

Town of Kearny Request for Proposals to Install and Operate Billboards on Town Properties

Table of Contents

A. Notice

B. Instructions to Applicants

C. Specifications

D. Exhibits

E. Sample License Agreement

SECTION A



TOWN OF KEARNY
HUDSON COUNTY, NEW JERSEY
402 Kearny Avenue
Kearny, New Jersey 07032
(201) 955-7400 FAX (201) 991-0608

ALBERTO G. SANTOS
MAYOR
(201) 955-7979

FIRST WARD
ALEXA C. ARCE
ALBINO CARDOSO

SECOND WARD
LAURA CIFELLI PETTIGREW
MADELINE PEYKO

PATRICIA CARPENTER
TOWN CLERK

THIRD WARD
CAROL JEAN DOYLE
EILEEN ECKEL

FOURTH WARD
SUSAN A. MC CURRIE
MICHAEL LANDY

TOWN OF KEARNY

PUBLIC NOTICE

**INVITATION FOR PROPOSALS FOR LICENSES TO INSTALL AND OPERATE BILLBOARDS ON
ANY ONE OR MORE OF TWO TOWN-OWNED PROPERTIES**

NOTICE IS HEREBY GIVEN that sealed proposals will be received by the Town of Kearny, Hudson County, New Jersey at the Town Hall, 402 Kearny Avenue, Kearny, New Jersey 07039 on June 7, 2013 at 11:00 a.m. prevailing time, for the following purposes.

The Town of Kearny (the "Town") is the owner of two lots; all in Block 285 as shown on the Tax Map, which are proposed Sign Locations for two billboards. The Sign Locations are:

Block 285 Lot 2 W/S Western Spur on New Jersey Turnpike, MP 108.4, 30' S/O New Jersey Turnpike light pole

Block 285 Lot 11 E/S of New Jersey Turnpike, MP 108.4, Eastern Spur, 15' S/O New Jersey Turnpike light pole

The lots are vacant land.

The Town is willing and able to license any one or more of the Site Locations to qualified billboard operators who would be required to construct and operate a billboard thereon in accordance with a Sample Outdoor Advertising License Agreement which is part of the proposal package.

An applicant may submit qualified proposals for any one or all of the two sign locations. However, all proposals must specifically identify the Sign Location the proposal is for, the payment terms for the license to use that sign location, and other terms for each sign location separately. For example, if a respondent desires to submit a proposal for Lots 2 and 17, he must submit two separate Schedules A. He cannot combine both proposals in one Schedule.

In the case of multiple proposals, the Town specifically retains the right in its sole discretion to accept both proposals, accept one and reject one, or reject both proposals.

Each license will be awarded on a stand alone basis.

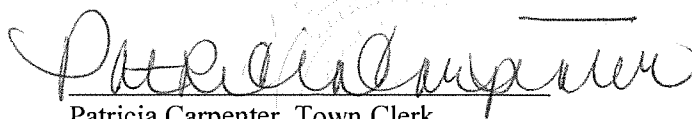
www.kearnynj.org
EQUAL OPPORTUNITY EMPLOYER

What will be granted to the successful bidder is a revocable license in accordance with the terms outlined in the Sample Outdoor Advertising License Agreement. This is not a lease nor an easement. This is not a agreement for the provision or performance of any goods or services pursuant to N.J.S.A. 40A:11-4.

If any provision in the RFP conflicts with any provision in the "Sample Outdoor Advertising License Agreement", the Sample Outdoor Advertising License Agreement shall govern.

Applications are available upon request for a non-refundable charge of \$100.00 and may be obtained at the Kearny Town Hall in the Office of the Town Clerk during normal business hours. Proposals must be submitted in standard proposal form and must be enclosed in a sealed envelope bearing the name and address of the applicant on the outside, addressed to the Town Clerk, and be accompanied by a Proposal Bond, Certified Check, or Cashier's Check made payable to the Town of Kearny in an amount not less than 10% of the amount of the proposal, not to exceed \$20,000.00. The Town shall not be responsible for late mail deliveries and no bids will be accepted after the time stipulated above.

The Town of Kearny reserves in its sole discretion the right to award a license and further reserves the right to reject any or all proposals, waive irregularities, and to decide as to the responsibility of the applicants.

A handwritten signature in dark ink, appearing to read 'Patricia Carpenter', is written over a horizontal line.

Patricia Carpenter, Town Clerk
Town of Kearny
402 Kearny Avenue
Kearny, New Jersey 07039

SECTION B

TOWN OF KEARNY

Instructions to Applicants

THE TOWN OF KEARNY, Hudson County, New Jersey (the "Town") invites proposals for the grant of Licenses that will permit successful applicants to install and operate billboards at any one or more of two site locations owned by the Town.

1.SUBMISSION OF PROPOSALS

1.1 Sealed proposals will be received by the Town Clerk on or before the time and place stated in the published Notice to Applicants at which time and place the Clerk or her designee will publicly open the proposals of each applicant. The names and amounts proposed for the Lump Sum Payment and the Base License Fee for Year One shall be read aloud.

1.2 The proposal form shall be submitted in a sealed envelope: (a) addressed to the Town, (b) bearing the name and address of the applicant written on the face of the envelope, and (c) clearly marked "Billboard Proposal".

1.3 It is the Applicant's responsibility to see that proposals are delivered to the Town on or before the date and hour at the place designated. Proposals may be hand delivered or mailed. However, the Town disclaims any responsibility for the timeliness of Proposals forwarded by mail. If the Proposal is sent by mail, the information required by 1.2 must also appear on the outside of the delivery company envelope. Proposals received after the designated time and date will be returned unopened.

1.4 Sealed proposals forwarded to the Town before the time of opening of proposals may be withdrawn at any time before the date and time scheduled for opening upon written application of the Applicant who shall be required to produce evidence showing that the individual is or represents the principal or principals involved in the proposal. Once proposals have been opened, they must remain firm for a period of up to 60 calendar days.

1.5 All prices and amounts must be written in ink or preferably typewritten. Proposals containing any conditions, omissions, unexplained erasures or alterations, items not called for in the proposal form, attachment of additive information not required by the Request for Proposals or irregularities of any kind may be rejected by the Town. Any changes, whiteouts, strikeouts, etc. on a proposal page must be initialed in ink by the person responsible for signing the proposal.

1.6 Each proposal form must give the full business address of the applicant and be signed by an authorized representative. Proposals by partnerships must furnish the full name of all partners and must be signed in the partnership name by one of the members of the partnership or by an authorized representative, followed by the signature and

designation of the person signing. Proposals by corporations must be signed in the legal name of the corporation, followed by the name of the State in which incorporated and must contain the signature and designation of the President, Secretary or other person authorized to bind the corporation in the matter. When requested, satisfactory evidence of the authority of the officer signing shall be furnished.

1.7 Applicant should be aware of the following statutes that represent "Truth in Contracting" laws:

N.J.S.A. 2C:21-34, et seq. governs false claims and representations by applicants. It is a serious crime for the applicant to knowingly submit a false claim and/or knowingly make material misrepresentation.

N.J.S.A. 2C:27-10, provides that a person commits a crime if said person offers a benefit to a public servant for an official act performed or to be performed by a public servant, which is a violation of official duty.

N.J.S.A. 2C:27-11 provides that an applicant commits a crime if said person, directly or indirectly, confers, or agrees to confer any benefit not allowed by law to a public servant.

2. PROPOSAL SECURITY

2.1 The following shall be made a part of the proposed documents:

A. PROPOSAL GUARANTEE

Applicant shall submit with the application a Certified Check, Cashier's Check, or Proposal Bond in the amount of ten percent (10%) of the total proposed price, but not in excess of \$20,000, payable unconditionally to the Town. When submitting a Proposal Bond, it shall contain Power of Attorney for full amount of the Proposal Bond from a Surety Company authorized to do business in the State of New Jersey and acceptable to the Town. The check or bond of the unsuccessful applicants shall be returned as prescribed by law. The check or bond of the applicant to whom the contract is awarded shall be retained until a contract is executed and the required Performance Bond or other security is submitted. The check or bond of the successful applicant shall be forfeited if the applicant fails to enter into a contract within 45 days of having one submitted to it by the Town.

Failure to submit a Proposal Guarantee shall be cause for rejection of the proposal.

B. REMOVAL BOND

The Town may require the successful Applicant to furnish a surety bond guaranteeing the prompt and proper removal of the outdoor and advertising sign and related facilities at no cost to the Town upon the expiration or other termination of the License.

If such bond is required, the surety issuing the bond shall be from a duly authorized Surety Company authorized to do business in the State of New Jersey.

3. INTERPRETATION AND ADDENDA

3.1 Applicants are expected to examine the Request for Proposals and related documents with care and observe all their requirements. Ambiguities, errors or omissions noted by applicants should be promptly reported in writing to the Town Clerk. Any applicant who wishes to challenge any provision of the Request for Proposals shall file such challenges in writing with the Town Clerk, no less than seven business days before the opening of the proposals. Challenges filed after that time shall be considered void and shall have no impact on the Town or the award of a contract. If an applicant fails to notify the Town of such ambiguities, errors, or omissions, the applicant shall be bound by the provisions.

3.2 No oral interpretation of the meaning of the Request for Proposals will be made to any applicant. Every request for an interpretation shall be in writing, addressed to the Town Clerk stipulated in the Proposal. In order to be given consideration, written requests for interpretation must be received at least seven days before the date fixed for the opening of the Proposals. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the Request for Proposals, and will be distributed to all prospective applicants. All addenda so issued shall become part of the contract documents and shall be acknowledged by the applicant in its proposal. The Town's interpretations or corrections thereof shall be final.

3.3 If the amount shown in words and its equivalent in figures do not agree, the written words shall be binding. Ditto marks are not considered writing or printing and shall not be used.

3.4 In the event that there is a discrepancy between the prices for an individual license and the extended totals for more than one license, the unit price shall prevail. In the event that there is an error in the summation of the extended totals, the computation by the Town of the extended totals shall govern.

SECTION C

TOWN OF KEARNY

Specifications re: Proposals for Billboard Licenses

A. Consultant

The Town has retained All Vision, LLC, a Delaware Limited Liability Company, whose address is 420 Lexington, Suite 1928, New York, NY 10170 as its exclusive authorized billboard license manager.

Pursuant to an agreement with the Town, All Vision has the exclusive right to market and negotiate the terms of outdoor advertising licenses, subject to approval of the Mayor and Council, with potential outdoor advertising sign operators for one or more of the specific Sign locations, and to administer such agreements on behalf of the Town and, for that limited purpose, is authorized to act on behalf of the Town. However, all awards shall be made by Resolution of the Mayor and Council.

The Town does not authorize any other individual or entity to represent it in connection with the competitive License process set forth herein, and neither All Vision nor the Town shall be liable to any individual or entity for any brokerage commissions, fees or expenses in connection with this matter.

Based on its expertise in the field, All Vision may solicit potential qualified and experienced billboard operators to respond to the Request for Proposals.

All Vision will assist the Mayor and Council in analyzing and evaluating the proposals submitted to the Town based on projected revenue and cost of operations and will present findings to the Mayor and Council with recommendations as to each site.

Following the award of a license, among other things, All Vision will coordinate and oversee installation of the billboards, supervise and approve all necessary construction, manage the permitting process, conduct regular visits after construction to identify safety and aesthetic issues, manage communications with external vendors and members of the community, set up procedures for advertising copy approval, provide regular reports to the Town, assist the Mayor and Council in any audits of sales and revenues and advise the Town of any material breaches.

B. Sign Locations

The two Sign Locations and their minimum Lump Sum Payments are as follows:

	Minimum Lump Sum Guarantee	
	Year 1	Year 2
Block 285 Lot 2 W/S Western Spur on New Jersey Turnpike, MP 108.2, 30' S/O New Jersey Turnpike light pole	_____	_____
Block 285 Lot 11 E/S of New Jersey Turnpike, MP 108.2, Eastern Spur, 15' S/O New Jersey Turnpike light pole	_____	_____

C. Qualifications

Applicant shall submit a statement of qualifications demonstrating, through the submission of verifiable citations of completed projects performed either directly, by contractors, or by members of the applicant's team, the applicant's experience in the following areas:

- (i) Ability to finance and manage transactions of a similar scope and magnitude;
- (ii) Experience in the construction and maintenance of billboards; and
- (iii) Experience in the sale of out-of-home advertising.

Qualification requirements can be satisfied by corporate experience or by the experience of individual employees of the applicant, or of its consultants, contractors and/or other members of the applicant's team.

D. Highest Bid

This process adopted by the Town to award licenses is intended to produce the highest revenue for the Town from the licensing of the billboard locations.

All proposals, therefore, must consist of the following:

1. Proposal Guarantee: Applicant shall submit with the proposal a certified check, cashier's check or proposal bond in the amount of ten percent (10%) of the proposal, but not in excess of \$20,000.00, payable unconditionally to the Town. When submitting a Proposal Bond, it shall contain Power of Attorney for the full amount of Proposal Bond from a surety company authorized to do business in the State of New Jersey and acceptable to the Town. The checks or bonds of the unsuccessful bidder(s) shall be returned within 10 days of an award being made or the rejection of all proposals. The check or bond of the applicant to whom the contract is awarded shall be retained until a contract is executed and the required performance bond or other

security is submitted. The check or bond of the successful applicant shall be forfeited if the applicant fails to enter into a contract within 45 days of having one submitted to it by the Town. Failure to submit a proposal guarantee shall result in rejection of the proposal.

2. Minimum Lump Sum Guarantees, Annual Base License Guarantees and Annual Percentage Guarantees: A Minimum Lump Sum Guarantee, the Annual Base License Fee (with increases every five years), and the Annual Revenue Percentage Guarantees proposed by the applicant, shall be submitted on the enclosed Proposal Form (Exhibit A) with the signature and full name of the individual authorized to make the proposal and that person's title (if any) shown on the enclosed Proposal (Exhibit A). The full name and title must be legible and also printed.

Minimum Lump Sum Guarantees: For Proposal purposes, the Town has established Minimum Lump Sum Guarantee amounts on Exhibit Q.. The Minimum Guarantees are not absolute minimums, but represent the Town's expectations for each license. Therefore, all proposals will be evaluated utilizing the evaluation criteria presented in Exhibit Q regardless of whether the proposal meets or exceeds the Minimum Guarantees. Applicants are advised that the Town reserves the right to decline to award any license for which proposals fail to meet the Minimum Guarantees and either re-bid the location at a future date, reserve the location for future use or abandon the location for outdoor advertising purposes. A sum meeting or exceeding the Minimum Lump Sum Guarantee may be bid for Year 1 & 2 of the License, but at least 70% of the total Lump Sum amounts bid for Years 1 & 2 shall be allocated to Year 1. Half of the Year 1 Lump Sum payment shall be due upon execution of the License Agreement and the other half shall be due upon substantial completion of construction of the advertising sign.

The Town will consider all proposals for up to 60 days after submittal. The Town reserves the right to cancel this solicitation at any time and to reject any and all proposals if the Town deems such cancellation or rejection to be in its best interest of the Town.

E. Evaluation, Selection and Notice

Proposals will be evaluated by the Town based on the following criteria:

- Qualifications
- Lump Sum Proposal Net of Construction Costs (i.e. construction costs are the responsibility of the applicant)
- Annual Base License Fees with Increases Every Five Years
- Annual Percentage (30% Minimum) Participation

Qualifications will be evaluated on a correctable Pass/Fail basis: At any time up to and until the Town declares an end to the Evaluation and Selection process, applicants are permitted to correct **qualification deficiencies** resulting in a "Fail" rating. The Town's determination on the acceptability of the respondent's qualifications shall be at its sole discretion.

Assuming an applicant is qualified, the Town will first evaluate the **Annual Base License Fee** followed by the Annual Percentage Participation and then the Lump Sum Proposal for each location.

The Town will evaluate the proposals by discounting cash flows, including the Lump Sum Proposal and the Annual Base License Fees, to determine the Present Value of proposals. The discount rate that will be used for the Present value analysis is 9% per annum, starting in License Year Two. (For example, payments to be made in License Year One will not be discounted; payments to be made in License Year Two will be discounted by a factor of 0.9174; payments to be made in License Year Three will be discounted by a factor of .8417, payments to be made in License Year Four will be discounted by a factor of .7722, etc.) The Town will also consider the reliability, timing, security and realism of projected cash flows to determine the proposal offering the best value for each location. That is the proposal which will be selected that will be deemed the "highest proposal."

Following selection of the proposal for each location offering the best value to the Town, the Town will establish the date of the closing at which the License agreement will be signed. The award, the final form and the final execution of the License Agreement shall be subject to the final approval of the Mayor and Council by Resolution.

F. Site Conditions and Inspection

Site inspection is recommended and is the sole responsibility of the applicants. Parties interested in gaining direct access to the site for purposes of inspection are invited to inspect the site. All Vision representatives will be available to coordinate site visits. Special permission is not required to view the site from adjacent public pavements. However, receipt of this RFP does not constitute permission to enter the property.

The Town does not have a topographic survey. The successful applicant will be responsible for designing and constructing the outdoor advertising structure(s) to meet existing conditions.

The Town makes no representations or warranties as to the environmental condition of the properties.

Applicants may conduct their own environmental and/or geotechnical investigations on the Town's property before submitting a proposal provided that the applicant:

1. Makes arrangements for such investigations in compliance with the Town's normal access permit procedures including but not limited to standard indemnifications and provisions to safeguard and restore the premises to the Town's satisfaction;

2. Provides complete reports of any investigations to the Town for the Town to use as it sees fit, and that All Vision and the Town at their sole discretion may disclose to all other potential applicants.

3. Applicants accept full responsibility for all costs associated with the development, preparation and submission of proposals. Neither All Vision nor the Town will bear responsibility for cost of any kind in this regard.

The Town reserves the right, upon review of plans for the outdoor advertising signs and related facilities or earlier, to require the successful applicant to enter into an Agreement governing the installation, maintenance and removal of such facilities.

G. Commercial Viability of Locations For Outdoor Advertising

The applicant bears full responsibility for investigating any development, zoning, or land use issues or plans that might impact on the present or future compatibility or commercial viability of the locations for outdoor advertising since the agreement entered into in response to a successful proposal is solely for the grant of a license..

H. Engineering and Construction

The successful applicant shall be responsible for the following:

1. Engaging the services of a qualified licensed professional engineer to prepare all necessary structural drawings and to inspect and approve the plans for the Billboards;
2. Compliance with State of New Jersey and Town construction and outdoor advertising permitting and licensing statutes and regulations.

The construction of the outdoor advertising sign on the Town property is subject to the jurisdiction of the Town Construction Department for the purpose of compliance with the New Jersey Uniform Construction Code. The successful applicant will have the sole responsibility for paying all costs and expenses incident to the permitting, construction and erection of a signboard, including, by not limited to, the following:

- Engineering
- Recording and permitting fees
- Legal and incidental expenses; and
- All construction costs

I. Construction Access, Maintenance and Permits

The applicant is responsible for obtaining all construction permits and approvals, properly maintaining the structure and paying for all utilities, inspection fees and other costs throughout the life of the License. If necessary, the applicant is responsible for entering into its own access and crossing agreements with adjacent property owners for the purpose of gaining access to the Town's property to construct and maintain the structure.

J. Digital Signs

All Signs shall be digital signs.

K. License Extension Option

Applicants are alerted that the License Agreement contains provisions that allow for the extension of the term of the License for an additional 15 years beyond the original 20 year term. The Licensee may elect to extend the term of the License for the additional 15 years by making an Extension Lump Sum payment equal to six times the highest Billboard Cash Flow "BCF" generated during the term of the License at the location. A written election to extend will be required from Licensee before the end of Year of the License Agreement. Payment of the Extension Lump Sum will be required within 30 days of written election.

Billboard Cash Flow is defined as the total of all revenues generated from the advertising, use and maintenance of the structure, including cutouts, plus revenues generated from any ancillary uses of the structure, such as telecommunications antennas, minus the Base Fees and Percentage Fees paid to the Licenser and minus the Licensee's operating expenses (not to exceed 12.5% of net revenues) for any consecutive 12 month period.

The Annual Base Fee will be escalated in the option years in accordance with Paragraph 17 of the License.

L. Lump Sum Payment Agreement 1

Upon the mutual execution and delivery of this Agreement, Licensee shall in a Lump Sum Payment in the amount set forth on Exhibit A as follows: (i) \$45,000 to All Vision; (ii) 65% of the balance of the Lump Sum Payment to the Town directly; and (iii) 35% of the balance of the Lump sum Payment to All Vision directly. The Lump Sum Payment is not a deposit and shall be nonrefundable except as otherwise provided herein. Licensee shall receive credit for the 10% proposal guarantee submitted with its proposal in response to the RFP if such guarantee was made by cashier's or certified check or cash.

M. Lump Sum Payment Agreement 2

Upon the mutual execution and delivery of the second License Agreement and all License agreements thereafter, Licensee shall make a Lump Sum Payment in the amount set forth on Exhibit A as follows: (i) 65% to the Town directly; (ii) 35% to All Vision directly. The Lump Sum Payment is not a deposit and shall be nonrefundable except as otherwise provided herein.

N. Exhibits Incorporated by Reference

As part of applicant's proposal, applicant shall address the requirements set forth in the Exhibits to the invitation for proposals which are incorporated herein as a part of this RFP especially those which refer to the "Equal Opportunity Laws, Regulations and Americans with Disabilities Act" and the Proposal Bond.

SECTION D

**TOWN OF KEARNY
EXHIBITS TO INVITATION FOR PROPOSALS**

Exhibit A	Proposals
Exhibit B	Proposal Certification and Proposal Bond
Exhibit C	Compliance with Specifications or Exceptions
Exhibit D	Successful Completed Contracts within the Last Three (3) Years
Exhibit E	Consent of Surety
Exhibit F	Acknowledgement of Receipt of Changes to Bid Documents Form
Exhibit G	Equal Opportunity Laws, Regulations and Americans With Disabilities Act
Exhibit H	Stockholder or Partnership Disclosure Statement
Exhibit I	Affidavit of Foreign Corporation (License)
Exhibit J	Non-Collusion Affidavit
Exhibit K	Equipment Certification
Exhibit L	Sub-Contractors (If Applicable)
Exhibit M	Business Registration Certificate
Exhibit N	Iran Certification
Exhibit O	Kearny Living Wage Ordinance
Exhibit P	Bid Document Checklist
Exhibit Q	Proposal Minimums: Up Front Lump Sum Payments, Base License Fee, Percentage Fee
Exhibit R	Document Retention

[Submit only the sheets which refer to the location for which you are applying]

TOWN OF KEARNY

EXHIBIT A

PROPOSAL

License of Outdoor Advertising Location

Sign Location Block 285, Lot 2 W/S Western Spur

Type of Structure

(Static/Digital): _____

I. LUMP SUM PAYMENT (Net of Construction Costs):

All Proposal Prices are to be entered in the form of Nominal (Current) Dollars. Town will conduct a Present Value Analysis by discounting the Nominal Proposal Prices using a Discount factor of 9% per annum starting in Year 2. *Please note that Applicants are expected to meet or exceed the minimum lump Sum Payment amount in Years 1&2. The Year 1 Lump Sum proposal amounts in Years 1 & 2*

II. ANNUAL BASE LICENSE FEE GUARANTEES WITH INCREASES EVERY FIVE YEARS

All proposal Prices are to be entered in the form of Nominal (Current) Dollars. Town will conduct a Present Value Analysis by discounting the Nominal Proposal Prices using a Discount factor of 95 per Annum starting in Year 2.

III. ANNUAL REVENUE PERCENTAGE PARTICIPATION

(30% Minimum) _____%

YEAR	Lump Sum Payment
1	
2	
YEAR	Annual Base license Fees
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
	*Increases required at least every 5 years

Continued Proposal Form – Proposed Base license Fee Schedule
(to apply if license term is extended)

YEAR	Annual Base License Fees
21	
22	
23	
24	
25	
26	
27	
28	
29	
30	
31	
32	
33	
34	
35	
	*Increases required at least every 5 years

Company Name

Federal I.D. # or Social Security #

Address

Signature of Authorized Agent

Type or Print Name

Title: _____

Telephone Number

Date

Fax Number

E-mail Address

[Submit only the sheets which refer to the location for which you are applying]

TOWN OF KEARNY

EXHIBIT A

PROPOSAL

License of Outdoor Advertising Location

Sign Location Block 285, Lot 11

Type of Structure
(Static/Digital): _____

I. LUMP SUM PAYMENT (Net of Construction Costs):

All Proposal Prices are to be entered in the form of Nominal (Current) Dollars. Town will conduct a Present Value Analysis by discounting the Nominal Proposal Prices using a Discount factor of 9% per annum starting in Year 2. *Please note that Applicants are expected to meet or exceed the minimum lump Sum Payment amount in Years 1&2. The Year 1 Lump Sum proposal amounts in Years 1 & 2*

II. ANNUAL BASE LICENSE FEE GUARANTEES WITH INCREASES EVERY FIVE YEARS

All proposal Prices are to be entered in the form of Nominal (Current) Dollars. Town will conduct a Present Value Analysis by discounting the Nominal Proposal Prices using a Discount factor of 95 per Annum starting in Year 2.

III. ANNUAL REVENUE PERCENTAGE PARTICIPATION

(30% Minimum) _____%

YEAR	Lump Sum Payment
1	
2	
YEAR	Annual Base license Fees
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
	*Increases required at least every 5 years

Continued Proposal Form – Proposed Base license Fee Schedule
(to apply if license term is extended)

YEAR	Annual Base License Fees
21	
22	
23	
24	
25	
26	
27	
28	
29	
30	
31	
32	
33	
34	
35	
	*Increases required at least every 5 years

Company Name

Federal I.D. # or Social Security #

Address

Signature of Authorized Agent

Type or Print Name

Title: _____

Telephone Number

Date

Fax Number

E-mail Address

EXHIBIT B
Proposal Certification & Proposal Bond

To the: _____
Mayor and Council of the Town of Kearny
Hudson County, New Jersey 07032

PROPOSAL OF: _____

ADDRESS: _____

FOR: LICENSE OF OUTDOOR ADVERTISING LOCATION

We hereby certify that we are the only person or persons interested in this application for a License, that it is made without collusion with any person, firm, or corporation making another application for the same license that the application is in all respects fair. And that no Officer of the Town of Kearny or any person in the employ of the said Town is directly or indirectly interested in this bid, in the supplies of work and/or service to which it relates, or in the profits or any portion thereof.

We further declare that we have carefully examined the **NOTICE TO APPLICANTS**, the Request for proposals, the Exhibits and the Sample License Agreement herein referred to, and propose to provide and deliver all necessary materials and services. Included herewith is our Proposal in standard form.

Accompanying this Proposal is a Bid Bond, Certified Check, or Cashier's Check mad payable to the Town of Kearny in the sum of not less than ten percent (!0%) of the proposal, not to exceed \$20,000, which the undersigned agrees is to be forfeited as liquidated damages and not as a penalty of the contract is awarded to the undersigned and the undersigned fails to execute the contract within the stipulated time; otherwise the Bond will be returned to the undersigned or applied to the first payment to be made.

SECURITY AMOUNT SUBMITTED: \$ _____

The economic terms of the Proposal are set forth in Schedule A.

The undersigned is a Corporation/Partnership/Individual (circle one) under the laws of the State of _____ having its principal office at _____

Company Name: _____

Company Address: _____

Authorized Signature: _____ Date: _____

(Signature – also Print Name and Title)

EXHIBIT C
Compliance with Specifications or Exceptions Taken

Is the application in conformance with the Specifications and Sample License Agreement?

YES _____ NO _____

If the answer is **NO**, the applicant must identify and explain each exception taken and make reference to each page and paragraph to which the exception will apply. It shall be understood that if no exception is taken, the applicant shall supply all material(s) and/or service(s) as specified.

EXCEPTIONS TAKEN:

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

EXHIBIT D

Successfully Completed Billboard Contracts within the Last Three (3) Years

[illegible]

EXHIBIT E

Consent of Surety

A Performance Bond will be required from the successful Applicant on this project and, consequently, all Applicants shall submit with their Application a certificate in substantially the following form:

TO:

(Owner)

RE:

(Contractor)

(Project Description)

This is to certify that the

(Surety Company)

Will provide to _____, a Performance Bond in the full amount of awarded License in the event that said applicant is awarded a License for the above project.

(Authorized Agent of Surety Company)

**CERTIFICATE OF SURETY MUST BE SIGNED BY AN AUTHORIZED AGENT OR
REPRESENTATIVE OF A SURETY COMPANY AND NOT BY THE INDIVIDUAL OR
COMPANY SUBMITTING THE APPLICATION.**

EXHIBIT F

ACKNOWLEDGEMENT OF RECEIPT OF ADDENDA

The undersigned hereby hereby acknowledges receipt of the following Addenda:

<u>Addendum Number</u>	<u>Dated</u>	<u>Acknowledge Receipt</u> (initial)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

_____ No addenda were received:

Acknowledged for: _____
(Name of Applicant)

By: _____
(Signature of Authorized Representative)

Name: _____
(Print or Type)

Title: _____

Date: _____

EXHIBIT G
Equal Opportunity Laws and Regulations
Required Evidence
Affirmative Action Regulations
P.L. 1975, C. 127 (N.J.A.C. 17:27)

If awarded a License all applicants will be required to comply with the requirements of P.L. 1975, C. 127 (N.J.A.C. 17:27). Within seven (7) days after receipt of the notification of intent to award the License or receipt of the License, whichever is sooner, the applicant should present one of the following to the Town Clerk.

31. A photocopy of a valid letter from the US Department of Labor that the Applicant has an existing federally-approved or sanctioned Affirmative Action Plan (good for one year from the date of the letter).

OR

32. A photocopy of approved Certificate of Employee Information report

OR

33. An Affirmative Action Employee Information Report (Form AA302)

OR

34. All successful applicants must submit within three days of the signing of the License Agreement and Initial Project Manning Report (AA201) for any License.

**NO FIRM MAY BE ISSUED A LICENSE UNLESS IT COMPLIES WITH THE
AFFIRMATIVE ACTION REGULATIONS OF P.L. 1975, C.127**

The following questions must be answered by all Applicants:

1). Do you have a federally-approved or sanctioned Affirmative Action Program?

YES _____ NO _____

If YES, please submit a copy of such approval.

2.) Do you have a Certificate of Employee Information Report Approval?

YES _____ NO _____

The undersigned certifies that he is aware of the commitment to comply with the requirements of P.L. 1975, C. 127 and agrees to furnish the required documentation pursuant to the law.

COMPANY: _____

SIGNATURE: _____

TITLE: _____

NOTE: An Applicant's proposal must be rejected as non-responsive if the Applicant fails to comply with requirements of P.L. 1975, C. 127

EXHIBIT H

STOCKHOLDER DISCLOSURE CERTIFICATION
This Statement Must Be Included With Proposal Submission

☐ I certify that the list below contains the names and home addresses of all stockholders/partners holding 10% or more of the issued and outstanding stock of the Corporation or 10% or more interest in the Partnership.

OR

☐ I certify that no one stockholder owns 10% or more of the issued and outstanding stock of the Corporation or 10% or more interest in the Partnership.

Check the Box that represents the type of business organization:

- | | | |
|---|--|--|
| <input type="checkbox"/> Partnership | <input type="checkbox"/> Corporation | <input type="checkbox"/> Sole Proprietorship |
| <input type="checkbox"/> Limited Partnership | <input type="checkbox"/> Limited Liability Corporation | <input type="checkbox"/> Limited Liability Partnership |
| <input type="checkbox"/> Subchapter S Corporation | | |

Sign and notarize the form below, and, if necessary, complete the stockholder list below or on an added sheet if necessary.

Stockholders/Partners:

Name: _____
Home Address: _____

Name: _____
Home Address: _____

Name: _____
Home Address: _____

Name: _____
Home Address: _____

Name: _____
Home Address: _____

Name: _____
Home Address: _____

Subscribed and Sworn to
Before me this _____
Day of _____, 20

Affidavit Signature: _____
Print or Type Name: _____
Notary Public of: _____

(Affiant)

(Print name and title of Affiant)

(Corporate Seal)

EXHIBIT I

Affidavit of Foreign Corporation (Licensed)

The undersigned certified that _____
Is a foreign corporation incorporated in the State of _____, whose
principal place of business is _____
And is therefor required to obtain authorization to transact business in the State of New Jersey.

The undersigned Applicant further certifies that said authorization has been obtained and is in effect and the Applicant has a designated statutory agent upon whom process against the Applicant Corporation may be served within the State of New Jersey. The designated statutory agent is

(Place name and address above)

Process served upon the designated statutory agent named above shall be in effect unless the Town of Kearny has been informed, by Certified Mail or its equivalent (return receipt), of a change in the agent upon whom the process can be served.

NOTE: This statement may be reproduced on the Applicant's Letterhead, signed by the authorized Signatory, notarized, and submitted with the Application.

• Any corporation that is not incorporated in the State of New Jersey is a Foreign Corporation.

Subscribed and Sworn to
Before me this _____
Day of _____, 20__

Authorized Agent's Name: _____
Authorized Agent's Signature: _____
Address: _____

Affidavit Signature: _____
Print or Type Name: _____
Notary Public Of: _____
Commission Expires: _____, 20 __

AFFIX SEAL HERE

EXHIBIT J
Non-Collusion Affidavit
(This form may be duplicated – If necessary)

State of New Jersey

County of _____

SS:

I, _____ residing in _____, in the County of _____
and State of _____, of full age, being duly sworn according to law on my oath
depose and say that:

I am _____ of the firm of _____, the Applicant
making this proposal entitled _____, and
that I executed the said Proposal with fully authority to do so; that said Applicant has not,
directly or indirectly entered into any Agreement, participated in any collusion, or otherwise
taken any action in restraint of free, competitive proposals in connection with the above named
project; and that all statements contained in said Proposal and in the Affidavit are true and
correct and made with full knowledge that the Town of Kearny relies upon the truth of the
statements contained in said Proposal and in the statement contained in this Affidavit in
awarding the License.

I further warrant that no person or selling agency has been employed or retained to solicit or
secure such License upon an Agreement or understanding for a commission, percentage,
brokerage, or contingent fee, except bona-fide employees or bona-fide established commercial
or selling agencies maintained by

Subscribed and Sworn to

Before me this _____

Day of _____, 20__

Authorized Agent's Name: _____

Authorized Agent's Signature: _____

Address: _____

Affidavit Signature: _____

Print or Type Name: _____

Notary Public Of: _____

Commission Expires: _____, 20__

AFFIX SEAL HERE

EXHIBIT K
Equipment Certification

The undersigned applicant hereby certifies as follows:

1. The number and type of equipment or vehicle, etc. intended to be used to fulfill all requirements of the contract documents with respect to the scope of work/service are listed, Table 1 and Table 2, and attached hereto.

Note: If the applicant **owns or controls** all the necessary equipment required, complete Paragraph two (2) below. If the applicant **does not own or control** all the necessary equipment required, complete Paragraph three (3) below.

2. The applicant owns or controls all the necessary equipment shown in Table 1 and required to accomplish the work described in the licensing documents during the contract term.

Name of Applicant: _____

By: _____
(Signature)

Name: _____

Title: _____

3. The applicant does not own or control all the necessary equipment required to accomplish the work during the lease term. The equipment actually owned or controlled by the applicant is identified in Table 1.

The remaining equipment required to perform the work described is noted in Table 2 together with the certification of the owner or person in control of such equipment

Name of Applicant: _____

By: _____
(Signature)

TABLE 1

Required Equipment Owned or Controlled by the Applicant

[illegible]

TABLE 2

Required Equipment to be Supplied by Others

[illegible]

EXHIBIT L
Sub-Contractors
(If Applicable)

The undersigned hereby lists the name(s) of the following Sub-Contractor(s):

_____ No Sub-Contractors (check here)

Company Name: _____
Owner Name: _____
Address: _____
Telephone No.: _____ Sub-Contract Amount: _____
Description of Work: _____

Company Name: _____
Owner Name: _____
Address: _____
Telephone No.: _____ Sub-Contract Amount: _____
Description of Work: _____

Company Name: _____
Owner Name: _____
Address: _____
Telephone No.: _____ Sub-Contract Amount: _____
Description of Work: _____

Company Name: _____
Owner Name: _____
Address: _____
Telephone No.: _____ Sub-Contract Amount: _____
Description of Work: _____

The Applicant is advised that any change of Sub-Contractor(s) from the Sub-Contractor(s) listed herein is subject to the Town's approval. Change of Sub-Contractor(s) will be approved only if made for good cause.

Subscribed and Sworn to
Before me this _____
Day of _____, 20__

Authorized Agent's Name: _____
Authorized Agent's Signature: _____
Address: _____

Affidavit Signature: _____
Print or Type Name: _____
Notary Public Of: _____
Commission Expires: _____, 20__

AFFIX SEAL HERE

EXHIBIT M

<p>STATE OF NEW JERSEY BUSINESS REGISTRATION CERTIFICATE</p>
<p>Taxpayer Name:</p> <p>Trade Name:</p> <p>Address:</p> <p>Certificate Number:</p> <p>Effective Date:</p> <p>Date of Issuance:</p>
<p>For Office Use Only:</p>

EXHIBIT N
IRAN CERTIFICATION

I, _____, residing at _____, upon penalty of perjury do
certify to the following statements:

I am the _____ of the business entity submitting this bid and am duly
authorized to execute this document on the business' behalf.

I am not, and the business entity submitting this bid, is not:

providing goods or services of \$20,000,000.00 or more in the energy sector of Iran,
including a person that provides oil or liquefied natural gas tankers, or products used to
construct or maintain pipelines used to transport oil or liquefied natural gas, for the
energy sector of Iran; or

a financial institution that extends \$20,000,000.00 or more in credit to another person,
for 45 days or more, if that person will use the credit to provide goods or services in the
energy sector in Iran.

I certify that the foregoing statements are true. I am aware that if any of the foregoing
statements made by me are willfully false, I am subject to punishment.

Affiant

Print Name

Notary Public

Date:

EXHIBIT O
Kearny Living Wage Ordinance

The Contractor acknowledges its obligation to comply with the Town of Kearny Ordinance No. 2007-(O)-41, as amended, with regard to the payment of Living Wages and the provision of Health Benefits to its employees.

By: _____
(Signature of Authorized Representative)

Name: _____
(Print or Type)

Title: _____

Date: _____

EXHIBIT P

TOWN OF KEARNY

BID DOCUMENT CHECKLIST*

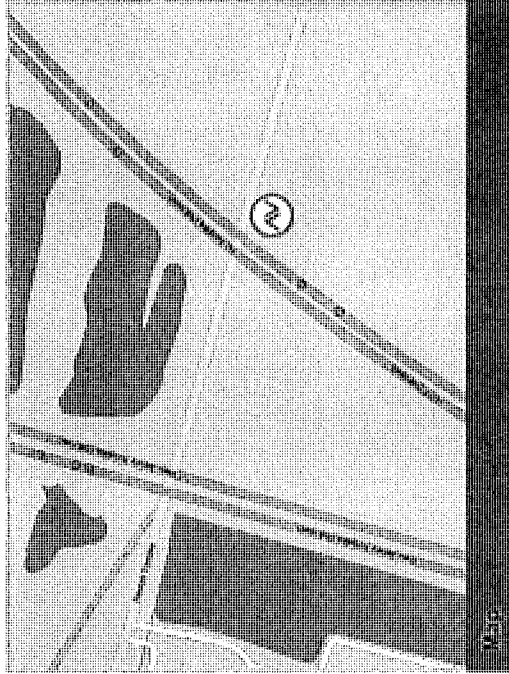
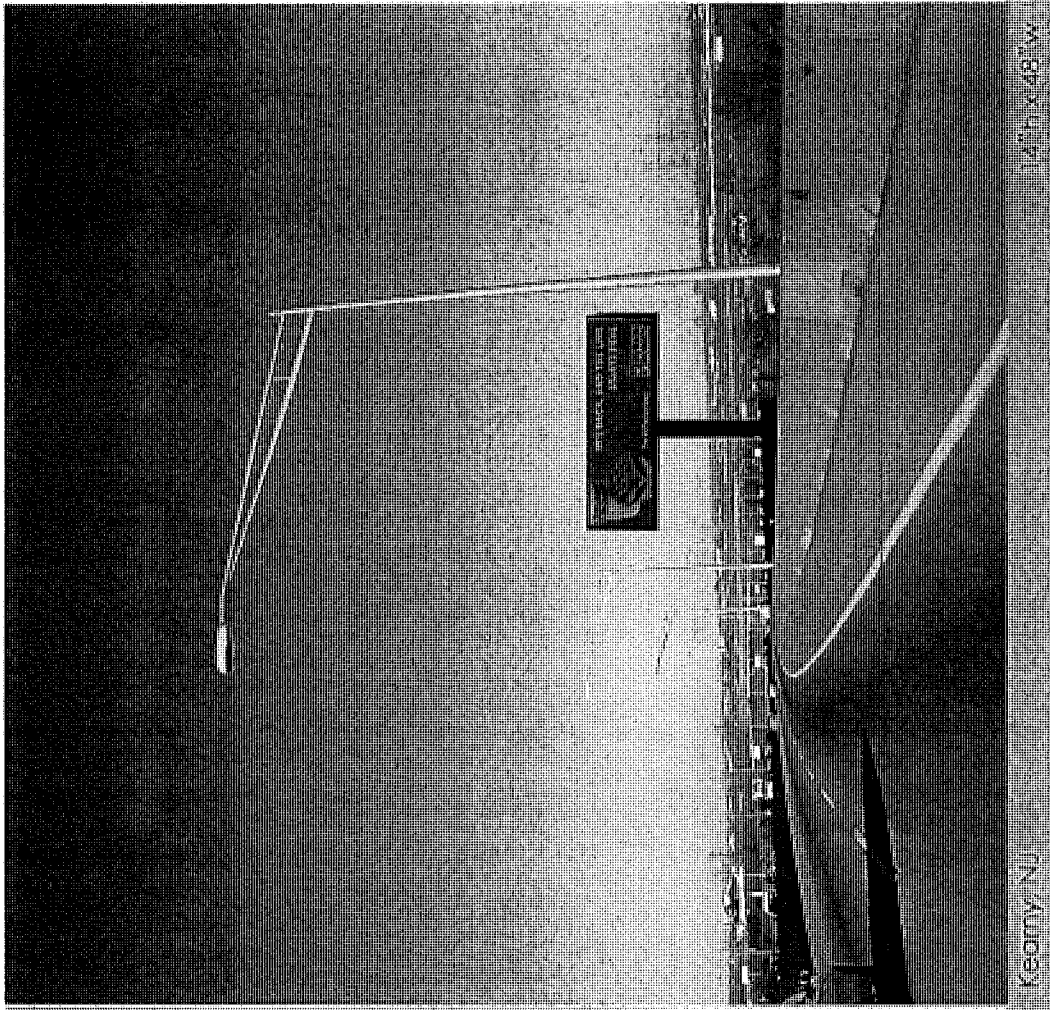
Proposals	
Proposal Certification and Proposal Bond	
Compliance with Specifications or Exceptions	
Successful Completed Contracts within the Last Three Years	
Consent of Surety	
Acknowledgement of Receipt of Changes to Bid Documents Form	
Equal Opportunity Laws, Regulations, and Americans with Disabilities Act	
Stockholder of Partnership Disclosure Statement	
Affidavit of Foreign Corporation (License)	
Non-Collusion Affidavit	
Equipment Certification	
Sub-Contractors (If Applicable)	
Business Registration Certificate	
Iran Certification	
Kearny Living Wage Ordinance	
Proposal Minimums; Up Front Lump Sum Payments, Base License Fee, Percentage Fee	
Document Retention	

*This **form** need not be submitted. It is provided for bidder's use in assuring compliance with all required documentation.



East Side New Jersey Turnpike Eastern Spur MP 108.4 (NB)

EXHIBIT Q



PERMIT #	NEW JERSEY
STATE	KEARNY
TOWN	NORTHBOUND
FACING	EAST SIDE NEW JERSEY TURNPIKE EASTERN SPUR
LOCATION	MP 108.4
ANNUAL REVENUE GUARANTEE	\$ 125,000
PERCENTAGE	30%
MINIMUM LUMP SUM GUARANTEE	\$ 600,000

**All figures are based on two combined digital faces

Town of
Kearny

www.allvision.com



East Side New Jersey Turnpike Eastern Spur MP 108.4 (SB)

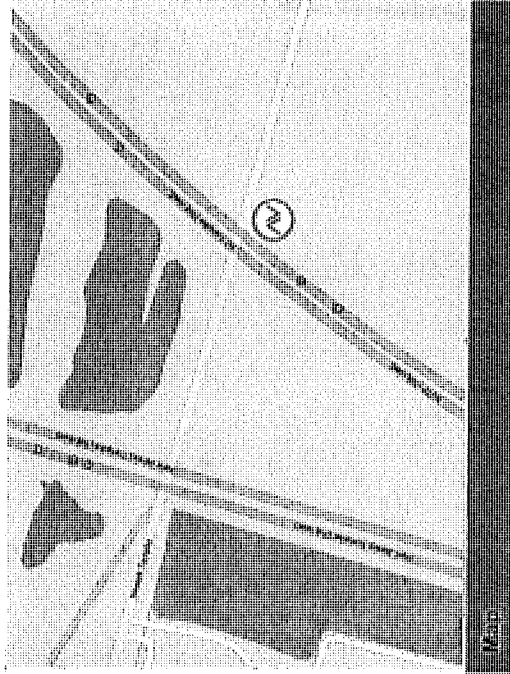
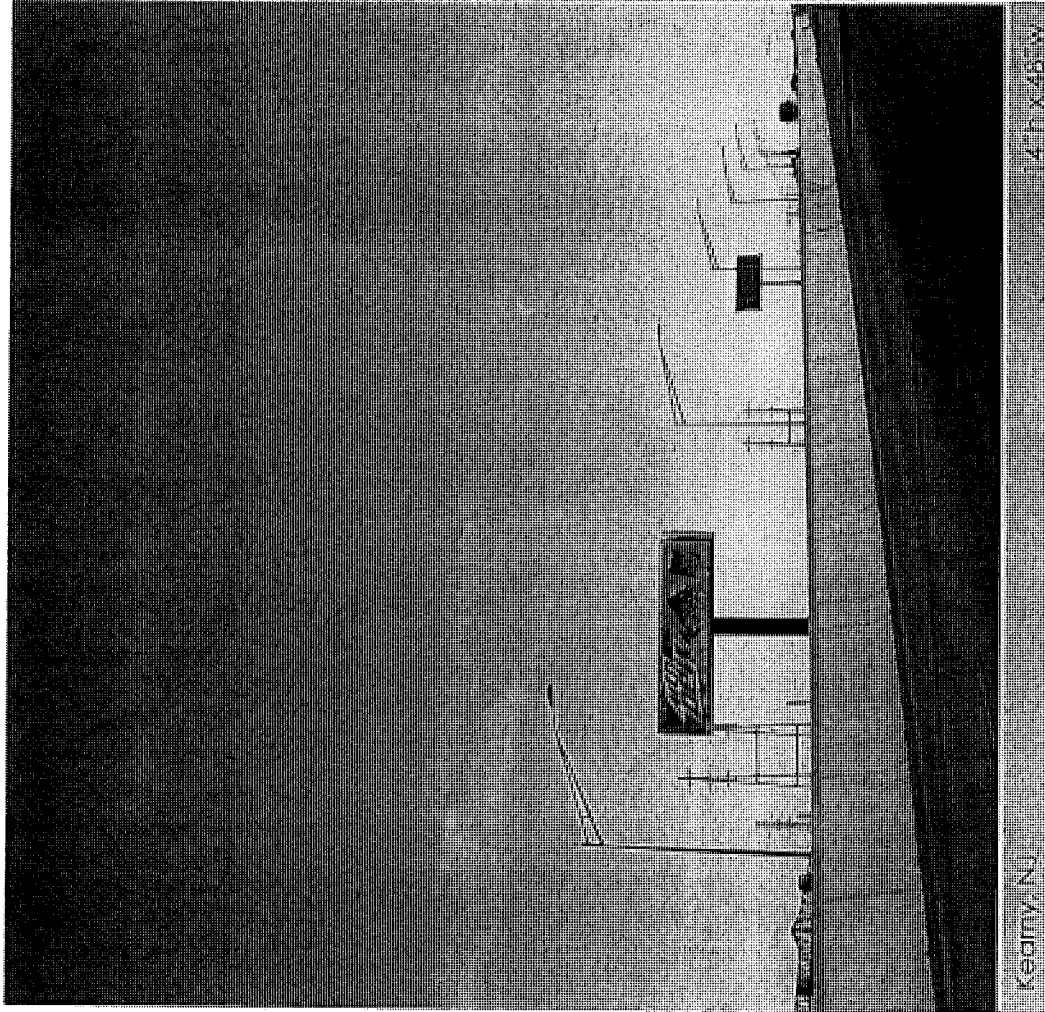


EXHIBIT Q

PERMIT #	
STATE	NEW JERSEY
TOWN	KEARNY
FACING	SOUTHBOUND
LOCATION	EAST SIDE NEW JERSEY TURNPIKE EASTERN SPUR MP 108.4
ANNUAL REVENUE GUARANTEE	\$ 125,000
PERCENTAGE	30%
MINIMUM LUMP SUM GUARANTEE	\$ 600,000

**All figures are based on two combined digital faces

Team of
Kearny

www.allvision.com



West Side New Jersey Turnpike Western Spur MP 108.4 (NB)

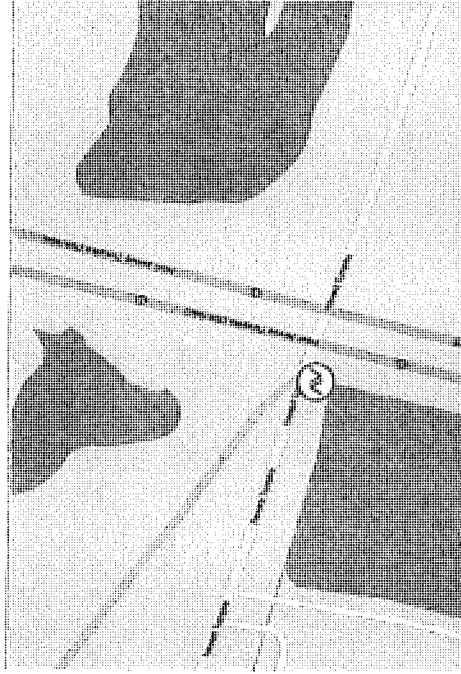
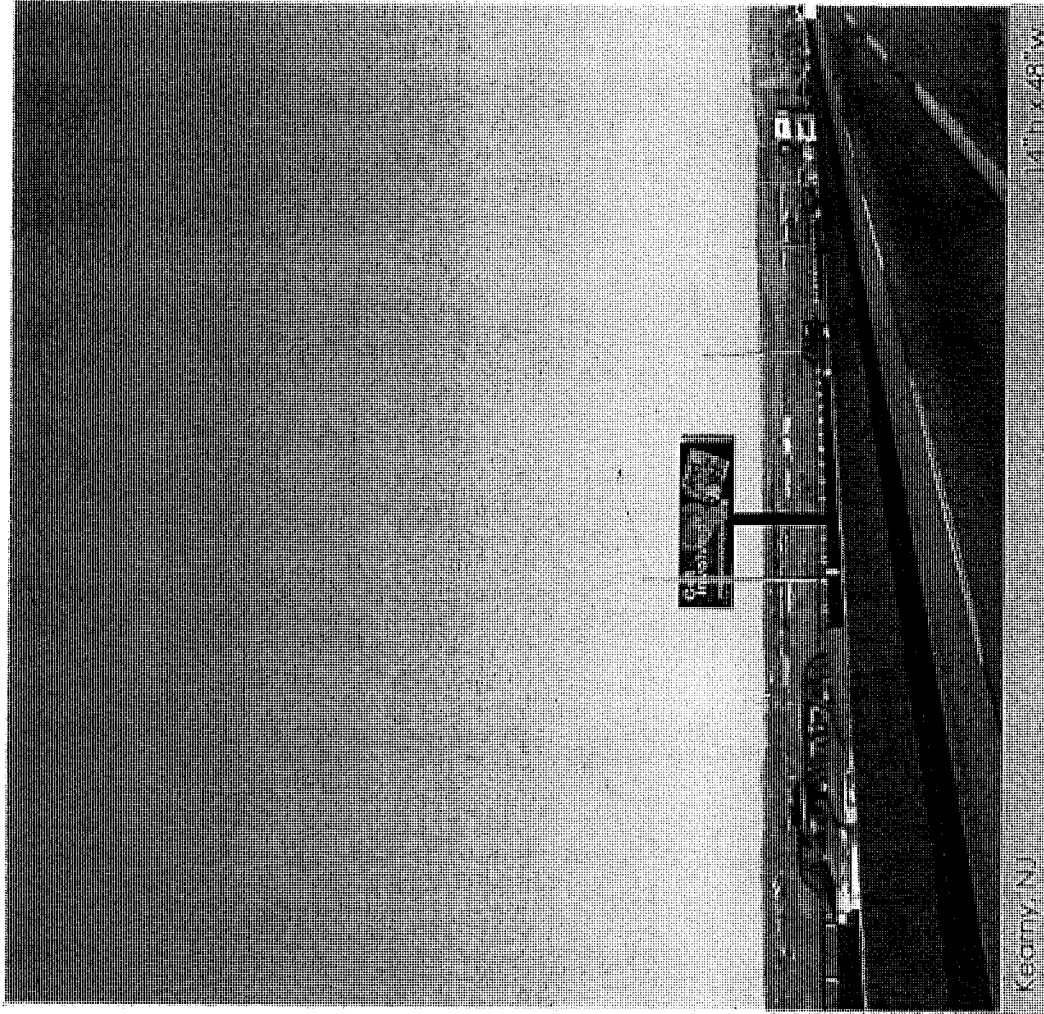


EXHIBIT Q

PERMIT #	NEW JERSEY
STATE	NEW JERSEY
TOWN	KEARNY
RACING	NORTHBOUND
LOCATION	WESTSIDE NEW JERSEY TURNPIKE WESTERN SPUR MP 108.4
ANNUAL REVENUE GUARANTEE	\$ 125,000
PERCENTAGE	\$ 225,000
MINIMUM LUMP SUM GUARANTEE	\$ 600,000

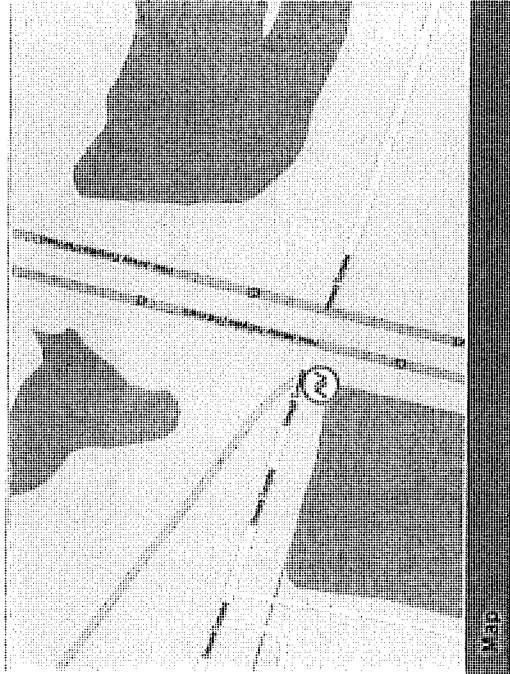
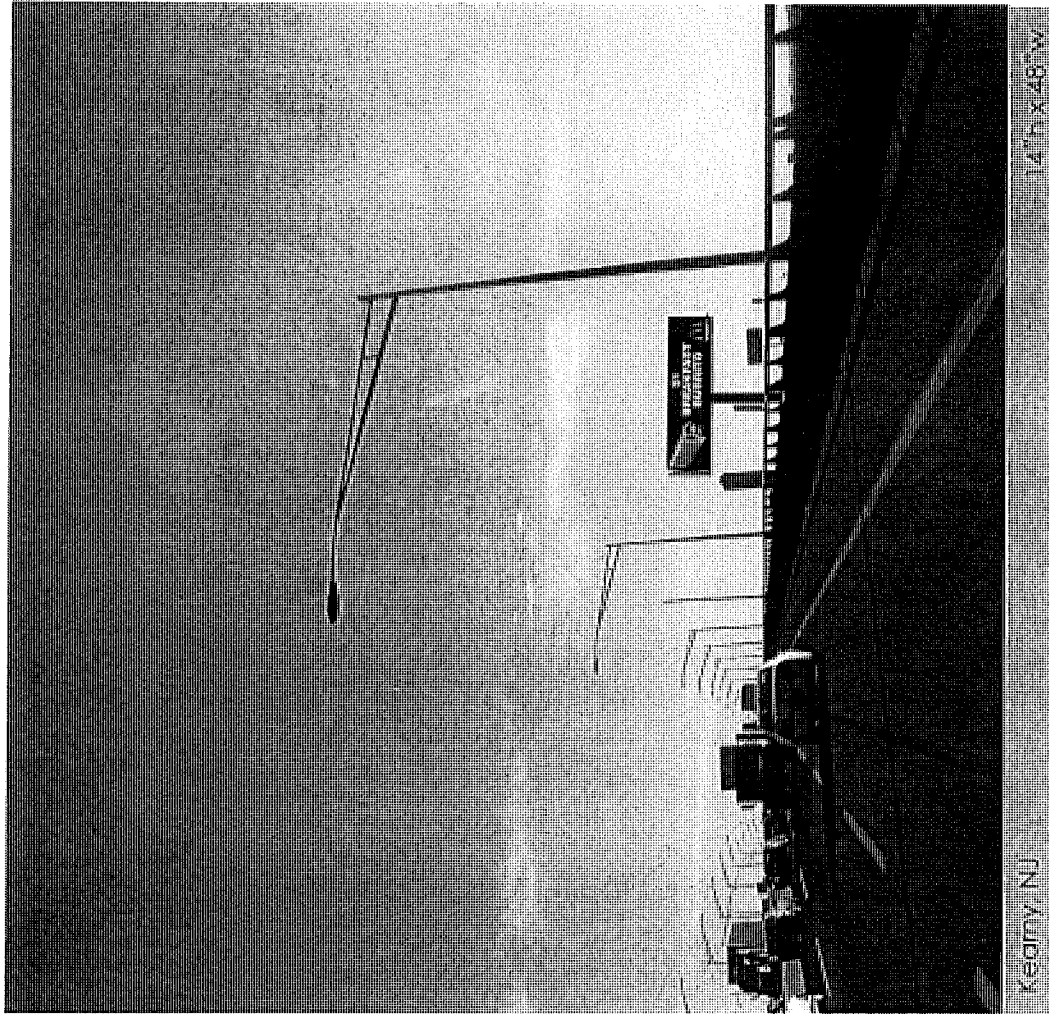
**All figures are based on two combined digital faces

Team of
Kearny

www.allvision.com



West Side New Jersey Turnpike Western Spur MP 108.4 (SB)



PERMIT #	
STATE	NEW JERSEY
TOWN	KEARNY
FACING	SOUTHBOUND
LOCATION	WEST SIDE NEW JERSEY TURNPIKE EASTERN SPUR MP 108.4
ANNUAL REVENUE GUARANTEE	\$ 125,000
PERCENTAGE	30%
MINIMUM LUMP SUM GUARANTEE	\$ 400,000

**All figures are based on two combined digital faces

Team of
Kearny

www.allvision.com

EXHIBIT R

The Licensee shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

SECTION E

OUTDOOR ADVERTISING LICENSE AGREEMENT
(Single Location)

This Outdoor Advertising License Agreement ("**Agreement**") is made and entered into as of the ____ day of _____, 2013 by and between the Town of Kearny, a municipal corporation of the State of New Jersey (the "**Town**"), and _____, a _____ (the "**Licensee**").

The Town owns the Property identified on Exhibits A as the **Sign Location**, which is suitable for the installation and operation of outdoor advertising signs. The Town desires to license the use of the Sign Location for construction and operation of a Sign (defined below).

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Town and Licensee agree as follows:

The Town hereby grants to Licensee, for the Term, subject to the terms and conditions of this Agreement, a License upon the sign location (i) to install, maintain, repair and operate a Sign in and on the Sign Location, (ii) to install, maintain, repair, replace and operate such wires, cables, conduits, electrical and telecommunications connections, and other equipment as are reasonably necessary to affix the Sign to the Sign Location and to provide power, telecommunications and electronic controls to the Sign (the "**Related Equipment**," and together with the Signs, the "**Facilities**"), and (iii) to have ingress and egress to the Sign Location over the surrounding Property, subject to the Town's safety and security policies, rules and regulations, to the extent reasonably necessary for Licensee to take the actions described in the foregoing provisions. However, if ingress and egress is over property which is privately owned, Licensee will have to obtain rights of ingress and egress directly from the owner of that property at its own cost and expense.

In consideration of the foregoing, Licensee shall perform and pay all obligations to be performed or paid by it hereunder.

General Terms and Conditions

1. **Use.** The Sign Location shall be used by Licensee only for the purposes hereinbefore set forth in this Agreement. Licensee, at its sole cost and expense, shall at all times during the Term, and during any use of the Sign Location beyond the Term, comply with (i) all applicable laws, statutes, codes, ordinances and regulations of federal, state, county and municipal authorities and any other governmental entity with jurisdiction (collectively, "**Applicable Law**"), (ii) all permits, licenses and approvals issued by governmental authorities relating to the Sign Location (regardless of what name the permits are issued in), and (iii) all applicable requirements of all insurance carriers who insure any risk with respect to the Property. Licensee shall not use the Sign Location for any purpose or in any manner that violates Applicable Law.

2. **No Interest in Land.** The rights granted by the Town to Licensee in this License consist only of permission to use the land (provided, however, that this permission shall not relieve the Licensee of the obligation to apply for and obtain any construction permits or approvals that are required from the Town, including those set forth in Section 8 of this Agreement.) Neither this Agreement nor the conduct of the Parties under this Agreement shall in any event be construed to grant Licensee a leasehold interest, easement interest or other real property interest of any kind in the Sign Location or any other property of the Town. This is not an agreement for the provision or performance of any goods or services pursuant to N.J.S.A. 40A:11-4.

3. **Access.** Licensee's access to the Sign Location shall occur at such time and in such manner as not to interfere with the Town's operations or any other use of the Property and subject to the Town's and All Vision's reasonable rules and regulations in effect from time to time; provided that in any event Licensee shall give the Town and All Vision not less than 48 hours prior notice of any access to the Sign Location except in cases of emergency posing a risk of personal injury or property damage or in circumstances in which the Town or All Vision has directed Licensee to act.

4. **Installation and Maintenance.**

4.1 **Generally.** Licensee shall Maintain the Facilities at its sole risk and expense in a good and workmanlike manner as a prudent owner of such property would, all in accordance with Applicable Law and this Agreement. Licensee shall ensure that the Facilities (i) remain in a clean and safe condition and are maintained and promptly repaired at all times, and (ii) will not impede or interfere with the use or operation of the Premises for the Town's or All Vision's regular operations. Licensee shall protect walls, duct lines, drainage lines and all other facilities located on the Premises against any damage caused by the Facilities or work related to the Facilities. Licensee shall be responsible for all necessary or required underground locates, utilities, fiber optic cables, flagging, traffic control, and other safety measures and apparatus. As used herein, "Maintain" means, as applicable, construct, install, paint, service, repair, alter, maintain, reconstruct, reinstall, enlarge, replace, upgrade or remove.

4.2 **Time.** If any new Sign is to be constructed, Licensee shall be responsible to construct the same at its sole cost and expense in accordance with this Agreement within 90 days after issuance of the Town construction permits as provided in Section 8.3 and all other required permits and approvals. If because of circumstances beyond the reasonable control of Licensee, Licensee fails to complete construction within such 90 day period but has begun substantial construction within such period, the Town shall permit Licensee to continue work to complete construction provided that Licensee shall diligently and continuously pursue construction to completion.

4.3 **Contractors and Insurance.**

4.3.1 At least 10 days before commencing any work to construct the Facilities, Licensee shall give the Town and All Vision notice identifying and listing the addresses

and telephone numbers of Licensee's general contractor and any subcontractors for installation of the Facilities and shall furnish the certificates of insurance and endorsements evidencing that each such contractor and subcontractor has the insurance coverage required of contractors by the Town's rules and regulations then in effect, and in the absence of any such rules or regulations, at least the same insurance coverage required of the Licensee under this License, including all required additional insured coverage and waivers of subrogation.

4.3.2 All construction, maintenance and repair work relating to the Facilities shall be performed in accordance with this License and in accordance with the Town's and All Vision's rules, regulations and policies for work performed on the Property as in effect from time to time. All warranty agreements with respect to the Facilities shall identify the Town and Licensee as beneficiaries thereof. Licensee shall not use any contractor or subcontractor to whom the Town or All Vision objects. All necessary lane closings or traffic management issues shall be subject to the Traffic Permit and/or License to Cross required by Section 8.6, and Licensee shall bear all costs thereof. Licensee shall coordinate with All Vision and the Town prior to engaging in any such work.

4.3.3 Licensee's contractors and their subcontractors shall be subject to the Town's prior approval and shall meet all insurance and other regulatory requirements under this Agreement or required by Applicable Laws.

4.4 **Specifications.**

4.4.1 Licensee shall submit drawings and specifications identifying the proposed locations for all Facilities and depicting in detail satisfactory to the Town and All Vision the equipment that will be installed and the location and manner of its installation, and the Town and All Vision shall be entitled to approve or disapprove the same in their sole discretion prior to any installation of such equipment. All specifications shall conform to any specifications and descriptions of the Facilities provided in this Agreement.

4.4.2 Without limiting the generality of the foregoing paragraph, Licensee shall not perform any construction, excavation or demolition until all construction plans and specifications for such work are approved by the Town's Engineer and Code Enforcement Officer. All construction must be in accordance with the Town's Code and applicable rules and regulations. Licensee shall not materially alter any outdoor advertising structure constructed from the approved plans and specifications without the Town's express written consent.

4.5 **Wireless Equipment and Other Equipment.** Licensee shall not install any wireless telecommunications equipment or traffic management equipment in the Sign Location. Licensee hereby grants the Town an exclusive license for the Term of this Agreement to install wireless telecommunications equipment and traffic management equipment on the Sign and Related Equipment, at its sole expense. Such license is assignable to third parties by the Town in its sole discretion independent of any other interest the Town might have in this Agreement and independent of the Town's real property interest in the Sign Location. In

exercising the license rights granted in this paragraph, the Town or its assignee will undertake the obligation to indemnify Licensee and hold Licensee harmless against any property damage done to any Facilities that may occur as an incident of the installation of the wireless telecommunications equipment, traffic management equipment or both.

4.6 Noise Generating Equipment and Other Nuisances. No bullhorns, loudspeakers or other noise generating apparatus shall be placed on the Sign Location. Licensee shall not use the Facilities, or permit them to be used, in a manner that creates a nuisance.

4.7 No Liens. Licensee shall not at any time cause or permit any lien or encumbrance of any kind to affect the Property. If any mechanics' lien is filed or claim of lien made for work done or materials furnished to the Sign location, Licensee shall, at its expense, cause the lien or claim to be discharged within 15 days thereafter. If Licensee does not timely cause such lien or claim to be discharged, the Town or All Vision may discharge the lien or claim, and the amount paid to do so, as well as attorneys' fees and other expenses incurred by All Vision or by the Town, if either of them is involved in obtaining the discharge, shall be due and payable by Licensee on demand. The Town and All Vision shall have no duty to investigate or evaluate the validity or merit of such lien or claim before discharging it, and the ultimate validity, invalidity or merit of such lien or claim shall have no effect on Licensee's obligation to pay the Town's or All Vision's costs and expenses of discharging the same.

5. Ownership; Return or Removal.

5.1 Existing Signs. The parties acknowledge that there are no existing Signs at the Sign Location.

5.2 Ownership of Facilities; Security Agreement. During the Term, all Facilities installed by Licensee shall remain the personal property of Licensee, provided, however, that Licensee may remove Facilities only as expressly provided in this Agreement or otherwise authorized by the Town in a signed written instrument. Licensee grants and warrants to the Town a first priority lien and security interest in the Facilities as security for the obligations of Licensee under this Agreement. This Agreement shall constitute a security agreement under the Uniform Commercial Code. The Town and All Vision are each irrevocably authorized to execute (on Licensee's behalf, if execution by Licensee is required), file and record any financing statements appropriate to give public notice in accordance with the Uniform Commercial Code of the Town's security interest in the Facilities. Licensee shall not pledge or encumber its interest in any Facilities to any third party without the prior written consent of the Town and All Vision, which the Town and All Vision shall not unreasonably withhold (but which the Town may condition on, among other things, the Lender's agreement to subordinate its security interest to that of the Town).

5.3 End of Term.

5.3.1 The Licensee shall, at its own expense and within 90 days after the effective date of the termination of this Agreement, remove the Sign and all other Facilities and restore the Sign Location to its condition existing before the installation of the Facilities. Licensee shall take and keep photographic records of the condition of the property before the installation of the Sign and after restoration of the Sign Location and promptly provide copies of such photographs to the Town and All Vision. Within 30 days after the effective date of termination, Licensee shall submit written demolition procedures, signed and sealed engineering plans, building permit applications and fees for demolition plan review and permits, crane calculations and any and all other documents reasonably required by the Town and All Vision.

5.3.2 If Licensee fails to timely remove the Facilities within the 90-day period, the facilities shall be deemed abandoned, and the Town (or All Vision acting on behalf of, and with the consent of, the Town) at its option and without prejudice to any other rights and remedies that may be available to the Town and All Vision under this Agreement, may, (but shall not be required to) at Licensee's expense, remove and dispose of such Facilities or make such other use of the Facilities as the Town in its sole discretion may determine, and Licensee shall have no further claim to the Facilities as against All Vision or the Town. If the Town elects to remove such Facilities, Licensee shall reimburse the Town and All Vision all of the Town's and All Vision's actual direct costs therefor, together with a fee of 50% of such costs to compensate the Town and All Vision for their overhead and administrative costs incurred in connection with such removal. If the Town elects to retain and use the Facilities, Licensee shall be deemed to have conveyed the applicable Facilities to the Town and to have warranted the title to the Facilities, and Licensee shall defend the Town against claims of title to the Facilities asserted by anyone claiming by, through or under Licensee. Such provisions shall be self-operative, but upon demand, Licensee shall execute such further documents as the Town or All Vision may request to confirm the transfer of ownership of the Facilities to the Town. Licensee shall hold the Town and All Vision harmless from, and indemnify and defend the Town and All Vision against, all claims, liabilities, obligations, losses, expenses, and costs (including attorneys' fees and costs) arising out of or related to such removal, disposition or other use. All Vision's and the Town's remedies provided in this paragraph for Licensee's failure to remove Facilities in accordance with the Town's or All Vision's notice shall be in addition to any other remedies to which All Vision and the Town may be entitled under this Agreement, at law or in equity.

5.4 **Transferable Development Rights.** All transferable development rights that may relate to the use of the Sign Location for outdoor advertising under Applicable Law, including square footage rights, rights to aggregate sign square footage, or "trade-up" rights that may exist under Applicable Law, shall belong to the Town. Upon the removal of any Sign from the Sign Location, the Town shall retain all such rights relating to the Sign. Upon demand, Licensee shall execute any instruments necessary to confirm such ownership in the Town.

5.5 **Documentation.** In the event Licensee fails to execute any documentation required by this Section 5 when and as required by this Agreement, the Town or All Vision shall be entitled (but not required) to execute such documents for and on behalf of Licensee and are hereby appointed Licensee's attorney in fact for the purposes of executing such documents. The power of attorney granted by the foregoing sentence is coupled with an interest and shall be irrevocable. Further, in addition to any other remedies to which the Town or All Vision may be entitled under this Agreement, at law or in equity for Licensee's failure to execute such documentation, the Town or All Vision shall be entitled to an order for specific performance of such obligations by Licensee or other injunctive or mandatory relief.

6. **Fees.** As used herein, "**License Fee**" means, collectively: (i) the Lump Sum Payment, (ii) Base License Fee, (iii) Percentage Fee and (iv) Holdover Fee, if any.

6.1 **Up Front Lump Sum Payment.**

[The following version of 6.1.1 shall appear only in the First License Agreement Issued]

6.1.1 Upon the mutual execution and delivery of this Agreement, Licensee shall in a Lump Sum Payment in the amount set forth on Exhibit A as follows: (i) \$45,000 to All Vision; (ii) 65% of the balance of the Lump Sum Payment to the Town directly; and (iii) 35% of the balance of the Lump Sum Payment to All Vision directly. The Lump Sum Payment is not a deposit and shall be nonrefundable except as otherwise provided herein. Licensee shall receive credit against the Lump Sum Payment for the 10% proposal guarantee required and submitted (only for the amount actually paid if the amount was not 10%) with its proposal in response to the RFP if such guarantee was made by cashier's or certified check or cash.

[In All Subsequent License Agreements, Section 6.1.1 shall read as follows]

6.1.1 Upon the mutual execution and delivery of this Agreement, Licensee shall make a Lump Sum Payment in the amount set forth on Exhibit A as follows: (i) 65% to the Town directly; (ii) 35% to All Vision directly. The Lump Sum Payment is not a deposit and shall be nonrefundable except as otherwise provided herein. Licensee shall receive credit against the Lump Sum Payment for the 10% proposal guarantee required and submitted (only for the amount actually paid if the amount was not 10%) with its proposal in response to the RFP if such guarantee was made by cashier's or certified check or cash.

6.1.2 If Exhibit A provides that the Lump Sum Payment is divided into two installments, then (a) half of all of the amount as allocated in 6.1.1 shall be due upon mutual execution and delivery of this Agreement, and (b) the other half of the amount as allocated to in Section 6.1.1 shall be due upon the Commencement Date.

6.1.3 If the Initial Proposal Guarantee made by Licensee was made in cash or by cashier's or certified check the Initial Proposal Deposit paid by Licensee when Licensee submits its proposal in response to the RFP shall be applied as allocated in Section 6.1.1 to the initial installment of the Lump Sum Payment. If Licensee paid one Initial Deposit on

account of proposals for multiple license agreements and enters into more than one license agreement with the Town, the Initial Deposit shall be divided evenly among the initial lump sum payments due under all of the agreements. The Initial Deposit shall be allocated as set forth in Section 6.1.1.

6.2 Base License Fee.

6.2.1 Licensee shall pay the Town and All Vision the Base License Fee¹ for each year in advance on or before the first day of each License Year as follows: (i) 75% to the Town of Kearny directly and (ii) 25% to All Vision directly.

6.2.2 The scheduled annual Base License Fee amount assumes a 12 calendar month License Year. If the Commencement Date does not fall on the first day of a calendar month, or if Licensee displays advertising on the Sign before the Commencement Date (which it shall do only with the Town's consent, which the Town may withhold in its sole discretion), Licensee shall pay an additional Base License Fee for the partial month from the Commencement Date or the date advertising is first displayed on the Sign (whichever first occurs) until the end of that calendar month at the rate scheduled for the first License Year, prorated on a daily basis, and the initial License Year for calculation of Percentage Fee under Section 6.3.1 shall include such additional partial month. The payment shall be allocated and paid as set forth in Section 6.2.1.

6.2.3 If the Base License Fee is adjusted in the middle of a License Year pursuant to any provision of this License, then Licensee shall pay any incremental Base License Fee due for the period from the date of adjustment to the end of that License Year within 30 days after the date of adjustment (unless another provision of this Agreement provides for a different time for payment, in which event that time period will apply). The payment shall be allocated and paid as set forth in Section 6.2.1.

6.3 Percentage Fee.

6.3.1 **Report and Payment.** Within 30 days after the end of each License Year, Licensee shall deliver to the Town and All Vision (i) an itemized report of all Gross Revenue received by Licensee during the applicable License Year for the Sign (the "Revenue Report"), (ii) Licensee's computation of the Percentage Fee for the applicable License Year, and (iii) payment of the Percentage Fee as allocated in Section 6.2.1. Licensee shall submit with the Revenue Report a copy of each contract to which each item of Gross Revenue and each deduction is used to calculate Net Revenue, defined term.

¹ This is the amount that will have been proposed or bid by the successful RFP applicant and accepted by the Town.

6.3.2 Calculation. The Percentage Fee for each License Year shall be computed according to the following formula:

(a) Multiply (i) the Percentage Rate for the License Year by (ii) the total Net Revenue for the same License Year; then

(b) Subtract from the result the total Base License Fee paid for that License Year. If the result is negative, no Percentage Fee shall be due for that License Year. In no event shall any refund or other payment be due from All Vision or the Town in the event the result of this calculation is negative.

6.3.3 Revenue Received After Term. If Licensee receives Gross Revenue after the end of the Term on account of the operation of the Sign during the Term or any advertising use of the Sign during the removal period specified in Section 5.3.1, then such Gross Revenue shall be allocated to the final License Year of the Term. Within 30 days after the end of every six month period after the end of the Term for so long as Gross Revenue is received on account of any Sign, Licensee shall submit an updated Revenue Report for the last License Year of the Term including the additional Gross Revenue received, an updated calculation of the Percentage Fee for the last License Year of the Term, and payment of any additional Percentage Fee that may be due allocated as set forth in Section 6.2.1.

6.4 Interest. Amounts not paid when due hereunder shall bear interest from the date due until paid at the rate of the lesser of (i) 18% per annum or (ii) the maximum amount permitted under Applicable Law. The interest shall be allocated as set forth in Section 6.2.1.

6.5 Governmental Fees. Licensee covenants to pay to all governmental departments, bureaus or authorities having jurisdiction over the Premises, all fees and charges for all licenses, permits, privileges, inspections, maintenances, uses and any and all charges incidental to or which may be necessary to and/or for Licensee's use of the Premises, or any part thereof, under any present or future law with respect to the construction and display of the Signs.

6.6 After Term - Holdover. For *each day* following the expiration or other termination of the Term and the removal period specified in Section 5.3.1 during which Licensee holds over its use of the Sign Location, Licensee shall pay a fee computed as 200% of the sum of all of the following amounts with respect to each applicable Sign Location: (i) the average daily Base License Fee for the year preceding termination, plus (ii) the average daily Percentage Fee for the year preceding termination, plus (iii) 0.11% of the Lump Sum Payment. Payment of such amounts shall not entitle Licensee to the continued use of the Sign Location or Facilities and shall not be deemed to cure any default hereof. By way of example, and without limiting the generality of the foregoing provisions, Licensee shall be obligated to pay the amounts provided in this paragraph in the event this Agreement is terminated and Licensee thereafter continues to use the Sign Location or by any other means (including legal process) prevents, limits or restrains the Town's use of the Sign Location and/or the Facilities, including

any such circumstances occurring while Licensee is contesting such termination or any provision hereof relating to the ownership, retention, transfer or removal of any Facilities, and including any delay by Licensee in executing any document reasonably requested by the Town or All Vision to confirm a transfer of such Facilities. The holdover fee shall be paid as allocated in Section 6.2.1.

6.7 Gross Revenue. “**Gross Revenue**” means all amounts actually received by Licensee on account of the Signs, including without limitation: (a) any and all revenue received by Licensee that is attributable to any media placed or displayed upon the Signs during the Term; (b) any and all commissions, fees and any other form or share of revenue or compensation which is paid, payable, credited or otherwise attributable to Licensee related to any media displayed on the Signs; and (c) any other revenue received by Licensee on account of the Sign. In the event that any media is sold, placed or displayed on any Sign as part of an advertising package, incentive, or otherwise provided as part of, or with, any discount or price reduction, then Gross Revenue hereunder shall also include the highest rate paid for any such media contained within, or which otherwise comprises, any portion of such package, incentive, or to which any such discount or price reduction may relate, regardless of the form or actual location of the display of such media. In addition, in the event that Licensee receives any revenues with respect to the Signs after the expiration or termination of the Term which relate to payments by third parties for the use of the Signs during the Term (including any amounts due under media contracts, commissions, etc. paid in arrears or otherwise received after the end of the Term), such amounts shall be deemed to have been received by the Town during the last License Year of the Term for purposes of computing Gross Revenue.

6.8 Net Revenue. “**Net Revenue**” means Licensee’s Gross Revenue from the sale of advertising on each Sign less any applicable customary commission or fee paid on account of advertising contracts, provided that such agency fee shall not exceed 16.67% of the value of the applicable contract.

6.9 Audit.

6.9.1 Both All Vision and the Town shall be entitled, by notice given at any time before the expiration of seven years after the end of the Term, to examine and audit all the books and records of Licensee relating in any way to the ownership, maintenance and operation of Facilities and any media displayed on any Sign, including without limitation (i) all payments received or made by Licensee, (ii) all agreements to which Licensee may at any time be a party, and (iii) any other records relevant to the determination of Gross Revenue, Net Revenue and Percentage Fees under this Agreement, as well as any records and books of any company which is owned or controlled by the Licensee, or which owns or controls the Licensee, if that company performs services similar to those performed by the Licensee anywhere in the State of New Jersey. All Vision and the Town may conduct such audits using their own employees, a management agent or consultant or an independent accountant. Licensee shall provide All Vision and the Town access to such books and records upon not less than five days prior written notice, and shall make such books and records available to All Vision and the Town

at the Kearny Town Hall. If any such audit requires the Town's or All Vision's officers, employees and representatives to travel outside the State of New Jersey to the Licensee's principal place of business where the Licensee's records and books are maintained, then the Licensee shall bear the additional cost of the audit and related travel and lodging expenses.

6.9.2 If such audit reveals a discrepancy in the Percentage Fee of 5% or less, the Parties will each pay for their own cost and expense incurred in connection with the audit process. If the audit reveals an overstatement of the Percentage Fee of more than 5%, All Vision and the Town shall reimburse the Licensee, for the reasonable out-of-pocket cost and expense of the Licensee for undertaking such audit process. If the audit reveals an understatement in the Percentage Fee of more than 5%, Licensee shall pay the Town and All Vision the amount of such discrepancy allocated as set forth in Section 6.2.1 and the reasonable out-of-pocket cost and expense of the Town and All Vision for undertaking such audit process.

6.10 **All Vision's and Town's Expenses.** Licensee shall reimburse the Town's and All Vision's third party expenses in connection with engineering, state, and local review and approvals and other site development work for the Sign Location simultaneously with the mutual execution and delivery of this Agreement.

7. Advertising.

7.1 Prohibited Media; Approvals.

7.1.1 Licensee shall submit all proposed advertising copy to the Town and All Vision for review and approval, and shall not display on the Sign any advertising copy that has not been specifically approved by the Town and All Vision. All Vision shall review advertising copy for conformance to the advertising policies of the Town, as in effect at that time, and the provisions of Section 7.1.2 below. All Vision is not a government entity, and its interpretation and application of the Town's policies, rules and regulations shall not be binding on the Town.

7.1.2 Licensee shall not display or allow to be displayed on the Signs any of the following kinds of media:

- (a) advertising for any product or service that is prohibited under Applicable Law;
- (b) advertising for any product or service that contravenes or conflicts with All Vision's or the Town's policies, rules and regulations as they may be in effect from time to time;
- (c) advertising for any tobacco or sexually-related products or services; and
- (d) political advertising unless it has first been approved by the Mayor and Council of the Town.

7.1.3 Licensee shall not install on the Sign any three-dimensional props or dummies without the prior written consent of the Town, which it may withhold or condition in its sole discretion.

7.2 **Removal of Prohibited Media.** Licensee shall, within 24 hours after written demand from the Town or All Vision, at Licensee's risk and expense, remove any advertising material that is prohibited by this Agreement. If Licensee fails to promptly remove such advertising, the Town or All Vision may (but shall not be required to), without further process of law, remove the advertising or, if the applicable Sign is a digital electronic sign, shut down electric power and/or telecommunications lines to such Sign and/or any Related Equipment that controls the media displayed on the Sign. Licensee shall reimburse the Town's or All Vision's costs for such actions upon demand and shall bear the risk of any damage to the Facilities resulting from such actions. The Town or All Vision may exercise such remedies without prejudice to any other remedies it may be entitled to exercise under this Agreement or at law or in equity.

8. **Approvals, Permits and Taxes.**

8.1 The Facilities shall be subject to the Town's and All Vision's approval prior to installation thereof and at a minimum shall comply with all Applicable Laws and permits and approvals, as well as industry standards for best operating practices and safety.

8.2 The Sign Location may be the subject of one or more Outdoor Advertising Permits ("**Outdoor Permit**") issued by the New Jersey Department of Transportation's Bureau of Outdoor Advertising ("**NJDOT**"). The Outdoor Permit shall be held in the name of the Town. All Vision shall obtain the Outdoor Permit in the name of the Town and provide a copy to Licensee. All Vision, the Town and Licensee shall cooperate to provide any information and attend any hearings required by NJDOT for the issuance or maintenance of the Outdoor Permit. Licensee shall keep the Sign Location in compliance with the Outdoor Permit and reimburse All Vision or the Town for the annual fee charged by NJDOT for the Outdoor Permit.

8.3 The Sign is subject to the jurisdiction of the Town's Construction Code Enforcement Department with respect to compliance with the Town's implementation of the Uniform Construction Code. Licensee shall pay for all plan reviews, permit and inspection fees charged by the Code Enforcement Department in connection with the Sign. If All Vision or the Town incurred costs related to a permit application or other governmental approvals for construction of the Sign before the execution of this Agreement or incur such costs thereafter, Licensee shall reimburse such costs no later than the Commencement Date. Licensee shall apply for all required building and construction permits within 60 days after the execution of this Agreement.

8.4 Notwithstanding anything to the contrary in this Agreement, after Licensee has constructed any Sign, Licensee shall not at any time alter (including, by way of example and not limitation, conversion of the Sign display from static to digital, tri-vision or

movable, or adding, removing or enlarging sign faces), reconstruct or remove any Sign without the prior written consent of the Town, which the Town shall not unreasonably withhold.

8.5 Additional Provisions Regarding Permits.

8.5.1 All permits, approvals, consents or licenses shall be issued and held in the name of the Town unless the Town specifically directs otherwise in writing.

8.5.2 Upon request originals or copies of issued permits shall be promptly furnished to the Town and All Vision by Licensee. The Town and All Vision have no obligation to consent to, authorize, approve or assist in any matter referred to in this Section 8 which they determine, acting within their sole discretion, would negatively affect the status or zoning of any of All Vision's or the Town's property or All Vision's or the Town's reputation. Further, if All Vision or the Town determines, each in its sole discretion, that the issuance of the required approvals or construction of the Sign would negatively affect the status or zoning of any of All Vision's or the Town's property or All Vision's or the Town's reputation, either of them may terminate this Agreement by notice to the Licensee, in which event the Initial Deposit and any other amounts paid to the Town or All Vision by the Licensee under this Agreement shall be refunded (unless the termination is on account of failure to obtain permits for a Replacement Location, in which event the amount of any refund shall be governed by Section 15.6) and the Parties shall have no further obligations under this Agreement except those, if any, which expressly survive its termination.

8.5.3 If any permits required for construction and operation of the Signs have not been issued as of the execution of this Agreement, Licensee shall, at its cost, submit its applications therefor within 60 days after the mutual execution and delivery of this Agreement.

8.5.4 If Licensee is not able within 120 days after submission of its application in the exercise of its best efforts to obtain all necessary approvals and permits for a Sign that this Agreement requires it to obtain, All Vision may, but will not be required to, seek such approvals and permits. If All Vision does not desire to seek such approvals and permits or is unable to obtain the same within 90 additional days, either Party may thereafter terminate this Agreement as to the applicable Sign Location by notice to the other with the effect provided in Section 15.6 below unless all necessary approvals and permits are first obtained.

8.6 Licensee shall obtain a Traffic Permit and/or License to Cross from the Town, in accordance with Town procedures, prior to commencing construction of any Facilities.

8.7 Licensee shall pay, on or before the date on which such amounts are due, any and all fees, charges, taxes, levies and assessments ("**Sign Taxes**") that may be charged, levied, assessed or imposed by any governmental agency with jurisdiction upon the Signs or upon the Property as a result of the installation and/or presence of the Signs thereon (excluding, for greater certainty, any real estate taxes), regardless of whether Licensee owns such Signs. Licensee shall indemnify and save the Town and All Vision harmless from and

against any and all such Sign Taxes, whether charged, levied, assessed or imposed against the Town, All Vision, Licensee or any other party. Licensee agrees to pay or collect any and all taxes payable in connection with this Agreement, including, but not limited to, taxes payable or collectable on the License Fee (except for state or federal taxes on the net income of the Town and All Vision).

9. **Maintenance and Repair.** Licensee shall, at its cost, at all times keep the Facilities in a first class, clean and safe condition and state of repair in accordance with this Agreement. Promptly upon receipt of notice that any Sign is not being maintained to the Town's satisfaction, Licensee shall, at its sole cost and risk, immediately take all action required to bring the Signs into conformance with this Agreement. In the event Licensee fails to comply with its obligations provided in this Section, the Town (or All Vision, acting on behalf of, and with the consent of, the Town) may (but shall not be obligated to), make such repairs as the Town deems necessary, in its sole discretion, at Licensee's expense. Licensee shall be responsible to repair damage occurring from vandalism or from any other circumstance not controlled by the Town.

10. **Fences and Barricades.** Licensee shall, at its sole cost and expense, within 45 days following receipt of a written request from the Town or All Vision, construct a fence or barricade around a Sign in a manner designated by the Town or All Vision, provided, however that the Town and All Vision shall request the construction of such fences or barricades only to the extent necessary for safety or security purposes or as required by Applicable Law. Fences shall be of a type and design acceptable to the Town and All Vision in their sole discretion and shall be maintained at the risk and expense of Licensee.

11. **Alterations; Sign Modifications.**

11.1 Notwithstanding anything to the contrary in this Agreement, after Licensee has first constructed any Sign, Licensee shall not alter the structure or type (including by way of example and not limitation, converting the display from static to digital, tri-vision or otherwise moveable, or adding, removing or enlarging faces) of any Sign, the Sign Location, the Property, or any part thereof, or reconstruct or remove any Sign, without the prior written consent of the Town and All Vision, which may be withheld in the Town's or All Vision's sole and absolute discretion (except for changes necessary to protect safety of persons or property, for which the Town or All Vision shall not unreasonably withhold approval).

11.2 Before making any modifications to the foundation, structural, electrical or mechanical elements of the Signs, except for minor repairs and routine maintenance, Licensee shall submit a written application identifying the Sign Location and Licensee and describing the type, dimensions and other material features of the proposed modifications. The Town or All Vision may disapprove any proposed modifications to the Signs in their sole and absolute discretion.

11.3 Any modifications shall be performed in accordance with Section 4. If Licensee makes changes to any Sign prohibited by that Section, Licensee upon the Town's or All

Vision's demand, shall immediately restore the Sign to its condition existing immediately prior to such alterations or modifications. If Licensee fails to perform such restoration within 20 days after receipt of notice from the Town or All Vision, the Town or All Vision may at its option perform such restoration or remove the Sign (without further notice or opportunity to cure), and Licensee shall reimburse the Town or All Vision all their actual direct costs therefor, together with a fee of 50% of such costs to compensate the Town and All Vision for their overhead and administrative costs incurred in connection with such restoration or removal. The Town's and All Vision's remedies provided in the foregoing sentence shall be in addition to other remedies to which the Town or All Vision may be entitled under this Agreement, at law or in equity for Licensee's default.

12. **Illumination.** Licensee shall cause the Signs to be properly illuminated, provided that all such illumination shall be in strict accordance with Applicable Law and this Agreement, and shall not otherwise result in a nuisance. If the Town reasonably determines that illumination of the Signs may interfere with the safe operation of the Property, the Town may give notice to Licensee requiring that the Signs not be illuminated or that illumination be restricted to certain times or to certain levels or combinations of illumination.

13. **Utilities.** Licensee shall be responsible to provide electrical power and any telecommunications services required for operation of the Sign to the Facilities at its sole cost and expense. Licensee shall, at its sole expense, install a separate meter on the Signs or within the Sign Location to measure the electricity usage of the Signs. Licensee shall pay all amounts due for electrical power and other utilities directly to the providers thereof. Licensee shall ensure that the Facilities do not interfere with any electrical wires, cables or other equipment located on the Property or the operation thereof.

14. **Entry by the Town or All Vision.** The Town and All Vision reserve the right, at all reasonable times, to enter into and upon the Sign Location to examine the condition thereof. No such entry or inspection shall be construed as an assumption of any of Licensee's obligations.

15. **Termination Based on Changed Circumstances.**

15.1 **Change in Visibility, Traffic, or other Commercial Value.** Licensee shall have the right to apply for termination of this Agreement if (i) the face of the corresponding Sign becomes materially and indefinitely obscured from view of the general public, (ii) traffic patterns in the visibility range of the Sign materially and indefinitely change to the extent that such Sign substantially loses commercial value, or (iii) due to fire, other casualty, war, enemy act, or terrorist act, the Sign substantially loses commercial value. The Town and All Vision, in their sole but good faith discretion, shall determine whether the loss of commercial value has actually occurred and shall promptly give Licensee written notice of its decision, which shall be final and binding. If the Town and All Vision determine that such Sign has substantially lost commercial value and the Town is unable to provide a Replacement Location on Town owned property under Section 15.7 below, the Term shall terminate as to such Sign Location (or, if it is the only Sign Location, this Agreement shall terminate) 45 days after the date of the Town and

All Vision's response or 90 days after the date of Licensee's application for termination, whichever is earliest, with the effect provided in Section 15.6.

15.2 Elimination of Access. Licensee shall be entitled to terminate this Agreement upon 45 days' prior written notice to the Town and All Vision in the event all reasonable routes of access to the corresponding Sign Location are indefinitely eliminated, provided that (i) if a reasonable route of access is restored within such 45 day period, Licensee's notice to terminate shall be of no further force or effect and this Agreement shall continue in effect with respect to such Sign Location, and (ii) if the Town and All Vision makes a Replacement Location on property owned by the Town available, the applicable Sign Location shall be relocated to the Replacement Location in accordance with Section 15.7 below. Any such termination shall have the effect provided in Section 15.6.

15.3 Condemnation. In the event that the Sign Location is taken by power of condemnation, this Agreement shall terminate as to that Sign Location as of the date of the transfer of title to the Sign Location with the effect provided in Section 15.6, provided, however, that if All Vision makes a Replacement Location on property owned by the Town available, the applicable Sign Location shall instead be relocated to the Replacement Location in accordance with Section 15.7 below. The Town shall notify Licensee within a reasonable time after receiving written notice of the condemning authority's intent to take the Sign Location. Licensee shall be responsible to remove the Facilities on or before the date of such termination unless the Facilities themselves are also taken. The entire award for a condemnation of the Sign Location shall belong to the Town, and neither All Vision nor Licensee shall have any right to share in any award. The foregoing sentence shall not preclude All Vision or Licensee from pursuing a separate award relating to the loss of, or damage to, All Vision's or Licensee's personal property (including the Facilities if they are taken), relocation costs, or other losses or compensation provided that any such award shall not in any way reduce any award to the Town.

15.4 Prohibition. In the event that (i) a final unappealable order of a court with jurisdiction declares the existence of any of the Signs unlawful or (ii) new Applicable Laws not in effect as of the date hereof unambiguously prohibit any of the Signs, either Party may terminate the Agreement as to the affected Sign Location upon 10 days' notice to the other Party, but not earlier than (i) the effective date of the final unappealable order or (ii) 15 days before the effective date of the new law, as applicable; provided, however, that if the Town and All Vision make Replacement Locations available on Town-owned property for any such Signs, some or all of the affected Sign Locations shall instead be relocated to the Replacement Location in accordance with Section 15.7 below. Any termination under this paragraph shall have the effect provided in Section 15.6. The Licensee shall retain, after such termination, any rights it might otherwise have to seek compensation on account of its losses from any appropriate governmental authority (excluding the Town and All Vision). This provision neither expresses nor implies any acknowledgment by the Town or All Vision or Licensee's entitlement to such compensation.

15.5 Disposition or Change in Use of Property. In the event the Town wishes at any time to sell, lease, license (for purposes other than outdoor advertising), abandon or dispose of the Sign Location or to use the Sign Location for a purpose other than outdoor advertising which the Town reasonably determines to be incompatible with the continued operation of the Sign, the Town may, at its sole option, either (i) terminate this Agreement upon at least 60 days prior written notice to Licensee or (ii) provide a Replacement Location to Licensee on Town-owned property, in which case the Sign Location shall be relocated to the Replacement Location in accordance with Section 15.7 below. Any termination under this Section 15.5 shall have the effect provided in Section 15.6.

15.6 Effect of Termination. If this Agreement is terminated pursuant to any of the foregoing Sections 15.1 through 15.5 or any other provision of this Agreement that provides for termination to have the effect provided in this Section, this Agreement shall terminate as if the Term had been originally scheduled to expire on the effective date of termination. If such termination occurs during the Amortization Period (defined below), the Licensee shall receive a refund of Lump Sum Payment from the Town and All Vision in the amount that remains when the Lump Sum Payment is amortized on a straight-line, monthly basis over the Amortization Period beginning on the Commencement Date and ending on the date of termination. **"Amortization Period"** shall mean the first five years of the Term. However, if as part of such termination All Vision and Licensee agree that Licensee will take a replacement license from All Vision to operate a sign on property that is not owned by the Town, neither All Vision nor the Town shall have any obligation to refund any portion of the Lump Sum Payment.

15.7 Replacement Locations. In the event of any circumstances in which this Agreement may be terminated as to the Sign Location (the **"Existing Location"**) pursuant to any provision in Sections 15.1 through 15.5 above, the Town or All Vision may, at its sole option, make available to Licensee an alternative Sign Location on property owned by the Town with an advertising value reasonably equivalent to that of the Sign Location to be terminated, as measured according to the metrics then standard in the outdoor advertising industry (a **"Replacement Location"**). All Vision shall notify Licensee when a Replacement Location is available (which shall be on or before the termination date for the Sign Location being replaced) and Licensee shall, at its sole cost and expense, remove the Facilities from the Existing Location in accordance with the provisions of Section 5.3 and promptly reconstruct the Facilities on the corresponding Replacement Location in accordance with Section 4. The Parties shall seek any necessary permits associated with the Replacement Location in accordance with Section 8. If any necessary permits or approvals cannot be obtained, the provisions of Section 8.5.4 shall apply. The Initial Term as to any Replacement Location shall expire on the date originally scheduled for the Existing Location, as extended for a period equal to the amount of time from the date the Sign is removed from the Existing Location to the date of substantial completion of the installation of the new Sign in the Replacement Location.

16. Insurance.

16.1 **Coverage.** During the Term and any other period of Licensee's occupancy or use of the Premises, Licensee shall keep in full force and effect at least the following insurance, with such other terms, coverages and insurers, as the Town or All Vision shall reasonably require from time to time, on policy forms acceptable to the Town or All Vision (the "**Required Insurance**"). The Town, All Vision, any other contractors of the Town designated in writing by the Town from time to time, and their respective governing board members, officers, managers, members, shareholders, trustees, partners, lenders, contractors, employees, and agents, and their respective successors and assigns, shall be named as additional insured on all policies.

16.1.1 Commercial general liability insurance drawn on an "occurrence" form, with (a) contractual liability coverage including the indemnification provisions contained in this Agreement, (b) a severability of interest endorsement, (c) coverage for the products-completed operations hazard, and (d) limits of not less than:

- (a) \$2,000,000 combined single limit each occurrence for bodily injury and property damage;
- (b) \$2,000,000 personal injury each occurrence;
- (c) \$2,000,000 general aggregate;
- (d) \$2,000,000 products/completed operations aggregate;
- (e) \$100,000 fire damage legal liability; and
- (f) \$5,000 medical payments.

16.1.2 Automotive liability insurance covering hired, owned and non-owned vehicles covering bodily injury and property damage, with limits of not less than \$2,000,000 per accident combined single limit.

16.1.3 Property insurance against "All Risks" of physical loss covering an amount not less than the full replacement cost of the Facilities. The proceeds of such insurance shall be used for the repair or replacement of the property so insured.

16.1.4 Professional errors and omissions insurance with a minimum limit of liability of \$2,000,000 per claim and an annual aggregate exclusive of the limits under Licensee's commercial general liability policy, with tail coverage or an extended reporting period extending at least two years beyond the end of the Term.

16.1.5 If Licensee has employees, workers' wage or similar insurance in form and amounts required by law and employer's liability coverage in not less than \$500,000 per accident, per employee. The workers' wage insurance must include an all-states endorsement to extend coverage to any state which may be interpreted to have legal jurisdiction.

16.1.6 Licensee's commercial general liability and automotive liability policies shall, by endorsement, name as additional insureds All Vision, the Town, their employees, officers and agents, the Mayor and Council of the Town, and such other agents, lenders, or affiliates of the Town as the Town or All Vision may designate by notice to Licensee from time to time.

16.1.7 The coverage under Licensee's commercial general liability insurance policy must be at least as broad as the standard, un-amended and un-endorsed Insurance Services Office occurrence-basis forms of commercial general liability, and must include, without limitation, Personal Injury, Broad Form Property Damage, and Contractual Liability, and all restrictions relating to work conducted within fifty (50) feet of a railroad, Products/Completed Operations, Explosion/Collapse/Underground (commonly referred to as "XCU"), and Independent Contractors must be deleted. The commercial general liability policy must provide for coverage for the Products/Completed Operations hazard to remain in force until the expiration of two (2) years after the end of the Term.

16.2 **Primary.** Licensee shall obtain and provide the Town and All Vision endorsements to Licensee's policies of commercial general liability and automotive liability insurance providing that Licensee's insurance shall be primary and not contributory to that carried by All Vision, the Town, their agents, or any person with an interest in the property where the Premises are located. Policies of property insurance required hereunder may be in the form of "blanket" policies, but the coverage thereunder with respect to the Property must be at least equal to that which would be provided under a separate policy or policies.

16.3 **Insurer.** The company or companies writing the Required Insurance, as well as the form of such insurance, shall at all times be subject to the Town's and All Vision's approval, and any such company shall be licensed to do business in the State of New Jersey. Such insurance companies must have and maintain an A.M. Best rating of A- / VII or better.

16.4 **Waiver of Subrogation.** Licensee shall have no claim against All Vision, the Town or insurance policies carried by them or any of their agents for any damage Licensee may suffer. Licensee shall require its insurers (except under the workers wage and employer's liability policies) to waive, by endorsement, any rights of subrogation by the insurers against All Vision and the Town and those for whose conduct All Vision or the Town may be responsible.

16.5 **Other Risk.** All Vision, the Town and their agents and employees make no representation that the limits of liability specified to be carried by Licensee pursuant to this License are adequate to protect Licensee. If Licensee believes that any of such insurance coverage is inadequate, Licensee will obtain such additional insurance coverage as Licensee deems adequate, at Licensee's sole expense. **In no event shall the minimum insurance coverage limits of liability specified herein limit Licensee's indemnification obligations or other liability under this License, nor shall it preclude the Town or All Vision from taking any other actions available to them under any other provisions of this Agreement, at law or in equity.**

16.6 **Certificates.** Licensee shall deliver to the Town and All Vision certificates evidencing all Required Insurance and endorsements reflecting the required Additional Insured coverage and waivers of subrogation no later than 10 days prior to the Commencement Date and each insurance renewal date. Upon the Town's and All Vision's request from time to time, Licensee shall also provide certified copies of each policy of Required Insurance.

16.7 **Notice Before Change.** Each certificate and policy of Required Insurance must provide that the policies shall not be cancelled nor any coverage restricted unless 30 days prior written notice of cancellation is given in writing to the Town and All Vision. Licensee shall cause all certificates and notices of cancellation or change to be mailed to the Town and All Vision at their addresses for notice stated in this Agreement.

16.8 **Town's Right to Procure Coverage.** If Licensee fails to obtain and keep in effect the Required Insurance, such failure shall constitute a material breach of this Agreement, and the Town may, at the Town's option and in addition to any other remedy available to the Town, procure such Required Insurance and may pay the premiums therefor and other charges, if any, required by the insurance carrier or carriers, and any amount so paid, plus a fee of 50% of such insurance premiums to compensate the Town for its overhead and administrative expenses, together with interest on the sum of the foregoing amounts at the rate of 18% from the date of the Town's payment of such insurance premiums to the date of repayment by Licensee, shall be paid by Licensee within 15 days after the Town gives Licensee its statement therefor. If the Town fails to exercise such option, All Vision has the right to exercise the option.

16.9 **Licensee's Contractors.** Licensee shall cause all contractors who render services to it relating to the Sign Location to carry the insurance required by this Agreement and provide the same policies, endorsements, certificates and coverages for the benefit of All Vision and the Town.

16.10 **Modification.** Based on changes in economic, financial or insurance market conditions, All Vision or the Town in their discretion may modify the minimum limits and coverages of the Required Insurance by notice to Licensee.

17. **Indemnification.**

17.1 Licensee shall, at its sole cost and expense, indemnify, defend (upon request by All Vision or the Town, and with counsel acceptable to them) and save harmless All Vision, the Town, any other contractors of the Town designated in writing by the Town from time to time, and their respective governing board members, officers, managers, members, shareholders, trustees, partners, lenders, contractors, employees, consultants, professionals and agents, and their respective successors and assigns, (collectively and individually, "**Indemnitees**") from and against any and all liabilities, judgments, threatened, pending or completed actions, suits, demands, costs or expenses of any kind and description actually and reasonably incurred (including attorneys' fees and expenses and court costs) ("**Liabilities**"), including, without implied limitations, Liabilities for damage to property or Liabilities for injury or death of any person, including without limitation officers, agents and employees of Licensee,

All Vision or the Town, resulting from any act or omission or willful misconduct of the Licensee or any of its officers, agents, employees, contractors or subcontractors at any tier, or consultants or sub-consultants at any tier, related in any way to the subject matter of this Agreement.

17.2 In the event of any failure of Licensee to defend, indemnify and hold harmless Indemnitees as required by **Section 17.1** above, All Vision and the Town may retain all amounts owed to Licensee under this Agreement or any other agreement between Licensee and All Vision or the Town and apply such amounts to offset Liabilities until All Vision and the Town receive evidence sufficient to confirm that such Liabilities have been finally settled or otherwise resolved.

17.3 The obligations of Licensee under this **Section 17** shall survive any termination of this Agreement.

18. Condition of Sign Location – Risk of Loss – Other Claims.

18.1 All Vision and the Town make no representation or warranty with respect to the condition, nature, composition, zoning, or use (past, present, or future) of the Sign Location and Property or the suitability of the Sign Location for the Maintenance of any Signs. Licensee assumes the risk of making use of the Sign Location, Property and any Signs installed thereon as provided herein, accepts the same in its “as is” condition and waives any and all rights and recourse of any nature whatsoever in respect of any defects related to the Sign Location, Property and any existing Signs.

18.2 Licensee agrees that all property of any kind owned by or in the possession, use, care, custody or control of Licensee and situated (whether permanently or temporarily) upon the Property (during the Term and during any renewal or other period in which Licensee occupies the Property under the provisions of this License), including without limitation all Facilities, shall be on the Property at the sole risk and hazard of Licensee.

18.3 To the fullest extent permitted by law, Licensee waives and releases any claims it may at any time, now or in the future, have against All Vision or the Town or their officers, directors, employees, contractors or agents for any damage to property, business interruption, or any other consequential damages sustained by Licensee, and further waives and releases any claims it may have at any time, now or in the future, for exemplary or punitive damages of any kind.

19. Default.

19.1 **Events of Default.** The occurrence of any of the following circumstances shall constitute an “Event of Default”:

19.1.1 Payment Default – License Fee. Licensee fails to pay when due any payment of License Fee and such failure is not cured within three days after receipt of written

notice from the Town or All Vision; provided, however, that if Licensee twice in one License Year fails to pay any License Fee when due and is notified of such failure by the Town or All Vision, any subsequent failure by Licensee to pay any License Fee when due during such License Year shall automatically be an Event of Default without notice or opportunity to cure;

19.1.2 Payment Default – Other Amounts. Licensee fails to pay any other amount due hereunder within 30 days after the Town's or All Vision's written statement thereof (or such shorter time period as may be specified for such payment herein);

19.1.3 Specific Default. Licensee defaults in any of its obligations under Sections 4.7 (No Liens), 7 (Advertising), or 20 (Assignment and Sublicense) of this Agreement;

19.1.4 Other Performance Default. Licensee fails to keep and perform any covenant or obligation to the Town or All Vision under this License other than as specifically described in Sections 19.1.1 through 19.1.3 above, and such failure continues uncured for 10 days after written notice thereof is given to Licensee, or if any such failure would reasonably require more than 10 days to cure, Licensee fails to commence curing within the 10 day notice period or fails thereafter promptly, effectively, and continuously to proceed with the cure of such failure, or fails to complete such cure within 60 days after the Town's or All Vision's notice, or, if any such failure is inherently incurable, after 10 days' written notice by All Vision or the Town.

19.1.5 Credit Default. Any of the following events occurs:

(a) Licensee commences any proceeding under any law relating to bankruptcy, insolvency, reorganization or relief of debts, or seeks appointment of a receiver, trustee, custodian or other similar official for the Licensee or for any substantial part of its property, or any such proceeding is commenced against Licensee and either remains undismissed for a period of 30 days or results in the entry of an order for relief against Licensee which is not fully stayed within seven days after entry;

(b) Licensee becomes insolvent or bankrupt, does not generally pay its debts as they become due, or admits in writing its inability to pay its debts, or makes a general assignment for the benefit of creditors;

(c) Any third party obtains a levy or attachment under process of law against Licensee's interest in this Agreement; or

19.1.6 Cross Default. A default by Licensee occurs under any other agreement between the Town and Licensee relating to outdoor advertising that entitles the Town to terminate that other agreement, and any applicable notice and cure periods under the other agreement have expired without Licensee having cured the default. Notwithstanding any cure, Licensee shall be liable to the Town for interest, costs and any damage actually suffered by the Town for any breach or failure to perform by Licensee hereunder. Payment of such amounts shall be required to effect any cure.

19.2 **Remedies.** Upon the occurrence of an Event of Default, the Town or All Vision shall be entitled to pursue any one or more of the remedies available at law, in equity, or under this Agreement, without any further notice or demand whatsoever, including without limitation the following:

19.2.1 Terminate Agreement. The Town may terminate this Agreement, effective at such time as may be specified by notice to Licensee, in which event:

- (a) Licensee's rights hereunder shall cease and terminate;
- (b) At the Town's sole option, the Town (or All Vision acting on behalf of, and with the consent, of the Town) may, with or without further process of law, take exclusive ownership, possession and control of some or all Facilities with the effect provided in Section 5.3.2;
- (c) The Town or All Vision may require Licensee to remove some or all Facilities in accordance with Section 5.3.1;
- (d) The Town (or All Vision, acting on behalf of, and with the consent of, the Town) may recover from Licensee damages for breach of this Agreement and/or pursue any other remedy to which the Town or All Vision may be entitled under this Agreement, at law or in equity, including without limitation claims for damages for lost License Fees through the scheduled end of the Term (which shall be due regardless of the termination of this Agreement) and other costs and damages resulting from Licensee's breach; and
- (e) if Licensee holds over in its use of the Sign Location following the termination of this Agreement as to that Sign Location, the Town or All Vision may recover the holdover fees provided in Section 6.6.

19.2.2 Pursue Claims Without Terminating Agreement. The Town or All Vision may pursue claims for breach of any obligation under this Agreement without terminating this Agreement, in which event this Agreement and Licensee's obligations hereunder shall continue in full force and effect.

19.2.3 Ownership of Facilities. If the Town (or All Vision acting on behalf of the Town at its direction) elects to take ownership of any Facilities pursuant to Section 19.2.1(b) above, this Agreement shall operate as a bill of sale and assignment transferring to the Town such Facilities, as well as any and all permits and approvals held by Licensee with respect to the Facilities transferred, without the need for execution of further documents, and Licensee warrants the title to the Facilities and covenants to defend the Town and All Vision against claims of title to the Facilities asserted by anyone claiming by, through or under Licensee. However, upon demand, Licensee shall execute such further documents as All Vision or the Town may request to confirm the transfer of ownership of the Facilities to the Town. Licensee shall hold All Vision and the Town harmless from, and indemnify and defend All Vision

and the Town against, all claims, liabilities, obligations, losses, expenses, and costs (including attorneys' fees and costs) arising out of or related to such transfer.

19.3 Force Majeure. Except to the extent that this Agreement may otherwise expressly provide, and except for Licensee's obligation to make payments hereunder when and as due, neither Party will be liable under this Agreement for delays due to causes beyond its reasonable control, including acts of any government, war, natural disasters, strikes, civil disturbances, and fires. The Party bearing the obligation with which such circumstances interfere shall act, to the extent reasonably possible, to minimize any such delays. If performance in accordance with this Agreement is rendered impossible by such circumstances for a period longer than 180 consecutive days, either Party may terminate this Agreement on 10 days prior written notice to the other, with the effect provided in Section 15.6. The provisions of this Section 19.3 shall not apply to the failure of any government agency to issue permits required for the Sign (in which event the provisions of Section 8 will apply) or any of the circumstances described in Section 15 (which are governed by the provisions of that Section).

20. Assignment and Sublicense.

20.1 By Licensee. Neither this License nor any rights conferred hereunder shall be assigned or subcontracted in whole or in part by Licensee without the written consent of the Town and All Vision, which may be withheld in the Town's or All Vision's sole discretion. Any purported assignment or sublicense made without the consent of the Town and All Vision shall, at the Town's or All Vision's option, be void and of no effect. No assignment hereof by Licensee to which the Town and All Vision grant approval shall be effective unless and until the assignee executes and delivers to the Town and All Vision a written instrument assuming of all the obligations of Licensee hereunder. No approval by the Town or All Vision shall cause a novation of this Agreement, and the assignor Licensee shall remain liable for all of Licensee's obligations hereunder whether accruing before or after any assignment.

20.2 The Town. The Town may, , at any time upon notice to All Vision and Licensee, assign this License to any subsequent owner or tenant of the Property. The Town shall have no liability hereunder for obligations accruing from and after the effective date of such assignment, and Licensee shall look only to the assignee for the performance of the Town's obligations hereunder.

20.3 By All Vision. As between All Vision and the Town, All Vision may assign its interest in this Agreement as a third party beneficiary only as permitted by the separate Outdoor Advertising Services Agreement between All Vision and the Town. The provisions of the foregoing sentence are for the benefit of the Town only, and Licensee may not enforce against All Vision or any of its successors in interest any restriction on assignment by All Vision of any interest in this Agreement or payments to be made hereunder.

21. Relationship of All Vision. All Vision is at all times acting in connection with this Agreement on behalf of the Town pursuant to a contract between All Vision and the Town except that, pursuant to that contract between All Vision and the Town, All Vision's right to be

allocated and directly paid a share of amounts to be paid under this Agreement is held by All Vision in its own capacity and not the capacity of a contractor or agent of the Town, just as if the Town and Licensee had agreed for those amounts to be paid to the Town and the Town had then irrevocably assigned a share of those payments to All Vision. All Vision may also enforce in its own right any provisions of this Agreement that are for its protection, including the indemnification and insurance obligations of the Licensee. As to those obligations of Licensee that All Vision is entitled to enforce in its own right and name, All Vision is a third party beneficiary of this Agreement, and those provisions may not be amended without the written consent of All Vision. If the contract between All Vision and the Town is terminated, All Vision shall continue to be a third party beneficiary and to have the right to be paid the share of payments to be made to it hereunder and the right to be indemnified and insured as provided in this Agreement, and Licensee shall continue to perform those obligations and make those payments for or to All Vision notwithstanding any selection by the Town of a new contractor to administer this Agreement on its behalf. Nothing in this Agreement shall be construed to obligate All Vision to perform for the benefit of Licensee any obligation under this Agreement that All Vision has not been authorized by the Town to perform or which the Town has directed All Vision not to perform, and All Vision shall have no liability to the Licensee for any failure by All Vision to perform any such obligation.

22. Option to Extend.

22.1 The Town shall have the option (the “**Extension Option**”), at its discretion, to extend the Term by one period of 15 additional years or less (the “**Extension Term**”) by giving Licensee notice of the exercise of the Extension Option not later than the end of the 19th year of the Term. If the Town, or All Vision (with the consent of the Town) gives Licensee such notice and Licensee accepts the Extension Option Licensee shall, on or before the day that is 19 years and three months after the Commencement Date, pay the Town and All Vision a lump sum payment equal to seven times the highest annual Billboard Cash Flow generated during the first 16 License Years of the Term (the “**Extension Lump Sum**”). Any such payment shall be allocated as set forth in Section 6.2.1. Licensee must deliver, with payment of the Extension Lump Sum, a calculation of Billboard Cash Flow for each of the first 19 License Years of the Term. Licensee’s calculation of Billboard Cash Flow shall be subject to audit under Section 6.9.

22.2 “**Billboard Cash Flow**” means, for any License Year, Net Revenues less the sum of (a) the Base License Fee and Percentage Fee for that License Year and (b) Licensee’s other operating expenses for the Sign (but not more than 12.5% of Net Revenues) for that License Year.

22.3 During the Extension Term, this Agreement and the License shall be on the terms provided in this Agreement, except that the Base License Fee for each License Year in the Extension Term shall be as specified in Exhibit A or, if no amount of Base License Fee is specified, shall be 102.5% of the Base License Fee for the preceding License Year.

23. **Subordination and Attornment.** This Agreement does not grant an interest in real property. However, for the avoidance of doubt, the Parties agree that this Agreement shall be subject and subordinate to any mortgage, deed of trust, ground lease or other interest now or hereafter affecting the Property that is created by the Town.

24. **Disclosure of Interest.** Within 10 days after the mutual execution and delivery of this Agreement, and annually thereafter until the expiration of the Term (including any extensions), the Licensee shall inform the Town and All Vision, in writing, of (a) any ownership interest the Licensee has in any other entity performing or being paid or reimbursed for any service rendered in connection with the Sign, including advertising placement agency fees paid from Gross Revenue, and (b) any ownership interest any such entity has in the Licensee. The disclosure required by this Section shall include a description both of the nature and of the quantity or proportion of the interest held by (or in) the Licensee. The Licensee acknowledges that the purpose of this Section is to provide complete transparency of information to the Town regarding any affiliates of the Licensee.

25. **Miscellaneous**

25.1 **Notices.** Except as otherwise provided herein, notices shall be in writing and shall be delivered to the Party or other person entitled to receive the same by personal delivery, by certified mail, by facsimile or by e-mail (provided that a confirmation copy is sent by certified mail). Any notice given under this Agreement shall be effective as of the date of delivery in the case of personal delivery (or when such delivery is attempted and refused), as of the third business day following the date of mailing in the case of notices sent by certified mail and as of the date of transmission in the case of notices given by facsimile or by e-mail. A copy of each notice directed to Licensee or All Vision shall also be directed to the Town. Notices shall be delivered to the addresses set forth in the Schedule of Key Terms or such other addresses as the Parties or the Town may from here to time designate by notice given in accordance with this Section.

25.2 **Waiver of Jury Trial.** The Parties hereby waive trial by jury in any action, proceeding or claim or counterclaim asserted by either of the Parties or the Town against the other with respect to any matter whatsoever arising out of or in any way connected with this Agreement, the relationship between the Parties, any claim of injury or damage arising out of or related to this Agreement, the Property, the Sign Location or Sign, or the enforcement of any remedy.

25.3 **Interpretation of Certain Terms.** "Including" and cognate terms, unless otherwise expressly limited, shall in all cases be construed and interpreted to mean "including without limitation." "Hereof," "herein," "hereto," "hereinafter," and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Agreement taken as a whole. Except where the context requires otherwise, references to specific Sections, Exhibits, and other divisions of the Agreement followed by a number or letter are references to the whole of the Section, Exhibit or other

division of the Agreement as applicable, bearing that number or letter, including all subsidiary provisions containing that same number or letter as a prefix.

25.4 No Personal Liability. No member of the Town's governing body, other officer, member, agent or employee of the Town or All Vision shall have any personal obligation or liability on account of this Agreement.

25.5 Licensee Not an Agent. Nothing in this Agreement confers on Licensee any authority to act on behalf of All Vision or the Town, and Licensee shall not have any authority to, and shall not purport to, act on behalf of or in any way bind the Town, All Vision, or any of their officers, members, agents or employees.

25.6 Foreign Entity Authority. If Licensee is not a New Jersey entity, Licensee shall file all required documents for, make all required payments for, and maintain at all times until the end of the Term proper authority to transact business in New Jersey in accordance with the Applicable Laws in effect from time to time.

25.7 Governing Law and Forum. The validity and effect of this Agreement shall be determined in accordance with the laws of the State of New Jersey, without reference to its conflicts of laws principles. The venue for any litigation arising out of or relating to this Agreement shall be the Superior Court of New Jersey, Hudson County in accordance with the New Jersey Contractual Liability Act (N.J.S.A. § 59:13-1 *et seq.*).

25.8 Survival of Provisions. The provisions of Sections 6, 17, 19.2, 25.2, and all provisions hereof which provide for actions to be taken after the end of the Term shall survive the expiration or other termination of this Agreement.

25.9 Waiver. No waiver by the Town or All Vision of any breach of any provision of this Agreement shall be deemed for any purpose to be a waiver of any breach of any other provision hereof, nor of any continuing or subsequent breach of the same provision.

25.10 Entire Agreement. This Agreement and the Exhibits attached hereto represent the complete understanding and agreement between the Parties with respect to the subject matter hereof. This Agreement may not be changed orally, but may be changed only by a written amendment signed by the Parties. This Agreement shall be binding upon and inure to the successors and permitted assigns of the Parties.

25.11 Time of Essence. Time shall be of the essence of this Agreement.

25.12 Severability. If any covenant, obligation, agreement or part thereof or the application thereof to any person or circumstance should, to any extent, be determined to be invalid or unenforceable, the remainder of this Agreement (or the application of such covenant, obligation or agreement or part thereof to any person, Party or circumstance other than those to which it is determined to be invalid or unenforceable) shall not be affected

thereby. Each covenant, obligation and agreement in this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

25.13 **Further Assurances.** Each of the Parties hereto shall from time to time hereafter and upon any reasonable request of the other Party, make or cause to be made all such further acts, deeds, assurances and things as may be required or necessary to more effectually implement and carry out the true intent and meaning of this Agreement.

25.14 **Interpretation.** As used herein, "including" and its cognate terms mean "including, without limitation," unless otherwise expressly limited. "Herein," "hereof," and cognate terms refer to this Agreement in its entirety, including all exhibits. All exhibits attached hereto are a part of, and incorporated in, this Agreement.

25.15 **Counterparts.** This Agreement may be executed in counterparts each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. To evidence its execution of an original counterpart of this Agreement, a Party may send a copy of its original signature on the execution page hereof to the other Party by facsimile transmission or other electronic means and such delivery shall constitute delivery of an executed copy of this Agreement to the other Party.

25.16 **Fair and Open Process.** This License Agreement was publically advertised in newspapers and on the Town of Kearny Website in sufficient time to provide advance notice of the availability of a License. The contract was awarded under a process which provided for public solicitation of proposals and qualifications, and awarded and disclosed under criteria established in writing by the Town prior to the solicitation of proposals or qualifications and the process included public opening and award.

Schedule of Key Terms

26. **Sign Location:** The outdoor advertising sign location described on Exhibit A.

27. **Sign:** "Sign" means any structure including, but not limited to, an advertising structure and sign face used outdoors and affixed to or upon property to display messages and/or images within public view which is designed to attract, or does attract, the attention of pedestrians or operators or passengers of motor vehicles using the roads, highways, and other public thoroughfares and places, and shall include any writing, printing, painting, display, emblem, drawing, or other device whether placed on the ground, rocks, trees, tree stumps or other natural structures, or on a building, structure, signboard, billboard, wallboard, roofboard, frame, support, fence, or elsewhere, and any lighting or other accessories used in conjunction therewith .

28. **Commencement Date:** The Commencement Date shall be the earlier of (i) the first day of the month following the date the installation of the Sign is substantially complete or (ii) the first day of the month following the expiration of 60 days after issuance of obtaining final building permits by the Town.

29. **Anniversary Date:** Each annual anniversary of the Commencement Date.

30. **Initial Term:** The period of [not to exceed 20 years] beginning on the Commencement Date, subject to extension by the Extension Term as provided in Section 22.

31. **Term:** Collectively, the Initial Term and any Extension Term. **“License Year”** means each year during the Term beginning on the Commencement Date or an Anniversary Date.

32. **Property:** Each parcel of property owned by the Town of which the Sign Location is a portion.

33. **Initial Deposit:** 10% of total price proposal

34. **Lump Sum Payment:** The amount identified as the Lump Sum Payment on Exhibit A.

35. **Base License Fee:** The fee for each License Year set forth on Exhibit A, subject to adjustment as provided in Section 22.

36. **Percentage Rate:** _____

37. **Place of payment.** Licensee shall pay all amounts due hereunder to the Town and All Vision at the following addresses or at such other addresses as the Town or All Vision may from time to time designate by written notice to Licensee:

All Vision, LLC
6200 S. Syracuse Way, Suite 125
Greenwood Village, CO 80111

Chief Financial Officer
Town of Kearny
402 Kearny Avenue
Kearny NJ 07032

38. **All Vision’s Address for Notices:**

All Vision, LLC
Attn: Vice President of Operations
420 Lexington Avenue, Suite 1928
New York, NY 10170

With a copy to:

All Vision, LLC
Attn: CFO
6200 S. Syracuse Way, Suite 125
Greenwood Village, CO 80111

And a copy to:

All Vision, LLC
Attn: President
6200 S. Syracuse Way, Suite 125
Greenwood Village, CO 80111

39. **Licensee's Address for Notices:**

40. **Town's Address for Notices:**

Town Clerk
Town of Kearny
402 Kearny Avenue
Kearny NJ 07032

[The remainder of this page is intentionally blank; signatures follow.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above:

Licensee:

_____,
A _____

By: _____

Print Name: _____

Title: _____

The Town:

THE TOWN OF KEARNY

By: _____

Print Name: _____

Title: _____

ATTEST:

Title: _____

**TOWN OF KEARNY
EXHIBITS TO OUTDOOR LICENSE AGREEMENT**

Exhibit i	Sign Location and License Fee
Exhibit ii	Consent of Surety
Exhibit iii	Equal Opportunity Laws, Regulations and Americans With Disabilities Act
Exhibit iv	Stockholder of Partnership Disclosure Statement
Exhibit v	Affidavit of Foreign Corporation (License)
Exhibit vi	Non-Collusion Affidavit
Exhibit vii	Equipment Certification
Exhibit viii	Sub-Contractors (If Applicable)
Exhibit ix	Business Registration Certificate
Exhibit x	Iran Certification
Exhibit xi	Kearny Living Wage Ordinance
Exhibit xii	Document Retention Form
Exhibit xiii	Pay to Play Certification

EXHIBIT i

SIGN LOCATION AND LICENSE FEE

Sign Location and Description:

Lump Sum Payment:

Installment	Amount
Year 1 First Installment (due upon execution)	
Year 1 Second Installment (due on Commencement Date)	
Year 2	

Base License Fee:

License Year	Amount	Extension Term License Year (If applicable)	Amount
1		21	
2		22	
3		23	
4		24	
5		25	
6		26	
7		27	
8		28	
9		29	
10		30	
11		31	
12		32	
13		33	
14		34	
15		35	
16			
17			

18	
19	
20	

(Diagrams or further descriptions of the sign location may be attached.)
(Specifications may also be attached if known.)

4846-6781-8001, v. 6

EXHIBIT ii

Consent of Surety

A Performance Bond will be required from the successful Applicant on this project and, consequently, all Applicants shall submit with their Application a certificate in substantially the following form:

TO:

(Owner)

RE:

(Contractor)

(Project Description)

This is to certify that the

(Surety Company)

Will provide to _____, a Performance Bond in the full amount of awarded License in the event that said applicant is awarded a License for the above project.

(Authorized Agent of Surety Company)

CERTIFICATE OF SURETY MUST BE SIGNED BY AN AUTHORIZED AGENT OR REPRESENTATIVE OF A SURETY COMPANY AND NOT BY THE INDIVIDUAL OR COMPANY SUBMITTING THE APPLICATION.

EXHIBIT iii
Equal Opportunity Laws and Regulations
Required Evidence
Affirmative Action Regulations
P.L. 1975, C. 127 (N.J.A.C. 17:27)

If awarded a License all applicants will be required to comply with the requirements of P.L. 1975, C. 127 (N.J.A.C. 17:27). Within seven (7) days after receipt of the notification of intent to award the License or receipt of the License, whichever is sooner, the applicant should present one of the following to the Town Clerk.

31. A photocopy of a valid letter from the US Department of Labor that the Applicant has an existing federally-approved or sanctioned Affirmative Action Plan (good for one year from the date of the letter).

OR

32. A photocopy of approved Certificate of Employee Information report

OR

33. An Affirmative Action Employee Information Report (Form AA302)

OR

34. All successful applicants must submit within three days of the signing of the License Agreement and Initial Project Manning Report (AA201) for any License.

**NO FIRM MAY BE ISSUED A LICENSE UNLESS IT COMPLIES WITH THE
AFFIRMATIVE ACTION REGULATIONS OF P.L. 1975, C.127**

The following questions must be answered by all Applicants:

1). Do you have a federally-approved or sanctioned Affirmative Action Program?

YES _____

NO _____

If YES, please submit a copy of such approval.

2.) Do you have a Certificate of Employee Information Report Approval?

YES _____

NO _____

The undersigned certifies that he is aware of the commitment to comply with the requirements of P.L. 1975, C. 127 and agrees to furnish the required documentation pursuant to the law.

COMPANY: _____

SIGNATURE: _____

TITLE: _____

NOTE: An Applicant's proposal must be rejected as non-responsive if the Applicant fails to comply with requirements of P.L. 1975, C. 127

EXHIBIT iv
Stockholder or Partnership Disclosure Statement

**IT IS MANDATORY THAT THIS FORM BE COMPLETED AND SUBMITTED
WITH THE APPLICATION**

Chapter 33 of the Public Laws of 1977 provides that no Corporation or Partnership shall be awarded any Contract by the State, County, Municipal, or School District which includes the performance of any work or the furnishing of any materials or supplies unless, prior to the receipt of the proposal of accompanying the Proposal of said Corporation or Partnership, there is a submitted a statement. The statement shall set forth the names and addresses of all stockholders in the Corporation or Partnership who own ten percent (10%) or more of its stock of any class or of all individual partners in the Partnership who own a ten percent (10%) or greater interest therein.

Applicant's Name: _____
Address: _____
City, State, and Zip _____
Facsimile Number: _____
E-Mail Address: _____

NAME OF STOCKHOLDER(S)/PARTNER(S)

ADDRESS

_____	_____
_____	_____
_____	_____
_____	_____

_____ Check here if additional space is required. If so, attach additional listing on vendor letterhead.

_____ Check here if no additional stockholder or partner owns ten percent (10%) or more of this Corporation or Partnership.

_____ Check here if sole Proprietorship.

Authorized Signature: _____
Type or Print Name: _____
Title: _____
Date: _____

Subscribed and Sworn to
Before me this _____
Day of _____, 20

Affidavit Signature: _____
Print or Type Name: _____
Notary Public of: _____

EXHIBIT v
Affidavit of Foreign Corporation (Licensed)

The undersigned certified that _____
Is a foreign corporation incorporated in the State of _____, whose
principal place of business is _____
And is therefor required to obtain authorization to transact business in the State of New Jersey.

The undersigned Applicant further certifies that said authorization has been obtained and is in effect and the Applicant has a designated statutory agent upon whom process against the Applicant Corporation may be served within the State of New Jersey. The designated statutory agent is

(Place name and address above)

Process served upon the designated statutory agent named above shall be in effect unless the Town of Kearny has been informed, by Certified Mail or its equivalent (return receipt), of a change in the agent upon whom the process can be served.

NOTE: This statement may be reproduced on the Applicant's Letterhead, signed by the authorized Signatory, notarized, and submitted with the Application.

• Any corporation that is not incorporated in the State of New Jersey is a Foreign Corporation.

Subscribed and Sworn to
Before me this _____
Day of _____, 20__

Authorized Agent's Name: _____
Authorized Agent's Signature: _____
Address: _____

Affidavit Signature: _____
Print or Type Name: _____
Notary Public Of: _____
Commission Expires: _____, 20 __

AFFIX SEAL HERE

EXHIBIT vi
Non-Collusion Affidavit
(This form may be duplicated – If necessary)

State of New Jersey

County of _____

SS:

I, _____ residing in _____, in the County of _____
and State of _____, of full age, being duly sworn according to law on my oath
depone and say that:

I am _____ of the firm of _____, the Applicant
making this proposal entitled _____, and
that I executed the said Proposal with fully authority to do so; that said Applicant has not,
directly or indirectly entered into any Agreement, participated in any collusion, or otherwise
taken any action in restraint of free, competitive proposals in connection with the above named
project; and that all statements contained in said Proposal and in the Affidavit are true and
correct and made with full knowledge that the Town of Kearny relies upon the truth of the
statements contained in said Proposal and in the statement contained in this Affidavit in
awarding the License.

I further warrant that no person or selling agency has been employed or retained to solicit or
secure such License upon an Agreement or understanding for a commission, percentage,
brokerage, or contingent fee, except bona-fide employees or bona-fide established commercial
or selling agencies maintained by

Subscribed and Sworn to

Before me this _____

Day of _____, 20__

Authorized Agent's Name: _____

Authorized Agent's Signature: _____

Address: _____

Affidavit Signature: _____

Print or Type Name: _____

Notary Public Of: _____

Commission Expires: _____, 20 __

AFFIX SEAL HERE

EXHIBIT vii
Equipment Certification

The undersigned applicant hereby certifies as follows:

1. The number and type of equipment or vehicle, etc. intended to be used to fulfill all requirements of the contract documents with respect to the scope of work/service are listed, Table 1 and Table 2, and attached hereto.

Note: If the applicant **owns or controls** all the necessary equipment required, complete Paragraph two (2) below. If the applicant **does not own or control** all the necessary equipment required, complete Paragraph three (3) below.

2. The applicant owns or controls all the necessary equipment shown in Table 1 and required to accomplish the work described in the licensing documents during the contract term.

Name of Applicant: _____

By: _____
(Signature)

Name: _____

Title: _____

3. The applicant does not own or control all the necessary equipment required to accomplish the work during the lease term. The equipment actually owned or controlled by the applicant is identified in Table 1.

The remaining equipment required to perform the work described is noted in Table 2 together with the certification of the owner or person in control of such equipment

Name of Applicant: _____

By: _____
(Signature)

EXHIBIT viii
Sub-Contractors
(If Applicable)

The undersigned hereby lists the name(s) of the following Sub-Contractor(s):

_____ No Sub-Contractors (check here)

Company Name: _____
Owner Name: _____
Address: _____
Telephone No.: _____ Sub-Contract Amount: _____
Description of Work: _____

Company Name: _____
Owner Name: _____
Address: _____
Telephone No.: _____ Sub-Contract Amount: _____
Description of Work: _____

Company Name: _____
Owner Name: _____
Address: _____
Telephone No.: _____ Sub-Contract Amount: _____
Description of Work: _____

Company Name: _____
Owner Name: _____
Address: _____
Telephone No.: _____ Sub-Contract Amount: _____
Description of Work: _____

The Applicant is advised that any change of Sub-Contractor(s) from the Sub-Contractor(s) listed herein is subject to the Town's approval. Change of Sub-Contractor(s) will be approved only if made for good cause.

Subscribed and Sworn to
Before me this _____
Day of _____, 20__

Authorized Agent's Name: _____
Authorized Agent's Signature: _____
Address: _____

Affidavit Signature: _____
Print or Type Name: _____
Notary Public Of: _____
Commission Expires: _____, 20__

AFFIX SEAL HERE

Required Equipment Owned or Controlled by the Applicant

Required Equipment Owned or Controlled by the Applicant

[illegible]

Required Equipment to be Supplied by Others

Required Equipment to be Supplied by Others

[illegible]

EXHIBIT ix

**STATE OF NEW JERSEY
BUSINESS REGISTRATION CERTIFICATE**

Taxpayer Name:

Trade Name:

Address:

Certificate Number:

Effective Date:

Date of Issuance:

For Office Use Only:

EXHIBIT x
IRAN CERTIFICATION

I, _____, residing at _____, upon penalty of perjury do
certify to the following statements:

I am the _____ of the business entity submitting this bid and am duly
authorized to execute this document on the business' behalf.

I am not, and the business entity submitting this bid, is not:

providing goods or services of \$20,000,000.00 or more in the energy sector of Iran,
including a person that provides oil or liquefied natural gas tankers, or products used to
construct or maintain pipelines used to transport oil or liquefied natural gas, for the
energy sector of Iran; or

a financial institution that extends \$20,000,000.00 or more in credit to another person,
for 45 days or more, if that person will use the credit to provide goods or services in the
energy sector in Iran.

I certify that the foregoing statements are true. I am aware that if any of the foregoing
statements made by me are willfully false, I am subject to punishment.

Affiant

Print Name

Notary Public

Date:

EXHIBIT xi
Kearny Living Wage Ordinance

The Contractor acknowledges its obligation to comply with the Town of Kearny Ordinance No. 2007-(O)-41, as amended, with regard to the payment of Living Wages and the provision of Health Benefits to its employees.

By: _____
(Signature of Authorized Representative)

Name: _____
(Print or Type)

Title: _____

Date: _____