

Meeting Date:

3-24-15
2-10-15**AGENDA REPORT**

City of Santa Clara, California

Agenda Item #

6.B

**Date:** March 6, 2015**To:** City Manager for Council Action**From:** Sheila Tucker, Assistant City Manager

Subject: Approval of agreement for professional services with All Vision at no cost to the City to access the City's real estate assets for opportunities to maximize revenue from digital outdoor advertising and to return to Council for final approval to construct any new billboards

EXECUTIVE SUMMARY:

At the April 16, 2014 and May 21, 2014 Marketing Committee meetings, the Committee discussed pursuing consulting and management services to access the city's real estate assets for opportunities to maximize revenue from digital outdoor advertising. The Marketing Committee recommended that the Council conduct a request for proposals for consulting and management services to access the city's real estate assets for opportunities to maximize revenue from digital outdoor advertising, and to return to Council for final approval to construct any new billboards. Staff introduced this topic at the city Council's special meeting on November 7, 2014.

On November 25, 2014 the City Council approved the issuance of a request for proposals (RFP) for such consulting and management services. Staff was further directed to pursue brokerage services in the competitive solicitation. The city released an RFP for brokerage services in December 2014. Two firms submitted proposals, All Vision and TR Advisors. An evaluation committee comprised of staff from Finance, Planning and the City Manager's Office evaluated each firm's submittal relative to the proposer's experience, overall cost and business value to the city and strategic direction. Upon completion of staff's evaluation of proposals, oral interviews and reference checks, All Vision was selected as the recommended firm.

All Vision will assist the city to develop a strategic plan for outdoor advertising within the City of Santa Clara. The plan will align with the city's signage reduction, revenue, environmental, and public policy objectives. All Vision will provide the following scope of work:

- Evaluate all potential outdoor advertising opportunities and develop a comprehensive strategic plan based on the city's objectives and goals
- Obtain all applicable local and state entitlements and regulatory approvals
- Negotiate agreements for the placement and sale of advertising with third party billboard companies
- Manage the construction process in coordination with applicable departments and permit requirements
- Manage asset performance, contract enforcement, collections, content control, maintenance & operational standards

All Vision's compensation is based solely on the revenue that its work generates for the City of Santa Clara. There are two implementation models from which the city may select on a location-by-location basis at their sole discretion. Having two models will enable the city to have the flexibility to maximize its revenue while also achieving its signage reduction goals. Both models will provide opportunities for outdoor companies to participate in and benefit from the program.

Third Party Development: All Vision, on behalf of the City of Santa Clara, will negotiate with and license the development/construction, sales, and operations of an asset to a third-party billboard company who pays annual rental revenue for the right to sell advertising on a potential asset. Under this model the city will receive 70% of rental revenue. All Vision will receive 30% of rental revenue. The third party model may be utilized to work with existing billboard companies on the removal of existing signs, but will provide lower revenue and lesser property rights protection to the city.

Contractor Development: All Vision, on behalf of the City of Santa Clara, will develop/construct an asset and then negotiates with and licenses the sales to a billboard company. Under this model, the city will receive 55% of net revenue. All Vision will receive 45% of the net revenue. Net revenue is comprised of total advertising revenue less third party sales, maintenance, electric, and insurance expenses. The contractor development model has the benefit of generating the most revenue for the city while also providing the greatest property rights to the city. However, it will likely make it more difficult to achieve maximum signage reduction.

In the event that a sign developed under the Contractor Development option may need to be removed in the future for a higher and better use, the city can remove a developed sign. Should the sign be removed and not be able to be relocated after the first five years, All Vision would not recoup any costs associated with constructing the sign. Should the sign be removed and not be able to be relocated within the first 5 years, All Vision would only receive their unamortized capital construction costs. A similar concept can be negotiated in potential Third Party Development agreements.

The proposed agreement between All Vision and the City of Santa Clara is similar to other public agency agreements that All Vision has, including with Los Angeles County METRO, a state chartered agency. There is no conflict of interest that arises from the proposed agreement because All Vision does not propose to actually sell advertising, but instead will select third party billboard companies to do so. All Vision will perform all services contemplated in the procurement and is not an end user or "awardee" of those services. Furthermore, staff is aware of controversies related to All Vision's similar work with another municipality (City of Santa Clarita), but our review of that dispute fails to indicate any wrongdoing, malfeasance, or violation of law resulting from that city's and All Vision's contractual relationship.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

All Vision will develop a strategic plan at no cost to the city and there is no obligation for the city to move forward with any concepts that are presented in the plan. Any potential outdoor advertising development will be approved on a location-by-location basis by the City Council. Should Council approve any part of the strategic plan, All Vision will negotiate with third party billboard companies to be the end user of any outdoor advertising assets that are contemplated in the strategic plan. After

City Manager for Council Action
Subject: Approval of Agreement with All Vision
March 2, 2015

Page 3

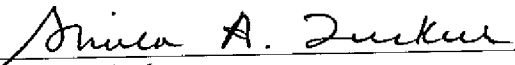
assets are operational, All Vision will continue to provide ongoing management services to ensure that all outdoor advertising assets are operating based on the City's objectives.

ECONOMIC/FISCAL IMPACT:

This agreement is a no cost agreement to the City.

RECOMMENDATION:

That the Council approve and authorize the City Manager to execute an agreement for professional services with All Vision at no cost to the city to access the City's real estate assets for opportunities to maximize revenue from digital outdoor advertising and to return to Council for final approval to construct any new billboards.


6th Sheila A. Tucker
Assistant City Manager

APPROVED:


Julio J. Fuentes
City Manager

Documents Related to this Report:
Agreement

Meeting Date: 3-24-15

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 6B.1



Date: March 19, 2015

To: City Manager for Council Information

From: Sheila Tucker, Assistant City Manager

Subject: Supplemental Information on Staff Recommendation to Approve Agreement with All Vision

EXECUTIVE SUMMARY:

On March 10, 2015, the City Council considered a staff recommendation to approve an agreement for professional services with All Vision to access the City's real estate assets for opportunities to maximize revenue from digital outdoor advertising. On March 9, 2015, the Mayor and City Council received a letter from the unsuccessful bidder (TRA) expressing concerns with the staff recommendation and objecting to the award of the proposed agreement based on the financial evaluation (see letter attached). The City Council continued this item to date uncertain pending additional information.

This staff report provides supplemental information about staff's review of proposals and the basis of selection of All Vision as the recommended firm. Following the review of the written proposals, oral evaluation and reference checks, the evaluation panel (comprised of representatives of the City Manager's Office, Planning and Finance) rated the two proposals based on the criteria outlined in the RFP as follows:

Criteria	Weight	All Vision	TRA
Demonstrated understanding of the requested work and responsiveness to the RFP	10%	24.5	22.5
Demonstrated successful past performance of brokerage work for public agencies as verified by reference checks or other means	20%	50	53
Professional qualifications and experience of individuals to be assigned to the project	20%	54	52
Proposed compensation/revenue sharing structure	50%	140	103
Total	100%	268.5	230.5

Based on this evaluation, All Vision was selected as the recommended firm.

- All Vision is the largest independent outdoor advertising manager currently managing in excess of 2,500 outdoor advertising assets and generating over \$850 million for their clients.

- All Vision has entitled over 70 digital billboard faces across North America in the last five years, including experience with CEQA and the entitlement process in California.
- All Vision has a dedicated team of over 20 full-time professionals (including legal, operations, development, finance, accounting, management, construction and maintenance personnel) to manage outdoor advertising programs.
- All Vision offers two models (third party and contractor development) that provide flexibility in their approach that will allow the City to maximize revenue and signage removal.

To provide some additional context to the concerns raised in TRA's letter about the evaluation of the revenue sharing proposals, it is staff's opinion that TRA's analysis is incomplete in that it only illustrates the terms of one of the two options that All Vision offered to the city, that of the Third-Party Development model. In addition to the Third-Party Development model, All Vision also proposed a Contractor Development Model. TRA did not propose the Contractor Development model.

Under the Third Party Development model, the selected firm will negotiate a license for the development, construction, sales and operations of a billboard with a third-party billboard company who pays annual rental revenue for the right to sell advertising on the asset. Since the majority of the billboards in Santa Clara are owned by billboard companies, this model will allow the City to work with billboard companies on the removal of existing signs as the City negotiates the construction of new signs. However, this model will yield less revenue for the city than the Contractor Development model.

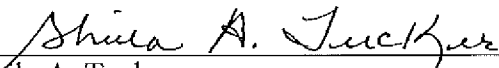
Under All Vision's proposed Contractor Development model, All Vision will develop and construct the billboard and then negotiate with and license the sales to a billboard company. This model has the benefit of generating the most revenue for the city. It may, however, achieve less signage reduction, as the current billboard companies may have less incentive to take down existing signs.

In order to normalize the evaluation of the revenue sharing proposals staff proposed a hypothetical scenario for a billboard that generates \$2 million annual gross advertising revenue over a five year period. The proposals as submitted by All Vision and TRA are included in Attachment B. In comparing each proposer's Third-Party Development model and the City's share of the net revenue, (Attachment B-1 and B-2) TRA estimates the City's share would be higher than All Vision in years 1 and 5, however All Vision estimates higher revenue for the City in years 2, 3 and 4. Overall, the estimates in the Third-Party Development model from both firms are comparable.

In comparing All Vision's estimate of the City's share of the revenue under the Contractor Development model (Attachment B-3), to TRA's Third-Party Development model (Attachment B-1), All Vision's revenue estimate exceeds TRA's in all years (1 through 5) ranging from \$186,000 to \$273,000 higher. When comparing estimates provided by both firms, the City would generate approximately \$1 million more over the five years by using All Vision's Contractor Development Model.


In conclusion, staff agrees that when comparing the City's revenue estimates under the third party model, that All Vision and TRA proposed comparable returns for the City. However, when comparing All Vision's contractor development model to TRA third party model, All Vision submitted the most advantageous revenue-generating proposal for the city. In addition, the City may elect either model proposed by All Vision on an asset-by-asset basis that will provide the City with the flexibility and optionality to both maximize revenue and achieve signage reduction.

There was some discussion at the March 10, 2015, meeting as to whether TRA's letter constituted a protest to the solicitation process. Pursuant to the Request for Proposals (RFP) issued in December 2014, no protest mechanism is provided to firms that are not selected. Unlike the process for public works contracts, the City is not required by state or local law to provide a mechanism for protests when selecting firms to provide services. This RFP, as well as most issued by the City, used a standard form that makes it very clear to proposers that the City has full and complete discretion to select the best firm based on multiple criteria. For example, based on the RFP, the City is not required to select the lowest offer, is not required to select any proposer, may choose to reject any and all proposals, and may negotiate with any, all or some proposers.



Sheila A. Tucker
Assistant City Manager

APPROVED:



Julio J. Fuentes
City Manager

Documents Related to this Report:

Attachment A. TRA letter dated March 9, 2015

Attachment B. All Vision and TRA Revenue Sharing Proposals



March 9, 2015

The Honorable Mayor Jamie L. Matthews
Members of the City Council
City of Santa Clara ("City")
1500 Warburton Avenue
Santa Clara, CA 95050

Re: City Council Agenda Item No. 7B.9
Approval of Agreement with All Vision for Outdoor Advertising Program

Dear Mayor Matthews,

The purpose of this letter is to express our concerns with the staff recommendation for the above referenced item and our objection to the award of the proposed agreement.

As noted in the staff report, the City received two proposals in response to the Request for Proposal (RFP) for Outdoor Advertising Management Services issued on November 25, 2014. I am the Managing Director for TR Advisors, LLC, the other company who submitted a proposal in response to the RFP. While we appreciate staff's time and effort, the staff report does not provide you with quantitative analysis or comparison of the two proposals in accordance with the scoring criteria set forth in the RFP to support their recommendation.

On January 7, 2015 at the request of the City, we submitted a spreadsheet to clarify the revenue sharing using a hypothetical scenario for a billboard that generates \$2 Million annual gross advertising revenue over a five-year period. TRA proposed 19.75% share of the lease rent revenue the City would receive from the third-party billboard operator limited to a five year term. **Under the proposed All Vision contract, All Vision would receive its 30% revenue share from a third-party billboard operator for the entire 25-year lease term.**

For the scenario, we projected the City would receive an estimated 30% of the gross advertising revenue, \$600,000 annually, our fee would be \$118,500 and the City's share would be \$481,500. If you use the same scenario for All Vision's proposed 30% share of the lease rent revenue for a third-party billboard operator, their share would be \$180,000 and the City's share would be \$420,000.

	Gross Advertising Revenue	All Vision Share	City Share	TRA Share	City Share	Net Revenue Loss to City
1 st Year	\$2,000,000	\$180,000	\$420,000	\$118,500	\$481,500	\$61,500
5-Year Total	\$10,000,000	\$900,000	\$2,100,000	\$592,500	\$2,407,500	\$307,500
6-25 Year Total	\$40,000,000	\$3,600,000	\$8,400,000	\$0 N/A	\$12,000,000	\$3,600,000



Mayor Matthews

Page 2

Other key points to note: TRA proposed to reduce our percentage share for the 2nd, 3rd and 4th or more billboard sites that were developed and reduce our fee when our accumulated consulting fee reached a certain financial threshold. We also limited our consulting fee to a five-year term with the City's option to continue to have TRA manage the program for a mutually agreeable management fee after the initial five-year term, while All Vision would receive their 30% fee over the 25-year lease term.

On December 5, 2014, Addendum #1 was issued which provided answers To All Potential Bidders previously submitted questions. Question No. 8 asked the City, "For the Review and Selection Process – Evaluation Criteria (page 7), are any of the bullet points listed weighted differently or are they all considered equal?" The City's response was the following chart:

Criteria	Weight
Demonstrate understanding of the requested work and responsiveness to the RFP	10%
Demonstrated successful past performance of brokerage work for public Agencies as verified by reference checks or other means	20%
Professional qualifications and experience of individuals to be assigned to the project	20%
Proposed compensation/revenue sharing structure	50%

Clearly, the City was seeking a qualified firm who could do the required work to implement an Outdoor Advertising Program, which also provided the best or highest amount of revenue to the City. Per this method of evaluation, by comparing the All Vision proposal with our proposal, TRA should have been awarded the full 50% of the weighted criteria allocation for the compensation/revenue sharing structure criteria.

For these reasons, we respectfully ask the City to reject the proposed agreement with All Vision and direct staff to negotiate an agreement with TRA which is more financially beneficial to the City.

Thank you for your consideration. I will be attending the City Council Meeting on March 10, 2015 to answer any further questions.

Sincerely,

Steve Shinn
Managing Director

CC: City Council Members
Julio J. Fuentes, City Manager
Sheila A. Tucker, Assistant City Manager

TR Advisors LLC**Outdoor Advertising Program Revenue Sharing Clarification**Assumptions:

3rd Party Development Model — Note: We are not contractor developers which is not the typical model.

One two-sided digital reader board structure (two display faces)

Built on City owned property

Annual gross advertising revenue of \$2 million (both faces)

Entitlement costs of \$25,000

Construction costs of \$750,000

Construction costs payback over five years

What is the proposal of costs and revenue sharing with City over five year period?

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
Annual gross revenue	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000
Entitlement costs	-	-	-	-	-
Construction costs payback	-	-	-	-	-
Other costs (specify) 70% Third party billboard company	1,400,000	1,400,000	1,400,000	1,400,000	1,400,000
Total costs	1,400,000	1,400,000	1,400,000	1,400,000	1,400,000
Net revenue	600,000	600,000	600,000	600,000	600,000
Proposer's % share of net revenue	19.75%	19.75%	19.75%	19.75%	15%-19.75%*
Proposer's \$ share of net revenue	118,500	118,500	118,500	118,500	81,253
City's % share of net revenue	80.25%	80.25%	80.25%	80.25%	86.46%
City's \$ share of net revenue	481,500	481,500	481,500	481,500	518,747

Other notes:

*We are proposing as a consultant not as a billboard developer in keeping with the RFP scope of work. We will be acting as the City's agent to obtain billboard companies to lease the City's land and to entitle and develop the billboards at no cost to the city. The Third Party billboard company will lease directly with the City and we will manage the leases on behalf of the city, collect the rent, and send the collected rent to the City net of our commission. This form does not take into account our actual approach. Therefore there are no entitlement costs and no construction payback costs. We have listed the retained revenues by the third party billboard company as "Other cost" but it is not actually a cost. The billboard company will receive and generate the gross advertising revenues. From those revenues they will pay the rent to the City. We cannot know what the actual rent will be until it is negotiated on the City's behalf. Generally the rent is between 25% and 35% of gross revenues. This will depend on the value of the specific site.

*This percentage is reduced for each additional billboard

Allvision

Outdoor Advertising Program Revenue Sharing Clarification

Assumptions:

3rd Party Development Model

One two-sided digital reader board structure (two display faces)

Built on City owned property

Annual gross advertising revenue of \$2 million (both faces)

Entitlement costs of \$75,000

What is the proposal of costs and revenue sharing with City over five year period?

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
Annual gross revenue	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000
Rental Revenue (35%)	700,000	700,000	700,000	700,000	700,000
Entitlement costs	75,000	-	-	-	-
Net revenue	625,000	700,000	700,000	700,000	700,000
Proposer's % share of net revenue	30%	30%	30%	30%	30%
Proposer's \$ share of net revenue	187,500	210,000	210,000	210,000	210,000
City's % share of net revenue	70%	70%	70%	70%	70%
City's \$ share of net revenue	437,500	490,000	490,000	490,000	490,000

Other notes:

Allvision is aligned to keep entitlement costs as low as possible

Entitlement Costs are 3rd party costs and do not include any Allvision internal, employee, or administrative overhead costs

Allvision is aligned to maximize Rental Revenue Percentage...

Allvision

Outdoor Advertising Program Revenue Sharing Clarification

Assumptions:

Contractor Development Model

One two-sided digital reader board structure (two display faces)

Built on City owned property

Annual gross advertising revenue of \$2 million (both faces)

Entitlement costs of \$25,000

Construction costs of \$750,000

Construction costs payback over five years

What is the proposal of costs and revenue sharing with City over five year period?

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>	<u>*Year 6</u>
Annual gross revenue	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000
Entitlement costs	75,000	-	-	-	-	-
Construction costs payback	150,000	150,000	150,000	150,000	150,000	-
Other costs (specify)						
Est. Operating Costs (insurance, electric maintenance) (3%)	60,000	60,000	60,000	60,000	60,000	60,000
Est. 3rd Party Advertising Sales Commission (25%)	500,000	500,000	500,000	500,000	500,000	500,000
Total costs	785,000	710,000	710,000	710,000	710,000	560,000
Net revenue	1,215,000	1,290,000	1,290,000	1,290,000	1,290,000	1,440,000
Proposer's % share of net revenue	45%	45%	45%	45%	45%	45%
Proposer's \$ share of net revenue	546,750	580,500	580,500	580,500	580,500	648,000
City's % share of net revenue	55%	55%	55%	55%	55%	55%
City's \$ share of net revenue	668,250	709,500	709,500	709,500	709,500	792,000

Other notes:

*Year 6 was added to show the City's revenue share after construction cost payback

Allvision is aligned to keep construction costs, operating costs, and sales commission costs as low as possible, since we share in net revenue after those costs

All construction, operating, and 3rd party advertising sales commissions are 3rd party costs and do not include any Allvision internal, employee, or administrative overhead costs

Since entitlement, construction, operating, and 3rd party advertising sales commissions are taken prior to net revenue, Allvision shares in all of these costs proportionally

Having a construction payback period enables the City to ultimately own and have much greater control of an asset on their property

03/24/15

RECEIVED

MAR 24 2015

City Clerk's Office
City of Santa Clara



March 24, 2015

Honorable Jamie L. Matthews
Members of the City Council
1500 Warburton Avenue
Santa Clara, CA 95050

Via Electronic Mail
jmatthews@santacleara.gov
MayorAndCouncil@santacleara.gov

Re: Agenda Item 6B, Approval of Agreement with Allvision for Outdoor Advertising Program

Dear Mayor Matthews and Council Members:

We are writing this letter in response to the letter and memorandum submitted by Steve Shinn on behalf of TRA on Monday, March 23rd. That letter and memorandum contain many inaccuracies and is another deliberate attempt to mislead the City Council 24 hours prior to discussing Allvision's proposed agreement. We are submitting the information below that confirms Allvision's proposal was compliant with the procurement, consistent with applicable law, and provides the greatest financial opportunity for the City of Santa Clara.

RFP's Scope of Services:

The RFP's Scope of Services, which was unanimously approved by the City Council on November 25, 2014 states: "Responsibilities could include, without limitation, a range of services from consulting/advisory to asset construction/development/implementation to long-term management/maintenance services on behalf of the City of Santa Clara (City)." The RFP's Scope of Services also called for creative approaches to address the City's objectives of reducing billboards in the City and generating additional revenue.

Allvision's proposal clearly complies with the Scope of Services that this procurement contemplated and requested. Specifically, the Scope of Services included the following two tasks, which were left out of Mr. Shinn's correspondence:

4.e. Construct, develop, implement, and/or manage assets on behalf of the City at provider's upfront cost;

- o This is the foundation and basis for the Contractor Development Model that Allvision proposed

5. Assist the City in updating its sign regulations Code 18.80.010, and Policy for Billboard Relocation (see Attachment A-1), as needed.

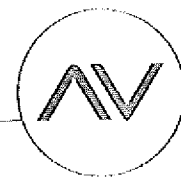
- o The procurement clearly contemplated updating or revising the City's Ordinance and Policy to meet and enhance the City's overall outdoor advertising objectives, which are likely to include both signage reduction and revenue generation. Any modifications to the Ordinance and Policy would be at the sole discretion and approval of the Council. Development and implementation of a possible revision to the Ordinance and Policy is clearly contemplated by the RFP.



JOSH SCHARFBERG, VICE PRESIDENT, BUSINESS DEVELOPMENT
JSCHARFBERG@ALLVISION.COM
PHONE: 917.803.0244

WWW.ALLVISION.COM

POST MEETING MATERIAL



Thus, Allvision's proposal is a direct, comprehensive, and compliant response to the RFP, and it will enable the City to meet its objectives stated in the procurement.

California Public Contract Code Section 10365.5(a).

TRA's reference to California Public Contract Code Section 10365.5(a) is clearly misplaced and the conclusions stated therein are completely inaccurate and invalid. The cited Code section is only applicable to State agencies. The City is not a State Agency under the terms of this Codes section. Moreover, the Allvision Agreement is quite similar to other public agency agreements that Allvision has in place, including with Los Angeles County METRO, a state chartered agency. There is no conflict of interest that arises from the proposed agreement because Allvision does not propose to be an end user or "awardee" of the services that were requested in the procurement or proposed by Allvision. To reiterate, third party billboard companies, not Allvision, will be the end user or "awardee" of Allvision's work. At no time will Allvision "*submit a bid, nor be awarded a contract for, the provision of services, procurement of goods or supplies or any other related actions which is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract.*" Under either proposed development model – Contractor or 3rd Party - a billboard company, not Allvision, will enter into an Agreement to sell advertising and generate revenue for the City. The billboard companies will always be the end-user or awardee of both proposals submitted by Allvision.

Revised Financial Estimates:

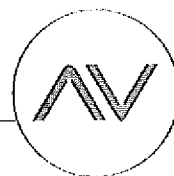
TRA's revised financial model is inconsistent with all previous financial information that they submitted to the City as part of the evaluation process. This includes a worksheet submitted in January, 2015 as well as information submitted March 9, 2015, both of which are included in the Supplemental Staff Report. In all previous correspondence with City Staff and City Council, TRA has stated they believe they can generate a 30% revenue share, however they inexplicably have now inflated that percentage to 35%. Allvision's financial proposal and analysis has been consistent throughout. TRA's altered estimates again do not compare the Contractor Development Model, which would generate over \$5 million more to the City nor do they compare a hybrid of both models that would generate over \$1.4 million more to the City. Allvision's proposal has been consistent and unquestionably provides the greatest financial opportunity to the City. Importantly, Allvision's proposal provides a broader range of options to the City, resulting in a number of financial, legal and property rights benefits to the City, and is directly responsive to the full range of requested services set out in the RFP.

Allvision has successfully implemented complex outdoor advertising reduction projects with the major billboard companies. Our Strategic Plan is likely to propose recommendations for a combination of both models to ensure that the RFP's two stated objectives, signage reduction and revenue generation, are satisfied. Having both options enables the City to have the greatest flexibility to ensure both objectives are met to their satisfaction. We encourage you to approve staff's recommendation and award an agreement to Allvision so we can begin working on behalf of the people of Santa Clara



JOSH SCHARFBERG, VICE PRESIDENT, BUSINESS DEVELOPMENT
JSCHARFBERG@ALLVISION.COM
PHONE: 917.803.0244

WWW.ALLVISION.COM



Very truly yours,

Josh Scharfberg

Vice President, Business Development, Allvision

CC: Julio J Fuentes, City Manager, City of Santa Clara
Sheila Tucker, Assistant City Manager, City of Santa Clara
Richard E. Nosky, City Attorney



JOSH SCHARFBERG, VICE PRESIDENT, BUSINESS DEVELOPMENT
JSCHARFBERG@ALLVISION.COM
PHONE: 917.803.0244

WWW.ALLVISION.COM

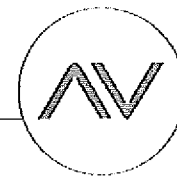
03/24/15

6B-1

RECEIVED

MAR 23 2015

City Clerk's Office
City of Santa Clara



March 23, 2015

Honorable Jamie L. Matthews
Mayor, City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Via Electronic Mail
jmatthews@santaclara.gov
MayorAndCouncil@santaclara.gov

Re: City Council Agenda Item 6B
Approval of Agreement with Allvision for Outdoor Advertising Program

Dear Mayor Matthews and Council Members:

We are writing this letter in response to a letter submitted by Mr. Steve Shinn on March 9th and City Council's subsequent continuance and request for further information during the March 10th City Council meeting regarding the above referenced item.

First and foremost, I would like to commend your staff for conducting a fair, transparent and thorough evaluation process regarding this procurement. After nearly three months of evaluating the proposals, City staff has concluded that Allvision has the best proposal both from a financial and execution basis, and is recommending award of this contract to us.

Should you approve the proposed agreement, Allvision would provide the City with a comprehensive strategy for a full range of potential outdoor advertising concepts. These concepts include two models from which the City Council will select and approve on a location-by-location basis at your discretion: a Third Party Development model and a Contractor Development model. Our program will enable the City to realize significant revenue, achieve reduction in existing billboard signage, and meet Council's marketing committee's objective promoting the City's brand.

Allvision is the largest independent outdoor advertising manager in North America with over 2,500 outdoor advertising assets under management. Over the past six years we have entitled or developed over 70 digital outdoor advertising faces and have generated over \$850 million in contracted long-term incremental revenue for our clients. We have a full-time team of over 20 full-time professionals solely dedicated to developing, implementing, and managing outdoor advertising programs, on behalf of our mostly public agency clients. Our internal infrastructure includes legal, operations, development, finance, accounting, management, and construction personnel who will all be utilized to implement this project. TRA's business, on the other hand, is not focused solely on outdoor advertising and their team lacks the experience and infrastructure to facilitate a complex outdoor advertising project of this nature.

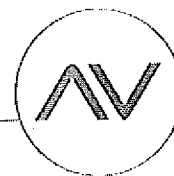
Allvision has successfully implemented and is actively working on signage projects with Outfront Media (formerly CBS Outdoor) and Clear Channel Outdoor at the highest levels, who together own most of the existing billboard inventory within the City. We will work



JOSH SCHARFBERG, VICE PRESIDENT, BUSINESS DEVELOPMENT
JSCHARFBERG@ALLVISION.COM
PHONE: 917.803.0244

WWW.ALLVISION.COM

POST MEETING MATERIAL



with both of these organizations, amongst others, to implement an outdoor advertising program that will meet the City's objectives, including signage reduction.

Mr. Shinn's letter included a financial table that was both incomplete and inaccurate based on information submitted to the City by both parties. Mr. Shinn's letter analyzed inaccurate information on only one of the two models that Allvision proposed, the 3rd Party Development Model. In addition to that model, Allvision proposed a Contractor Development Model that could generate the most money for the City. Below is an accurate analysis and comparison of the Allvision Contractor Development Model to TRA's proposal. When comparing this model to TRA's proposal, the City would generate \$5 million more from Allvision's proposal over a 25-year period.

Allvision Contractor Development Model versus TRA Model				
	Gross Advertising Revenue	Allvision Model City Revenue	TRA Model City Revenue	City Increase with Allvision
5 Year Total	\$10,000,000	\$3,533,750	\$2,407,500	\$1,126,250
25-Year Total	\$40,000,000	\$19,483,750	\$14,407,500	\$5,076,250

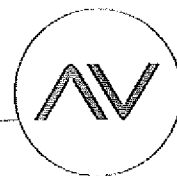
During the interview process, Allvision has consistently informed the City that we envision a successful outdoor advertising program being comprised of a hybrid of both proposed models in order to maximize the City's signage reduction and revenue. When comparing an average of Allvision's two models to TRA's proposal, the City would generate approximately \$1.4 million more from Allvision's proposal over a 25-year period.

Allvision Hybrid (1/2 Development & 1/2 Third Party) versus TRA Model				
	Gross Advertising Revenue	Allvision Model City Revenue	TRA Model City Revenue	City Increase with Allvision
5 Year Total	\$10,000,000	\$2,965,625	\$2,407,500	\$558,125
25-Year Total	\$40,000,000	\$15,840,625	\$14,407,500	\$1,433,125

Please note that Allvision's financial information above is accurate and based off the revenue worksheets submitted by Allvision during the evaluation. TRA's financial information is based off of the letter they submitted to the City Council on March 9, 2015. Both the revenue worksheets and letter were included in the Supplemental Staff Report and can corroborate that Allvision's financial proposal provides the greatest revenue opportunity for the City.

In addition to providing a better financial proposal for the City, Allvision is fully aligned to maximize both the City's total revenue as well as their long-term revenue. Based on TRA's proposal, TRA is only aligned to generate a fixed capped amount of revenue over a five-year term. Unlike TRA's proposal, Allvision will be there for the long haul, advocating, advising, and managing these assets at the direction of and for the benefit of the City of Santa Clara.





In all models, the revenue that the City would receive is based off a percentage of gross advertising revenue. Allvision's financial alignment, infrastructure, and active management are likely to generate significantly more absolute revenue than TRA's proposal contemplates. TRA does not have the staff, experience, or long-term financial incentive to maximize the total advertising revenue, which is a critical component of any outdoor advertising project.

Allvision has the experience, staff, and incentive to develop and implement a comprehensive outdoor advertising program for the City of Santa Clara. Our proposal provides the greatest financial benefit to the City as explained above and confirmed by Staff in the Supplemental Staff Report. We encourage you to accept staff's thorough evaluation and recommendation and to approve the City's Agreement with Allvision at the March 24, 2015 City Council Meeting. We look forward to working together on a highly successful program for the people of Santa Clara. Along with other members of our team, I will be in attendance on Tuesday, March 24th should you have any questions.

Very truly yours,

Josh Scharfberg
Vice President, Business Development
Allvision

CC: Councilmember Pat Kolstad, City of Santa Clara
Vice Mayor Debi Davis, City of Santa Clara
Councilmember Jerry Marsali, City of Santa Clara
Councilmember Dominic J. Caserta, City of Santa Clara
Councilmember Lisa M Gillmor, City of Santa Clara
Councilmember Teresa O'Neill City of Santa Clara
Julio J Fuentes, City Manager, City of Santa Clara
Sheila Tucker, Assistant City Manager, City of Santa Clara



6312415



RECEIVED

6B.1

MAR 23 2015

City Clerk's Office
City of Santa Clara

March 23, 2015

The Honorable Mayor Jamie L. Matthews
Members of the City Council
City of Santa Clara ("City")
1500 Warburton Avenue
Santa Clara, CA 95050

Re: City Council Agenda Item No. 6B.1
Supplemental Information on Staff Recommendation to Approve Agreement with All Vision

Dear Mayor Matthews and City Council Members,

I would like to thank Staff for their diligence and hard work in developing the Supplemental Information for your consideration. While we are pleased to see how the evaluation panel highly rated TR Advisors (TRA) proposal, there remain questions and concerns with this staff recommendation.

Contractor/Developer Model

TRA did not propose as the Contractor/Developer model for several reasons:

- The model would result in a violation of the City's Sign Code 18.80.220 (see attached memo from Michael Dissette, TRA Senior Counsel). This is not consistent with your RFP Section 1 (b) which provides that a proposal should maximize revenues for the City and present alternative creative ideas through the deployment of outdoor advertising that "complies with City ordinances and policies."
- The model would be in conflict with the California Public Contract Code Section 10365.5(a)*
- There would be no incentive and/or cooperation from third party billboard companies to permanently remove their company owned assets, if they must compete for sites with a new digital billboard developer who is permitted to add new billboards in Santa Clara.
- It was not consistent with the goal and purpose of your Council's Marketing Committee, who initiated the proposal on April, 16, 2014. As stated in the minutes from that meeting: "The Committee discussed pursuing consulting and management services to access the City's real estate assets for opportunities to maximize revenue from digital outdoor advertising."

*Cal PCC Code 10365.5 (a) No person, firm, or subsidiary thereof who has been awarded a consulting services contract may submit a bid for, nor be awarded a contract for, the provisions of services, procurement of goods or supplies or any other related actions which is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract.

www.tradvisors.com

27 Franklin Street, 9th Floor | Boston, MA 02110 | (p)617.482.2525 | (f)617.482.0210

POST MEETING MATERIAL



Mayor Matthews

March 23, 2015

Page 2

Revenue to City

For the hypothetical scenario requested by City Staff, TRA projected the City/Consultant would receive an estimated 30% of the gross advertising revenue from billboard companies which is consistent with industry averages. This number was reflected in the letter and chart we shared with you for your March 10th council meeting. We've since learned from the staff report released on March 19th, All Vision projected an estimated 35% of the gross advertising revenue from billboard companies. Thus, for a fair comparison, we ask you to review the chart below that shows the differences using 35% (or \$700,000) gross advertising revenue which will be shared by the City/Consultant.

With this new information, the City will lose \$4.6 million over 25 years per billboard with All Vision.

	Gross Advertising Revenue (35%)	All Vision Share	City Share	TRA Share	City Share	Net Revenue Loss to City
1 st Year	\$2,000,000	\$210,000	\$490,000	\$138,250	\$561,750	\$71,500
5-Year Total	\$10,000,000	\$1,050,000	\$2,450,000	\$691,250	\$2,808,750	\$358,750
6-25 Year Total	\$40,000,000	\$4,200,000	\$9,800,000	\$0 N/A	\$14,000,000	\$4,200,000

Under the proposed All Vision contract, All Vision would receive its 30% revenue share from a third-party billboard operator for the entire 25-year lease term. TRA's contract after 5 years expires unless the City wishes to extend it; if so, it would be at a much lower rate as stated in our proposal.

We respectfully request you to ask city staff to negotiate an agreement with TRA as we believe we provide you with more revenue and will be able to negotiate a reduction of billboards in Santa Clara as we are the only firm who can do so without a conflict of interests or violation of your ordinances.

Sincerely,

Steve Shinn

Managing Director

CC: City Council Members
Julio J. Fuentes, City Manager
Sheila A. Tucker, Assistant City Manager
Richard E. Nosky, City Attorney

www.tradvisors.com

77 Franklin Street, 9th Floor | Boston, MA 02110 | (p)617.482.2525 | (f)617.482.0210

03/24/15

TRA

RECEIVED

6B:1

MAR 23 2015

City Clerk's Office
City of Santa Clara

MEMORANDUM

TO: Steve Shinn; Lorna Moritz

FROM: Michael Disse, Sr. Counsel

DATE: March 22, 2015

RE: Santa Clara, CA -- RFP for Outdoor Advertising

I reviewed the Santa Clara RFP for Outdoor Advertising, the Santa Clara City Code and the City's Policy Statement for Billboard Relocation Agreements in order to evaluate the efficacy of a "Contractor/Developer" program model to achieve the City's stated goals. My conclusion is that the permitting and development of a new billboard through a contractor/developer model will likely result in a violation of the current City Code by increasing the number of billboards. Under these circumstances, proposing a contractor/developer program model is non-compliant with City ordinances, non-responsive to the RFP, and a conditional or contingent bid. The third Party Development model is the only compliant, unconditional and responsive model to propose to meet both of the City's stated goals.

The goals of the RFP are stated as:

- a. Reduce the number of existing billboards currently in place in residential/neighborhood areas.
- b. Maximize revenues for the City and present alternative creative ideas and methods for generating revenues through the deployment of outdoor advertising that complies with City ordinances and policies. [Emphasis supplied]

The City Code provides:

18.80.220 Outdoor advertising signs (billboards).

(a) *Intent.* The City of Santa Clara has had a policy since 1978 (Ordinance No. 1365) to limit the number of outdoor advertising signs (also commonly referred to as "billboards") to no more than sixty (60) physically in place in order to improve the quality of urban life for its citizens. It had been determined that billboards, by their very nature, wherever located and however constructed, constitute visual clutter and blight to the appearance of the City. It has also been determined that billboards impede traffic safety by unduly distracting motorists and pedestrians, creating traffic hazards, and reducing the effectiveness of signs needed to direct the public.

The City reasserts its policy that the obtrusive nature of billboards makes it imperative that the City control the number, size, and location of billboards. It is the continued position of the City Council that billboards are not permitted within the jurisdictional boundaries of the City unless a particular billboard



location has been approved. In the absence of a billboard location receiving affirmative approval from the City Council, the application was denied.

It is the City Council's intent hereby to permit no more billboards within the city, and to thereby restrict the presence of billboards in the City by limiting the number of billboards to those physically in place or for which approvals have been granted as of the effective date of the ordinance codified in this chapter. Additionally, as billboards are physically removed or destroyed, it is the intent of the City Council that the number of billboards will be permanently reduced by that number....

It is the express intent of the City Council to permit no further billboards within the city and to reduce their number through attrition rather than pay compensation pursuant to the provisions of Article 7 (commencing with Section 5400) of Chapter 2 of Division III of the California Business and Professions Code, which provisions require compensation for billboards removed at governmental insistence.

[Emphasis supplied]

The City's **Policy Statement** for Billboard Relocation Agreements (April 2011) establishes fairly restrictive relocation criteria for new billboards. For every construction or relocation of one sign face, three must be taken down. The City has made significant progress in reducing the number of billboards and locating new billboards in appropriate commercial zones. Currently, the City believes that there are 19 billboards within the City limits. That number shall not increase. Any newly permitted billboard must result in a net reduction of sign faces.

A proposer who does not own or control any of the existing billboards is not in a position to take down the required three sign faces when it develops a new billboard as the contractor/developer. The incentives which drive the Billboard Relocation program's required net reduction in sign faces are absent from the contractor/developer model. The result is an increase in billboards and, unless amended by City Council, a violation of the City Code.

Under these circumstances, proposing a contractor/developer program model is non-compliant with City ordinances, non-responsive to the RFP, and a conditional or contingent bid. The third Party Development model is the only compliant, unconditional and responsive model to propose to meet both of the City's stated goals.

CITY OF SANTA CLARA
AGENDA MATERIAL ROUTE SHEET

Council Date: 3/10/2015

SUBJECT: Agreement for the Performance of Services with All Vision LLC

PUBLICATION REQUIRED:

The attached Notice/Resolution/Ordinance is to be published _____ time(s) at least _____ days before the scheduled meeting/public hearing/bid opening/etc., which is scheduled for _____, 20____.

AUTHORITY SOURCE FOR PUBLICATION REQUIREMENT:

Federal Codes:

Title _____ U.S.C. § _____
(Titles run 1 through 50)

Federal Regulations:

Title _____ C.F.R. § _____
(Titles run 1 through 50)

City Regulations:

City Charter § _____
(i.e., 1310. Public Works Contracts. Notice published at least once at least ten days before bid opening)

California Codes:

Code _____ § _____
(i.e., Government, Street and Highway, Public Resources)

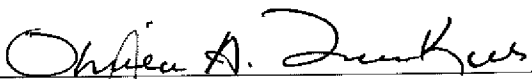
California Regulations:

Title _____ California Code of Regulations § _____
(Titles run 1 through 28)

City Code § _____

Reviewed and approved:

1. As to City Functions, by



Department Head

2. As to Legality, by



City Attorney's Office/CAO Assign. No 15-0243

3. As to Environmental Impact Requirements, by

N/A

Director of Planning and Inspection

4. As to Substance, by



City Manager

AGREEMENT FOR THE PERFORMANCE OF SERVICES
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
and
ALL VISION, LLC

PREAMBLE

This agreement for the performance of services ("Agreement") is made and entered into by and between All Vision, LLC, a Delaware limited liability company, with its principal place of business located at 420 Lexington Avenue, Suite 1601, New York, NY 10170 ("Contractor"), and the City of Santa Clara, California, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 ("City"). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. City desires to secure professional services more fully described in this Agreement, at Exhibit A, entitled "Scope of Services";
- B. Contractor represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of City; and,
- C. The Parties have specified herein the terms and conditions under which such services will be provided and compensated.

The Parties agree as follows:

AGREEMENT PROVISIONS

1. SERVICES TO BE PROVIDED.

City employs Contractor to perform the services ("Services") more fully described in Exhibit A entitled, "SCOPE OF SERVICES." All of the exhibits referenced in this Agreement are attached and incorporated by this reference. Except as otherwise specified in this Agreement, Contractor shall furnish all necessary technical and professional services, including labor, material, equipment, transportation, supervision and expertise to satisfactorily complete the work required by City at his/her own risk and expense.

2. TERM OF AGREEMENT.

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall

begin on the date this Agreement has been fully signed by both Parties and terminate at the end of the day before the fifth (5th) anniversary of the commencement date,

3. QUALIFICATIONS OF CONTRACTOR - STANDARD OF WORKMANSHIP.

Contractor represents and maintains that it has the necessary expertise in the professional calling necessary to perform services, and its duties and obligations, expressed and implied, contained herein, and City expressly relies upon Contractor's representations regarding its skills and knowledge. Contractor shall perform such services and duties in conformance to and consistent with the professional standards of a specialist in the same discipline in the State of California.

The plans, designs, specifications, estimates, calculations, reports and other documents furnished under Exhibit A shall be of a quality acceptable to City. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well organized, that is technically and grammatically correct, checked and having the maker and checker identified. The minimum standard of appearance, organization and content of the drawings shall be that used by City for similar projects.

4. MONITORING OF SERVICES.

City may monitor the Services performed under this Agreement to determine whether Contractor's operation conforms to City policy and to the terms of this Agreement. City may also monitor the Services to be performed to determine whether financial operations are conducted in accord with applicable City, county, state, and federal requirements. If any action of Contractor constitutes a breach that is not cured within the time period required by this Agreement, City may terminate this Agreement as provided in Section 32 below.

5. WARRANTY.

Contractor expressly warrants that all materials and services covered by this Agreement shall be fit for the purpose intended, shall be free from defect, and shall conform to the specifications, requirements, and instructions upon which this Agreement is based. Contractor agrees to promptly replace or correct any incomplete, inaccurate, or defective Services at no further cost to City when defects are due to the negligence, errors or omissions of Contractor. If Contractor fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Contractor for the cost incurred by City.

6. PERFORMANCE OF SERVICES.

Contractor shall perform all requested services in an efficient and expeditious manner and shall work closely with and be guided by City. Contractor shall be as fully responsible to City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by it. Contractor will perform all Services in a safe manner and in accordance with all federal, state and local operation and safety regulations.

7. RESPONSIBILITY OF CONTRACTOR.

Contractor shall be responsible for the professional quality, technical accuracy and coordination of the Services furnished by it under this Agreement. Neither City's review, acceptance, nor payments for any of the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement and Contractor shall be and remain liable to City in accordance with applicable law for all damages to City caused by Contractor negligent performance of any of the Services furnished under this Agreement.

Any acceptance by City of plans, specifications, construction contract documents, reports, diagrams, maps and other material prepared by Contractor shall not in any respect absolve Contractor from the responsibility Contractor has in accordance with customary standards of good professional practice in compliance with applicable federal, state, county, and/or municipal laws, ordinances, regulations, rules and orders.

8. COMPENSATION AND PAYMENT.

In consideration for Contractor's complete performance of Services, Contractor shall be entitled to the compensation provided in Exhibit B.

9. TERMINATION OF AGREEMENT.

A. Either Party may terminate this Agreement without cause by giving the other Party written notice ("Notice of Termination") which clearly expresses that Party's intent to terminate the Agreement. Notice of Termination shall become effective no less than thirty (30) calendar days after a Party receives such notice. After either Party terminates the Agreement, Contractor shall discontinue further services as of the effective date of termination, and City shall reimburse Contractor for all reasonable costs incurred by Contractor in performing Services up to such date, including without limitation amounts paid or owed to subcontractors or third party consultants and other vendors, salaries, benefits, employment taxes and other labor burden costs of Contractor's personnel engaged in performing the Services (reasonably allocated based on the portion of their working time devoted to the Services), personnel travel expenses (also so allocated), and all Direct Expenses (defined in Exhibit A).

B. A Party may terminate this Agreement for cause only in accordance with Section 32.

C. Without limiting the effect of any other provisions of this Agreement relating to survival of provisions after termination, Contractor's right to receive compensation based on any License Agreements entered into during the term of this Agreement and Section 2.C of Exhibit A will survive termination.

10. NO ASSIGNMENT OR SUBCONTRACTING OF AGREEMENT.

City and Contractor bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written

approval of City, which approval the City shall not unreasonably withhold, condition or delay. Contractor shall not hire subcontractors to whose engagement the City reasonably objects.

11. NO THIRD PARTY BENEFICIARY.

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

12. INDEPENDENT CONTRACTOR.

Contractor and all person(s) employed by or contracted with Contractor to furnish labor and/or materials under this Agreement are independent contractors and do not act as agent(s) or employee(s) of City. Contractor has full rights, however, to manage its employees in their performance of Services under this Agreement. Contractor is not authorized to bind City to any contracts or other obligations.

13. NO PLEDGING OF CITY'S CREDIT.

Under no circumstances shall Contractor have the authority or power to pledge the credit of City or incur any obligation in the name of City. Contractor shall save and hold harmless the City, its City Council, its officers, employees, boards and commissions for expenses arising out of any unauthorized pledges of City's credit by Contractor under this Agreement.

14. CONFIDENTIALITY OF MATERIAL.

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Contractor and all other written information submitted to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor and shall not, without the prior written consent of City, be used for any purposes other than the performance of the Services nor be disclosed to an entity not connected with performance of the Services. Nothing furnished to Contractor which is otherwise known to Contractor or becomes generally known to the related industry shall be deemed confidential.

Information will not constitute confidential information for purposes of this Section 14 in the following circumstances:

(a) City advises Contractor that the information is not required to be treated as confidential, provides the information with instructions to furnish it to others or use it in discussions with others, or provides the information in response to a request for information that is to be shared with others;

(b) the information is then or subsequently becomes generally available to or accessible by the public through no fault or wrongdoing of the Contractor;

(c) the information was in the possession of the Contractor before it was disclosed to Contractor in connection with the services under this Agreement;

(d) the information is required to be disclosed under open public records laws or open public meetings laws by virtue of being received, generated, or disclosed by City;

(e) the information is required to be disclosed pursuant to a subpoena, court order, or other legal process.

15. USE OF CITY NAME OR EMBLEM.

Contractor shall not use City's name, insignia, or emblem, or distribute any information related to services under this Agreement in any magazine, trade paper, or newspaper without express written consent of City. Contractor agrees to use City's name, insignia or emblem in support of its efforts as outlined in this Agreement and not for any other purpose without the prior written consent of the City.

16. OWNERSHIP OF MATERIAL.

All Planning Materials (defined below) will remain the intellectual property of Contractor or the consultants who contributed their work to the Planning Materials. Contractor grants (and shall obtain from its consultants, if necessary), a non-exclusive license for City to make copies and derivative works of Planning Materials as reasonably necessary to evaluate and implement the Strategic Plan (defined in Exhibit A). If City creates derivative works of Planning Materials that are not specifically approved by Contractor for City's use or uses Planning Materials for projects other than the Project or for parts of the Project other than those for which the Planning Materials were prepared, neither Contractor nor any of its contractors or consultants shall have any liability arising out of the City's use of those Planning Materials or derivative works. "Planning Materials" means each draft and final Strategic Plan and all designs, plans, studies, reports, and other information prepared and submitted by Contractor in any form in connection with the proposed Strategic Plan and implementation of the approved Strategic Plan.

17. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR.

For so long as Contractor collects and distributes License Revenue under License Agreements and for the duration of each Site Agreement (as those terms are defined in Exhibits A and B), whichever extends later, and for three years thereafter, Contractor shall maintain records of receipts, disbursements and withholding of amounts received by it on account of each License Agreement, including all Direct Expenses, and on account of each Site Agreement looking back at least seven years. City and its accountants and consultants shall be entitled to inspect and obtain copies of such records and documents at Contractor's office where such records are regularly kept during normal business hours upon not less than ten business days' prior written request.

City shall keep records of all License Revenue and Other Program Revenues (as those terms are defined in Exhibit B) received by it, and Contractor and its accountants and consultants shall be entitled to inspect such records and documents at the City's office

where such records are regularly kept upon not less than ten business days' prior written request.

18. CORRECTION OF SERVICES.

Contractor agrees to correct any incomplete, inaccurate or defective Services at no further costs to City, when such defects are due to the negligence, errors or omissions of Contractor.

19. FAIR EMPLOYMENT.

Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, gender, sexual orientation, age, disability, religion, ethnic background, or marital status, in violation of state or federal law.

20. HOLD HARMLESS/INDEMNIFICATION.

To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all reasonable attorneys' fees and costs incurred in providing a defense to any claim arising therefrom, for which City becomes liable as a result of Contractor's negligent, reckless, or wrongful acts, errors or omissions in connection with the Services performed by Contractor pursuant to this Agreement, except to the extent resulting from the sole negligence, recklessness, or wrongful conduct of the City or its employees, officers, council members, volunteers, contractors (other than Contractor) and other agents.

21. INSURANCE REQUIREMENTS.

During the term of this Agreement, and for any time period set forth in Exhibit C, Contractor shall purchase and maintain in full force and effect, at no cost to City insurance policies with respect to employees and vehicles assigned to the Performance of Services under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in Exhibit C.

22. AMENDMENTS.

This Agreement may be amended only with the written consent of both Parties.

23. INTEGRATED DOCUMENT.

This Agreement represents the entire agreement between City and Contractor. No other understanding, agreements, conversations, or otherwise, with any representative of City prior to execution of this Agreement shall affect or modify any of the terms or obligations of this Agreement. Any verbal agreement shall be considered unofficial information and is not binding upon City.

24. SEVERABILITY CLAUSE.

In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

25. WAIVER.

Waiver by a party of any one or more of the conditions of performance, rights or obligations under this Agreement shall not be construed as waiver(s) of any other condition of performance, right or obligation under this Agreement.

26. NOTICES.

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara
Attention: City Manager's Office
1500 Warburton Avenue
Santa Clara, California 95050
or by facsimile at (408) 241-6771

And to Contractor addressed as follows:

All Vision, LLC
Attention: CEO
420 Lexington Avenue, Suite 1601
New York, NY 10170
or by facsimile at (212) 661-5704

with a required copy to:

All Vision, LLC
Attention: President
1805 Shea Center Drive Suite 250
Highlands Ranch, CO 80129
or by facsimile at (303) 773-7124

If notice is sent via facsimile, a signed, hard copy of the material shall also be mailed. The workday the facsimile was sent shall control the date notice was deemed given if there is a facsimile machine generated document on the date of transmission. A facsimile transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following Monday.

27. CAPTIONS.

The captions of the various sections, paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

28. LAW GOVERNING CONTRACT AND VENUE.

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

29. DISPUTE RESOLUTION.

- A. Unless otherwise mutually agreed to by the Parties, any controversies between Contractor and City regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.
- B. The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement.
- C. The costs of mediation shall be borne by the Parties equally.
- D. For any contract dispute, mediation under this section is a condition precedent to filing an action in any court. In the event of mediation which arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit, through mediation only. In the event of litigation, the prevailing party shall recover its reasonable costs of suit, expert's fees and attorney's fees.

30. COMPLIANCE WITH ETHICAL STANDARDS.

Contractor shall:

- A. Read Exhibit D, entitled "ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA"; and,
- B. Execute Exhibit E, entitled "AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS."

31. CONFLICT OF INTERESTS.

This Agreement does not prevent either Party from entering into similar agreements with other parties, except to the extent otherwise expressly provided in Section 2.C of Exhibit A. To prevent a conflict of interest, Contractor certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Contractor and that no person associated with Contractor has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code Section 87100 and following, and certifies that it does not know of any facts which would violate these code provisions. Contractor will advise City if a conflict arises.

32. DEFAULT AND REMEDIES.

- A. The occurrence of any of the following circumstances with respect to a party to this Agreement (the "Defaulting Party") will constitute an "Event of Default":
- i. a Party fails in a material way to perform its obligations under this Agreement and fails to cure such default within 30 days following delivery of written notice of that failure from the other Party to the Defaulting Party (or, if the default cannot reasonably be cured within that 30 day time period, but the Defaulting Party commences efforts to cure within that 30 day period and diligently pursues such efforts and the default is not inherently incurable, then within the longer amount of time reasonably necessary to complete such cure);
 - ii. a Party commences voluntary bankruptcy or insolvency proceedings or is adjudicated bankrupt, becomes insolvent, makes an assignment for the benefit of creditors or proposes or makes any arrangement for the settlement of its debts (in whole or in part) or for the liquidation of its assets or a receiver or a receiver and manager or person with similar authority is appointed with respect to the assets of that Party;
 - iii. a material portion of the assets of the Party is seized in satisfaction of any judgment; or
 - iv. any proceedings are taken for the liquidation, dissolution or winding-up of a Party or a Party ceases or threatens to cease to carry on business in the ordinary course.
- B. If an Event of Default occurs, the non-defaulting Party may have recourse to any one or more of the following remedies (but without any duplicative recovery):
- i. Recover its actual, direct damages for breach of contract resulting from the Defaulting Party's default;
 - ii. Terminate this Agreement; and

- iii. Have recourse to any other remedies for the breach available at law or in equity, except as limited by the provisions of this Agreement.

33. ENFORCED DELAY

In addition to specific provisions of this Agreement, whenever a period of time, including a reasonable period of time, is designated within which one of the Parties is required to do or complete any act, matter or thing, the time for that performance will be extended by a period of time equal to the number of days during which that Party is actually prevented from that performance or that performance is unreasonably interfered with because of causes beyond the reasonable control of the Party otherwise responsible to perform that act, including: war; insurrection; riots; floods; earthquakes; fires; casualties; acts of God; unusual economic or governmental circumstances that limit the ability to generate advertising revenue from the Signs, litigation and administrative proceedings against the Signs (defined in Exhibit A) (not including any administrative proceedings contemplated by this Agreement in the normal course of affairs); any governmental approval required with respect to any one or more of the Signs (not including any period of time normally expected for the processing of those approvals in the ordinary course of affairs); restrictions imposed or mandated by other governmental entities; enactment of conflicting state or federal laws or regulations; judicial decisions; or similar bases for excused performance which is not within the reasonable control of the Party to be excused (financial inability excepted). This Section 33 does not apply to any proceedings with respect to bankruptcy or receivership initiated by or on behalf of either Party, or any such proceeding initiated by any third parties against a Party to this Agreement that is not dismissed within ninety (90) days. If written notice of a delay to which this Section 33 applies is given to any Party within thirty (30) days of the commencement of that delay, an extension of time for the applicable cause will be granted in writing for the period of the delay, or longer as may be reasonable or mutually agreed upon. If that delay results in an impairment of the revenue generating capacity of the Signs, the Term of this Agreement and each affected Site Agreement will be extended by the length of the duration of the period for which the revenue generating capacity of the affected Signs was impaired by those circumstances.

34. EXHIBITS.

The exhibits attached to this Agreement are part of this Agreement.

35. OTHER PROVISIONS

- A. Contractor Not a Guarantor. Contractor is not a guarantor of the obligations of any vendor or other third party doing business with City with respect to any Signs and will have no obligation to pay any amount owed by any such third parties or otherwise cure the default of any such third party.
- B. Sale or Other Disposal of Property by City. If City sells or otherwise disposes of an interest in City property that includes a Sign Location identified in the Strategic Plan and neither a Site Agreement nor a License Agreement has been entered into for that Sign Location, City at its sole discretion shall either (a) cancel the work on the evaluation and development of that Sign Location by notice to Contractor and, at or before the closing of the transfer of that property,

reimburse all of Contractor's reasonable Direct Expenses incurred for its work in connection with that prospective Sign Location, or (b) assign its interest in this Agreement insofar as it applies to the applicable property to the transferee of the property and, in the terms of the agreement for that sale or other transfer, require the transferee to assume the obligations of City hereunder with respect to the property and Sign Locations thereon (subject to the limitation that if the foregoing option "(b)" is not available because the transferee of the Sign Location is legally prevented from assuming those obligations, the City shall cancel the Contractor's work on that Sign Location in accordance with option "(a)"). Notwithstanding the foregoing sentence or anything else in this Agreement to the contrary, if a sale or other disposition of an interest in City property for which no License Agreement or Site Agreement then exists is for the purpose of allowing the Person acquiring that interest (or any of its affiliates or successors) to use the affected property to construct or use a Sign, the City's gross revenues from that sale or other disposition will be deemed License Revenues and Contractor shall be entitled to receive a portion of those License Revenues as provided in Section 2 of Exhibit B. If City sells or otherwise disposes of City property that includes a Sign Location with respect to which a License Agreement is in effect, City shall assign its interest in this Agreement insofar as it applies to that Sign Location and cause the purchaser of that property to assume the City's obligations under this Agreement to pay Contractor its License Revenue Share for the balance of the applicable License Revenue Share Period, to the extent permitted by applicable law; provided, however, that if the assumption of those obligations by the transferee of a Sign Location is not permitted by applicable law, City shall after that transfer remain liable to pay Contractor its License Revenue Share for the applicable License Revenue Share Period based on the amounts paid by the Licensee under the applicable License Agreement, which shall constitute License Revenues regardless of whether such amounts are paid to the City or its transferee.

- C. No Partnership. Nothing in this Agreement is to be construed to create a partnership between City and Contractor. The relationship between City and Contractor is an independent contracting and licensor/licensee relationship.
- D. No Regulated Services. Nothing in this Agreement is to be construed to require Contractor to provide legal advice to City, perform real estate brokerage services, or perform any other activity for which any kind of professional license is required. Contractor is not a real estate brokerage firm. Contractor is not providing legal advice to City and has not been engaged either to provide that advice or to obtain legal advice for City. City shall obtain and rely on the advice of its own legal counsel at its own cost.
- E. Deadlines on Business Days. The term "business day," as used in this Agreement, refers to days other than Saturday, Sunday, holidays when banks in the State of California are not open for transaction of regular business, or other days when the Santa Clara City Hall is closed. If the last day for any obligation to be performed under this Agreement falls on a day other than a business day, that deadline will be automatically extended to the next business day.

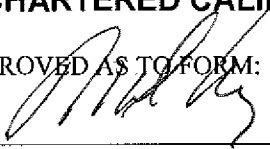
- F. City Business License. Contractor shall obtain and keep in force during the term of this Agreement a business license permitting it to conduct business in the City.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the date it has been fully signed by both Parties.


**CITY OF SANTA CLARA, CALIFORNIA
A CHARTERED CALIFORNIA MUNICIPAL CORPORATION**

APPROVED AS TO FORM:




RICHARD E. NOSKY, JR.
City Attorney

ATTEST:




ROD DIRIDON, JR.
City Clerk



JULIO J. FUENTES
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

ALL VISION, LLC
a Delaware limited liability company

By: 

Print Name: Greg Smith
Title: CEO

"CONTRACTOR"

AGREEMENT FOR THE PERFORMANCE OF SERVICES
by and between the
CITY OF SANTA CLARA, CALIFORNIA
and
ALL VISION, LLC

EXHIBIT A

All Vision will represent the City in developing a strategic plan for outdoor advertising within the City of Santa Clara. This plan will align with the City's signage reduction, revenue, environmental, and public policy objectives. The plan will be delivered at no cost to the City and there is no obligation for the City to move forward with any concepts that are presented in the plan. Any potential outdoor advertising development will be approved on a location-by-location basis by the City Council. Should Council approve any part of the strategic plan, Allvision will negotiate with third party billboard companies for them to be the end user of any outdoor advertising assets that are contemplated in the strategic plan. After assets are operational, All Vision will continue to provide ongoing management services to ensure that all outdoor advertising assets are operating based on the City's objectives.

Management and consulting services consist of, at no out of pocket cost or obligation to the City during the planning phase, the following. To the extent of any conflict between the provisions of this Exhibit A and the provisions contained in the body of the Agreement, the provisions of this Exhibit A control.

1. **Definitions.** The following additional definitions apply for the purposes of this Agreement, including its exhibits:

"City Property" means real property owned by the City at the time in question, including property owned in fee, leasehold rights, and easement rights.

"Contractor Development" has the meaning given in Section 2.E.i.b.

"Direct Expenses" has the meaning given in Exhibit B.

"Licensee" means each licensee under a License Agreement.

"License Agreement" means an agreement with a Licensee under which the Licensee will construct (if necessary), own and operate a Sign. "License Agreement" does not include any Site Agreement.

"Sign" means any of various sizes and types of outdoor advertising displays, including static, digital, or mechanical (including tri-vision) and all other billboards, displays, signboards and other types of equipment and structures that may be appropriate for outdoor advertising purposes, located or proposed to be located in Sign Locations.

“Sign Location” means each location within the City on which a Sign is or is proposed to be located.

“Site Agreement” means an agreement between Contractor and City entered into pursuant to Section 5 below under which Contractor will construct and operate a Sign and license the sales of advertising on the Sign to a third party advertising sales company.

“Third Party Development” has the meaning given in Section 2.E.i.a.

Other terms are defined elsewhere in this Exhibit. Capitalized terms used in this Exhibit that are not defined in this Exhibit have the meanings given in the body or other exhibits to the Agreement.

2. Outdoor Advertising Strategic Plan

- A. **Planning.** Contractor shall evaluate the opportunities for the marketing and development of Signs and transit oriented advertising in potential new Sign Locations. Contractor shall prepare and submit to City, within one year after the mutual execution and delivery of this Agreement, a draft Strategic Plan that includes the following elements, among others that may be reasonably requested by City:
- i. an analysis of Sign development opportunities based on development feasibility and revenue potential;
 - ii. evaluation of the current and potential value of prospective Signs and identification of the potential advertising locations on City property that are best situated for the generation of advertising revenue;
 - iii. relevant market and/or media research, planning and competitive analyses; and
 - iv. policy recommendations regarding the possible modification of City’s existing codes and regulations pertaining to outdoor advertising signage.
- B. **City’s Documents and Information.** City shall make reasonable efforts to, promptly upon request, provide Contractor any and all records and documents which Contractor reasonably requests of City as necessary or appropriate for Contractor’s preparation of the Strategic Plan, except for documents and information that applicable laws prohibit City from disclosing, or which is privileged, including attorney-client communications and attorney work product. Contractor and City shall work cooperatively to ensure that Contractor and City’s representatives are available for meetings to discuss the proposed Strategic Plan.
- C. **Restriction Period for Prospective Sign Locations Proposed by Contractor.** Except for Signs installed pursuant to a Site Agreement or License Agreement, City shall not install, maintain or operate, and shall not permit any third party to install, maintain or operate, any new revenue-generating billboard or other

revenue-generating advertising sign of any kind at any location on City Property that is identified as a prospective Sign Location in the final Strategic Plan or any draft of the Strategic Plan submitted by Contractor under this Agreement for three (3) years after the submission of the plan identifying that Sign Location. The foregoing restriction is not to be construed to prohibit City from approving requests for building, sign or other permits in its ministerial capacity for outdoor advertising signage on privately owned property that will not result in any payment of revenue sharing or recurring fees to City. The provisions of this Section 2.C survive the term.

- D. **Access to Property.** On condition that Contractor complies with the requirements of this Section 2.D and any other material provisions of this Agreement pertaining to its activities on City Property, Contractor is granted the right to have access to Sign Locations and prospective Sign Locations on City Property for purposes of performing the activities contemplated by this Agreement subject to Contractor providing written communication to City in advance to coordinate access to City Property, to avoid conflict between City's operations and Contractor's services, and to make any necessary arrangements for on-site safety measures.
- E. **Selection of Development Methodologies.**
- i. The development of Sign Locations and Signs under this Agreement will be undertaken using one of the following two methodologies subject to City's prior written approval (to be made by the approval of the Strategic Plan unless otherwise agreed in writing by the parties), which will be selected separately for each Sign Location:
 - a. Contractor may obtain the preliminary engineering studies, design work, and permits and approvals required for construction of the Sign and then market the opportunity to construct and operate the Sign to a third party Licensee under a License Agreement, in which event Section 4 below will apply with respect to the applicable Sign Location (that process, "**Third Party Development**"); or
 - b. Contractor and City may agree to proceed with development of the proposed Sign under a Site Agreement under which Contractor will construct the Sign and license the sales of advertising to a sales agent, in which event Section 5 below will apply with respect to the applicable Sign Location (that process, "**Contractor Development**").
 - ii. Contractor and City shall confer with each other regarding the selection of one of the development methodologies described above. The City will have the right to approve whichever methodology is to be pursued; however, Contractor is not required to pursue a development methodology for a particular Sign to which it objects.

- iii. Contractor may recommend to the City, and assist the City with, opportunities involving outdoor advertising facilities on Sign Locations that are not located on City Property. Any revenues received by the City or by the Contractor on the City's behalf as a result of those projects will constitute Other Program Revenues (as defined in Exhibit B).

3. **Pre-Construction Services.** For the Sign Locations designated for Contractor Development or Third Party Development in the Strategic Plan, Contractor shall prepare and submit to the applicable governmental authorities all necessary applications for Operating Permits, in the name of City. Unless the parties otherwise agree or unless specifically restricted in the Strategic Plan, Contractor may also proceed with the engineering, environmental and other evaluations, plans and designs necessary to prepare the Sign Locations for construction and obtain any governmental approvals other than Operating Permits that are required for the construction of each Sign. Each License Agreement shall require the Licensee to obtain at its cost any governmental approvals other than Operating Permits that are required for work it performs to construct each Sign, including building, electrical, and other permits. If the Licensee fails to obtain any required governmental approvals, Contractor may at its option pursue such approvals, and any costs it incurs in so doing will constitute Direct Expenses. Contractor shall obtain all such permits for each Sign Location designated for Contractor Development. Contractor's out-of-pocket costs paid to third parties in connection with those activities will constitute Direct Expenses. Contractor does not guarantee, and submission of the Strategic Plan will not constitute a guarantee, that every potential Sign Location identified in the Strategic Plan will be found to be suitable for the construction and use of a Sign after pre-construction due diligence has been completed or that all required governmental approvals can be obtained for each Sign Location.

4. **Third Party Sign Development.**

- A. **Marketing.** If the approved Strategic Plan calls for Third Party Development for any Sign Location, Contractor will proceed with efforts to obtain proposals for License Agreements when Contractor determines that the development of the Sign Location for the installation of the proposed Sign has proceeded to such a stage that the Licensee is reasonably likely to be able to complete construction promptly after the License Agreement is signed.
- B. **License Agreements.** Each new License Agreement entered into during the Term will be on a form prepared by either party and mutually approved by City and Contractor. Each License Agreement will be subject to the prior approval of City, which City may withhold in its sole and absolute discretion. For each proposed new License Agreement, Contractor shall provide City a complete draft of the proposed License Agreement. City shall notify Contractor whether City approves or rejects the proposed License Agreement upon a decision by the City Council. City will have no obligation to approve any License Agreement. Following City's disapproval of a proposed License Agreement, Contractor may, at its option, continue efforts to find a Licensee willing to enter into a License Agreement on terms satisfactory to City and Contractor or give City notice that Contractor is

terminating those efforts. If Contractor gives City notice as permitted by the preceding sentence, the provisions of Section 2.C above will continue to apply to the Sign Location in question and Contractor will have no obligation to perform further Development Services for that Sign Location.

C. **Ongoing Administration Services.** Contractor shall provide the following services with respect to the ongoing administration of License Agreements, as requested by City:

- i. administer the terms of each License Agreement as City's representative;
- ii. monitor the construction activities of the Licensee on the Sign Location;
- iii. prepare and deliver to City, on an annual basis or at other times upon reasonable request by City (but no more often than once per calendar quarter), reports regarding the number of, location of, and revenues associated with Signs;
- iv. provide accounting, billing, collection, and account reconciliation for License Revenues as provided in this Agreement;
- v. advise City regarding any safety issues and concerns observed by Contractor or reported to Contractor relating to the Signs;
- vi. conduct annual inspections of Signs and provide City with a detailed report of the results of those inspections;
- vii. respond in a timely manner to any concerns raised by City regarding any Signs or Licensees; and
- viii. collect License Revenues from each Licensee and disburse those License Revenues as provided in Exhibit B.

5. **Contractor Sign Development.**

A. **Site Agreements.** If City approves a Strategic Plan that designates any one or more Sign Locations for development, the parties shall prepare and enter into a Site Agreement for each Sign Location designated for Contractor Development in a form provided by either party and mutually approved by City and Contractor.

B. **Key Terms.** Each Site Agreement shall include provisions based on the following key economic terms (but providing greater detail), among the other terms specified in the approved form of Site Agreement, unless the parties otherwise agree in writing:

- i. The term of each Site Agreement will extend until the expiration of 25 years after the date the Sign is first put into operation to display commercial advertising, or the deadline in the Site Agreement for such

commencement of operations, and shall have appropriate insurance, maintenance, and indemnification provisions and appropriate reporting and audit provisions consistent with those in this Agreement.

- ii. Contractor's reasonable direct expenses incurred in connection with the Sign, including reasonable amounts owed to sales agents for procurement of advertising media, out-of-pocket expenses paid to third parties for maintenance and repair of the Sign which, under generally accepted accounting principles consistently applied, are not required to be capitalized and amortized, costs of electricity and telecommunications services serving the Sign, costs of insurance for the Sign equipment, costs of electrical and telecommunications services for the Sign, and costs of obtaining and maintaining Operating Permits and other governmental approvals, but excluding costs that must be capitalized and depreciated under generally accepted accounting principles, will be reimbursed out of Site Agreement Development Revenues (as defined in Exhibit B) for the Sign Location before sharing of net Site Agreement Development Revenues (the amount so reimbursed, "**Site Agreement Direct Expense Reimbursement**"). Site Agreement Direct Expense Reimbursement for each year will be capped at 30% of gross Site Agreement Development Revenues for that year, unless the City authorizes an increased Site Agreement Direct Expense Reimbursement limit in writing.
- iii. Contractor's costs of construction and maintenance of the Sign that must be capitalized and depreciated under generally accepted accounting principles, including all actual out-of-pocket costs paid to third parties for design, construction, bonds or other security, and payment of claims arising out of construction, and including maintenance and repair costs that fall within that accounting category, will be amortized in equal monthly installments over a period of five years (the "**Reimbursement Period**"), beginning with the calendar month in which the Sign is first put into service for the display of commercial advertising, and, as so amortized, will be reimbursed out of Site Agreement Development Revenues for the Sign before sharing of net Site Agreement Development Revenues (the amount so reimbursed, "**Site Agreement Capital Expenditure Reimbursement**").
- iv. Revenue sharing fees and minimum annual revenue guaranteed to the City under the Site Agreement will be as provided in Section 3 of Exhibit B.
- v. Contractor will be entitled to terminate the Site Agreement if any required governmental approvals cannot be obtained.
- vi. Contractor will be responsible for the construction and maintenance of the Sign, including the sign operation activities of sales agents engaged by Contractor. Contractor will be required to keep the Sign in good and safe condition, to repair promptly any malfunctioning or damaged component

of the Sign, to replace digital screen components when they reach the end of their useful lives, and to obtain property insurance to insure the Sign against damage. Contractor's out of pocket costs of those services and insurance will constitute Direct Expenses and be reimbursed in accordance with the provisions of the Site Agreement.

- vii. Until the capital expenditures described above have been fully reimbursed to Contractor, Contractor will own the assets acquired or constructed with those costs (which will not be deemed to be fixtures or accessions to the real or personal property of City), and after that reimbursement has been paid, those assets will at City's option be transferred to City.

- C. **Removals.** Each Site Agreement will contain terms providing that if the Sign is to be removed because of casualty, condemnation, or legal prohibition, or because City requires the Sign Location for a bona fide purpose other than outdoor advertising that is incompatible with continued operation of the Sign, and the parties fail to agree on a comparable replacement Sign Location, then (1) Contractor shall use diligent efforts to obtain payment of its unreimbursed operating expenses and capital expenditures from the condemning authority or applicable insurance company, if any exists, (2) Contractor will thereafter be entitled to deduct any remaining unreimbursed operating expenses and capital expenditures, if any, from amounts due under this Agreement or other agreements (including other Site Agreements) between Contractor and City, or City may pay those amounts at the time of termination, and (3) if the Sign is removed due to condemnation action or prohibition by City (not acting under any legal compulsion) or because City requires the use of the location for another purpose, and the parties fail to agree on a comparable replacement Sign Location, Contractor shall be entitled to deduct any remaining unreimbursed operating expenses and capital expenditures from amounts due to City under this Agreement and the Site Agreements, and if the amounts due under those agreements are not adequate for Contractor to fully recover those unreimbursed operating expenses and capital expenditures, then City will be obligated to reimburse them. If the Sign is removed so that City can develop the Sign Location for other purposes, City will impose a restrictive covenant for the benefit of Contractor prohibiting the installation of outdoor advertising billboards on the property of which that Sign Location is a part until the earlier of five years after the date of removal or the originally scheduled termination date of the Site Agreement.

AGREEMENT FOR THE PERFORMANCE OF SERVICES
by and between the
CITY OF SANTA CLARA, CALIFORNIA
and
ALL VISION, LLC

EXHIBIT B

The Program shall create no additional cost for the City during the planning phase. All Vision's compensation is based solely on the revenue that its work generates for the City of Santa Clara. All Vision's work is fully aligned with generating and maximizing revenue for the City. To that end the following provisions are part of the foregoing Agreement. To the extent of any conflict between the provisions of this Exhibit B and the provisions contained in the body of the Agreement, the provisions of this Exhibit B control.

1. **Definitions.** The following additional definitions apply for the purposes of this Agreement, including its exhibits:

"Direct Expenses" means all out-of-pocket expenses paid to third parties by Contractor for (a) engineering, surveying, drilling, geotechnical services, legal work, permit or application fees, and other reasonable expenses of evaluating, investigating, obtaining governmental approvals for, preparing plans and specifications for, and otherwise developing each Sign Location for the purposes provided in this Agreement, (b) monitoring the activities of Licensees, enforcing the obligations of Licensees, and otherwise administering License Agreements, and (c) any other expense designated in this Agreement as Direct Expenses, all of which must be incurred pursuant to budgets for Direct Expenses approved by City except for expenses incurred in emergency circumstances.

"License Revenues" means all payments of any kind received by City or Contractor during the License Revenue Share Period from or on behalf of any Licensee pursuant to a License Agreement for a Sign Location designated in the Strategic Plan, regardless of whether the License Agreements from which the revenues are received are entered into during or after the Term. "License Revenues" excludes Site Agreement Development Revenues.

"License Revenue Share Period" means, for each Sign Location for which a License Agreement is entered into, the period of 25 years following (a) the commencement of the initial License Agreement for that Sign Location or (b) the day after the last day of the Term, whichever occurs first.

"Net License Revenues" means License Revenues net of Direct Expenses reimbursed from those License Revenues.

"Net Site Agreement Development Revenues" means Site Agreement Development Revenues less Site Agreement Direct Expense Reimbursement and Site Agreement Capital Expense Reimbursement.

"Other Program Revenues" means any revenues received by City pursuant to any of: (a) any new fee or compensation structure established in connection with the relocation, conversion, or installation of outdoor advertising billboards pursuant to the Strategic Plan; (b) the existing fee relocation fee or consideration structure provided in the City's Policy Statement for Billboard Relocation Agreements, but only for relocations that result from the Contractor's Services; or (c) any other new fee or compensation structure with respect to outdoor advertising signs to be installed, relocated, or converted within the City pursuant to recommendations submitted by Contractor in connection with the Strategic Plan or the Contractor's recommendations with respect to the City's outdoor advertising regulations and policies.

"Site Agreement Development Revenues" means, for any period of time, the gross amount received by City and Contractor from sales of advertising on a Sign developed under a Site Agreement on account of that Sign.

2. Division and Payment of License Revenues.

2.1. License Revenues collected by Contractor (during the Term) or the City (after the Term) during the License Revenue Share Period for each Sign Location under a License Agreement shall be applied in the following order:

- (a) First, to reimbursement of Contractor's accrued and unreimbursed Direct Expenses;
- (b) Then, to pay the License Revenue Share due to each of the City and Contractor.

2.2. Contractor and the City will be entitled to receive the Net License Revenues remaining after reimbursement of Direct Expenses as follows: 70% to the City and 30% to Contractor, unless otherwise agreed to by both parties. **"License Revenue Share"** means, with respect to each party, that party's allocated portion of Net License Revenues.

2.3. Any amounts paid by a Licensee that are specifically designated in the License Agreement, by court order, or by agreement of the City and Contractor for the reimbursement of Direct Expenses or expenses incurred by the City will be applied or distributed to pay those expenses.

2.4. Contractor's right to receive License Revenue Share on account of each Licensed Sign Location will survive the end of the Term for the License Revenue Share Period applicable to each Sign Location for which a License Agreement is signed.

2.5. During the Term, on a quarterly basis, Contractor shall pay to the City the City's License Revenue Share due on account of all Net License Revenues, together with a statement for the applicable period showing: (a) the License Revenues received under each License Agreement; (b) the Direct Expense reimbursements withheld by Contractor; (c) the net disbursement to the City; and (d) any accrued Direct Expenses remaining unreimbursed. No inadvertent omission from any statement or invoice of any amount Contractor may be entitled to retain or receive will be deemed to constitute a waiver of Contractor's right to retain or receive that amount.

2.6. After the Term and for the balance of the License Revenue Share Period for each Sign Location under a License Agreement, the City shall provide a monthly report to Contractor of all License Revenues received for the preceding calendar month within 15 days after the end of the month, plus a statement of any Direct Expenses incurred by the City with respect to the applicable Sign Locations. Contractor shall invoice the City for Contractor's License Revenue Share based on the City's report, and the City shall pay Contractor the amount due within 30 days after receipt of Contractor's invoice.

3. **Division and Payment of Site Agreement Development Revenues.**

3.1. Site Agreement Development Revenues are not included in License Revenues, and Contractor will not be entitled to any License Revenue Share based on the City's share of Net Site Agreement Development Revenues. The payment of Net Site Agreement Development Revenues to each party will be governed by the applicable Site Agreement, based on terms conforming to the requirements of this Section 3 and the provisions of Section 5.B of Exhibit A.

3.2. If the Sign under a Site Agreement has one or more digital sign faces at least 14' in height by 48' in width, and is located adjacent to US Highway 101 or Interstate Highway 237 ("**Premium Digital Faces**"), the Site Agreement will require Contractor to pay City the greater of (a) a share of Site Agreement Development Revenues determined by allocating to City 55% (unless agreed to otherwise by both parties) of the net Site Agreement Development Revenues remaining after deduction of Site Agreement Direct Expense Reimbursement and Site Agreement Capital Expenditure Reimbursement or (b) an annual minimum payment according to the following schedule of rates (which reflects rates for a Sign with two Premium Digital Faces), beginning when the Sign is first put into service:

US-101 Locations:

Year 1:	\$200,000
Years 2-5:	\$250,000
Years 6+:	Adjusted based on change in CPI

I-237 Locations:

Year 1:	\$100,000
Years 2-5:	\$125,000
Years 6+:	Adjusted based on change in CPI

3.3. The amount, if any, required to increase the total amount paid to the City under the Site Agreement in each year to the annual minimum for that year will be payable in arrears after the end of the applicable year and reconciliation of the net Site Agreement Development Revenues to the annual minimum. If a Sign is constructed with only one Premium Digital Face, the annual minimum payment required by the Site Agreement will be half the amount set forth in Section 3.2 above.

3.4. For any other kind of Sign built under a Site Agreement (including Signs with digital faces that do not conform to the definition of Premium Digital Faces), the Site

Agreement will require Contractor to pay City 55% (unless otherwise agreed to by both parties) of the net Site Agreement Development Revenues remaining after deduction of Site Agreement Direct Expense Reimbursement and Site Agreement Capital Expenditure Reimbursement, and City and Contractor will determine whether a minimum annual fee similar to the fees described above for Premium Digital Faces will apply as part of the process of evaluating and approving that Sign Location for development under a Site Agreement and approval of the Site Agreement.

3.5. City and Contractor may agree to different economic terms based on the circumstances of the proposed Sign Location. Any payments to third party landlords will be from the City's share of net Site Agreement Development Revenues.

4. **Sharing of Other Program Revenues.** If the City receives any Other Program Revenues during an Other Program Revenue Sharing Period, the City shall pay Contractor the amount that is no more than or up to thirty percent (30%) of those Other Program Revenues within thirty (30) days after the end of the calendar month in which those Other Program Revenues were received. The "**Other Program Revenue Sharing Period**" for each Sign Location generating Other Program Revenues will be the 25 year period beginning on the date the first payment of Other Program Revenues is made with respect to the Sign Location in question. The City's obligations under this Section 4 survive the end of the Term.

**AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
ALL VISION, LLC**

EXHIBIT C

INSURANCE COVERAGE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$1,000,000 each occurrence
\$1,000,000 general aggregate
\$1,000,000 products/completed operations aggregate
\$1,000,000 personal injury
2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01, with minimum policy limits of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with the following limits: at least one million dollars (\$1,000,000) policy limit Illness/Injury by disease, and one million dollars (\$1,000,000) for each Accident/Bodily Injury.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
3. Cancellation.

- a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
 - b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

AGREEMENT FOR THE PERFORMANCE OF SERVICES
by and between the
CITY OF SANTA CLARA, CALIFORNIA
and
ALL VISION, LLC

EXHIBIT D

ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO
AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA

Termination of Agreement for Certain Acts.

- A. The City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:
1. If a Contractor¹ does any of the following:
 - a. Is convicted² of operating a business in violation of any Federal, State or local law or regulation;
 - b. Is convicted of a crime punishable as a felony involving dishonesty³;
 - c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;
 - d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City contractor or subcontractor; and/or,
 - e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.
 2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with the Contractor can be imputed to the Contractor when the conduct occurred in connection with

¹ For purposes of this Agreement, the word "Consultant" (whether a person or a legal entity) also refers to "Contractor" and means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

² For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

³ As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

the individual's performance of duties for or on behalf of the Contractor, with the Contractor's knowledge, approval or acquiescence, the Contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

- B. The City may also terminate this Agreement in the event any one or more of the following occurs:
1. The City determines that Contractor no longer has the financial capability⁴ or business experience⁵ to perform the terms of, or operate under, this Agreement; or,
 2. If City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with City, including, but not limited to, Contractor's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.
- C. In the event a prospective Contractor (or bidder) is ruled ineligible (debarred) to participate in a contract award process or a contract is terminated pursuant to these provisions, Contractor may appeal the City's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

⁴ Contractor becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Contractor.

⁵ Loss of personnel deemed essential by the City for the successful performance of the obligations of the Contractor to the City.

AGREEMENT FOR THE PERFORMANCE OF SERVICES
by and between the
CITY OF SANTA CLARA, CALIFORNIA
and
ALL VISION, LLC

EXHIBIT E

AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS

I hereby state that I have read and understand the language, entitled "Ethical Standards" set forth in Exhibit D. I have the authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records, and I have made appropriate inquiry of those individuals potentially included within the definition of "Contractor" contained in Ethical Standards at footnote 1.

Based on my review of the appropriate documents and my good-faith review of the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to said "Contractor" category [i.e., owner or co-owner of a sole proprietorship, general partner, person who controls or has power to control a business entity, etc.] has been convicted of any one or more of the crimes identified in the Ethical Standards within the past five (5) years.

The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

ALL VISION, LLC

By: _____

Signature of Authorized Person or Representative

Name: _____

Greg Smith

Title: _____

CEO

NOTARY'S ACKNOWLEDGMENT TO BE ATTACHED

Please execute the affidavit and attach a notary public's acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity's complete legal name and the title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

STATE OF NEW YORK

COUNTY OF Orange

On the 26th day of MARCH in the year 2015 before me personally came GREG SMITH to me known, who, being by me duly sworn, did depose and say that he/she/they reside(s) in 420 Lexington Ave. NY (if the place of residence is in a city, include the street and street number, if any, thereof); that he/she/they is (are) the CEO (president or other officer or director or attorney in fact duly appointed) of the ALL VISION, LLC (name of corporation), the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by authority of the board of directors of said corporation.

Rosemarie Karg

Notary Public # 01KA6316667

Printed Name: Rosemarie Karg

My Commission Expires:

December 22, 2018

Browser window showing the Elix website. The address bar displays: <https://www.elixcerts.com/ELICCS/Insured/managedinsured.aspx>. The browser tabs include: InfoMap 2, Transparent California, GSO - Priority Overnight, Superior Court of Californ..., and Elix EPO Certificate of Ins...

The Elix website header shows the logo and a navigation bar with links: Home, Insured Tasks, View, and Insured. The user is logged in as "Welcome flutney".

The left sidebar contains a search bar and a list of filters: Insured Name, Account Number, and Active Records Only. Below these are sections for Insured Tasks, Admin Tools, View, and a list of links: Insured, Notes, History, Deficiencies, Coverages, Requirements, Add, and Help.

The main content area displays the "Insured" page for "AT Vision LLC (S200003168)". The page shows the following information:

Insured	
Name:	AT Vision LLC
Account Number:	S200003168
Address:	1605 Shea Center Drive, Suite 250, Highlands Ranch, CO, 80129
Status:	Currently in Compliance.

Below this is a detailed view of the insured information, including account information, address information, and a list of insured addresses.

Account Information	
Account Number:	S200003168
Risk Type:	Exhibit C1 - Service Contract <\$50,000
Do Not Call:	<input type="checkbox"/>
Address Updated:	<input type="checkbox"/>

Address Information	
Mailing Address	Physical Address
Insured	AT Vision LLC
Address 1:	1605 Shea Center Drive
Address 2:	Suite 250
City:	Highlands Ranch