.

SECTION III. TERMINATION AND SEVERANCE PAY

A. Doyle shall serve at the will and pleasure of the City Council and may be removed from office (terminated) at any time for any reason, consistent with the time limits and procedures set forth in this Agreement and Chapter 6.04 of the AVMC as codified on the date of termination. Doyle will be provided thirty (30) days written notice of any decision by the City Council to terminate his employment; except that Doyle will not be entitled to such notice if Doyle is terminated because of his conviction of any illegal act involving personal gain or is convicted of any felony or any misdemeanor involving moral turpitude (except minor traffic offenses).

B. In accordance with Section III, paragraph A above, upon termination by the City Council, Doyle shall be entitled to a lump sum cash payment equal to six (6) months annual base salary; and six (6) months city-paid medical, dental, and

vision coverage; provided however, that in the event Doyle is terminated because of his conviction of any illegal act involving personal gain or is convicted of any felony or any misdemeanor involving moral turpitude (except minor traffic offenses), then, in that event, the City shall have no obligation to pay the aggregate severance sum designated in this paragraph, nor will the City's decision to terminate be subject to the time limit in Section II above or the notice requirements of Section III, paragraph A above. Doyle shall be paid for all accrued and unused vacation and annual leave balances.

C. If Doyle desires to resign his position with the City, he will provide the City Council with at least thirty (30) days written notice. In the event Doyle resigns his employment with the City, Doyle shall not be entitled to any severance pay except as specified in Section III, paragraph D below. However, Doyle shall be paid for all accrued and unused vacation and annual leave balances.

D. In the event at any time during the employment term the City (1) reduces the salary or other financial benefits of Doyle in a greater percentage than an applicable across-the-board reduction for all City employees, (2) refuses, following written notice to comply with any other provision of this Agreement or Chapter 2.06 of the AVMC benefiting Doyle, or (3) requests the resignation of Doyle and Doyle resigns due to that request, Doyle will be deemed "terminated" and be eligible for the severance pay provision of this contract.

E. Pursuant to Government Code section 53243, et seq. which became effective on January 1, 2012, if Doyle is convicted of a crime involving an abuse of his office or position, all of the following shall apply: (1) if Doyle is provided with administrative leave pay pending an investigation, Doyle shall be required to fully reimburse such amounts paid; (2) if City pays for the criminal legal defense of Doyle (which would be in its sole discretion, as it is generally not obligated to pay for a criminal defense), Doyle shall be required to fully reimburse such amounts paid; and (3) if this Agreement is terminated, any cash settlement related to the termination that Doyle may receive from City shall be fully reimbursed to City. For this Section, abuse of office or position means either: (1) an abuse of public authority, including waste, fraud, and violation of the law under color of authority; or (2) a crime against public justice, including a crime described in Title 7 commencing with section 92 of the Penal Code.

SECTION IV. COMPENSATION

A. Effective July 1, 2017, City agrees to pay Doyle an annual base salary of Two Hundred Sixteen Thousand Five-Hundred and Ninety-Seven dollars ($216,597) payable in installments at the same time as other employees of the City are paid. In addition, on each January 1st and July 1st thereafter up to and through July 1, 2019, City agrees to increase said base salary in an amount equal to four and one-half percent (4.5%) of Doyle's then-current base salary.

B. Effective July 1, 2017, and annually thereafter, City agrees to provide Doyle with

the same cost-of-living adjustment, if any, that is given to other exempt City employees.

C. The City agrees to contribute an amount equal to three percent (3%) of Doyle's new base salary as of each July 1st to Doyle's deferred compensation account at the beginning of each fiscal year during the term of this Agreement.

D. Upon either Doyle's or the City Council's request, the parties may annually meet and confer regarding Doyle's salary, salary schedule, or compensation paid in the form of fringe benefits. Such meet and confer, if any, shall be held between May 31 and June 30 of each calendar year. The party requesting the meet and confer shall provide a written request to the other party at least fourteen (14) days before the requested meet and confer. Notwithstanding a request to meet and confer, the City shall have the sole discretion to amend this Agreement as to Doyle's compensation.

E. City agrees it will conduct an annual performance review of Doyle in concert with an annual salary review in accordance with Section IV, paragraph A above between May 1 and June 30 of each year.

F. City and Doyle agree that, annually the City Council and Doyle shall jointly define such goals and performance objectives which they determine necessary for the proper operation of the City in the attainment of the City Council's policy objectives, and the City Council and Doyle shall establish the relative priority among those various goals and objectives. The prioritized policy objectives shall be reduced to writing, thereby forming the basis of Doyle's annual evaluation. Said goals and objectives shall be obtainable generally within the time limits as specified in the annual operating and capital budgets and appropriations approved by the City Council.

G. The City shall pay to Doyle the sum of Five Hundred Dollars ($550) per month as an automobile allowance and a cell phone allowance of One Hundred Dollars ($150) per month. Doyle will be provided a City paid FasTrak transponder for toll roads for City-related business.

H. City agrees to pay for comprehensive medical, optical, dental, life and long-term disability insurance for Doyle and his dependents upon the same conditions as other employees generally. City agrees to pay for Public Employees Retirement System ("PERS") on behalf of Doyle at the same rate and upon the same conditions as other employees generally, which currently includes City's payment of the PERS employee contribution. City agrees that Doyle qualifies as a "Classic" employee (2% at 55 formula) under PERS.

I. City agrees to budget and to pay professional tuition, dues, subscriptions, travel and related expenses of Doyle as determined by the City Council necessary for Doyle's full participation in national, regional, state and local associations and organizations necessary and desirable for his continued professional participation,

growth and advancement and for the good of the City. In addition, City shall reimburse Doyle for all actual and necessary expenses incurred by him in the performance of his official duties.

SECTION V. LEAVE

A. Doyle shall be entitled to receive two-hundred and forty (240) hours of vacation leave annually effective July 1, 2017 and on every anniversary date thereafter that this Agreement is in effect. City agrees to pay to Doyle any banked but unused vacation leave on each anniversary date (July 1st) of this Agreement. Additionally, within _____ (___) days of the execution of this Agreement, City agrees to pay to Doyle any banked but unused vacation leave accrued between February 10, 2017 and June 30, 2017.

B. Doyle shall be further entitled to receive an additional eighty (80) hours of Administrative Leave per fiscal year. The Administrative Leave is provided in recognition of the substantial hours expended on City business beyond regular business hours by Doyle. Administrative Leave time must be used during the fiscal year it is granted, does not carry over from year to year, and will not be cashed out upon separation from employment with the City.

SECTION VI. OTHER TERMS AND CONDITIONS

A. The City Council shall fix any other terms and conditions of employment, as it may determine from time to time, relating to performance of Doyle, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, Article 7 of the AVMC or any other applicable laws.

B. All provisions of City ordinances and regulations and rules of City relating to holidays, retirement programs, and working conditions as they now exist or hereafter may be amended, also apply to Doyle in the same manner as other employees of City in addition to said benefits enumerated specifically for the benefit of Doyle, except as herein provided.

SECTION VII. GENERAL PROVISIONS

A. The text herein shall constitute the entire agreement between the parties.

B. This agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Doyle.

C. This Agreement may be amended only in writing by mutual agreement of the City and Doyle.

D. Should either party commence any legal action or proceeding against the other based upon this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees.

E. City shall indemnify and pay the cost of defending Doyle for any tort, professional liability claim or other legal action, whether groundless or otherwise, arising out of the scope of Doyle's duties.

F. If any provision, or any portion thereof, contained in this agreement is held to be unconstitutional, invalid or unenforceable the remainder of this agreement, or portion thereof, shall be deemed severable, and shall not be affected and shall remain in full force and effect.

IN WITNESS WHEREOF, the City has caused this agreement to be signed and executed on its behalf by its Mayor and approved as to form by its City Attorney and Doyle has signed and executed this agreement, both in duplicate, as of the date first written above.

CITY:

By: _____
Dave Harrington, Mayor

Attest:

By: _____
Mitzi Ortiz, City Clerk

Approved as to Form:

By: _____
Scott C. Smith, City Attorney

DOYLE:

By: _____
David A. Doyle

SECOND AMENDMENT TO EMPLOYMENT AGREEMENT BETWEEN THE CITY OF ALISO VIEJO AND DAVID A. DOYLE

This Second Amendment is made and entered into between DAVID A. DOYLE ("Doyle") and THE CITY OF ALISO VIEJO ("City") in order to modify in writing the terms and conditions of the City's employment of Doyle.

WHEREAS, the City and Doyle entered into an Employment Agreement dated December 18, 2013 ("Employment Agreement"); and

WHEREAS, the City and Doyle entered into a First Amendment to Employment Agreement dated August 19, 2015 ("First Amendment"; the Employment Agreement, as amended by the First Amendment, are hereinafter referred to as the "Employment Agreement"); and

WHEREAS, Section IV(B) of the Employment Agreement provides, in part, that the City Council may increase Doyle's base salary and/or other benefits based on Doyle's performance as the City Council deems appropriate, and Section VII(C) of the Employment Agreement provides that the parties may amend the Employment Agreement in writing by mutual agreement; and

WHEREAS, the City Council has concluded its annual evaluation of Doyle; and

WHEREAS, as a result of the evaluation, the City and Doyle desire to amend the compensation and benefits provisions of the Employment Agreement as set forth herein, while leaving all other terms of the Employment Agreement the same.

NOW THEREFORE, IT IS HEREBY AGREED as follows:

Section 1. The City and Doyle mutually desire to amend Subsections IV(A) and IV(B) of the Employment Agreement as follows:

"A. Effective July 1, 2016, City agrees to pay Doyle an annual base salary of $207,270 payable in installments at the same time as other employees of the City are paid. The City shall contribute concurrently with execution of this Agreement an additional $6,218 to Doyle's deferred compensation account, and on each succeeding July 1 thereafter, the City shall contribute, in addition to Doyle's then base salary, an amount equal to three percent (3%) of Doyle's then-current base salary.

B. In addition, at the beginning of each fiscal year, City agrees to increase said base salary and/or other benefits of Doyle including, but not limited to additional deferred compensation or performance bonus of up to seven percent (7%), in such amounts and to such an extent as the City Council may determine that it is desirable to do so on the basis of an annual performance review and annual salary review of Doyle conducted between May 1 and June 30 of each calendar year or at such time preceding

the beginning of the fiscal year as the City Council may determine. Such increases shall be effective July 1 of the same fiscal year, with eligibility first occurring in July 2015."

Section 2. Severability

If any provision of this First Amendment to the Employment Agreement, shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of the First Amendment unless elimination of such provision materially alters the rights and obligations set forth herein.

Section 3. Effect on Employment Agreement

Except as amended by this Second Amendment, all provisions of the Employment Agreement shall remain in full force and effect and shall govern the actions of the City and Doyle under this Second Amendment.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the 16th day of Nov, 2016.

BY CITY:

Mike Munzing
Mayor

BY DOYLE:

David A. Doyle

APPROVED AS TO FORM:

for Scott C. Smith, City Attorney

FIRST AMENDMENT TO EMPLOYMENT AGREEMENT BETWEEN THE CITY OF ALISO VIEJO AND DAVID A. DOYLE

This First Amendment is made and entered into between DAVID A. DOYLE ("Doyle") and THE CITY OF ALISO VIEJO ("City") in order to modify, in writing, the terms and conditions of the City's employment of Doyle.

WHEREAS, the City and Doyle entered into an "Employment Agreement" dated December 18, 2013 ("Employment Agreement"); and

WHEREAS, Section IV(B) of the Employment Agreement provides, in part, that the City Council may increase Doyle's base salary and/or other benefits based on Doyle's performance as the City Council deems appropriate; and

WHEREAS, the City Council has concluded its annual evaluation of Doyle; and

WHEREAS, as a result of the evaluation, the City and Doyle desire to amend the compensation and benefits as set forth herein, while leaving all other terms of the Employment Agreement the same.

NOW THEREFORE, IT IS HEREBY AGREED as follows:

Section 1. The City and Doyle mutually desire to amend Section IV(A) of the Employment Agreement as follows:

> "A. Effective July 1, 2015, City agrees to pay Doyle for his services rendered hereto an annual base salary of $197,400 payable in installments at the same time as other employees of the City are paid."

Section 2. The City and Doyle mutually desire to add the following to Section IV(E) of the Employment Agreement:

> "Doyle will be provided a City paid Fastrack transponder for toll roads for City-related business."

Section 3. The City and Doyle mutually desire to amend Section V of the Employment Agreement to include the following:

> "Doyle shall be further entitled to receive an additional eighty (80) hours of Administrative Leave per fiscal year The Administrative Leave is provided in recognition of the substantial hours expended on City business beyond regular business hours by Doyle. Administrative Leave time must be used during the fiscal year it is granted, does not carry

over from year to year and will not be cashed out upon separation from employment with the City."

Section 4. Severability

If any provision of this First Amendment to the Employment Agreement, shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of the First Amendment unless elimination of such provision materially alters the rights and obligations set forth herein.

Section 5. Effect on Employment Agreement

Except as amended by this First Amendment, all provisions of the Employment Agreement shall remain in full force and effect and shall govern the actions of the City and Doyle under this First Amendment.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the 19th day of August, 2015.

BY CITY:

William Phillips
Mayor

BY DOYLE:

David A. Doyle

APPROVED AS TO FORM:

Scott C. Smith, City Attorney

EMPLOYMENT AGREEMENT

This Agreement is made and entered into on Dec. 18, 2013, effective on February 10, 2014, by and between the City of Aliso Viejo, a municipal corporation, hereinafter referred to as "City" and David A. Doyle, hereinafter referred to as "Doyle."

RECITALS

1. City desires to employ the services of Doyle as its City Manager to perform the duties of that office, the same as are provided in Chapter 2.06 of the Aliso Viejo Municipal Code ("AVMC") as it may from time to time be amended.

2. It is the desire of the City Council to provide certain compensation and benefits, establish certain conditions of employment, and set forth working conditions for Doyle.

3. It is the desire of the City Council to secure and maintain the services of Doyle and provide inducement for him to remain in such employment; to make possible full work productivity by assuring Doyle's morale and peace of mind with respect to future security; to act as a deterrent against malfeasance or dishonesty for personal gain on the part of Doyle; and to provide a means for terminating Doyle's services at such a time as he may be unable to discharge the duties of the office or when the City may desire to otherwise terminate his employment.

4. Doyle desires to accept employment as the City Manager of the City of Aliso Viejo.

NOW, THEREFORE, IN CONSIDERATION OF PERFORMANCE BY THE PARTIES OF THE COVENANTS AND CONDITIONS HEREIN CONTAINED, THE PARTIES AGREE AS FOLLOWS:

SECTION I DUTIES

City engages Doyle as City Manager to perform the functions and duties specified in Article 7 of the AVMC as referred to in recital 1 hereinabove and to perform such other legally permissible and proper duties and functions as the City Council shall from time to time assign.

SECTION II TERM AND EXTENSION

A. This Agreement shall be for three (3) years effective from February 10, 2014, through February 9, 2017, unless terminated in accordance with Section III, paragraphs A or C, and Chapter 2.06 of the AVMC as codified on the date of termination. On June 30, 2015, the term of this Agreement shall automatically be extended through June 30, 2017. On July 1, 2017 and on each succeeding July 1 while this Agreement is in effect, this Agreement shall be automatically extended for one additional year unless prior to such date by a majority vote of the entire City Council in attendance at any lawfully called meeting, the City declares its intention not to extend this Agreement for one

additional year. Such decision shall not constitute a termination for purposes of Section III of this Agreement. In any event, during the 120-day period immediately preceding or following the date of a regular or special municipal election, the Council shall take no action, whether immediate or prospective, to remove, suspend, request the resignation of, or reduce the salary of Doyle. The City acknowledges that this period is longer than that specified in Chapter 2.06 of the AVMC, but provides said period as an additional inducement for Doyle to enter into this Agreement.

B. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City Council to terminate the services of Doyle at any time, with or without cause, subject to the notice provisions set forth in Section III, paragraph A of this Agreement, the time limits specified in Section II of this Agreement, and Chapter 2.06 of the AVMC as codified on the date of termination.

C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the rights of Doyle to resign at any time from his position with the City, subject only to the provisions set forth in Section III, paragraph C of this Agreement.

D. Doyle agrees to remain in the exclusive employ of the City, and shall not become employed by any other employer, until this Agreement is terminated by the City according to the provisions set forth in Section III, paragraph A, or is terminated by Doyle in accordance with Section III, paragraph C. The term "employed" shall not be construed to include teaching, writing, consulting, or pursuing other vocational interests performed outside of normal business hours which may occasionally pay a stipend or wage.

SECTION III TERMINATION AND SEVERANCE PAY

A. Doyle shall serve at the will and pleasure of the City Council and may be removed from office (terminated) at any time for any reason, consistent with the time limits and procedures set forth in this Agreement and Chapter 6.04 of the AVMC as codified on the date of termination. Doyle will be provided thirty (30) days written notice of any decision by the City Council to terminate his employment; except that Doyle will not be entitled to such notice if Doyle is terminated because of his conviction of any illegal act involving personal gain or is convicted of any felony or any misdemeanor involving moral turpitude (except minor traffic offenses).

B. In accordance with Section III, paragraph A above, upon termination by the City Council, Doyle shall be entitled to a lump sum cash payment equal to six (6) months annual base salary; and six (6) months city-paid medical, dental, and vision coverage; provided however, that in the event Doyle is terminated because of his conviction of any illegal act involving personal gain or is convicted of any felony or any misdemeanor involving moral turpitude (except minor traffic offenses), then, in that event, the City shall have no obligation to pay the aggregate severance sum designated in this paragraph, nor will the City's decision to terminate be subject to the time limit in Section II above or the notice requirements of Section III, paragraph A above. Doyle shall be paid for all accrued and unused vacation and annual leave balances.

C. If Doyle desires to resign his position with the City, he will provide the City Council with at least thirty (30) days written notice. In the event Doyle resigns his employment with the City, Doyle shall not be entitled to any severance pay except as specified in Section III, paragraph D below. However, Doyle shall be paid for all accrued and unused vacation and annual leave balances.

D. In the event at any time during the employment term the City (1) reduces the salary or other financial benefits of Doyle in a greater percentage than an applicable across-the-board reduction for all City employees, (2) refuses, following written notice to comply with any other provision of this Agreement or Chapter 2.06 of the AVMC benefiting Doyle, or (3) requests the resignation of Doyle and Doyle resigns due to that request, Doyle will be deemed "terminated" and be eligible for the severance pay provision of this contract.

E. Pursuant to Government Code section 53243, et seq. which became effective on January 1, 2012, if Doyle is convicted of a crime involving an abuse of his office or position, all of the following shall apply: (1) if Doyle is provided with administrative leave pay pending an investigation, Doyle shall be required to fully reimburse such amounts paid; (2) if City pays for the criminal legal defense of Doyle (which would be in its sole discretion, as it is generally not obligated to pay for a criminal defense), Doyle shall be required to fully reimburse such amounts paid; and (3) if this Agreement is terminated, any cash settlement related to the termination that Doyle may receive from City shall be fully reimbursed to City. For this Section, abuse of office or position means either: (1) an abuse of public authority, including waste, fraud, and violation of the law under color of authority; or (2) a crime against public justice, including a crime described in Title 7 commencing with section 92 of the Penal Code.

SECTION IV COMPENSATION

A. City agrees to pay Doyle for his services rendered pursuant hereto an annual base salary of One Hundred Eighty-Eight Thousand ($188,000) payable in installments at the same time as other employees of the City are paid.

B. In addition, at the beginning of each fiscal year, City agrees to increase said base salary and/or other benefits of Doyle including, but not limited to deferred compensation or performance bonus of up to seven percent (7%), in such amounts and to such an extent as the City Council may determine that it is desirable to do so on the basis of an annual performance review and annual salary review of Doyle conducted between May 1 and June 30 of each calendar year or at such time preceding the beginning of the fiscal year as the City Council may determine. Such increases shall be effective July 1 of the same fiscal year, with eligibility first occurring in July 2015.

C. City agrees it will conduct a modified annual performance review of Doyle in August, 2014, and thereafter an annual performance review in concert with an annual salary review in accordance with Section IV, paragraph B above between May 1 and June 30 of each year.

D. City and Doyle agree that, within the first 45 days of this Agreement and thereafter annually, the City Council and Doyle shall jointly define such goals and performance objectives which they determine necessary for the proper operation of the City in the attainment of the City Council's policy objectives, and the City Council and Doyle shall establish the relative priority among those various goals and objectives. The prioritized policy objectives shall be reduced to writing, thereby forming the basis of Doyle's annual evaluation. Said goals and objectives shall be obtainable generally within the time limits as specified in the annual operating and capital budgets and appropriations approved by the City Council.

E. The City shall pay to Doyle the sum of Five Hundred Dollars ($550) per month as an automobile allowance and a cell phone allowance of One Hundred Fifty Dollars ($150) per month.

F. City agrees to pay for comprehensive medical, optical, dental, life and long-term disability insurance for Doyle and his dependents upon the same conditions as other employees generally. City agrees to pay for Public Employees Retirement System ("PERS") on behalf of Doyle at the same rate and upon the same conditions as other employees generally, which currently includes City's payment of the PERS employee contribution. City agrees that Doyle qualifies as a "Classic" employee (2% at 55 formula) under PERS.

G. City agrees to budget and to pay professional tuition, dues, subscriptions, travel and related expenses of Doyle as determined by the City Council necessary for Doyle's full participation in national, regional, state and local associations and organizations necessary and desirable for his continued professional participation, growth and advancement and for the good of the City. In addition, City shall reimburse Doyle for all actual and necessary expenses incurred by him in the performance of his official duties.

SECTION V LEAVE

Doyle shall be entitled to receive two-hundred and forty (240) hours of vacation/administrative leave annually effective February 10, 2014 and on every anniversary date thereafter that this Agreement is in effect. City agrees to pay to Doyle any banked but unused vacation/administrative leave on each anniversary date (February 10th) of this Agreement.

SECTION VI OTHER TERMS AND CONDITIONS

A. The City Council shall fix any other terms and conditions of employment, as it may determine from time to time, relating to performance of Doyle, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, Article 7 of the AVMC or any other applicable laws.

B. All provisions of City ordinances and regulations and rules of City relating to holidays, retirement programs, and working conditions as they now exist or hereafter may be amended, also apply to Doyle in the same manner as other employees of City in addition to said benefits enumerated specifically for the benefit of Doyle, except as herein provided.

SECTION VII GENERAL PROVISIONS

A. The text herein shall constitute the entire agreement between the parties.

B. This agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Doyle.

C. This Agreement may be amended only in writing by mutual agreement of the City and Doyle.

D. Should either party commence any legal action or proceeding against the other based upon this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees.

E. City shall indemnify and pay the cost of defending Doyle for any tort, professional liability claim or other legal action, whether groundless or otherwise, arising out of the scope of Doyle's duties.

F. If any provision, or any portion thereof, contained in this agreement is held to be unconstitutional, invalid or unenforceable the remainder of this agreement, or portion thereof, shall be deemed severable, and shall not be affected and shall remain in full force and effect.

IN WITNESS WHEREOF, the City has caused this agreement to be signed and executed on its behalf by its Mayor and approved as to form by its City Attorney and Doyle has signed and executed this agreement, both in duplicate, as of the date first written above.

CITY:

By: _____
Carmen Cave, Mayor

Approved as to Form:

By: _____
for Scott C. Smith, City Attorney

DOYLE:

By: _____
David A. Doyle