

ATTACHMENT A

**Development Agreement between the City of El Monte, All Vision
LLC and Los Angeles Metropolitan Transportation Authority**

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:
City of El Monte
c/o City Clerk
11333 Valley Blvd.
El Monte, CA 91731

[Exempt From Recording Fee Per Gov. Code §6103]

(Space Above Line for Recorder's Use)

**DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF EL MONTE
AND
ALL VISION LLC
AND
LOS ANGELES METROPOLITAN TRANSPORTATION AUTHORITY**

**DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF EL MONTE AND
ALL VISION LLC**

AND LOS ANGELES METROPOLITAN TRANSPORTATION AUTHORITY

This Development Agreement (hereinafter "**Agreement**") is entered into this _____ day of _____, 2023 (hereinafter the "**Effective Date**"), by and between the City of El Monte (hereinafter "**City**"), All Vision LLC, a Delaware limited liability company ("**All Vision**") and the Los Angeles County Metropolitan Transportation Authority, a California public entity ("**Owner**" or "**Metro**") (All Vision and Metro are hereinafter sometimes collectively referred to as the "**Developer**").

RECITALS

This Development Agreement is predicated upon the following facts:

A. The Development Agreement Act (Government Code section 65864 *et seq.*) authorizes cities to enter into binding development agreements with persons having a legal or equitable interest in real property for the development of such property, all for the purposes of strengthening the public planning process, encouraging private participation and comprehensive planning and identifying the economic costs of such development.

B. Owner is the owner of certain real property located adjacent to and on the southerly side of the west-bound lanes of the Interstate 10 Freeway at 3349 Santa Anita Avenue, in the City of El Monte, also known as the "Metro Transportation Site" on Santa Anita Avenue (APN: 8578-020-908), as more specifically described in Exhibit "A" attached hereto and incorporated herein (the "**Site**").

C. Developer desires to install on the Site a new double-sided 14 x 48-foot digital display which is oriented toward the Interstate 10 Freeway, as more particularly described in the Scope of Development attached hereto as Exhibit "B" and as depicted in the Site Plan attached hereto as Exhibit "C" and incorporated herein (the "**New Digital Billboard**" or the "**Project**").

D. Pursuant to that certain Second Amended and Restated Revenue Services Contract between Developer and Owner ("**Owner Agreement**"), Developer has an interest in developing the New Digital Billboard.

E. Developer and City recognize that Owner has a legal or equitable interest in the Site and Developer, as Owner's agent, also has an interest in the Project, and is qualified to enter into this Agreement in accordance with the Development Agreement Act.

F. In anticipation of the implementation of the Project, the Developer has made or will make application to the City (in its governmental capacity) for certain approvals, entitlements, findings, and permits required for the implementation of the Project,

including, a sign use permit, and an application for a development agreement for the Project under the Development Agreement Act.

G. To mitigate the impact of the installation of the New Digital Billboard and in consideration of the City's agreement to enter into this Agreement with Developer and grant the approvals sought by Developer for the New Digital Billboard, Developer will pay the City an annual Public Benefit Contribution (as such terms are defined below), for the consideration to the City to enter into this Agreement and to mitigate the impact of the installation of the New Digital Billboard and for the Owner (through the Developer as the Owner's agent) to reimburse the City its Project costs.

H. The Site is located within the City's Billboard Overlay Zone Area No. 3, on property that is zoned Specific Plan Gateway (SP-1) with a General Plan Land Use Classification of "Gateway Specific Plan." Developer and the City agree that a development agreement should be approved and adopted to memorialize the property expectations of the City and Developer, as more particularly described herein.

I. Owner's Board considered this Agreement at its duly noticed public meeting of November 1, 2022, and adopted Resolution No. 10399, approving the Agreement.

J. The City Council has specifically considered the Project's environmental impacts and public benefits and approved the Project in compliance with the requirements of the California Environmental Quality Act ("CEQA").

K. This Agreement eliminates uncertainty in planning and provides for the orderly implementation of the Project in a manner consistent with the City's zoning regulations and the General Plan.

L. On October 11, 2022, at a duly noticed public hearing, the Planning Commission adopted Resolution No. 3644, recommending the City Council approve Design Review No. 18-22 for the aesthetics and recommending the City Council approve this Agreement (Development Agreement No. 18-22) for the terms and conditions of the New Digital Billboard.

M. On November 1, 2022, the City Council found that, as a result of the Project, the City's Development Approvals and this Agreement, substantial public benefits will accrue to the public and that it is in the best public interest of the City and its residents, to adopt this Agreement. This Agreement and the proposed Development (as hereinafter defined) will achieve a number of City objectives, including but not limited to utilizing the Site for a revenue-generating use.

N. On November 1, 2022, the City Council, at a duly noticed hearing to consider the approval of this Agreement, considered the proposal, heard testimony, and introduced Ordinance No. 3017, which Ordinance approves this Agreement.

O. On November 15, 2022, the City Council held the second reading on, and adopted Ordinance No. 3017, thereby approving this Agreement.

P. The City finds and determines that all actions required of the City precedent to approval of this Agreement by Ordinance No. 3017 of the City Council have been duly and regularly taken.

NOW, THEREFORE, pursuant to the authority contained in the Development Agreement Act, as it applies to the City, and in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. DEFINITIONS AND EXHIBITS.

1.1 **Definitions.** This Agreement uses a number of terms having specific meanings, as defined below. These specially defined terms are distinguished by having the initial letter capitalized, when used in the Agreement. In addition to the terms defined in the Recitals above, the defined terms include the following:

1.1.1 **"Additional Revenue"** means revenue received from a third-party for use of the support structure of the New Digital Billboard for the installation of Telecommunications Facilities.

1.1.2 **"Agreement"** means this Development Agreement and all attachments and exhibits hereto.

1.1.3 **"Anniversary Date"** is the annual reoccurrence of the Commencement Date.

1.1.4 **"City"** means the City of El Monte, a California municipal corporation.

1.1.5 **"City Council"** means the City Council of the City.

1.1.6 **"City Fees"** means all fees and charges required by City that are customarily and uniformly applied to all construction or development related activity including, but not limited to, fees for land use applications, building permit applications, building permits, grading permits, hauling permits, encroachment permits, demolition permits, lot line adjustments, street vacations, inspections, certificates of occupancy and plan check.

1.1.7 **"Commencement Date"** means the date that is five (5) business days after the satisfaction of the Completion Requirements.

1.1.8 **"Completion Requirements"** means (i) issuance of all Development Approvals, Final Permits and/or compliance with all requirements under applicable laws required to operate the New Digital Billboard and the expiration of all applicable challenge periods related to the foregoing without the filing of any challenge or appeal (or if a challenge or appeal has been filed, such challenge or appeal has been resolved on terms reasonably satisfactory to Developer), as evidenced by written notice thereof from Developer to the City, and (ii) completion of construction of the New Digital Billboard, such that Developer can immediately commence operation of the New Digital Billboard (as

determined by Developer in its reasonable discretion) for the display of third party advertising, as evidenced by written notice thereof from Developer to the City.

1.1.9 **“Developer”** means the Los Angeles County Metropolitan Transportation Authority, a public entity, and its successor and assigns and All Vision LLC, a Delaware limited liability company duly existing and operating, and its successors and assigns.

1.1.10 **“Developer Fee”** is the fee to be paid to the City pursuant to Section 3.7 below, which Developer Fee shall be paid in addition to the payment of the City Fees and Processing Fee.

1.1.11 **“Development”** means the installation of a New Digital Billboard on the Site and underground utilities connecting Southern California Edison’s electrical source to the New Digital Billboard, as well as any other improvements to the Site for the purpose of completing the structures, improvements and facilities comprising the Project.

1.1.12 **“Development Agreement Act”** means Article 2.5 of Chapter 4 of Division 1 of Title 7 (Sections 65864 through 65869.5) of the California Government Code, as the same may be amended or re-codified from time to time.

1.1.13 **“Development Approvals”** means any and all permits, licenses, consents, rights and privileges that are prerequisites to construct and operate the New Digital Billboard, and that are approved or issued by the City in connection with the Project on or before the Effective Date, including, without limitation, this Agreement and the following entitlements: the Resolution No. 3644 approved by the Planning Commission on October 11, 2022, and adoption by the City Council of Ordinance No. 3017 on November 15, 2022, as further described at Section 4.3 herein.

1.1.14 **“Effective Date”** means the date inserted into the preamble of this Agreement, which is thirty (30) days following (a) approval of this Agreement by ordinance of the City Council, provided this Agreement is signed by Developer and the City, (b) the Development Approvals have been approved; and (c) expiration of all applicable challenge periods without the filing of any challenge or appeal (or if a challenge or appeal has been filed, such challenge or appeal has been resolved on terms reasonably satisfactory to Developer) related to the Development Approvals and CEQA.

1.1.15 **“Final Permits”** shall mean all necessary/required permits and inspections by all governmental and utility agencies, including any permits and approvals required by the California Department of Transportation, to construct and operate the New Digital Billboard and related improvements, which are signed and dated by the City, as applicable. Final Permits do not include the Development Approvals.

1.1.16 Intentionally Omitted.

1.1.17 **“Land Use Regulations”** means all ordinances, resolutions, codes, rules, regulations and official policies of the City, including, but not limited to, the City’s General Plan, Municipal Code and Zoning Code, which govern development and use of the Site, including, without limitation, the permitted use of land, the density or intensity of

use, subdivision requirements, the maximum height and size of the New Digital Billboard, and the design, improvement and construction standards and specifications applicable to the Development or the Site which are in full force and effect as of the Effective Date of this Agreement, subject to the terms of this Agreement. Land Use Regulations shall also include the federal National Pollutant Discharge Elimination System (“NPDES”) regulations and approvals from the California Department of Transportation Outdoor Advertising Division, to the extent applicable.

1.1.18 “**Lease**” means the lease, license, or contract as the case may be, for the Site between Owner, as landlord or licensor (or similar term), and Developer, as tenant or licensee (or similar term), as set forth in the Owner Agreement or any written lease agreement entered into between Owner and Developer pursuant thereto. In the event that Developer is subsequently granted an easement over the Site for purposes of developing and operating outdoor advertising structures thereon, which easement supersedes Developer’s license or leasehold interest therein, all references to herein “Lease” or Developer’s leasehold interest shall be deemed to refer Developer’s easement over the Site.

1.1.19 “**Mortgagee**” means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device, a lender or each of their respective successors and assigns.

1.1.20 “**Official Records**” means the official Records of Los Angeles County, California.

1.1.21 “**Owner Agreement**” means that certain Second Amended and Restated Revenue Services Contract dated as of June 29, 2017, entered into between Owner and Developer, as amended, governing, among other things, use and development of the Site for outdoor advertising purposes.

1.1.22 “**Processing Fee**” is the fee which is in addition to the payment of City Fees or customary building plan check or building permit fees, and is intended to reimburse the City for fees and costs incurred in connection with City’s review, evaluation, and analysis pertaining to the New Digital Billboard, including, but not limited to, legal and consultant fees and feasibility analysis incurred by the City in negotiation and preparation of this Agreement, in the amount of \$25,000.

1.1.23 “**Project**” means the New Digital Billboard as described in Exhibit “B” consistent with the Development Approvals and the Final Permits.

1.1.24 “**Public Benefit Contribution**” means the payment from Developer to City pursuant to Section 3.3 of this Agreement, which payment may be used by the City for various public projects and programs.

1.1.25 “**Site**” refers to the real property described in Recital B and more specifically described on Exhibit “A” attached hereto and incorporated herein.

1.1.26 “**Scope of Development**” means the Scope of Development attached hereto as Exhibit “B” and incorporated herein.

1.1.27 “**Subsequent Land Use Regulations**” means any Land Use Regulations adopted and effective after the Effective Date of this Agreement which govern development and use of the Site and Project.

1.1.28 “**Subsequent Development Approvals**” means any Development Approvals issued subsequent to the Effective Date in connection with the Project.

1.1.29 “**Telecommunications Facilities**” means an antenna or wireless communication device, infrastructure and related equipment for telecommunications, cellular or wi-fi service, surveillance or other video equipment provided by a duly approved and licensed telecommunications service provider.

1.1.30 “**Term**” shall have the meaning provided in Section 2.4, unless earlier terminated as provided in this Agreement.

1.1.31 “**Term Year**” shall mean each 12-month period during the Term of this Agreement commencing on the Commencement Date and on each Anniversary Date thereafter.

1.2 **Exhibits.** The following documents are attached to, and by this reference made a part of, this Agreement: Exhibit “A” (Legal Description of Site), Exhibit “B” (Scope of Development), and Exhibit “C” (Site Plan and Elevations).

2. **GENERAL PROVISIONS.**

2.1. **Application of Agreement.** This Agreement shall apply to the development and use of the Project carried out on the Site. The Project shall be developed and operated in accordance with the Development Approvals and this Agreement.

2.2. **Binding Effect of Agreement.** From and following the Effective Date, actions by the City and Developer with respect to the Development, including actions by the City on applications for Subsequent Development Approvals affecting the Site, shall be subject to the terms and provisions of this Agreement, provided, however, that nothing in this Agreement shall be deemed or construed: (i) to modify or amend the Owner Agreement or any Lease entered into pursuant thereto, or any of Developer’s obligations thereunder, or to bind or restrict Owner with respect to its ownership or operation of the Site except as expressly set forth herein with respect to the Development, or (ii) to impose any obligation whatsoever on Owner with respect to the Development, except as expressly set forth in this Agreement.

2.3. **Interest in Site.** The City and Developer acknowledge and agree that Metro is the Owner of the Site and that All Vision is the agent of Owner and thus both are qualified to enter into and be a party to this Agreement. The City and Developer acknowledge and agree that Developer has a legal or equitable interest in the Site and thus is qualified to enter into and be a party to this Agreement under the Development Agreement Act. Additionally, prior to the execution of this Agreement, Developer has allowed the City to view a redacted copy of the Owner Agreement which demonstrates that All Vision has a leasehold or license or equitable interest in the Site, which interest

shall be maintained for the entire Term of this Agreement. If All Vision's leasehold or license interest is prematurely and legally terminated by Owner in conformance with the Owner Agreement (other than upon the conveyance of an easement to Developer), then All Vision shall have no further obligations under Section 3(a) of the Scope of Development attached hereto as Exhibit "B", relative to the maintenance of landscaping on the Site, except as provided under Section 6.1. Additionally, if All Vision's leasehold or license interest is prematurely terminated for any reason (other than upon the conveyance of an easement to All Vision), then All Vision shall have no further obligations under this Agreement for the Site, except as provided under Section 6.1.

2.4. **Term of Agreement.** Unless earlier terminated as provided in this Agreement, this Agreement shall commence on the Commencement Date and continue in full force and effect until the date that is thirty (30) years after the Commencement Date (the "Term"). Notwithstanding any provision in this Agreement to the contrary, the Term of this Agreement shall automatically expire upon (i) the expiration or earlier termination of the Lease (other than upon the conveyance of an easement to Developer), or (ii) the permanent removal of the New Digital Billboard constructed pursuant to the terms hereof, other than its removal for reconstruction, repair or replacement. Within thirty (30) days after the termination of this Agreement, the parties shall execute a written cancellation of this Agreement which shall be recorded in the Official Records pursuant to Section 9.1 below. If this Agreement is not extended or renewed as set forth herein, then any party may, at its option, elect for Developer to remove the digital displays and restore the portion of the Site affected by the New Digital Billboard to its pre-billboard condition, except the columns can be cut off one (1) foot below grade.

3. DEVELOPER OBLIGATIONS-PUBLIC BENEFIT.

3.1. **Processing Fee.** Upon submission of this Agreement for approval by the City, Developer paid to the City a one-time non-refundable Processing Fee in the amount of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) to reimburse the City for its costs in processing this Agreement, including costs for outside consultants and staff time.

3.2. **City Fees.** Developer shall pay all City Fees for the development of the Project at the rate and amount in effect at the time the fee is required to be paid by City in accordance with the planning permit process upon submittal and building permit process.

3.3. **Public Benefit Contribution.** In consideration for the rights and benefits to Developer under this Agreement, from and after the Commencement Date, Developer shall pay to the City an annual Public Benefit Contribution in an amount equal to the greater of (i) the applicable "**Minimum Annual Guaranteed Payment**" as specified in the table below, or (ii) the "**Annual Percentage Payment**" calculated in accordance with Section 3.3.2 below.

<u>Year</u>	<u>Minimum Guaranteed Payment</u>	<u>Quarterly Installment</u>	<u>Percentage Payment</u>
1-10	\$80,000	\$20,000	10%
11-20	\$100,000	\$25,000	15%
21-30	\$125,000	\$31,250	20%

3.3.1. **Payment of the Public Benefit Contribution.** From and after the Commencement Date, the Minimum Guaranteed Payment shall be paid to the City on or before the first (1st) day of each calendar quarter in four (4) equal installments as set forth in the table above. Quarterly installments for the calendar quarter in which the Commencement Date occurs as well as the calendar quarter in which the Term expires shall be prorated based upon a ninety (90) day quarter. Within forty-five (45) days after the end of each Term Year, Developer shall calculate the Annual Percentage Payment in accordance with Section 3.3.2 below and shall deliver a payment to the City in an amount equal to the positive difference, if any, between the Annual Percentage Payment and Minimum Guaranteed Payment for such Term Year; provided that no further payment shall be required if the Minimum Guaranteed Payment is greater than the Annual Percentage Payment for such Term Year.

3.3.2. **Calculation of Annual Percentage Payment.** For purposes of this Section 3.3, “**Annual Revenue**” shall be defined as (A) all revenues realized and actually received by Developer from the sale of third-party advertising on the New Digital Billboard, less (B) agency fees, broker commissions or other fees paid for marketing the New Digital Billboard to advertisers and selling advertising space thereon to third-party advertisers (in an amount not to exceed 16.67% percent). The Annual Percentage Payment for each Term Year shall be an amount equal to (i) the Annual Revenue for such Term Year multiplied by (ii) the Applicable Percentage for such Term Year as set forth in the table above less (iii) the Minimum Annual Guaranteed Payment. Additional Revenue shall not be included within Annual Revenue for purposes of calculating the Annual Percentage Payment nor credited against the amount of any such Annual Percentage Payment.

3.3.3. **Audit of Annual Revenue.** Developer shall maintain and make available for City’s review and audit, all contracts, leases, invoices, and other records that are relevant to the accurate determination of Annual Revenue. The City may conduct an audit annually consistent with the Commencement Date of this Agreement. City shall be entitled once each year of the Term to inspect, examine, copy and audit Developer’s books, records and cash receipts as related to Annual Revenue. If the audit shows that there is a deficiency in the determination of Annual Revenue or payment of the Annual Percentage Payment, then Developer shall immediately upon notice pay any such deficiency to City. If the audit shows that there is an overstatement in the determination of Annual Revenue or payment of the Annual Percentage Payment, then City shall immediately upon notice pay Developer any overpayment City received. Developer may offset future payments of the Public Benefit Contribution for any overpayments that are not repaid by City. City shall pay the costs of the **audit** unless the audit shows that Developer understated Annual Revenue by more than three percent (3%), in which case Developer shall pay the City’s costs of the audit.

3.4. **Community Benefits.** Developer shall also provide the following community benefits during the entire Term of this Agreement.

3.4.1. **City's Use of the Billboard.** During the entire Term of this Agreement, Developer shall permit the City to place public service announcements in the current rotation of display images on either side of the New Digital Billboard spread out evenly during a 24 hour day at no cost to the City but subject to availability of space; provided that in no event shall the City be entitled to any use of display images on the New Digital Billboard in excess of five percent (5%) of the total available display time on either face of the New Digital Billboard during any given Term Year. The City shall be responsible for providing Developer with approved advertising copy and shall also be responsible for any costs associated with providing Developer with artwork in acceptable format per Developer's specifications. City's use is subject to the following conditions and parameters: (1) a copy must be submitted to Developer at least five (5) days before the proposed display date and will be subject to Developer's standard advertising copy rejection and removal policies, which allow Developer, in its sole discretion, to approve or disapprove copy and remove copy once posted or displayed, and (2) the City's use of allocated display time for a particular Term Year must be utilized during such Term Year (i.e., no advertisement rights shall accumulate or carryover to the following Term Year). Nothing herein shall give the City the right to sell, barter, trade, or otherwise transfer such advertising rights to any third-person or entity; the same shall be utilized by the City only for its own governmental purposes. The advertising rights available to the City are not assignable, in whole or in part, and any such assignment by the City shall be void ab initio.

3.4.2. **Public Safety Alerts.** The New Digital Billboard shall be connected into and utilized in connection with the Amber Alert communications network established by the U.S. Department of Justice. Developer shall further cooperate with the City, Caltrans, the Federal Emergency Management Agency and any other federal or state emergency management or public safety authority to display public health and safety emergency alerts in the event of natural disasters or other emergency events at no cost to the City or other applicable agency or authority.

3.4.3. **Discount Advertising.** Developer shall offer a ten percent (10%) discount off its applicable rates for display of advertising on the New Digital Billboard to any current, active member of the El Monte - South El Monte Chamber of Commerce holding a City-issued business license and with a home office located in the City of El Monte.

3.4.4. **City Signage.** Developer shall install and maintain on both sides of the New Digital Billboard above the display panel a sign reading "City of El Monte." The design of such sign shall be approved by the City.

3.5. **Restrictions on Use.** Developer shall not utilize any of the displays on the New Digital Billboard to advertise or communicate political matter, tobacco including e-cigarettes and vaping, marijuana, hashish, "strip clubs," adult entertainment businesses, sexually oriented materials, or use sexually oriented images, or use sexually oriented language. Further, Developer shall not utilize any of the displays on the New Digital

Billboard to advertise or communicate any matter that may be prohibited by State or Federal law and any City ordinance existing as of the Effective Date of this Agreement, or as may be amended or implemented from time-to-time after the Effective Date and equally-applicable to all billboard displays by any duly and valid City ordinance. The New Digital Billboard shall at all times be constructed and operated in a manner consistent with the Outdoor Advertising Act of the State of California (Business & Professions Code sections 5200 *et seq.*) and other applicable State and Federal laws and regulations.

3.6. **City's Rights to Use the Site.** The City shall have the right to access and install Telecommunications Facilities on the Site that the City deems necessary for the health, safety and welfare of the public, upon prior written notice and approval from Owner, not to be unreasonably withheld. The City shall be responsible for all of the installation and operating costs of its Telecommunications Facilities, and the City's Telecommunications Facilities shall be installed and operated in a manner that does not interfere with or negatively impact visibility or operation of the New Digital Billboard in any manner, including, without limitation, the amount of advertising revenue received by Developer from the operation of the New Digital Billboard or the amount of Additional Revenue derived therefrom. The City shall indemnify, defend and hold harmless Developer and its members, partners, shareholders, officers, directors, employees and affiliates (collectively, the "**Developer Parties**") from and against any and all claims, lawsuits, actions, proceedings, judgments, losses, costs, claims (including reasonable sums paid in settlement of claims), reasonable attorneys' fees, consultant and expert fees, penalties, damages and liabilities (collectively, "**Claims**") arising from or related to the installation, operation or use of the Telecommunications Facilities installed on the Site by or on behalf of the City, and from the City's use of the New Digital Billboard (as detailed in Section 3.4.1 above), except to the extent that such Claims arise from the active negligence or willful misconduct of any of the Developer Parties.

3.7. **Developer Fee.** Upon issuance of the State ODA Permit, as required under Exhibit "B", Section 6(g) as a Condition of Approval, Developer shall deliver a one-time payment to the City of a Developer Fee in the amount of One Hundred Thousand Dollars (\$100,000) as further consideration for the rights and benefits provided to the Project hereunder.

3.8. **Fixed Facility Fee.** Should Developer enter into any agreement for the installation of Telecommunications Facilities on the support structure of the New Digital Billboard (other than the Telecommunications Facilities installed by the City pursuant to Section 3.6 above), Developer shall pay to the City an annual fixed facility fee equal to Fifteen Percent (15%) of the total amount of Additional Revenue collected by Developer from the use of the Telecommunications Facilities. The City shall have the right upon request to review and audit the Additional Revenue received by Developer for a period of thirty (30) days after the date on which such Additional Revenue was received. The fixed facility fee shall be due and payable forty-five (45) days after the end of each Term Year. Notwithstanding the foregoing or anything to the contrary set forth in this Agreement, any Telecommunications Facilities installed by Developer or Owner, or their agents, to be used as a part of the Owner's Transportation Communication Network (TCN) Program shall not be subject to the payment of any fee by either Developer or Owner.

4. DEVELOPMENT AND IMPLEMENTATION OF THE DEVELOPMENT.

4.1. **Rights to Develop.** Subject to provisions of this Agreement, which shall be approved by the Board of Directors of Owner prior to execution of the Agreement and within ninety (90) days of the City Council's approval of the Agreement (which time-period can be extended by mutual agreement of the parties), Developer shall have the right to develop the Site in accordance with, and to the extent of, the Development Approvals, the existing Land Use Regulations, this Agreement and in compliance with all laws, regulations, rules and requirements of all governmental authorities with jurisdiction over the Project.

4.2. **Effect of Agreement on Land Use Regulations.** Except as otherwise provided under the terms of this Agreement, the rules, regulations and official policies governing permitted uses of the Site, the density and intensity of use of the structures on the Site, the maximum height and size of proposed structures on the Site, and the design, improvement and construction standards and specifications applicable to the Site, shall be as set forth in the Land Use Regulations which are in full force and effect as of the Effective Date of this Agreement, subject to the terms of this Agreement.

4.3. **Development Approvals.** Developer shall, at its own expense and before commencement of demolition, construction or development of any structures or other work of improvement upon the Site, secure or cause to be secured the Development Approvals, a Conditional Use Permit and building permit(s) from the City, and any and all permits and approvals which may be required by any other governmental agency or utility affected by such construction, development or work to be performed by Developer pursuant to the Scope of Development; provided, however, that the City acknowledges that the City's Planning Commission and City Council have approved an Initial Study/Negative Declaration for the Project, thus complying with, and satisfying the requirements of CEQA. Not by way of limiting the foregoing, in developing and constructing the Development, Developer shall comply with all: (1) applicable development standards in the City's Municipal Code that were in effect at the time the Agreement and Conditional Use Permit were approved by the City's Planning Commission, (2) applicable NPDES requirements pertaining to the Development, and (3) applicable building codes that were in effect at the time this Agreement and the Conditional Use Permit were approved by the City's Planning Commission, except as may be permitted through approved variances and modifications. Developer shall pay all normal and customary fees and charges applicable to such permits, and any fees and charges hereafter imposed by the City in connection with the Development which are standard and uniformly applied to similar projects in the City. Nothing contained in this Agreement shall be deemed to impose any obligation on Owner with respect to the Development Approvals or the Development, all of which obligations of Owner shall be governed by the terms of the Owner Agreement. Without limiting the foregoing, the City shall take such actions as may be reasonably required to enable Developer to obtain any Final Permits, including without limitation, providing notice of default to a developer or lessee of any City-owned property adjacent to the Site in order to facilitate removal of any outdoor advertising displays or structures located on any City-owned property adjacent to the Site.

4.4. Timing of Development.

4.4.1. The parties acknowledge that Developer cannot at this time predict when or if the Property will be developed. Such decisions depend upon numerous factors that are not within the control of Developer. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465 (the “**Pardee Case**”) that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties’ agreement, it is the parties’ intent to cure that deficiency by acknowledging and providing that, except as otherwise provided in this Agreement, Developer shall have the right to develop the Project consistent with the Development Approvals in such order and at such rate and at such times as Developer deems appropriate within the exercise of its sole and subjective business judgment during the Term of this Agreement. This provision shall be broadly construed to provide Developer the greatest amount of time and flexibility (in light of the *Pardee Case* and any other similar or distinguishing cases) as necessary or appropriate to permit Developer to complete the development of the Project irrespective of later-adopted rules, regulations or initiatives that would otherwise restrict Developer’s time to complete the Project.

4.4.2. Developer shall commence construction of the New Digital Billboard on the Site within ninety (90) calendar days following: (a) Developer’s receipt of a building permit from the City for construction of the New Digital Billboard and related improvements, (b) the issuance of all Development Approvals and Final Permits for construction of the New Digital Billboard and related improvements and (c) the expiration of all applicable challenge periods related to the foregoing without the filing of any challenge or appeal (or if a challenge or appeal has been filed, such challenge or appeal has been resolved on terms reasonably satisfactory to Developer). In the event that Developer fails to meet the schedule for commencement of construction of the New Digital Billboard set forth above, then after compliance with Section 5.3, either party hereto may terminate this Agreement by delivering written notice to the other party, and, in the event of such termination, neither party shall have any further obligation hereunder. However, if circumstances within the scope of Section 9.10 delay the commencement of construction or completion of construction of the New Digital Billboard, then such delays shall not constitute grounds for any termination rights found within this Agreement and the timeline to commence or complete the relevant task shall be extended in the manner set forth in Section 9.10. Notwithstanding the above, Developer shall, at all times, comply with all other obligations set forth in this Agreement regarding the construction or improvement of the New Digital Billboard. Developer shall also maintain the New Digital Billboard at all times during the Term in accordance with the maintenance provisions set forth in Section 3 of the Scope of Development, attached as Exhibit “B” herein.

4.5. **Changes and Amendments.** Developer may determine that changes to the Development Approvals are appropriate and desirable. In the event Developer makes such a determination, Developer may apply in writing for an amendment to the Development Approvals to effectuate such change(s). The parties acknowledge that the City shall be permitted to use its inherent land use authority in deciding whether to approve or deny any such amendment request; provided, however, that in exercising the

foregoing reasonable discretion, the City shall not apply a standard different than that used in evaluating requests of other developers. Accordingly, under no circumstance shall the City be obligated in any manner to approve any amendment to the Development Approvals. The City Manager shall be authorized to approve any non-substantive amendment to the Development Approvals without processing an amendment to this Agreement. All other amendments shall require the approval of the City Council. Nothing herein shall cause Developer to be in default if it upgrades the digital displays installed pursuant to this Agreement during the Term of this Agreement to incorporate newer technology; provided Developer shall secure all applicable ministerial permits to do so and such upgrade is consistent with the dimensions and standards for the displays, as provided under this Agreement, Land Use Regulations and Subsequent Land Use Regulations.

4.6. **Reservation of Authority.**

4.6.1. **Limitations, Reservations and Exceptions.** Notwithstanding any other provision of this Agreement, the following Subsequent Land Use Regulations shall apply to the Development:

(a) Processing fees and charges of every kind and nature imposed by the City to cover the estimated actual costs to the City of processing applications for Subsequent Development Approvals.

(b) Procedural regulations consistent with this Agreement relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure. Notwithstanding the foregoing, if such change materially changes Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice to the City.

(c) Changes adopted by the International Conference of Building Officials, or other similar body, as part of the then most current versions of the Uniform Building Code, Uniform Fire Code, Uniform Plumbing Code, Uniform Mechanical Code, or National Electrical Code, as adopted by the City as Subsequent Land Use Regulations, if adopted prior to the issuance of a building permit for development of the New Digital Billboard. Notwithstanding the foregoing, if such change materially changes Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice to the City.

(d) Regulations that are not in conflict with the Development Approvals or this Agreement.

(e) Regulations that are in conflict with the Development Approvals or this Agreement, provided Developer has given written consent to the application of such regulations to the Development.

(f) Applicable federal, state, county and multi-jurisdictional laws and regulations which the City is required to enforce against the Site or the Development, and that do not have an exception for existing signs or legal nonconforming uses.

4.6.2. **Future Discretion of the City.** This Agreement shall not prevent the City from denying or conditionally approving any application for a Subsequent Development Approval on the basis of the Land Use Regulations.

4.6.3. **Modification or Suspension by Federal, State, County, or Multi-Jurisdictional Law.** In the event that applicable federal, state, county or multi-jurisdictional laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, and there is no exception for the legal nonconforming use under applicable federal, state, county or multi-jurisdictional laws or regulations, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such federal, state, county or multi-jurisdictional laws or regulations, and this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provision impractical to enforce. Notwithstanding the foregoing, if such change materially changes Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice to the City.

4.7. **Regulation by Other Public Agencies.** It is acknowledged by the parties that other public agencies not subject to control by the City may possess authority to regulate aspects of the Development as contemplated herein, and this Agreement does not limit the authority of such other public agencies. Developer acknowledges and represents that, in addition to the Land Use Regulations, Developer shall, at all times, comply with all applicable federal, state and local laws and regulations applicable to the Development and that do not have an exception for a legal nonconforming use. To the extent such other public agencies preclude development or maintenance of the Development and do not have an exception for a legal nonconforming use, Developer shall not be further obligated under this Agreement except as provided in Section 6.1. Notwithstanding the foregoing, if such action by another public agency materially changes Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice to the City.

4.8. **Public Improvements.** Notwithstanding any provision herein to the contrary, the City shall retain the right to condition any Subsequent Development Approvals on the requirement that Developer pay subsequently required development fees, and/or construct certain subsequently required public infrastructure ("**Exactions**") at such time as the City shall determine, subject to the following conditions:

4.8.1. The payment or construction must be to alleviate an impact caused by the Development or be of benefit to the Development;

4.8.2. The timing of the Exaction should be reasonably related to the development of the Development and said public improvements shall be phased to be

commensurate with the logical progression of the development of the Development, as well as the reasonable needs of the public;

4.8.3. It is understood, however, that if there is a material increase in cost to Developer, or such action by the City otherwise materially impacts Developer or its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice to the City.

4.9. **Fees, Taxes and Assessments.** During the Term of this Agreement, the City shall not, without the prior written consent of Developer, impose any additional fees, taxes or assessments on all or any portion of the Development, except such fees, taxes and assessments as are described in or required by this Agreement and/or the Development Approvals. However, this Agreement shall not prohibit the application of fees, taxes or assessments upon the Site only and not on the New Digital Billboard or Developer directly, except as follows:

4.9.1. Developer shall be obligated to pay those fees, taxes or City assessments and any increases in same which exist as of the Effective Date and applicable to the Development or are included in the Development Approvals;

4.9.2. Developer shall be obligated to pay any fees or taxes, and increases thereof, imposed on a City-wide basis such as, but not limited to, business license fees or taxes or utility taxes applicable to the Development;

4.9.3. Developer shall be obligated to pay all fees applicable to any permit applications as charged by the City at the time such application(s) are filed by Developer;

4.9.4. Developer shall be obligated to pay any fees imposed pursuant to any Uniform Code that exist when the permit applications are filed by Developer or that exist when Developer applies for any Subsequent Development Approvals.

4.10. **Changes.** Notwithstanding anything to the contrary herein, if there is a change in such fees as compared to those fees in effect as of the Effective Date, or if any additional fees are charged and such additional or increased fees materially change Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice to the City.

5. **REVIEW FOR COMPLIANCE.**

5.1. **Review.** In compliance with the Development Agreement Act, the City Council shall have the right to review at its sole cost and expense the Developer's good faith compliance with the terms of this Agreement at least every twelve (12) months during the Term ("**Review**") and City Council may, in its sole and absolute discretion and at its sole cost and expense, order a Review at any time. No failure on the part of the City to conduct or complete any Review as provided herein shall have any impact on the validity of this Agreement. Developer shall cooperate with the City in the conduct of any such Review.

5.2. **City Rights of Access.** Subject to the City's execution of a permit to enter the Site in a form reasonably acceptable to Owner, the City and its officers, employees, agents and contractors shall have the right, at their sole risk and expense, to enter the Site without interfering with any right-of-way, and at all reasonable times with as little interference as possible, for the purpose of conducting the Review under this Section 5 or inspection, construction, reconstruction, relocation, maintenance, repair or service of any public improvements or public facilities located on the Site. Any damage or injury to the Site or to the improvements constructed thereon (including, without limitation, the New Digital Billboard) resulting from such entry shall be promptly repaired at the sole expense of the City. Notwithstanding the foregoing or any other provision in this Agreement (including without limitation Section 5.1 above) to the contrary, the City shall have no right whatsoever to enter the Site unless and until the City executes and delivers to Owner a permit to enter in a form reasonably acceptable to Owner (except that this provision is not intended to interfere with the City's police powers to address any nuisance, dangerous condition, or other condition pursuant to the City's ordinances). Notwithstanding anything to the contrary herein, in no event will the City's representatives ever climb up the pole of the New Digital Billboard during any inspection¹.

5.3. **Procedure.** Each party shall have a reasonable opportunity to assert matters which it believes have not been undertaken in accordance with this Agreement, to explain the basis for such assertion, and to receive from the other party(ies) a justification of its position on such matters. If, on the basis of the parties' review of any terms of this Agreement, a party concludes that the other party(ies) has not complied in good faith with the terms of this Agreement, then such party may issue a written "**Notice of Non-Compliance**" specifying the grounds therefore and all facts demonstrating such non-compliance. The party receiving a Notice of Non-Compliance shall have thirty (30) days to cure or remedy the non-compliance identified in the Notice of Non-Compliance, but if such cure or remedy is not reasonably capable of being cured or remedied within such thirty (30) day period, then the party receiving a Notice of Non-Compliance shall commence to cure or remedy the non-compliance within such thirty (30) day period and thereafter diligently and in good faith prosecute such cure or remedy to completion. If the party receiving the Notice of Non-Compliance does not believe it is out of compliance and contests the Notice of Non-Compliance, it shall do so by responding in writing to said Notice of Non-Compliance within thirty (30) days after receipt of the Notice of Non-Compliance. If the response to the Notice of Non-Compliance has not been received in the office of the party alleging the non-compliance within the prescribed time period, the Notice of Non-Compliance shall be conclusively presumed to be valid. If a Notice of Non-Compliance is contested, the parties shall, for a period of not less than fifteen (15) days following receipt of the response, seek to arrive at a mutually acceptable resolution of the matter(s) occasioning the Notice of Non-Compliance. In the event that a cure or remedy is not timely completed, the party alleging the non-compliance may thereupon pursue the remedies provided in Section 6; provided, however, that if the Notice of Non-Compliance is contested and the parties are not able to arrive at a mutually acceptable resolution of the matter(s) by the end of the fifteen (15) day period, then either party shall have the right to seek a judicial determination of such contested matter. Neither party hereto shall

¹ Subject to review and comment by Metro's Board prior to execution of this Agreement.

be deemed in breach if the reason for non-compliance is due to “force majeure” as defined in, and subject to the provisions of, Section 9.10.

5.4. **Certificate of Agreement Compliance.** If, at the conclusion of any Review, Developer is found to be in compliance with this Agreement, the City shall, upon request by Developer, issue within ten (10) days of receipt of the request, a written confirmation (“**Certificate**”) to Developer stating that, after the most recent Review, and based upon the information known or made known to the City Manager and the City Council, that (1) this Agreement remains in effect, and (2) Developer is in compliance. The Certificate shall be in recordable form if requested by Developer and shall contain information necessary to communicate constructive record notice of the finding of compliance. Developer may record the Certificate with the County Recorder. Additionally, Developer may, at any time, request from the City a Certificate stating, in addition to the foregoing, which specific obligations under this Agreement have been fully satisfied with respect to the Site and City shall respond within ten (10) days of receipt of the request. If the City fails to respond to a Developer’s request pursuant to this Section 5.4, the Developer is presumed to be in compliance with this Agreement or any obligation that is the subject of the Developer’s request.

6. **DEFAULT AND REMEDIES.**

6.1. **Termination of Agreement.**

6.1.1. **Termination of Agreement for Material Default of Developer.**

The City, in its discretion, may terminate this Agreement (a) if Developer fails to make the Public Benefit Contribution within fifteen (15) days after the due date, or (b) for any material failure of Developer to perform any material duty or obligation of Developer hereunder or to comply in good faith with the terms of this Agreement (hereinafter referred to as “**default**” or “**breach**”); provided, however, the City may terminate this Agreement pursuant to subsection (b) above only after following the procedures set forth in Section 5.3. In the event of a termination by the City under this Section 6.1.1, Developer acknowledges and agrees that the City may retain any portion of the Public Benefit Contribution paid up to the date of termination and Developer shall pay the prorated amount of the Public Benefit Contribution within sixty (60) days after the date of termination and removal of the New Digital Billboard that equates to the percentage of time elapsed in the year of the Term at the time of termination.

6.1.2. **Termination of Agreement for Material Default of City.**

Developer, in its discretion, may terminate this Agreement for any material failure of the City to perform any material duty or obligation of the City hereunder or to comply in good faith with the terms of this Agreement; provided, however, Developer may terminate this Agreement pursuant to this Section only after following the procedures set forth in Section 5.3.

6.1.3. **Termination of Agreement Without Default.** Developer may terminate this Agreement upon the occurrence of any of the following: (1) if, despite Developer’s good faith efforts, Developer is unable to secure the Development Approvals

and/or the necessary permits (including all Final Permits) and/or comply with requirements under applicable laws as necessary to effectuate the Development, or (2) any governmental agency has concluded a taking or regulatory taking of any material portion of the Site and/or the Development, or (3) the Lease is terminated, or (4) Developer is unable to profitably operate the Development or (5) if the advertising value of the New Digital Billboard is materially diminished for any reason, including, without limitation, a diversion or reduction of vehicular traffic or (6) the view of the New Digital Billboard becomes entirely or partially obstructed or impaired or (7) any other circumstance or event pursuant to which termination is permitted by Developer under this Agreement, or (8) if this Agreement and the development of the Project is not approved by the Board of Directors of Owner prior to execution of this Agreement within ninety (90) days of the City Council's approval of the Agreement (which time-period may be extended by mutual agreement of the parties). In the event of a termination by Developer under this Section 6.1.3, Developer acknowledges and agrees that the City may retain any portion of the Public Benefit Contribution paid up to the date of termination. If this Agreement is terminated pursuant to subsections (1) or (8) of this Section 6.1.3, then this Agreement shall terminate immediately and Developer shall not be required to make any payment set forth herein and this Agreement shall be of no further force and effect.

6.1.4. ***Rights and Duties Following Termination.*** Upon the termination of this Agreement, no party shall have any further right or obligation hereunder.

7. **INSURANCE, INDEMNIFICATION AND WAIVERS.**

7.1. **Insurance.**

7.1.1. ***Types of Insurance.***

(a) ***Liability Insurance.*** On or prior to the Effective Date and until completion of the Term, Developer shall, at its sole cost and expense, keep or cause to be kept in force for Developer general liability insurance against claims and liabilities for bodily injury, death or property arising out of or in connection with Developer's activities on the Site under this Agreement and for claims and liabilities covered by the indemnification provisions of Section 7.2. Such insurance shall name the City as an additional insured and shall have the following limits: (i) at least Two Million Dollars (\$2,000,000) for bodily injury or death to any one person, (ii) at least Four Million Dollars (\$4,000,000) for any one accident or occurrence, and (iii) at least One Million Dollars (\$1,000,000) for property damage. Within seven (7) days after written request from the City, Developer shall also furnish or cause to be furnished to the City evidence that any contractors with whom Developer has contracted for the performance of any work under this Agreement for which Developer is responsible maintains the same coverage required of Developer.

(b) ***Worker's Compensation.*** Within seven (7) days after written request from the City, Developer shall also furnish or cause to be furnished to the City evidence that any contractor with whom Developer has contracted for the performance of any work under this Agreement for which Developer is responsible hereunder carries worker's compensation insurance as required by law.

(c) Insurance Policy Form, Sufficiency, Content and Insurer. All insurance required by express provisions hereof shall be carried only by responsible insurance companies qualified to do business by California with an AM Best Rating of no less than "A". All such policies shall be non-assignable and shall contain language, to the extent obtainable, to the effect that (i) the insurer waives the right of subrogation against the City and against the City's agents and representatives except as provided in this Section; (ii) the policies are primary and noncontributing with any insurance that may be carried by the City, but only with respect to the liabilities assumed by Developer under this Agreement; and (iii) the policies cannot be canceled or materially changed except after written notice by the insurer to the City or the City's designated representative as expeditiously as the insurance company agrees to provide such notice. Developer shall furnish the City with certificates evidencing the insurance required to be procured by the terms of this Agreement on or prior to the Effective Date.

7.1.2. **Failure to Maintain Insurance.** If Developer fails or refuses to procure or maintain insurance as required hereby or fails or refuses to furnish the City with required proof that the insurance has been procured and is in force and paid for, the City, after complying with the requirements of Section 5.3, may view such failure or refusal to be a default hereunder.

7.2. Indemnification.

7.2.1. **General.** To the extent of its liability coverage required under Section 7.1.1(a) above, Developer shall indemnify the City and its officers, employees, attorneys, consultants and agents (collectively, "**City-Related Parties**") against, and will hold and save each of the City-Related Parties harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions, or liabilities (herein "**claims or liabilities**") that may be claimed or asserted against any City-Related Parties by any person, firm, or entity to the extent arising out of or materially connected with (i) the negligent work, operations, or activities of Developer, its agents, employees, subcontractors, or invitees, hereunder, upon the Site or (ii) the City's approval of this Agreement or any Development Approvals or Subsequent Development Approvals pursuant hereto or (iii) the performance of any obligations of the City hereunder.

(a) Developer will defend any action or actions filed in connection with any such claims or liabilities covered by the indemnification provisions herein and will pay all costs and expenses, including reasonable legal costs and attorneys' fees incurred in connection therewith, which attorneys will be the attorneys hired by the insurance company where insurance coverage applies, or by Developer.

(b) Developer will promptly pay any judgment rendered against any City-Related Party for any such claims or liabilities subject to Developer's indemnification obligations as set forth in Section 7.2.1 above.

7.2.2. **Exceptions.** The foregoing indemnity shall not include claims or liabilities arising from the negligence or willful misconduct of the City, or its officers, agents or employees who are directly responsible to the City.

7.2.3. **Additional Coverage.** Without limiting the generality of the foregoing, Developer's indemnity obligation shall include any liability arising by reason of:

(a) Any accident or other occurrence in or on the Site causing injury to any person or property whatsoever to the extent caused by Developer;

(b) Any failure of Developer to comply with performance of all of the provisions of this Agreement;

(c) Any harm, delays, injuries or other damages incurred by any party as a result of any subsurface conditions on the Site caused solely by Developer, including but not limited to, the presence of buried debris, hazardous materials, hydrocarbons, or any form of soil contamination.

7.2.4. **Loss and Damage.** Except as set forth below, the City shall not be liable for any damage to property of Developer, nor for the loss of or damage to any property of Developer by theft or otherwise. The foregoing sentence shall not apply (i) to the extent the City or its agents, employees, subcontractors, invitees or representatives causes such injury or damage when accessing the Site, or (ii) under the circumstances set forth in Section 7.2.2 above.

7.2.5. **Period of Indemnification.** The obligations for indemnity under this Section 7.2 shall begin upon the Effective Date and shall survive expiration of the Term of this Agreement (unless earlier terminated prior to commencement of construction of the New Digital Billboard) for the period of two (2) years. Developer's indemnification obligations as set forth in Section 7.2.1 shall terminate concurrently with termination of this Agreement for any reason pursuant to Section 6.1 above prior to commencement of construction.

7.3. **Waiver of Subrogation.** Developer and the City mutually agree that neither shall make any claim against, nor seek to recover from the other party(ies) or its agents, servants, or employees, for any loss or damage to Developer or the City or to any person or property relating to this Agreement, except as specifically provided hereunder, which include but is not limited to a claim or liability to the extent arising from the negligence or willful misconduct of the City or Developer, as the case may be, or their respective officers, agents, or employees who are directly responsible to the City and Developer, as the case may be.

8. **MORTGAGEE PROTECTION.** The parties hereto agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole discretion, from encumbering Developer's interest in the Site or any portion thereof or the Development or any improvement on the Site thereon by any mortgage, deed of trust or other security device securing financing with respect to the Site. The City acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and the City agrees upon request, from time to time, to meet with Developer or Owner and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. Subject to compliance with applicable laws, the City will not unreasonably withhold its consent to any such requested

interpretation or modification, provided the City determines such interpretation or modification is consistent with the intent and purposes of this Agreement. Upon reasonable approval by the City Attorney, the City authorizes the City Manager to execute any Notices of Consent to Assignment on behalf of the City or similar financial documentation. Any Mortgagee of the Site shall be entitled to the following rights and privileges.

8.1. Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Development of the Site or any mortgage of the Site made in good faith and for value, unless otherwise required by law.

8.2. The Mortgagee of any mortgage or deed of trust encumbering the Development of the Site or any mortgage or deed of trust encumbering the Site, or any part thereof, which Mortgagee has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive written notification from the City of any default by Developer in the performance of Developer's obligations under this Agreement.

8.3. If the City timely receives a request from a Mortgagee requesting a copy of any Notice of Non-Compliance given to Developer under the terms of this Agreement, the City shall make a good faith effort to provide a copy of that Notice of Non-Compliance to the Mortgagee within ten (10) days of sending the Notice of Non-Compliance to Developer. The Mortgagee shall have the right, but not the obligation, to cure the non-compliance during the period that is the longer of (i) the remaining cure period allowed such party under this Agreement, or (ii) sixty (60) days.

8.4. Any Mortgagee who comes into possession of the Development or the Site, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Development or the Site, or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of Developer's obligations or other affirmative covenants of Developer hereunder, or to guarantee such performance; except that (i) to the extent that any covenant to be performed by Developer is a condition precedent to the performance of a covenant by the City, the performance thereof shall continue to be a condition precedent to the City's performance hereunder, and (ii) in the event any Mortgagee seeks to develop or use any portion of the Development or the Site acquired by such Mortgagee by foreclosure, deed of trust, or deed in lieu of foreclosure, such Mortgagee shall strictly comply with all of the terms, conditions and requirements of this Agreement and the Development Approvals applicable to the Development or the Site or such part thereof so acquired by the Mortgagee.

9. MISCELLANEOUS PROVISIONS.

9.1. **Recordation of Agreement.** This Agreement shall be recorded in the Official Records of the Los Angeles County Recorder within ten (10) days of execution,

as required by Government Code Section 65868.5. Amendments approved by the parties, and any cancellation, shall be similarly recorded.

9.2. **Entire Agreement.** This Agreement sets forth and contains the entire understanding and agreement of the parties with respect to the subject matter set forth herein, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

9.3. **Severability.** If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, then that term, provision, covenant or condition of this Agreement shall be stricken and the remaining portion of this Agreement shall remain valid and enforceable if that stricken term, provision, covenant or condition is not material to the main purpose of this Agreement, which is to allow the Development to be permitted and operated and to provide the Public Benefit Contribution Fee to the City; otherwise, this Agreement shall terminate in its entirety, unless the parties otherwise agree in writing, which agreement shall not be unreasonably withheld.

9.4. **Interpretation and Governing Law.** This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning, to achieve the objectives and purposes of the parties hereto. The rule of construction, to the effect that ambiguities are to be resolved against the drafting party or in favor of the non-drafting party, shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

9.5. **Section Headings.** All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

9.6. **Singular and Plural.** As used herein, the singular of any word includes the plural.

9.7. **Time of Essence.** Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

9.8. **Waiver.** Failure of a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

9.9. **No Third-Party Beneficiaries.** This Agreement is made and entered into for the sole protection and benefit for the parties and Owner and their respective

successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

9.10. **Force Majeure.** Notwithstanding any provision to the contrary herein, neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by earthquakes, other acts of God, pandemic, epidemic, fires, rains, winds, wars, terrorism, riots or similar hostilities, strikes and other labor difficulties beyond the party's control (including the party's employment force), government actions and regulations (other than those of the City), court actions (such as restraining orders or injunctions), any delay or breach in performance of Owner's obligations under the Owner Agreement or any other causes beyond the party's reasonable control. If any such events shall occur during the term of this Agreement then the time for performance shall be extended for the duration of each such event, provided that the Term of this Agreement shall not be extended under any circumstances for more than five (5) years beyond the date it would have otherwise expired, and further provided that if such delay is longer than six (6) months, Developer may terminate this Agreement upon written notice to the City and the City shall return to Developer any portion of the Public Benefit Contribution Fee paid for any period after the effective date of such termination.

9.11. **Mutual Covenants.** The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

9.12. **Counterparts.** This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

9.13. **Litigation.** Any action at law or in equity arising under this Agreement or brought by any party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Los Angeles, State of California, or such other appropriate court in said county. Service of process on the City shall be made in accordance with California law. Service of process on Developer shall be made in any manner permitted by California law and shall be effective whether served inside or outside California. In the event of any action between the City and Developer seeking enforcement of any of the terms and conditions to this Agreement, the prevailing party in such action shall be awarded, in addition to such relief to which such party is entitled under this Agreement, its reasonable litigation costs and expenses, including without limitation, its expert witness fees and reasonable attorneys' fees. In any award to the City of its costs and expenses under this Section, Developer hereby represents and warrants that All Vision shall be solely responsible for paying the entire award.

9.14. **Covenant Not to Sue.** The parties to this Agreement, and each of them, agree that this Agreement and each term hereof are legal, valid, binding, and enforceable. The parties to this Agreement, and each of them, hereby covenant and agree that each of them will not commence, maintain, or prosecute any claim, demand, cause of action, suit, or other proceeding against any other party to this Agreement, in law or in equity,

which is based on an allegation, or assert in any such action, that this Agreement or any term hereof is void, invalid, or unenforceable.

9.15. Development as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the Development is a private development, that as between City and Developer, neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between the City and Developer is that of a government entity regulating the development of property, on the one hand, and the holder of a legal or equitable interest in such property on the other hand. The City agrees that by its approval of, and entering into, this Agreement, that it is not taking any action which would transform this private development into a "public works" development, and that nothing herein shall be interpreted to convey upon Developer any benefit which would transform Developer's private development into a public works project, it being understood that this Agreement is entered into by the City and Developer upon the exchange of consideration described in this Agreement, including the Recitals to this Agreement which are incorporated into this Agreement and made a part hereof, and that the City is receiving by and through this Agreement the full measure of benefit in exchange for the burdens placed on Developer by this Agreement.

9.16. Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of a party at any time, the other party(ies) shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

9.17. Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by the City of its power of eminent domain or Developer's right to seek and collect just compensation or any other remedy available to it.

9.18. Amendments in Writing/Cooperation. This Agreement may be amended only by written consent of all parties specifically approving the amendment (which approval shall not be unreasonably withheld, conditioned or delayed) and in accordance with the Government Code provisions for the amendment of development agreements. The parties shall cooperate in good faith with respect to any amendment proposed in order to clarify the intent and application of this Agreement and shall treat any such proposal on its own merits, and not as a basis for the introduction of unrelated matters. Minor, non-material modifications may be approved on behalf of the City by the City Manager upon reasonable approval by the City Attorney.

9.19. **Assignment.** Except with respect to Permitted Assignments (as defined below), Developer shall not transfer or assign its rights and obligations under this Agreement (collectively, an “**Assignment**”) to any person or entity without the prior approval of the City, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, the Permitted Assignments shall not be deemed an “Assignment” for the purposes of this Agreement and shall not require the prior approval of the City; provided that, (a) Developer shall notify the City in writing of such proposed Permitted Assignment at least thirty (30) days prior to the effective date of any proposed assignment or transfer, (b) Developer and such assignee shall enter into a written assignment and assumption agreement, executed in recordable form, pursuant to which such assignee shall agree to assume all duties and obligations of Developer under this Agreement remaining to be performed from and after the date of such assignment. For purposes of this Agreement, “**Permitted Assignment**” shall mean (i) a transfer or assignment to any person or entity in connection with a transfer or assignment of all of Developer’s interest in the Lease or the Owner Agreement, (ii) a transfer or assignment to a corporation, limited liability company or partnership in which Developer, individually or collectively, hold a voting and financial interest in excess of fifty percent (50%), (iii) a transfer or assignment to a member of Developer, (iv) a transfer or assignment to a trust or other estate planning entity formed for the benefit of Developer’s immediate family members (spouse and children), and (v) a transfer or assignment of this Agreement by Developer to Owner.

9.20. **Corporate Authority.** The person(s) executing this Agreement on behalf of each of the parties hereto represent and warrant that (i) such party, if not an individual, is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which such party is bound.

9.21. **Notices.** All notices under this Agreement shall be effective when delivered by United States Postal Service mail, registered or certified, postage prepaid return receipt requested or nationally recognized overnight courier, and addressed to the respective parties as set forth below, or to such other address as either party may from time to time designate in writing by providing notice to the other party:

If to the City: City of El Monte
 11333 Valley Blvd.
 El Monte, CA 91731
 Attn: City Manager

If to Developer: The Los Angeles County Metropolitan Transportation
 Authority
 One Gateway Plaza
 Mail Stop: 99-22-9
 Los Angeles, CA 90012
 Attn: Executive Officer, Real Estate

All Vision LLC
c/o All Vision LLC
125 Park Avenue, 25th Floor
New York, NY 10017
Attn: Greg Smith, CEO

With a copy to: All Vision LLC
c/o All Vision LLC
125 Park Avenue, 25th Floor
New York, NY 10017
Attn: General Counsel

9.22. **Nonliability of City Officials.** No officer, official, member, employee, agent, or representatives of the City shall be liable for any amounts due hereunder, and no judgment or execution thereon entered in any action hereon shall be personally enforced against any such officer, official, member, employee, agent, or representative.

9.23. **No Brokers.** The City and Developer each represent and warrant to the other that it has not employed any broker and/or finder to represent its interest in this transaction. Each party agrees to indemnify and hold the other free and harmless from and against any and all liability, loss, cost, or expense (including court costs and reasonable attorneys' fees) in any manner connected with a claim asserted by any individual or entity for any commission or finder's fee in connection with this Agreement or arising out of agreements by the indemnifying party to pay any commission or finder's fee.

9.24. **No Amendment of Owner Agreement or Lease.** Nothing contained in this Agreement shall be deemed to amend or modify any of the terms or provisions of the Lease or Owner Agreement. Nothing contained in this Agreement shall constitute or be deemed to constitute a limit on any of Developer's obligations under the Owner Agreement or the Lease, or any of Owner's rights or remedies against Developer under the Owner Agreement or the Lease.


9.25. **Right of Owner to Assume Agreement.** This Agreement is entered into by Developer on Owner's behalf as Owner's agent pursuant to the Owner Agreement. Owner has the right at any time to assume all of the rights and obligations of Developer under this Agreement upon written notice to the City. This Agreement shall remain in full force and effect, notwithstanding Owner's assumption rights.

(SIGNATURES ON THE FOLLOWING PAGE)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first set forth above.

CITY:

CITY OF EL MONTE
a California municipal corporation

By: 
Jessica Ancona
Mayor

DEVELOPER:

THE LOS ANGELES COUNTY
METROPOLITAN TRANSPORTATION
AUTHORITY, a public entity

APPROVED AS TO FORM
DAWYN R. HARRISON
County Counsel

By: _____
Its: _____

By: _____
Deputy County Counsel

ALL VISION LLC
a Delaware limited liability company

By: _____
Its: _____

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of Los Angeles }

On January 26, 2023 before me, Karina Casas, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Jessica Noemi Ancona
Name of Signer

who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Development Agreement between the City of El Monte and All Vision LLC

Document Date: January 26, 2023 Number of Pages: 35

Signer(s) Other Than Named Above: No other signers

Capacity(ies) Claimed by Signer(s)

Signer's Name: Jessica Noemi Ancona

- Corporate Officer – Title(s): _____
- Partner – Limited General
- Individual Attorney in Fact
- Trustee Guardian or Conservator
- Other: _____

Signer is Representing: City of El Monte
Mayor

Signer's Name: _____

- Corporate Officer – Title(s): _____
- Partner – Limited General
- Individual Attorney in Fact
- Trustee Guardian or Conservator
- Other: _____

Signer is Representing: _____



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, _____, before me, _____
(here insert name and title of the officer)

personally appeared _____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, _____, before me, _____
(here insert name and title of the officer)

personally appeared _____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, _____, before me, _____
(here insert name and title of the officer)

personally appeared _____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature (Seal)

EXHIBIT "A"

LEGAL DESCRIPTION OF SITE

All that certain real property located in the City of El Monte, County of Los Angeles, State of California more particularly described as follows:

EXHIBIT A
LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF EL MONTE IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

THAT PORTION OF SECTION 21, TOWNSHIP 1 SOUTH, RANGE 11 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF EL MONTE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF SAID WESTERLY LINE OF SAID TRACT 883, WITH THE SOUTHERLY LINE OF THE NORTHERLY 25.00 FEET OF THE SOUTHERLY 151.80 FEET OF LOT 2 OF SAID TRACT;

THENCE WESTERLY SOUTH 89°00'09" WEST, 67.62 FEET;

THENCE AT RIGHT ANGLES TO SAID COURSE SOUTH 00°59'51" EAST, 5.12 FEET;

THENCE AT RIGHT ANGLES TO LAST SAID COURSE SOUTH 89°00'09" WEST, 696.16 FEET TO THE WESTERLY LINE OF SAID SECTION 21;

THENCE SOUTHERLY ALONG SAID WESTERLY LINE TO THE NORTHERLY LINE OF THE LAND DESCRIBED IN THE DECREE UNDER THE LAND TITLE ACT, DESCRIBED AS NUMBER 3452, IN THE DECREE ENTERED DECEMBER 20, 1917;

THENCE EASTERLY ALONG SAID NORTHERLY LINE OF SAID DECREE TO THE SOUTHWESTERLY CORNER OF SAID TRACT 883;

THENCE IN A GENERAL NORTHERLY DIRECTION ALONG SAID WESTERLY LINE OF SAID TRACT TO THE POINT OF BEGINNING.

EXCEPT THEREFROM THAT PORTION OF SAID LAND LYING WITHIN THE FOLLOWING DESCRIBED LINES:

BEGINNING AT THE INTERSECTION OF SAID NORTHERLY LINE OF THE LAND DESCRIBED IN SAID DECREE WITH THE WESTERLY LINE OF SAID SECTION 21;

THENCE ALONG SAID NORTHERLY LINE SOUTH 81°09'47" EAST, 695.18 FEET TO THE SOUTH WESTERLY CORNER OF SAID TRACT 883;

THENCE NORTH 71°26'35" WEST, 246.23 FEET;

THENCE NORTH 64°46'59" WEST, 290.73 FEET;

THENCE NORTH 62°00'01" WEST, 216.67 FEET TO A POINT IN SAID WESTERLY LINE, DISTANT THEREON NORTH 0°14'39" WEST, 197.14 FEET FROM SAID POINT OF BEGINNING;

THENCE ALONG SAID WESTERLY LINE SOUTH 0°14'39" EAST, 197.14 FEET TO SAID POINT OF BEGINNING.

APN: 8578-020-908

EXHIBIT "B"

SCOPE OF DEVELOPMENT

Developer and the City agree that the Development shall be undertaken in accordance with the terms of the Agreement, which include the following:

1. The Development. Developer shall install the New Digital Billboard on the Site in accordance with the terms of this Agreement. The New Digital Billboard consists of one (1) 65-foot tall, "bulletin" size V-Shaped freeway-oriented billboard with a total of two (2) digital displays (each display measuring 14' x 48' within the billboard frame) adjacent to the Interstate 10 Freeway. Before the issuance of final inspection of the Final Permits, Developer shall underground all utilities necessary for the New Digital Billboard and the Site shall be maintained in accordance with the conditions at Section 3 below.

2. Building Fees. Developer shall pay all applicable City building fees at the time that the building permit is issued for the installation of the New Digital Billboard.

3. Maintenance and Access. Developer, for itself and its successors and assigns, hereby covenants and agrees to be responsible for the following:

(a) Maintenance and repair of the New Digital Billboard (where authorized pursuant to the Agreement, and including but not limited to, the displays installed thereon, and all related on-site improvements and, if applicable, easements and rights-of-way, at its sole cost and expense), including, without limitation, landscaping, poles, lighting, signs and walls (as they relate to the Development) to be kept in good repair, free of graffiti, rubbish, debris and other hazards to persons using the same, and in accordance with all applicable laws, rules, ordinances and regulations of all federal, state, and local bodies and agencies having jurisdiction over the Site. Such maintenance and repair shall include, but not be limited to, the following: (i) the care and replacement of all shrubbery, plantings, and other landscaping or the painted backing in a healthy condition if damaged by the Developer; and (ii) the repair, replacement and repainting of the New Digital Billboard's structures and displays as necessary to maintain such billboards in good condition and repair.

(b) Maintenance of the New Digital Billboard in such a manner as to avoid the reasonable determination of a duly authorized official of the City that a public nuisance has been created by the absence of adequate maintenance of the Development such as to be detrimental to the public health, safety or general welfare, or that such a condition of deterioration or disrepair causes appreciable harm or is materially detrimental to property or improvements within three hundred (300) feet of the Site.

(c) If more than ten percent (10%) of the display is not operational, the entire display shall be turned off and remain black until the display is repaired.

4. Other Rights of the City. In the event of any violation or threatened violation of any of the provisions of this Exhibit "B", then in addition to, but not in lieu of, any of the rights or remedies the City may have to enforce the provisions of the Agreement, the City

shall have the right, after complying with Section 5.2 and Section 5.3 of the Agreement, to enforce the provisions hereof by undertaking any maintenance or repairs required by Developer under Section 3 above (subject to the execution of a permit to enter in form reasonably acceptable to Owner) and charging Developer for any actual out-of-pocket maintenance costs incurred in performing same.

5. No City Liability. The granting of a right of enforcement to the City does not create a mandatory duty on the part of the City to enforce any provision of the Agreement. The failure of the City to enforce the Agreement shall not give rise to a cause of action on the part of any person. No officer or employee of the City shall be personally liable to Developer, its successors, transferees or assigns, for any default or breach by the City under the Agreement.

6. Conditions of Approval. The following additional conditions shall apply to the installation of the New Digital Billboard and, where stated, landscaping adjacent to New Digital Billboard, which billboard and landscaping or painted backing adjacent to the billboard, respectively, shall conform to all applicable provisions of the Development Approvals and the following conditions, in a manner subject to the approval of the Director of Planning or his or her designee:

(a) A building permit will be required, and structural calculations shall be prepared by a licensed civil engineer and approved by the City.

(b) The Billboard shall be located in the portion of the Site shown on Exhibit "C" and shall be of the dimensions described in Section 1, above.

(c) Except to the extent a variance is granted by the City, the size of each sign display of the New Digital Billboard shall not exceed the dimensions set forth in the Ordinance, and shall not exceed the maximum height set forth in the Ordinance, including all extensions, and shall be spaced at intervals from any other billboard on the same side of the freeway and measured parallel to the freeway as set forth in the Ordinance and depicted in the Site Plan attached hereto as Exhibit "C" approved by the City as part of the Development Approvals.

(d) Plans and specifications for the proposed installation of the New Digital Billboard shall be submitted to the City Planning and Building Departments for plan check and approval prior to the issuance of building permits. Plans and specifications for the proposed installation of the undergrounding of all utilities, shall be submitted to the City Planning and Building Departments for plan check and approval prior to the issuance of electrical permits.

(e) Prior to the approval of the final inspection, all applicable conditions of approval and all mandatory improvements shall be completed to the reasonable satisfaction of the City.

(f) Developer shall maintain the New Digital Billboard and use thereof in full compliance with all applicable codes, standards, policies and regulations imposed by the City, county, state or federal agencies with jurisdiction over the facilities.

(g) Developer shall, at all times, comply with the terms of the approval for the New Digital Billboard from the California Department of Transportation Outdoor Advertising Division, including obtaining a State ODA Permit and shall maintain acceptable clearance between proposed billboards and Southern California Edison distribution lines.

(h) Developer shall pay any and all applicable fees due to any public agency prior to the final issuance of the applicable building or electrical permits.

(i) The activities proposed in the Agreement shall be conducted completely upon the Site and shall not use or encroach on any public right-of-way.

(j) Developer shall ensure that all access to the New Digital Billboard is kept restricted to the general public to the extent permitted under local laws and by the Development Approvals.

(k) If any portion of the landscaping or painted backing installed adjacent to the New Digital Billboard is damaged by the Development or becomes damaged, unhealthy or otherwise in need of replacement, as determined by the City's Director of Planning or his or her designee, Developer shall ensure that the replacement is accomplished within fourteen (14) days of notification by the City, unless such time is extended by the City's Director of Planning or his or her designee if Developer shows special circumstances requiring more time to accomplish such replacement. Developer or Owner may trim such landscaping so as not to block the billboards or with the reasonable consent of the Director of Planning, the Developer at the Developer's own cost, may remove and relocate any landscaping.

(l) Developer shall comply with all necessary federal National Pollutant Discharge Elimination System (NPDES) requirements pertaining to the proposed use, to the extent applicable.

(m) All graffiti shall be adequately and completely removed or painted over within twenty-four (24) hours following notice to Developer of such graffiti being affixed on the Development.

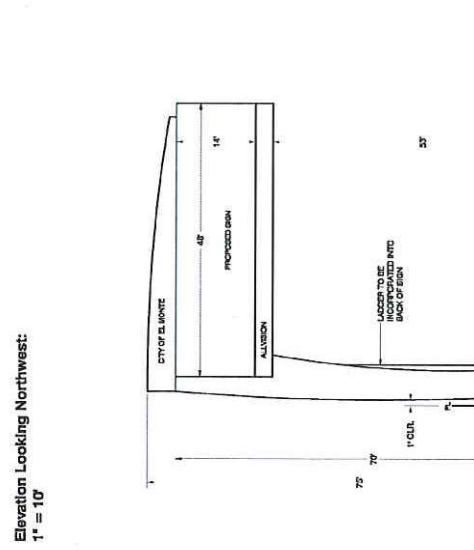
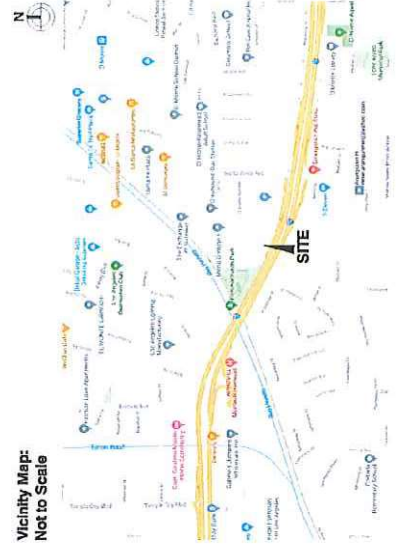
(n) Prior to final sign-off of the building permit for the New Digital Billboard, the applicable landscaping or painted backing shall be installed at the Site.

(o) Developer shall comply with State law regarding the limitation of light or glare or such other standards as adopted by the Outdoor Advertising Association of America, Inc. (OAAA), including but not limited to, the 0.3 foot-candles limitation over ambient light levels at a distance of 250 feet, and ensuring additional flexibility in reducing such maximum light level standard given the lighting environment and the obligation to have automatic dimming capabilities. Upon any reasonable complaint by City Manager or his or her designee, Developer shall perform a brightness measurement and display using OAAA standards and provide City with the results of same within five (5) days of City's complaint.

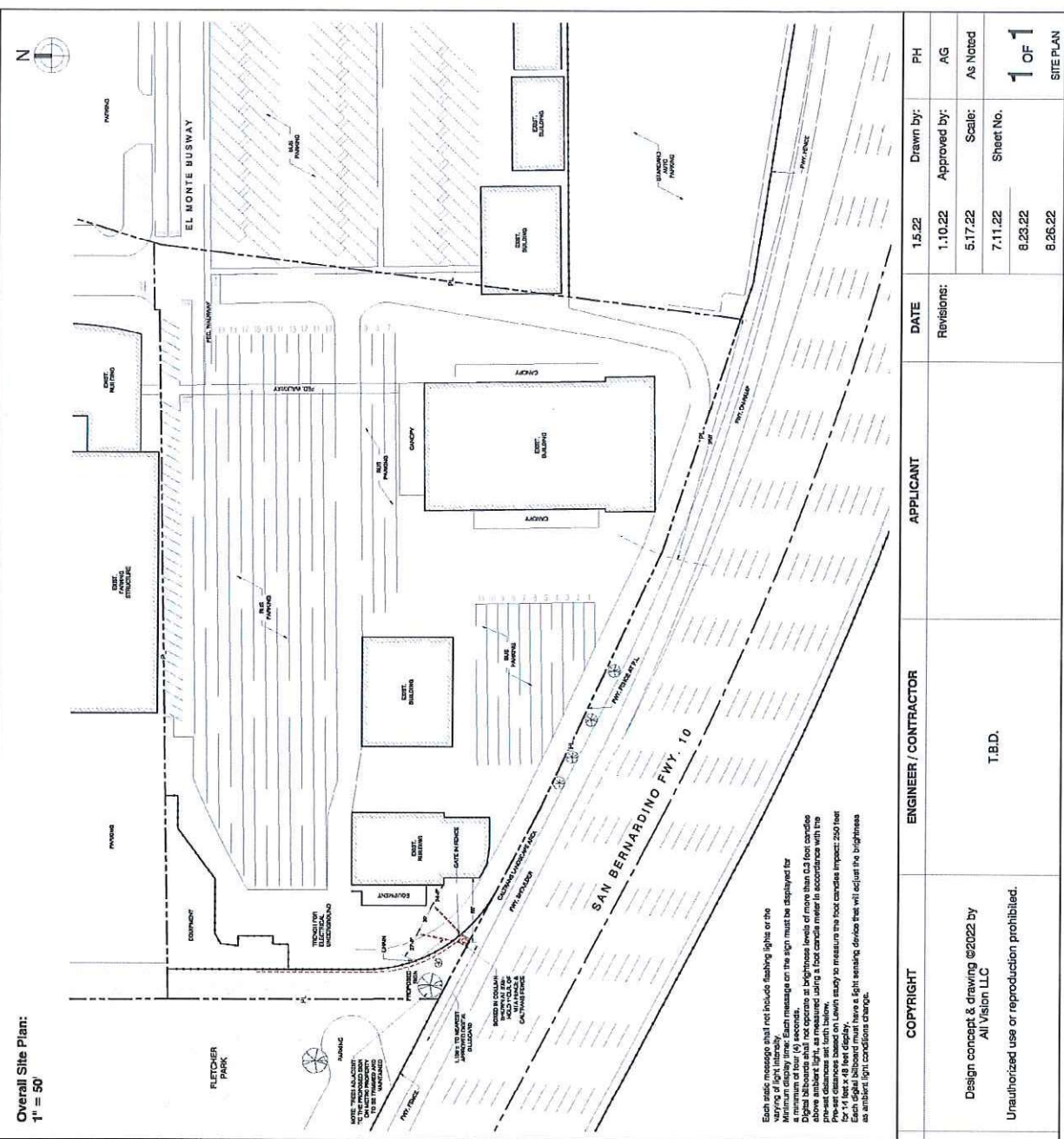
EXHIBIT "C"

SITE PLAN AND ELEVATIONS

[See Attached]



Each music message shall not include flashing lights or the winking of light internally.
 Minimum display time: Each message on the sign must be displayed for 15 seconds.
 Digital billboard shall not operate at brightness levels of more than 0.3 foot candle above ambient light, as measured using a foot candle meter in accordance with the current edition of the International Illumination Engineering Handbook.
 Pre-set obscures shall be in place at all times.
 For 14 feet x 48 feet display.
 Each digital billboard must have a split sensing device that will adjust the brightness as ambient light conditions change.



PROJECT	ELECTRICAL	COPYRIGHT	ENGINEER / CONTRACTOR	APPLICANT	DATE	Drawn by:	PH
LACHTA site (address not available) APN: 8578-000-008	T.B.D.	Design concept & drawing ©2022 by All Vision LLC Unauthorized use or reproduction prohibited.	T.B.D.		1.10.22	1.5.22	AG
					Revisions:	Approved by:	
					5.17.22	Scale:	As Noted
					7.11.22	Sheet No.	1 OF 1
					8.23.22		SITE PLAN
					8.26.22		