

**OVERCOMING BARRIERS TO IVHS--
LESSONS FROM OTHER TECHNOLOGIES**

FINAL TASK F REPORT

MODEL ADVANCED TRAVELLER INFORMATION SYSTEM FRANCHISE AGREEMENT

Prepared for the Federal Highway Administration

**by The Urban Institute
with
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**Contract DTFH61-93-C-00025
UI Project No.: 06351
August 25, 1995**

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INTRODUCTORY NOTE

Advanced Traveller Information Systems may be designed in a manner that does not use the public rights-of-way, in which case private sector ATIS providers may not require any form of government authorization to provide their services. On the other hand, some systems may require access to the rights-of-way for the placement of facilities and equipment. In addition, an ATIS system will require less governmental involvement and coordination than ATMS. Therefore, a traditional franchise fits this model very well.

In practice, of course, the needs of government and private industry will vary depending on a range of circumstances. It is also difficult to predict at the outset what services will actually be in demand, or how profitable a given service might be. Thus, no single model will fit all the possible situations that may arise in the development and deployment of ITS. This model agreement does not attempt to address many of the details that will be required by specific agreements. A model that attempted to cover such a broad range and level of detail would probably prove too cumbersome to be of use, and would certainly not address all the issues that will actually arise. Nevertheless, the model does attempt to address the critical issues in sufficient detail to serve as a starting point for any potential transaction.

This Note discusses the principal issues addressed by the model. Those issues are:

- 0 The identity of the franchisor;*
- 0 The compensation mechanism, which in turn depends on the profitability of a particular project;*

- 0 *Whether the franchise is to be exclusive or nonexclusive; and*
- 0 *Standards for designing, building, operating and maintaining the system.*

The Identity of the Franchisor

For an ATMS system to be effective, it must have access to and provide information over an entire metropolitan area, which makes a multi-jurisdictional franchise the most desirable approach. An effective ATIS system should likewise provide information over an entire metropolitan area, but because of the lower level of coordination required, it is not essential that a multi-jurisdictional body award the franchise. An ATIS provider could instead negotiate individual franchises.

This model assumes that a single authority will be involved, simply because such an entity will probably be established to deal with ATMS. Still, state law constitutional and statutory amendments and/or municipal charter amendments may be required to make this possible, and there may be political and financial reasons for allowing individual jurisdictions to grant franchises. If those amendments are not practical, a more complicated structure will be required. In that case, this model can be readily adapted to serve as a franchise agreement between an individual municipality and the private sector ATIS provider.

The Appropriate Compensation Mechanism

The draft assumes that the ATIS provider will compensate the franchising authority by paying a percentage of gross revenues. Other means of compensation are feasible, such as a flat fee or a charge based on the number of items of equipment installed in the right-of-way. A percentage of gross revenues, however, is a good approximation of the

value of the right-of-way because the amount of compensation increases in proportion to the amount of use, as measured by the ATIS provider's revenues.

This model assumes that a separate franchise is feasible because provision of ATIS is a profitable venture. The accompanying Model of a Modular ATMS Agreement addresses those scenarios in which ATIS is not considered profitable and is provided as a public service or in conjunction with ATMS.

The Choice of Entity To Perform a Function

The nature of ATIS as an information service of use to individual and commercial customers makes it likely that the private sector could successfully market ATIS services. Therefore, it is also likely that it would be profitable for the private sector to build and operate the system. If a government entity were to do so, the grant of a franchise would probably not be necessary, although the model would still be useful in defining the issues to be addressed.

The Exclusivity of the Franchise

The model assumes that any ATIS franchise will not be exclusive, because of the possibility that a viable competitive market for ATIS services can be developed, In the course of further development of ATIS or during the negotiation of a particular agreement, it may become apparent that an exclusive franchise will be needed to induce private sector participation. In that case, the model can be easily modified.

Finally, it should be noted that a particular franchise need not apply to the entire territory under the franchisor's control, although the model assumes that would be the case.

Design and Construction Standards

The model addresses the question of design and construction standards in fairly general terms, leaving the franchisor the authority to establish separate standards by regulation. This is unlikely to be a major issue, so long as ATIS providers are capable of delivering services in a satisfactory manner.

ADVANCED TRAVELLER INFORMATION SYSTEM FRANCHISE AGREEMENT

THIS ADVANCED TRAVELLER INFORMATION SYSTEM FRANCHISE AGREEMENT (the "Franchise Agreement") is entered into by and between [Insert full name of governmental entity] ("Franchisor") ,¹ a municipal corporation, and [insert full name of operator], a [insert state of formation] [corporation/limited partnership] ("Franchisee").

WHEREAS, the Franchisor finds that the development of an Advanced Traveller Information System ("ATIS") in [Insert name of area or region] has the potential to be of great benefit to the people of _____; and

WHEREAS, ATIS, through the integration of transportation, telecommunications, and computer technology promises to reduce traffic congestion, increase the average rate of traffic flow, improve highway safety, and promote more efficient use of Franchisor's road network; and

WHEREAS, these developments would improve both the economic efficiency of businesses in _____ and the quality of life of the residents of _____; and

WHEREAS, development of ATIS in _____ is thus a necessary and valuable improvement of Franchisor's basic infrastructure in _____; and

¹ ***Note that an ATIS franchise may lend itself more readily to being granted by individual jurisdictions than would an ATMS franchise. Nevertheless, for general planning purposes, it is probably preferable that a single agency grant both ATMS and ATIS franchises.***

WHEREAS, ATIS systems make extensive use of scarce and valuable Public Rights-of-Way, in a manner different from the way in which the general public uses them, and in a manner reserved primarily for those who provide services to the public, such as utility companies; and

WHEREAS, Franchisee has submitted a proposal for the design, construction, operation and maintenance of an ATIS system in _____ to the Governing Body; and

WHEREAS, Franchisor has considered the financial, technical and legal qualifications of Franchisee, and has determined that Franchisee's plans for constructing, operating and maintaining an ATIS system in _____ are adequate; and

WHEREAS, Franchisor has relied on Franchisee's representations and has considered the information that Franchisee has presented to it; and

WHEREAS, based on Franchisee's representations and information, the Governing Body has determined that the grant of an exclusive franchise to Franchisee is consistent with the public interest, and has therefore enacted [insert reference to granting ordinance]; and

WHEREAS, Franchisor and Franchisee have reached agreement on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of Franchisor's grant of a franchise to Franchisee, Franchisee's promise to provide ATIS service in _____ pursuant to and consistent with the terms and conditions set forth herein, the promises and undertakings

herein, and other good and valuable consideration, the receipt and the adequacy of which is hereby acknowledged;

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

1. Definitions and Word Usage

(a) *Definitions and Usage - General.*

For the purposes of this Agreement, the following terms, phrases, words, and abbreviations shall have the meanings given herein, unless otherwise expressly stated. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number, and words in the singular number include the plural number; and the masculine gender includes the feminine gender. The words "shall" and "will" are mandatory, and "may" is permissive. Unless otherwise expressly stated, words not defined herein shall be given their common and ordinary meaning.

(b) *Affiliate.*

"Affiliate" shall mean any Person who owns or controls, is owned or controlled by, or is under common ownership or control with a Franchisee.

(c) *ATIS Service.*

"ATIS Service" shall mean that service provided by an ATIS System, which is a system, including a database, designed to acquire, analyze, communicate and present real-time and other

information to assist travellers in moving from one location to another, both while en route, and before travelling.

(d) ATIS System or System.

"ATIS System" or "System" shall mean an Advanced Traveler Information System, which is a facility designed to provide surface transportation travellers with interactive, real-time information useful in moving from one location to another, such as traffic and road conditions, incidents, optimal routings, lane restrictions, and safety bulletins.

(e) FCC.

"FCC" shall mean the Federal Communications Commission, its designee, or any successor governmental entity thereto.

(f) Franchise.

"Franchise" shall mean an exclusive² authorization granted in accordance with this Agreement to construct, operate, and maintain an ATIS System along the Public Rights-of-Way within the boundaries of Franchisor. Any such authorization, in whatever form granted, shall not mean or include any franchise or permit required for the privilege of transacting and carrying on a business within the boundaries of Franchisor as required by the ordinances and laws of the relevant jurisdictions , or for attaching devices to poles or other structures, whether owned by Franchisor, another public entity, or a private entity, or for

² **Note that under certain circumstances it maybe desirable to grant multiple franchises, in which case the word "exclusive" should be deleted.**

excavating or performing other work in or along Public Rights-of-Way.

(g) *Franchise Agreement.*

"Franchise Agreement" or "Agreement" shall mean this agreement between the Franchisee and Franchisor.

(h) *Franchise Area.*

"Franchise Area" shall mean the area of Franchisor that the Franchisee is authorized to serve by this Franchise Agreement.

(i) *Franchisee.*

"Franchisee" shall mean a natural Person, partnership, domestic or foreign corporation, association, joint venture, or organization of any kind that has been granted an ATIS Franchise by Franchisor.

(j) *Franchisor.*

"Franchisor" shall mean [insert description of the entity granting the Franchise.]

(k) *Governing Body.*

"Governing Body" shall mean [insert description of the governing body of the Franchisor.]

(l) *Gross Revenues.*

"Gross Revenues" shall mean any and all revenues, credits, property or other consideration of any kind or nature of the Franchisee, its Affiliates, or any Person in which the Franchisee has a financial interest, or of any other entity that operates the System, arising from, attributable to, or in any way derived from the operation of the Franchisee's ATIS System. Gross

Revenues shall be the basis for computing the Franchise Fee. Gross Revenues shall not include any taxes on services furnished by the Franchisee that are imposed directly on any user by the state, City, or other governmental unit and that are collected by the Franchisee on behalf of said governmental unit. A franchise fee is not such a tax.

(m) *Intelligent Transportation System.*

"Intelligent Transportation System" shall mean any electronic system that may increase the information available to drivers regarding traffic conditions and/or enable automated tracking or control of vehicles.

(n) *ITS Services.*

"ITS Services" shall mean services capable of being provided by an Intelligent Transportation System, including ATIS Service.

(o) *Person.*

"Person" shall mean an individual, partnership, association, joint stock company, organization, corporation, or any lawful successor thereto or transferee thereof, but such term does not include Franchisor.

(p) *Public Rights-of-Way.*

"Public Rights-of-Way" shall mean the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkway, waterway, easement, or similar property in which Franchisor now or hereafter holds any property interest, which, consistent with the purposes for which it was

dedicated, may be used for the purpose of installing and maintaining an ATIS System. No reference herein, or in any Franchise Agreement, to a "Public Right-of-Way" shall be deemed to be a representation or guarantee by Franchisor that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and the Franchisee shall be deemed to gain only those rights to use as are properly in Franchisor and as Franchisor may have the undisputed right and power to give.

(g) Sale.

" Sale " shall mean any sale, exchange, or barter transaction.

(r) *Transfer*.

(1) "Transfer" shall mean any transaction in which:

(A) any ownership or other right, title, or interest of more than fifteen percent (15%) in the Franchisee or its ATIS System is transferred, sold, assigned, leased, sublet, or mortgaged, directly or indirectly, in whole or in part; or (B) there is any change, acquisition, or transfer of control of the Franchisee; or (C) the rights and/or obligations held by the Franchisee under the franchise are transferred, directly or indirectly, to another party; or (D) any change or substitution occurs in the managing general partners of the Franchisee; or (E) the Franchisee, or its corporate parents, enter into any transaction that materially increases the debt that is to be borne by the ATIS System directly or indirectly, in a manner that may adversely affect system rates or services; or (F) any assets or property of a

Franchisee used or held in connection with an ATIS System are subjected to any lien, mortgage, lease or security interest.

(2) "Control" for purposes of this Section means the legal or practical ability to exert actual working control over the affairs of the Franchisee, grantee or applicant, either directly or indirectly, whether by contractual agreement, majority ownership interest, any lesser ownership interest, or in any other manner.

(3) A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation of fifteen percent (15%) or more of the ownership of the grantee by any person or group of persons acting in concert, none of whom already own or control fifty percent (50%) or more of such right or control, singularly or collectively.

2. **Grant of Franchise**

(a) *Grant of Franchise.*

The approval by the Governing Body of this Franchise Agreement shall constitute the grant of a Franchise to the Franchisee, subject to the terms and conditions of this Franchise Agreement and any applicable federal state or local laws or ordinances. The Franchise grants the Franchisee the right to construct, operate and maintain an ATIS System along the Public Rights-of-Way, for the sole purpose of providing ATIS Service. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Agreement. This Agreement does not confer any rights other than

as expressly provided herein or as mandated by federal, state or local law.

(b) *Franchise Area.*

The Franchise is issued for the entire present territorial limits of Franchisor and any area annexed thereto during the term of the Franchise.

(c) *Franchise Term.*

The Franchise is issued for a term of [_____ (__) years] from the effective date of this Franchise Agreement, unless the Franchise is earlier revoked or its term shortened as provided herein. The Franchisee may apply for renewal or extension pursuant to Section 10 hereof.

(d) *Franchise Characteristics.*

(1) The Franchise authorizes use of Public Rights-of-Way for installing communications beacons and other devices necessary and appurtenant to the operation of an ATIS System within a Franchise Area, but does not authorize a Franchisee to install an ATIS System on private property without owner consent or to use publicly or privately owned conduits without a separate agreement with the owners.

(2) The Franchise is not exclusive and does not preclude the issuance of other Franchises to operate ATIS Systems within Franchisor, and nothing in this Agreement shall limit or otherwise affect Franchisor's right to itself construct, operate, or maintain an ATIS System, with or without a Franchise.

(3) Upon its approval by the Governing Body, this Franchise Agreement shall constitute a contract between the Franchisee and Franchisor, and the terms, conditions, and provisions of this Franchise Agreement, subject to all duly enacted and applicable laws, shall define the rights and obligations of the Franchisee and Franchisor relating to the Franchise.

(4) All privileges prescribed by the Franchise shall be subordinate to any prior lawful occupancy of the Public Rights-of-Way, and Franchisor reserves the right to reasonably designate where a Franchisee's facilities are to be placed within the Public Rights-of-Way.

(5) The Franchise shall be a privilege that is in the public trust and personal to the original Franchisee. No Transfer of the Franchise shall occur without the prior consent of Franchisor and unless application is made by the Franchisee and City approval obtained.

(6) As part of the consideration for the grant of the Franchise, Franchisor agrees that it will periodically upgrade the System to keep up with technological advances, and will ensure that data provided by the System is periodically updated at intervals frequent enough to ensure its continued utility to consumers.

(e) *Franchise and Franchisee*
Subject to Other Laws, Police Power.

(1) The Franchisee shall at all times be subject to and shall comply with all applicable federal, state, and local laws.

(2) This Franchise Agreement is subject to and shall be governed by all terms and conditions of any applicable provisions of federal, state, or local law.

(3) All rights and privileges granted herein are subject to the police powers of Franchisor and its rights under applicable laws and regulations to regulate the Franchisee and the construction, operation and maintenance of the Franchisee's System, including, but not limited to, the right to adopt and enforce additional ordinances and regulations as Franchisor shall find necessary in the exercise of its police powers, the right to adopt and enforce applicable zoning, building, permitting and safety ordinances and regulations, the right to adopt and enforce ordinances and regulations relating to equal employment opportunities, and the right to adopt and enforce ordinances and regulations containing right-of-way, telecommunications, utility and transportation service standards and rate regulation provisions.³

³ ***Note that there may be questions about the authority of a multi-jurisdictional agency to exercise all of the powers mentioned in this section. If so, it may be necessary to amend or delete this section, as well as to make other arrangements -- possibly including separate agreements or franchises with the various separate jurisdictions making up or comprised within the Franchisor.***

(4) No course of dealing between the Franchisee and Franchisor, or any delay on the part of Franchisor in exercising any rights hereunder, shall operate as a waiver of any such rights of Franchisor or acquiescence in the actions of the Franchisee in contravention of rights except to the extent expressly waived by Franchisor or expressly provided for in this Franchise Agreement.

(5) Franchisor shall have the maximum plenary authority to regulate ATIS Systems, Franchisees, and Franchises as may now or hereafter be lawfully permissible; except where Franchisor's rights are expressly waived by this Franchise Agreement, they are reserved, whether expressly enumerated or not.

(f) Approval and Effective Date.

This Franchise Agreement shall become effective upon its execution by Franchisor and the Franchisee, and its subsequent approval by the Governing Body.

(g) Effect of Acceptance.

By accepting the Franchise and executing this Franchise Agreement, the Franchisee (1) acknowledges and accepts Franchisor's legal right to grant the Franchise, to enter this Franchise Agreement, and to enact and enforce ordinances and regulations related to the Franchise, (2) agrees that it will not oppose intervention by Franchisor in any proceeding affecting the Franchisee's ATIS System, (3) accepts and agrees to comply with each provision of this Agreement, and (4) agrees that the

Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

(h) *No Waiver.*

(1) The failure of Franchisor on one or more occasions to exercise a right or to require compliance or performance under this Franchise Agreement or any applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the Franchise, unless such right or such compliance or performance has been specifically waived in writing.

(2) Waiver of a breach of this Agreement shall not be a waiver of any other breach, whether similar to or different from that waived. Neither the granting of the Franchise, nor any provision herein, nor any action by Franchisor hereunder shall constitute a waiver of or a bar to the exercise of any governmental right or power of Franchisor, including without limitation the right of eminent domain.

(i) *Construction of Franchise Agreement.*

The provisions of this Franchise Agreement shall be liberally construed in favor of Franchisor in order to promote the public interest. References to applicable law or applicable requirements refer to applicable law or requirements as the same may be amended from time to time.

(j) *Amendment of Franchise Agreement.*

Franchisor shall liberally amend this Franchise Agreement upon the application of the Franchisee whenever necessary to enable the Franchisee to take advantage of developments in the fields of telecommunications and traffic management that, in Franchisor's opinion, will afford the Franchisee an opportunity to serve the public more efficiently, effectively and economically. Such amendments shall be subject to such conditions as Franchisor determines are appropriate to protect the public interest.

(k) *Governing Law.*

Except as to matters that are governed solely by federal law or regulation, this Franchise Agreement will be governed by and construed in accordance with the laws of the State of _____

(l) *Acts at Franchisee's Expense.*

Unless otherwise expressly provided in this Franchise Agreement, all acts that the Franchisee is required to perform under this Agreement or applicable law shall be performed at the Franchisee's own cost and expense.

(m) *Eminent Domain.*

Nothing herein shall be deemed or construed to impair or affect, in any way or to any extent, the right of Franchisor to acquire the property of the Franchisee through the exercise of the right of eminent domain, and nothing herein contained shall be construed to contract away or to modify or abridge, either for

a term or in perpetuity, Franchisor's right of eminent domain with respect to any public utility.

3. Franchise Fee

(a) Franchise Fee.

As consideration for the Franchisee's use of the Public Rights-of-Way, in recognition that the Franchise constitutes a valuable and exclusive property right without which the Franchisee would be required to invest substantial additional capital, the Franchisee shall pay Franchisor a Franchise Fee of [five percent (5%)]⁴ of its Gross Revenues.

(b) Not a Tax or in Lieu of Any Other Tax or Fee.

(1) Payment of the Franchise Fee shall not be considered in the nature of a tax.

(2) The Franchise Fee is in addition to all other taxes and payments that the Franchisee may be required to pay under any federal, state, or local law.

(c) Payments

(1) The Franchise Fee and any other costs assessed by Franchisor against the Franchisee shall be paid monthly to Franchisor and shall commence as of the effective date of the Franchise. Franchisor shall be furnished at the time of each

⁴ ***This figure will be central to the negotiations between the Franchisor and a potential franchisee. Five percent is typical of cable television franchises, and is the maximum permitted by federal law governing cable franchises. Other compensation mechanisms, such as a flat fee or a share of net profits, are also feasible, but this method most closely captures the value of the use of the public rights-of-way. The accompanying model of an ATMS Franchise includes provisions for implementing several alternative compensation mechanisms.***

payment with a statement certified by the Franchisee's chief financial officer or an independent certified public accountant reflecting the total amount of monthly Gross Revenues for the payment period. Monthly payments shall be made to Franchisor no later than fifteen (15) days following the end of each month. An annual statement of Gross Revenues shall be furnished to Franchisor by an independent, certified public accountant. The Franchisee shall provide an annual complete audit statement for each calendar year within ninety (90) days from the end of that calendar year.

(2) In the event any franchise fee payment or recomputation amount is not made on or before the date specified herein, the Franchisee shall pay additional compensation and interest charges computed from such due date, at an annual rate equal to the commercial prime interest rate of Franchisor's primary depository bank during the period such unpaid amount is owed.

(d) *Audit.*

(1) Franchisor shall have the right to inspect and copy records and the rights to audit and to recompute any amounts determined to be payable under this Agreement, whether the records are held by the Franchisee, an Affiliate, or any other entity that collects or receives funds related to the Franchisee's operation in Franchisor, including, by way of illustration and not limitation, any entity that sells advertising on the Franchisee's behalf. The Franchisee shall be

responsible for providing the records to Franchisor, without regard to by whom they are held. The records shall be maintained for at least three (3) years after termination of the Franchise, including any renewal term. Franchisor's audit expenses shall be borne by Franchisor unless the audit discloses an underpayment, in which case the costs of the audit shall be borne by the Franchisee as a cost incidental to the enforcement of the Franchise. Any additional amounts due to Franchisor as a result of the audit shall be paid within thirty (30) days following written notice to the Franchisee by Franchisor of the underpayment, which notice shall include a copy of the audit report. If recomputation results in additional revenue to be paid to Franchisor, such amount shall be subject to a 10 percent (10%) interest charge.

(2) The Franchisee shall maintain its fiscal and financial records and have all relevant fiscal and financial records maintained by others on its behalf in such a manner as to enable Franchisor to determine the cost of assets of the Franchisee which are used in providing services within Franchisor and to determine Gross Revenues.

4. Design and Construction Provisions

(a) *System Design and Construction Plan.*

No later than sixty (60) days after the effective date of the Franchise, the Franchisee shall deliver to Franchisor a final system design and construction plan and budget (the "Construction Plan") substantially in the form attached as Exhibit A. The

system design will be shown on maps of industry standard scale using standard symbology, and shall depict all electronic and physical features of the plant. Franchisor shall review the plan and, within sixty (60) days of the date the plan is made available for City review, submit comments to the Franchisee. Within fifteen (15) days of receipt of the comments, the Franchisee shall submit a revised plan to Franchisor, either incorporating the comments or explaining why the comments were not included. Franchisor may take any appropriate action it is entitled to take under this Franchise Agreement or applicable law if it believes the Construction Plan fails to satisfy or is likely to fail to satisfy the Franchisee's obligations. Franchisor's review does not excuse any non-performance under this Franchise Agreement or applicable law.

(b) *System Construction Schedule.*

The Construction Plan shall include a detailed schedule for the construction of the ATIS System, and shall provide that the Franchisee shall begin construction of the System within four (4) months of the effective date of the Franchise, and shall complete construction within twenty-four (24) months of the effective date.

(c) *Compliance with Construction Plan.*

Failure on the part of a Franchisee to commence and diligently pursue each of the requirements and complete each of the matters set forth in this Agreement or to comply with the Construction Plan, including by providing the equipment specified

(or its equivalent) and by following the construction and installation practices required by this Agreement (except insofar as those plans or practices, if carried out, would result in construction of a system that could not meet requirements of federal, state or local law; and except for such minor modifications as are typical in the industry), shall be grounds for termination of the Franchise under and pursuant to the terms of Section 9; provided, however, that the Governing Body in its discretion may extend the time for the completion of construction and installation for additional periods in the event a Franchisee, acting in good faith, experiences delays by reason of circumstances beyond its control. The Franchisee's failure to comply with provisions of the construction plan approved by the Governing Body shall be subject to penalties pursuant to Section 9.

(d) *Construction Procedures.*

(1) The Franchisee shall construct, operate and maintain the ATIS System subject to the supervision of all of the authorities of Franchisor who have jurisdiction in such matters, and in strict compliance with all laws, ordinances, departmental rules and regulations affecting the System.

(2) The System, and all parts thereof, shall be subject to the right of periodic inspection by Franchisor.

(3) No construction, reconstruction or relocation of the System or any part thereof within the Public Rights-of-Way shall be commenced until written permits have been obtained from

the proper City officials. In any permit so issued, such officials may impose such conditions and regulations as a condition of the granting of the permit as are necessary for the purpose of protecting any structures in the Public Rights-of-Way and for the proper restoration of such Public Rights-of-Way and structures, and for the protection of the public and the continuity of pedestrian and vehicular traffic.

(4) The Governing Body may, from time to time, issue such reasonable rules and regulations concerning the construction, operation and maintenance of the System as are consistent with the provisions of this Franchise Agreement.

(e) *Construction Standards.*⁵

(1) The construction, operation, maintenance, and repair of the ATIS System shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970, as amended, the Intermodal Surface Transportation Efficiency Act, the National Electrical Safety Code, the National Electric Code, Obstruction Marking and Lighting, AC 70/7460 i.e., Federal Aviation Administration; Construction, Marking and Lighting of Antenna Structures, Federal Communications Commission Rules Part 17; [Insert references to applicable transportation-related codes]; AT&T Manual of Construction Procedures (Blue Book); Franchisor's Utility Construction Requirements; the

⁵ ***Note that there may be legal issues surrounding the Franchisor's power to establish the standards in this section, if they infringe on the authority of local governments to regulate the matters with which they are concerned.***

Franchisee's Construction Procedures Manual; and other applicable federal, state, or local laws and regulations that may apply to the operation, construction, maintenance, or repair of an ATIS System, including, without limitation, FCC rules and local zoning and construction codes, and laws and accepted industry practices, all as hereafter may be amended or adopted. In the event of a conflict among codes and standards, the most stringent code or standard shall apply (except insofar as those standard, if followed, would result in a system that could not meet requirements of federal, state or local law). Franchisor may adopt additional standards as required to ensure that work continues to be performed in an orderly and workmanlike manner, or to reflect changes in standards which may occur over the franchise term.

(2) All wires, cables, equipment, and structures shall be installed and located to cause minimum interference with the rights and convenience of property owners.

(3) All installation of electronic equipment shall be of a permanent nature, using durable components.

(4) Without limiting the foregoing, antennae and their supporting structures (towers) shall be designed in accordance with the Uniform Building Code as amended, and shall be painted, lighted, erected, and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable state or local laws,

codes, and regulations, all as hereafter may be amended or adopted.

(5) Without limiting the foregoing, all of the Franchisee's plant and equipment, including, but not limited to, control centers, antenna and beacon sites, sensing devices, distribution system, towers, structures, poles, wires, cable, coaxial cable, fiber optic cable, fixtures, and apparatuses shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained, and operated in accordance with good engineering practices, performed by experienced and properly trained maintenance and construction personnel so as not to endanger or interfere with improvements Franchisor shall deem appropriate to make or to interfere in any manner with the Public Rights-of-Way or legal rights of any property owner or to unnecessarily hinder or obstruct pedestrian or vehicular traffic.

(6) All safety practices required by law shall be used during construction, maintenance, and repair of an ATIS System. The Franchisee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public.

(7) The Franchisee shall not place facilities, equipment, or fixtures where they will interfere with any gas, electric, telephone, water, sewer, or other utility facilities, or obstruct or hinder in any manner the various utilities serving

the residents of Franchisor of their use of any Public Rights-of-Way.

(8) Any and all Public Rights-of-Way, public property, or private property that is disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance, or construction of a System shall be promptly repaired by the Franchisee.

(9) The Franchisee shall, by a time specified by Franchisor, protect, support, temporarily disconnect, relocate, or remove any of its property when required by Franchisor by reason of traffic conditions; public safety; Public Right-of-Way construction; Public Right-of Way maintenance or repair (including resurfacing or widening); change of Public Right-of-Way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned communications system, public work or improvement or any government-owned utility; Public-Right-of-Way vacation; or for any other purpose where the convenience of Franchisor would be served thereby; provided, however, that the Franchisee shall, in all such cases, have the privilege of abandoning any property in place.

(10) If any removal, relaying, or relocation is required to accommodate the construction, operation, or repair of the facilities of another Person that is authorized to use the Public Rights-of-Way, the Franchisee shall, after thirty (30) days' advance written notice, take action to effect the necessary

changes requested by the responsible entity. Franchisor may resolve disputes as to responsibility for costs associated with the removal, relaying, or relocation of facilities as among entities authorized to install facilities in the Public Right-of-Way if the parties are unable to do so themselves, and if the matter is not governed by a valid contract between the parties or a state or federal law or regulation.

(11) In the event of an emergency, or where the ATIS System creates or is contributing to an imminent danger to health, safety, or property, Franchisor may remove, relay, or relocate any or all parts of the ATIS System without prior notice.

(12) The Franchisee shall, on the request of any Person holding a building moving permit issued by Franchisor, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting same, and the Franchisee shall have the authority to require such payment in advance, except in the case where the requesting Person is Franchisor, in which case no such payment shall be required. The Franchisee shall be given not less than forty-eight (48) hours' advance notice to arrange for such temporary wire changes.

(13) The Franchisee shall have the authority to trim trees that overhang a Public Right-of-Way of Franchisor so as to prevent the branches of such trees from coming in contact with

the wires and cables of the Franchisee. At the option of Franchisor, such trimming may be done by it or under the supervision, direction, and expense of the Franchisee.

(14) The Franchisee shall use, with the owner's permission, existing underground conduits or overhead utility facilities whenever feasible and may not erect poles in Public Rights-of-Way without the express permission of Franchisor. Copies of agreements for use of conduits or other facilities shall be filed with Franchisor as required by this Franchise Agreement or upon City request.

(15) Cable may be installed overhead where poles now exist and electric or telephone lines or both are now overhead, but where no overhead poles exist all trunk, feeder and drop cable shall be constructed underground. Whenever and wherever electric lines and telephone lines are moved from overhead to underground placement, all ATIS System cables shall be similarly moved and the cost of movement of its cable shall be solely the obligation of the Franchisee.

(16) Franchisor shall have the right to install and maintain free of charge upon any poles owned by the Franchisee any wire and pole fixtures that do not unreasonably interfere with the ATIS System operations of the Franchisee.

(17) Prior to erection of any towers, poles, or conduits or the construction, upgrade, or rebuild of the System, the Franchisee shall first submit to Franchisor and other designated parties for approval a concise description of the ATIS

System proposed to be erected or installed, including engineering drawings, if required by Franchisor, together with a map and plans indicating the proposed location of all such facilities. No erection or installation of any tower, pole, underground conduit, or fixture or any rebuilding or upgrading of the ATIS System shall be commenced by any Person until approval therefor has been received from Franchisor.

(18) Any contractor or subcontractor used for work or construction, installation, operation, maintenance, or repair of System equipment must be properly licensed under laws of the State and all applicable local ordinances, and each contractor or subcontractor shall have the same obligations with respect to its work as Franchisee would have under this Franchise Agreement and applicable laws if the work were performed by Franchisee. The Franchisee must ensure that contractors, subcontractors and all employees who will perform work for it are trained and experienced. The Franchisee shall be responsible for ensuring that the work of contractors and subcontractors is performed consistent with the franchise and applicable law, shall be fully responsible for all acts or omissions of contractors or subcontractors, shall be responsible for promptly correcting acts or omissions by any contractor or subcontractor, and shall implement a quality control program to ensure that the work is properly performed.

(f) *Area Served.*

The Franchisee shall build its system so that it is able to provide service to all areas located within Franchisor limits as they existed on the effective date of the Franchise. It must build the system so that it can extend service to all areas that may be annexed in the future.

(g) *System Tests and Inspections.*

(1) Tests. The Franchisee shall perform all tests necessary to demonstrate compliance with the requirements of the franchise and other performance standards established by law or regulation. The Franchisee shall perform at least the following tests:

(A) Preconstruction quality control on equipment.

The Franchisee shall perform preconstruction quality tests on system components. In case of passive components, this will include testing a significant sample of devices to verify compliance with manufacturer's specifications. No component shall be used in system which fails to meet manufacturer's specifications. The Franchisee shall maintain in Franchisor records of all preconstruction tests, which Franchisor may inspect on reasonable notice.

(B) Acceptance Tests. The Franchisee shall perform acceptance tests on each construction area segment prior to system activation. The tests shall demonstrate that the system components are operating as expected. Franchisor has the option of witnessing the tests. The test results shall be

submitted to Franchisor for review. The Franchisee shall have the obligation, without further notice from City, to take corrective action if any segment is not operating as expected. Franchisor will review the tests and approve each system segment for system activation. Unless Franchisor determines test results are not adequate to demonstrate system compliance with the standards described above and objects within three (3) working days of receipt of the tests, a segment will be deemed approved for system activation.

(2) Inspections during Construction. Franchisor may conduct inspections of construction areas and subscriber installations, including to assess compliance with the construction and installation practices manual and design plans. The Franchisee shall be notified of any violations found during course of inspections. The Franchisee must bring violations into compliance within 30 days of the date notice of violation is given, and must submit a report to Franchisor describing the steps taken to bring itself into compliance. Inspection does not relieve the Franchisee of its obligation to build in compliance with all provisions of the franchise.

(h) *Use of Public Property.*

(1) Should the grades or lines of the Public Rights-of-Way which the Franchisee is hereby authorized to use and occupy be changed at any time during the term of the Franchise, the Franchisee shall, if necessary, at its own cost and expense,

relocate or change its System so as to conform with the new grades or lines.

(2) Any alteration to the water mains, sewerage or drainage system or to any City, state or other public structures in the Public Rights-of-Way required on account of the presence of the System in the Public Rights-of-Way shall be made at the sole cost and expense of the Franchisee. During any work of constructing, operating or maintaining of the System, the Franchisee shall also, at its own cost and expense, protect any and all existing structures belonging to Franchisor and any other person. All work performed by the Franchisee pursuant to this section shall be done in the manner prescribed by Franchisor or other officials having jurisdiction therein.

(i) *Interference with Public Projects.*

Nothing in this Agreement shall be in preference or hindrance to the right of Franchisor and any board, authority, commission or public service corporation to perform or carry on any public works or public improvements of any description, and should the System in any way interfere with the construction, maintenance or repair of such public works or public improvements, the Franchisee shall, at its own cost and expense, protect or relocate its System, or part thereof, as reasonably directed by any City official, board, authority, commission or public service corporation.

(j) *Publicizing Proposed Construction Work.*

The Franchisee shall publicize proposed construction work at least one (1) week prior to commencement of that work by causing written notice of such construction work to be delivered to Franchisor and by notifying those Persons most likely to be affected by the work in at least two (2) of the following ways: by telephone, in person, by mail, by distribution of flyers to residences, by publication in local newspapers, or in any other manner reasonably calculated to provide adequate notice. In addition, before entering onto any Person's property, the Franchisee shall contact the property owner or (in the case of residential property) the resident at least one (1) day in advance. If the Franchisee must enter premises, it must schedule an appointment at the convenience of the owner or resident.

5. Operations and Maintenance

(a) *System Maintenance.*⁶

(1) Maintenance Practices Subject to Regulation.

Franchisor shall review maintenance practices at regular intervals and may waive requirements or adopt additional requirements as reasonable to ensure the System remains capable of providing high-quality service.

⁶ ***Note that, unlike the Model ATMS Franchise, this document does not refer to an Annual Operations Plan. This is because this model anticipates that an ATIS System would not use the rights-of-way as intensively as an ATMS System, and would require little government supervision. ATIS Systems will by their nature, consist of providing services and the general public, and will not require close coordination with the traffic management faction.***

(2) Maintenance Practices. In addition to its other obligations, the Franchisee shall (A) use replacement components of good and durable quality, with characteristics better or equal to replaced equipment; and (B) follow the more stringent of franchise maintenance standards, industry maintenance standards or corporate maintenance standards.

(b) *Technical Standards.*

(1) The ATIS System shall meet or exceed all applicable technical standards, including any such standards as hereafter may be amended or adopted by Franchisor in a manner consistent with federal, state and local law.

(2) The Franchisee shall use equipment generally used in high-quality, reliable, modern systems of similar design, including, but not limited to, back-up power supplies capable of providing power to the System for a minimum of three (3) hours in the event of an electrical outage. This obligation shall include the obligation to install equipment that will (A) cut in automatically on failure of commercial utility AC power, (B) revert automatically to commercial power when it is restored, (C) prevent the standby power source from powering a "dead" utility line, and (D) alert the Franchisee's staff when the backup power supply cuts in.

(3) The Franchisee shall not design, install, or operate its facilities in a manner that will interfere with the signals of any broadcast station, the facilities of any public

utility or cable system, or individual or master antennae used for receiving television or other broadcast signals.

(c) *Tests.*

(1) Proof of Performance Tests.

At the times specified in applicable regulations, the Franchisee shall perform proof of performance tests, and such other tests as may be required, designed to demonstrate compliance with this Section and regulatory requirements. The Franchisee shall provide the proof of performance test results promptly to Franchisor. The Franchisee shall provide Franchisor ten (10) days' advance written notice when a proof of performance or other required test is scheduled so that Franchisor may have an observer present. Franchisor shall have the right to inspect the ATIS System during and after its construction to ensure compliance with this Section and applicable provisions of local, state and federal law, and may require the Franchisee to perform additional tests based on Franchisor's investigation of the ATIS System performance or on Subscriber complaints.

(2) Continuins Tests.

(A) The Franchisee and Franchisor will jointly select locations at the extremities of system service area to install equipment to establish permanent test points. The test points shall be installed in locked enclosures so as to be accessible from ground level. The Franchisee shall perform proof of performance tests at these locations at least once every six months through life of franchise except as federal law otherwise

limits its obligation, and at other points where system user complaints indicate tests are warranted. The tests shall demonstrate system compliance with technical specifications established pursuant to franchise, or other applicable law. Franchisor shall have option of witnessing the tests. The number of required test points may be specified by Franchisor in accordance with federal law and with good engineering practice, as appropriate to ensure all subscribers are receiving adequate service.

(B) A written report of test results shall be filed with Franchisor within seven (7) days of each test. If the location fails to meet performance specifications, the Franchisee, without requirement of additional notice or request from City, shall take corrective action, retest the locations and advise Franchisor of the action taken and results achieved.

(d) *Continuity of Service.*

At Franchisor's request, the Franchisee shall operate its System for a temporary period (the "transition period") following the termination, Sale, or Transfer of its Franchise as necessary to maintain service to Subscribers, and shall cooperate with Franchisor to assure an orderly transition from it to another Franchisee. The transition period shall be no longer than the reasonable period required to select another Franchisee and build a replacement System, and shall not be longer than thirty-six (36) months, unless extended by Franchisor for good cause. During the transition period, the Franchisee will

continue to be obligated to comply with the terms and conditions of the Franchise Agreement and applicable laws and regulations.

(1) If the Franchisee abandons its System during the Franchise term, or fails to operate its System in accordance with the terms of this Section 5(f) during any Transition Period, Franchisor, at its option, may operate the System, designate another entity to operate the System temporarily until the Franchisee restores service under conditions acceptable to Franchisor or until the Franchise is revoked and a new Franchisee selected by Franchisor is providing service, or obtain an injunction requiring the Franchisee to continue operations. If Franchisor is required to operate or designate another entity to operate the ATIS System, the Franchisee shall reimburse Franchisor or its designee for all reasonable costs and damages incurred that are in excess of the revenues from the ATIS System.

(2) Franchisor shall be entitled to injunctive relief under the preceding paragraph if:

(A) The Franchisee fails to provide ATIS Service in accordance with its Franchise over a substantial portion of the Franchise Area for ninety-six (96) consecutive hours, unless Franchisor authorizes a longer interruption of service; or

(B) The Franchisee, for any period, willfully and without cause refuses to provide ATIS Service in accordance with its Franchise over a substantial portion of the Franchise Area.

(e) *Interconnection and Interoperability.*

(1) The Franchisee shall design its System so that it may be interconnected with any or all other ATIS systems or similar traffic management systems in the area. Interconnection of systems may be made by direct cable connection, microwave link, satellite or other appropriate methods.

(2) The Franchisee shall design the System so that it meets national interoperability standards for ITS user equipment, and shall update the System as required to maintain compliance with those standards.

(3) Upon receiving the directive of Franchisor to interconnect, the Franchisee shall immediately initiate negotiations with the other affected system or systems so that costs may be shared equally for both construction and operation of the interconnection link.

(4) The Governing Body may grant reasonable extensions of time to interconnect or rescind its request to interconnect upon petition by the Franchisee to the Governing Body. The Governing Body shall grant the request if it finds that the Franchisee has negotiated in good faith and the cost of interconnection would cause an unreasonable increase in Subscriber rates.

(5) No interconnection shall take place without prior approval of the Governing Body. The Franchisee in seeking approval for interconnection shall demonstrate that all signals to be interconnected will comply with FCC technical standards for

all classes of signals and will result in no more than a low level of distortion.

(6) The Franchisee shall cooperate with any interconnection corporation, regional transportation or interconnection authority, state or federal regulatory agency which may be hereafter established for the purpose of regulating, facilitating, financing or otherwise providing for the interconnection of communications systems beyond the boundaries of Franchisor.

6. System Facilities, Equipment, and Services

(a) *Provision of ATIS Service.*

After the ATIS System becomes operational in a portion of the Franchise Area, as provided in the Construction Plan, Franchisee shall have the authority to provide ATIS Service to all businesses, residents, and travellers in Franchisor at reasonable rates.

(b) *Provision of Other IVHS Services.*

The Franchisee may provide other IVHS Services that do not require the installation of additional facilities or expansion of existing facilities in the Public Rights-of-Way, with the prior consent of Franchisor, and on such terms as the parties shall mutually agree.

7. Recordkeeping and Reporting Provisions

(a) *Open Books and Records.*

(1) Franchisor shall have the right to inspect and copy at any time during normal business hours at the Franchisee's

main office in Franchisor or at such location as Franchisor may designate, all of Franchisee's books and records of account, receipts, maps, plans, financial statements, contracts, service complaint logs, performance test results, records of requests for service, computer records, codes, programs, and disks or other storage media and other like material which Franchisor deems appropriate in order to monitor compliance with the terms of this Franchise Agreement or applicable law. This includes not only the books and records of the Franchisee, but any books and records Franchisor deems relevant held by an Affiliate, an operator of the ATIS System, or any contractor, subcontractor or any person holding any form of management contract for the ATIS System. The Franchisee is responsible for collecting the information and producing it at the location specified above, and by accepting its franchise it affirms that it can and will do so.

(2) The Franchisee shall maintain separate financial records governing its operations in the Franchise Area.

(3) Access to the Franchisee's records shall not be denied by the Franchisee on the basis that said records contain "proprietary" information. Refusal to provide information required herein to Franchisor shall be grounds for revocation. All such information received by Franchisor shall remain confidential insofar as permitted by the [Insert reference to state Freedom of Information Act or equivalent] and other applicable state and federal law.

(4) The Franchisee shall maintain a file of records open to public inspection in accordance with applicable FCC rules and regulations.

(b) *Communication with Regulatory Agencies.*

The Franchisee shall file with Franchisor in a form acceptable to Franchisor all reports required by state and Federal agencies, including, but not limited to, any proof of performance tests and results, Equal Employment Opportunity reports, and all petitions, applications, and communications of all types regarding the ATIS System, or a group of ATIS Systems of which the Franchisee's ATIS System is a part, submitted or received by the Franchisee, an Affiliate, or any other Person on the behalf of the Franchisee, either to or from the FHWA, the State Department of Transportation, the FCC, the Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction over any matter affecting operation of the Franchisee's System. This material shall be submitted to Franchisor at the time it is filed or within five (5) days of the date it is received. Public access to such reports received by Franchisor shall not be denied.

(c) *Reports.*

(1) Annual Report

(2) No later than 90 days after the end of its fiscal year, the Franchisee shall submit a written report to the Governing Body, in a form directed by the Governing Body, which shall include:

(A) a summary of the previous year's activities in development of the ATIS System, including but not limited to descriptions of services begun or dropped;

(B) a summary of complaints, identifying both the number and nature of the complaints received and an explanation of their dispositions;

(C) An annual fully audited and certified financial report from the previous calendar year, including year-end balance sheet; income statement showing revenue from every source, line item operating expenses, depreciation expense, interest expense, and taxes paid; statement of sources and applications of funds; and depreciation schedule;

(D) An ownership report, indicating all Persons who at any time during the preceding year did control or benefit from an interest in the Franchise of five percent (5%) or more;

(E) An annual list of officers and members of the Board of Directors of the Franchisee and any Affiliates;

(F) such other information as Franchisor Manager or the Governing Body may direct.

(d) *Annual Plant Survey Report.*

The Franchisee shall prepare and submit, by [August 31st of each year, a complete survey of its plant and a full report thereon to the Governing Body. The purpose of the report shall be to assure Franchisor that the technical standards of the FCC are being maintained. This plant survey shall include the physical miles of plant construction and plant in operation

during the fiscal year, including any revisions to the System "as built" maps filed with Franchisor, and appropriate electronic measurements and shall be conducted in conformance with such requirements, including supervision, as Franchisor Manager and Governing Body may devise.

(e) *Special Reports.*

Franchisee shall deliver the following special reports:

(1) Any notice of deficiency, forfeiture, or other document issued by any state or federal agency instituting any investigation or civil or criminal proceeding regarding the ATIS System, the Franchisee, or any Affiliate of the Franchisee, to the extent the same may affect or bear on operations in Franchisor. This material shall be submitted to Franchisor at the time it is filed or within five (5) days of the date it is received.

(2) Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the Franchisee or by any partnership or corporation that owns or controls the Franchisee directly or indirectly. This material shall be submitted to Franchisor at the time it is filed or within five (5) days of the date it is received.

(3) Technical tests required by Franchisor as specified in this Franchise Agreement or any applicable ordinance shall be submitted to Franchisor promptly upon completion of such tests.

(4) A report submitted within thirty (30) days of the end of each fiscal year showing the number of outages and service degradations for the prior quarter, and identifying separately each planned outage, the time it occurred, its duration, and the estimated area affected; each unplanned outage or service degradation, the time it occurred, its estimated duration and the estimated area affected; and the total hours of outages and service degradations as a percentage of total hours of ATIS System operation.

(f) *General Reports.*

Each Franchisee shall prepare and furnish to Franchisor, at the times and in the form prescribed by Franchisor Manager and Governing Body, such reports with respect to its operation, affairs, transactions or property, as may be reasonably necessary or appropriate to the performance of any of the rights, functions or duties of Franchisor in connection with this Agreement.

(g) *Records Required.*

(1) The Franchisee shall at all times maintain:

(A) A full and complete set of plans, records, and "as built" maps showing the exact location of all System equipment installed or in use in Franchisor.

(B) A comprehensive record of all personnel transactions and utilization of contractors, subcontractors, vendors, and suppliers by race and sex.

(C) Records of outages, indicating date, duration, and area affected, type of outage, and cause.

(D) Records of service calls for repair and maintenance.

(E) A public file showing its plan and timetable for construction of the ATIS System.

(2) Franchisor may require additional information, records, and documents from time to time.

(h) *Performance Evaluation.*

(1) Franchisor may, at its discretion, hold performance evaluation sessions. All such evaluation sessions shall be open to the public, and announced in a newspaper of general circulation.

(2) Topics that may be discussed at any evaluation session may include, but are not limited to, system performance and construction, Franchisee compliance with this Franchise Agreement, services provided, franchise fees, penalties, free or discounted services, applications of new technologies, and judicial and administrative filings.

(3) During the review and evaluation by Franchisor, the Franchisee shall fully cooperate with Franchisor and shall provide such information and documents as Franchisor may need to reasonably perform its review.

(i) *Voluminous Materials.*

If any books, records, maps or plans, or other requested documents are too voluminous, or for security reasons cannot be copied and moved, then the Franchisee may request that the inspection take place at some other location, provided that (1)

the Franchisee must make necessary arrangements for copying documents selected by Franchisor after review; and (2) the Franchisee must pay all travel and additional copying expenses incurred by Franchisor in inspecting those documents or having those documents inspected by its designee.

(j) *Retention of Records; Relation to Privacy Rights.*

The Franchisee shall take all steps required, if any, to ensure that it is able to provide Franchisor all information which must be provided or may be requested under this Franchise Agreement. Each Franchisee shall be responsible for redacting any data that federal law prevents it from providing to Franchisor. Records shall be kept for at least five (5) years.

8. Insurance; Surety; Indemnification

(a) *Insurance Required.*

The Franchisee shall maintain, and by its acceptance of a Franchise specifically agrees that it will maintain, throughout the entire length of the Franchise period, at least the following liability insurance coverage insuring Franchisor and the Franchisee: worker's compensation and employer liability insurance to meet all requirements of state law and comprehensive general liability insurance with respect to the construction, operation, and maintenance of the ATIS System, and the conduct of the Franchisee's business in Franchisor, in the minimum amounts of:

(1) [\$1,000,000] for property damage resulting from any one accident;

(2) [\$5,000,000] for personal bodily injury or death resulting from any one accident; and

(3) [\$2,000,000] for all other types of liability.

Franchisor may review these amounts no more than once a year and may require reasonable adjustments to them consistent with the public interest. In the event that the Franchisee objects to an increase in a policy limit and the parties are unable to agree on a mutually acceptable amount, the dispute shall be resolved by arbitration in accordance with the procedures of the American Arbitration Association.

(b) Qualifications of Sureties.

All insurance policies shall be with sureties qualified to do business in the State of _____ with an A-1 or better rating of insurance by Best's Key Rating Guide, Property/Casualty Edition, and in a form approved by Franchisor.

(c) Policies Available for Review.

All insurance policies shall be available for review by Franchisor, and the Franchisee shall keep on file with Franchisor certificates of insurance.

(d) Additional Insureds; Prior Notice of Policy Cancellation.

All general liability insurance policies shall name Franchisor, its officers, boards, commissions, commissioners, agents, and employees as additional insureds and shall further provide that any cancellation or reduction in coverage shall not be effective unless thirty (30) days' prior written notice thereof has been given to Franchisor. The Franchisee shall not

cancel any required insurance policy without submission of proof that the Franchisee has obtained alternative insurance satisfactory to Franchisor which complies with this Agreement.

(e) *Failure Constitutes Material Violation.*

Failure to comply with the insurance requirements set forth in this Section shall constitute a material violation of a Franchise.

(f) *Indemnification.*

(1) The Franchisee shall, at its sole cost and expense, indemnify, hold harmless, and defend Franchisor, its officials, boards, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of the construction, maintenance, or operation of its ATIS System; the conduct of the Franchisee's business in Franchisor; or in any way arising out of the Franchisee's enjoyment or exercise of a Franchise granted hereunder, regardless of whether the act or omission complained of is authorized, allowed, or prohibited by this Franchise Agreement.

(2) Specifically, the Franchisee shall, at its sole cost and expense, fully indemnify, defend, and hold harmless Franchisor, and in its capacity as such, the officers, agents, and employees thereof, from and against any and all claims, suits, actions, liability, and judgments for damages or otherwise arising out of or alleged to arise out of the installation, construction, operation, or maintenance of its System.

(3) The indemnity provision includes, but is not limited to, Franchisor's reasonable attorneys' fees incurred in defending against any such claim, suit, or proceeding.

(g) No Limit of Liability.

Neither the provisions of this Section nor any damages recovered by Franchisor shall be construed to limit the liability of the Franchisee for damages under any Franchise issued hereunder.

9. Performance Guarantees and Remedies

(a) Performance Bond.

(1) Prior to any ATIS System construction, upgrade, or other work in the Public Rights of Way, the Franchisee shall establish in Franchisor's favor a performance bond in an amount specified in the Franchise Agreement or other authorization as necessary to ensure the Franchisee's faithful performance of the construction, upgrade, or other work. The amount of such performance bond shall be equal to ten (10) percent of the total cost of the work.

(2) In the event the Franchisee subject to such a performance bond fails to complete the ATIS System construction, upgrade, or other work in the Public Rights of Way in a safe, timely, and competent manner in accord with the provisions of a Franchise Agreement, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by Franchisor as a result, including the full amount of any compensation, indemnification, or cost of removal

or abandonment of any property of the Franchisee, or the cost of completing or repairing the System construction, upgrade, or other work in the Public Rights-of-Way, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond. Franchisor may also recover against the bond any amount recoverable against the security fund where such amount exceeds that available under the security fund.

(3) Upon completion of the System construction, upgrade, or other work in the Public Rights-of-Way and payment of all construction obligations of the ATIS System to the satisfaction of Franchisor, Franchisor shall eliminate the bond or reduce its amount after a time appropriate to determine whether the work performed was satisfactory, which time shall be established considering the nature of the work performed. Franchisor may subsequently require a new bond or an increase in the bond amount for any subsequent construction, upgrade, or other work in the Public Rights-of-Way. In any event, the total amount of the bond shall equal ten (10) percent of the cost of the work.

(4) The performance bond shall be issued by a surety with an A-1 or better rating of insurance in Best's Key Rating Guide, Property/Casualty Edition; shall be subject to the approval of Franchisor; and shall contain the following endorsement:

"This bond may not be canceled, or allowed to lapse, until sixty (60) days after receipt by Franchisor, by certified mail, return receipt requested, of a written notice from the

issuer of the bond of intent to cancel or not to renew." .

(b) *Failure Constitutes Material Violation.*

Failure to maintain the performance bond shall constitute a material violation of a Franchise.

(c) *Remedies.*

In addition to any other remedies available at law or equity, Franchisor may apply any one or a combination of the following remedies in the event the Franchisee violates this Franchise Agreement, or applicable state or federal law:

(1) Revoke the Franchise or shorten the term pursuant to the procedures specified in this Agreement.

(2) Impose penalties available under applicable state and local laws.

(3) In addition to or instead of any other remedy, seek legal or equitable relief from any court of competent jurisdiction.

(d) *Shortening, Revocation, or Termination of Franchise.*

(1) Franchisor shall have the right to shorten the term of a Franchise to a term not less than thirty-one (31) months from the date of the action shortening the Franchise term, or to revoke the Franchise, for the Franchisee's failure to construct, operate, or maintain the ATIS System as required by this Franchise Agreement; for defrauding or attempting to defraud Franchisor or Subscribers; if the Franchisee is declared bankrupt; or for any other material breach of the Franchise

Agreement. To invoke the provisions of this Section, Franchisor shall give the Franchisee written notice of the default in its performance. If within thirty (30) calendar days following such written notice from Franchisor to the Franchisee, the Franchisee has not taken corrective action or corrective action is not being actively and expeditiously pursued to the satisfaction of Franchisor, Franchisor may give written notice to the Franchisee of its intent to shorten the term of or revoke the Franchise, stating its reasons; provided that no opportunity to cure shall be provided where the Franchisee has defrauded or attempted to defraud Franchisor or its Subscribers, or in the event the Franchisee is declared bankrupt. In the case of a fraud or attempted fraud, the Franchise may be revoked after the hearing required under Section 9(d) (2); revocation for bankruptcy shall be governed by paragraph Section 9(d) (3).

(2) Prior to shortening the term of or revoking a Franchise, Franchisor shall hold a public hearing, on thirty (30) calendar days' notice, at which time the Franchisee and the public shall be given an opportunity to be heard. Following the public hearing, Franchisor may determine whether to shorten the Franchise term or to revoke the Franchise based on the information presented at the hearing, and other information of record. If Franchisor determines to shorten the Franchise term or revoke the Franchise, it shall issue a written decision setting forth the reasons for its decision. A copy of such decision shall be transmitted to the Franchisee.

(3) The Franchise may, at the option of Franchisor following a public hearing, be revoked one hundred twenty (120) calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the Franchisee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding, unless within that one hundred twenty (120) day period:

(A) Such assignment, receivership, or trusteeship has been vacated; or

(B) Such assignee, receiver, or trustee has fully complied with the terms and conditions of this Franchise Agreement and has executed an agreement, approved by a court of competent jurisdiction, assuming and agreeing to be bound by the terms and conditions of this Franchise Agreement acceptable to Franchisor, and such other conditions as may be established or as are required under Section 11 of this Agreement.

(C) In the event of foreclosure or other judicial sale of any of the facilities, equipment, or property of the Franchisee, Franchisor may revoke the Franchise, following a public hearing before Franchisor, by serving notice on the Franchisee and the successful bidder, in which event the Franchise and all rights and privileges of the Franchise will be revoked and will terminate thirty (30) calendar days after serving such notice, unless:

(i) Franchisor has approved the Transfer of the Franchise to the successful bidder; and

(ii) The successful bidder has covenanted and agreed with Franchisor to assume and be bound by the terms and conditions of this Franchise Agreement.

(4) If Franchisor revokes the Franchise, or if for any other reason the Franchisee abandons, terminates, or fails to operate or maintain the ATIS System or provide service as required by the Agreement, the following procedures and rights are effective:

(A) Franchisor may require the former Franchisee to remove its facilities and equipment at the former Franchisee's expense. If the former Franchisee fails to do so within a reasonable period of time, Franchisor may have the removal done at the former Franchisee's and/or surety's expense.

(B) In the event of revocation, Franchisor, by resolution, may acquire ownership of the ATIS System at its then-fair market value, deducting therefrom the cost or damages to Franchisor resulting from Franchisee's default.

(C) If the ATIS System is abandoned by the Franchisee or the Franchisee fails to operate or maintain service or otherwise terminates the Franchise, the ownership of all portions of the ATIS System in Public Rights-of-Way shall revert to Franchisor and Franchisor may sell, assign, or Transfer all or part of the assets of the System.

(5) Franchisor may, by resolution, acquire ownership of and operate the ATIS System, whether or not such ownership is acquired following revocation or forfeiture of the Franchise.

(e) *Remedies Cumulative.*

All remedies under this Franchise Agreement are cumulative unless otherwise expressly stated. The exercise of one remedy shall not foreclose use of another, nor shall the exercise of a remedy or the payment of liquidated damages or penalties relieve the Franchisee of its obligations hereunder. Remedies may be used singly or in combination; in addition, Franchisor may exercise any rights it has at law or equity.

(f) *Relation to Insurance and Indemnity Requirements.*

Recovery by Franchisor of any amounts under insurance, the performance bond, the security fund or letter of credit, or otherwise does not limit the Franchisee's duty to indemnify Franchisor in any way; nor shall such recovery relieve the Franchisee of its obligations under a Franchise, limit the amounts owed to Franchisor, or in any respect prevent Franchisor from exercising any other right or remedy it may have.

10. Applications for Renewal or Modification of Franchises

(a) *Written Application.*

(1) A written application shall be filed with Franchisor for renewal of a Franchise or modification of this Franchise Agreement. An applicant shall demonstrate in its application compliance with all requirements of all applicable laws.

(2) To be acceptable for filing, a signed original of the application shall be submitted together with twelve (12) copies. The application must be accompanied by the required application filing fee as set forth in Section 11(d) and contain all required information. All applications shall include the names and addresses of Persons authorized to act on behalf of the applicant with respect to the application.

(3) All applications accepted for filing shall be made available by Franchisor for public inspection.

(b) Application for Renewal of a Franchise.

(1) The Franchisee may seek renewal of the Franchise by submitting an application notifying Franchisor of its desire to renew the Franchise, and stating the terms on which it purposes to renew the Franchise. Such application shall be submitted no more than thirty-six (36) months prior to franchise expiration and no less than twenty-four (24) months prior to franchise expiration. Franchisor may also seek renewal by requesting the Franchisee to submit an application; Franchisor may or may not include a statement of the terms on which it proposes to renew the Franchise with its request for a proposal.

(2) In considering an application for renewal, Franchisor shall consider the following factors:

(A) The extent to which the Franchisee has substantially complied with the applicable law and the material terms of the existing Franchise.

(B) Whether the quality of the Franchisee's service under the existing Franchise has been reasonable in light of the needs and interests of Franchisor and the public.

(C) Whether the Franchisee has the financial, technical, and legal qualifications to provide ATIS Service.

(D) Whether the application contains a proposal that is reasonable to meet the future traffic management needs and interests of the community.

(E) Whether the applicant proposes to provide adequate facilities or financial support.

(F) Whether renewal of the Franchise is warranted in the public interest considering the immediate and future effect on the Public Rights-of-Way and private property that would be used by the ATIS System, including the extent to which installation or maintenance as planned would require replacement of property or involve disruption of property, public services, or use of the Public Rights-of-Way.

(3) The Franchisee shall submit with its application, or upon the request of Franchisor, such information as is required for Franchisor to assess the application in light of the foregoing factors.

(4) If Franchisor finds that it is in the public interest to renew the Franchise considering the factors set forth above, and subject to the Franchisee's entry into an appropriate Franchise Agreement, it shall renew the Franchise. If Franchisor denies renewal, it will issue a written decision explaining why

renewal was denied. Prior to deciding whether or not to renew a Franchise, Franchisor may hold one or more public hearings or implement other procedures under which comments from the public on an application may be received. Franchisor also may grant or deny a request for renewal based on its review of an application without further proceedings.

(c) *Application for Modification of a Franchise.*

An application for modification of this Agreement shall include, at minimum, the following information:

- (1) The specific modification requested;
- (2) The justification for the requested modification;
- (3) Any other information that the Franchisee believes is necessary for Franchisor to make an informed determination on the application for modification; and
- (4) An affidavit or declaration of the franchisee or authorized officer certifying the truth and accuracy of the information in the application, and certifying that the application is consistent with all federal and state law requirements.

(d) *Filing Fees.*

To be acceptable for filing, an application shall be accompanied by a filing fee in the following amount to cover costs incidental to the awarding or enforcement of the Franchise, as appropriate:

- | | |
|--|----------|
| (1) For renewal of a Franchise: | \$30,000 |
| (2) For modification of a Franchise Agreement: | \$15,000 |

(3) For approval of a Transfer: \$30,000

In addition, Franchisor may require the Franchisee, or, where applicable, a transferor or transferee, to reimburse Franchisor for its reasonable out-of-pocket expenses in considering the application, including consultants' fees.

(e) *Public Hearings.*

An applicant shall be notified of any public hearings held in connection with the evaluation of its application and shall be given an opportunity to be heard.

11. **Transfers**

(a) *City Approval Required.*

No Transfer shall occur without prior written notice to and approval of the Governing Body, and only then upon such terms and conditions as Franchisor deems necessary and proper. The Franchisee's obligations under this franchise involve personal services whose performance involves personal credit, trust, and confidence in the Franchisee, and transfer without the prior written approval of Franchisor shall be considered to impair Franchisor's assurance of due performance. The granting of approval for a Transfer in one instance shall not render unnecessary approval of any subsequent Transfer.

(b) *Application.*

(1) The Franchisee shall promptly notify Franchisor of any proposed transfer. If any transfer should take place without prior notice to Franchisor, the Franchisee will promptly notify Franchisor that such a transfer has occurred.

(2) At least 120 calendar days prior to the contemplated effective date of a transfer, the Franchisee shall submit to Franchisor an application for approval of the transfer. Such an application shall provide complete information on the proposed transaction, including details on the legal, financial, technical, and other qualifications of the transferee, and on the potential impact of the Transfer on rates and service. At a minimum, the following information must be included in the application:

(A) all information and forms required under federal law;

(B) all information required in Section 10(b) of this Agreement;

(C) a detailed statement of the corporate or other business entity organization of the proposed transferee, together with an explanation of how decisions regarding the System will be made if the proposed transaction is approved;

(D) any business relationships or transactions of any kind, past, present, or anticipated, between the Franchisee, or its owners, subsidiaries, or affiliates, and any potential transferees, or their corporate parents, subsidiaries, or affiliates, other than the proposed transaction;

(E) any contracts, financing documents, or other documents that relate to the proposed transaction, and all documents, schedules, exhibits, or the like referred to therein;

(F) any documents related to the transaction (including any documents regarding rates the transferee expects to charge) that have been provided to any entity that has been asked to provide financing (debt, equity, or any other kind) for, or to underwrite any offering made in connection with, the proposed transaction;

(G) any documents provided to the Boards of Directors, Executive Committees, or similar controlling bodies of the Franchisee and any potential transferee, or their corporate parents, subsidiaries, or affiliates, regarding the proposed transaction;

(H) any shareholder reports or filings with the Securities and Exchange Commission ("SEC") or the Federal Trade Commission ("FTC") that discuss the transaction, and any filings required under the Clayton Act in connection with the proposed transaction;

(I) complete financial statements for the Franchisee and any potential transferees for the last three years, including balance sheets, income statements, profit and loss statements, and documents detailing capital investments and operating costs;

(J) a detailed description of the sources and amounts of the funds to be used in the proposed transaction, indicating how the debt-equity ratio of the System will change in the course of the transaction; what entities will be liable for repayment of any debt incurred; what interest, payment schedule,

and other terms or conditions will apply to any debt financing; any debt coverages or financial ratios any potential transferees will be required to maintain over the franchise term if the proposed transaction is approved; what financial resources would be available to the System under the control of the proposed transferee; whether the proposed transferee can meet debt-equity or any other required ratios without increasing rates, with any assumptions underlying that conclusion, and if not, what increases would be required and why;

(K) any other information necessary to provide a complete and accurate understanding of the financial position of the System before and after the proposed transfer, including but not limited to two sets of projected income statements and cash flow statements, including capital investments, for at least five years after the proposed transfer, one set assuming the transfer is approved, and one set assuming the transfer is not approved, each set stating specifically what assumptions are being made with respect to any rebuild or upgrade of the system;

(L) complete information regarding any potential impact of the transfer on Franchisee's rates and service;

(M) a detailed analysis of franchise fee payments made by the Franchisee, or any affiliate, during the life of the Franchise, showing (1) total gross revenues, by category (e.g., basic, pay, pay-per-view, advertising, installation, equipment, late charges, miscellaneous, other); (2) what revenues, by category, were included in the calculation of the franchise fee,

so that it is clear what, if any, revenues were not included and the dollar value of those exclusions; (3) the value of any non-cash compensation received (e.g., trades for advertising spots), showing what amounts of non-cash compensation were included in the franchise fee calculation; (4) what, if any, deductions were made from revenues in calculating the franchise fee (e.g., bad debt), and the amount of each deduction; (5) if an outside agency was used to collect revenue (e.g., a collection agency, an advertising agency paid on the basis of percentage of sales), how much revenue was received by these agencies, and the total amount of revenues included for purposes of the franchise fee calculation;

(N) information sufficient to permit Franchisor to determine the Franchisee's compliance with its franchise obligations over the term of the Franchise, including specific descriptions of any noncompliance of which the Franchisee or any potential transferee is aware;

(O) any representations made to anyone, in connection with the transaction, about the Franchisee's compliance with its Franchise; and

(P) a brief summary of the proposed transferee's plans for at least the next five years regarding plant and equipment upgrades, expansion or elimination of services, and any other changes affecting or enhancing the performance of the System,

(3) For the purposes of determining whether it shall consent to a transfer, Franchisor or its agents may inquire into all qualifications of the prospective transferee and such other matters as Franchisor may deem necessary to determine whether the transfer is in the public interest and should be approved, denied, or conditioned. The Franchisee and any prospective transferees shall assist Franchisor in any such inquiry, and if they fail to do so, the request for transfer may be denied.

(c) Determination by City.

(1) In making a determination as to whether to grant, deny, or grant subject to conditions an application for a Transfer of a Franchise, Franchisor shall consider the legal, financial, and technical qualifications of the transferee to operate the System; any potential impact of the Transfer on subscriber rates or services; whether the incumbent Franchisee is in compliance with this Agreement, and, if not, the proposed transferee's commitment to cure such noncompliance; whether the transferee owns or controls any other ATIS System in Franchisor, and whether operation by the transferee may eliminate or reduce competition in the delivery of ATIS Service in Franchisor; and whether operation by the transferee or approval of the Transfer would adversely affect Franchisor's interest under this Agreement, applicable law, or the public interest, or make it less likely that the future needs and interests of the community would be satisfied at a reasonable cost.

(2) Any transfer without Franchisor's prior written approval shall be ineffective, and shall make this franchise subject to cancellation at Franchisor's sole discretion, and to any other remedies available under the franchise or other applicable law.

(3) Franchisor reserves the right to review, inter alia, the purchase price of any Transfer or assignment of an ATIS System, and to take any necessary steps to ensure that any negotiated sale value which Franchisor deems unreasonable will not adversely affect subscriber rates, including denial of the Transfer,

(4) Any mortgage, pledge or lease shall be subject and subordinate to the rights of Franchisor under this Ordinance or other applicable law.

(d) *Transferee's Agreement.*

No application for a Transfer of the Franchise shall be granted unless the transferee agrees in writing that it will abide by and accept all terms of this Agreement, and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous Franchisee under this Franchise Agreement for all purposes, including renewal, unless Franchisor, in its sole discretion, expressly waives this requirement in whole or in part.

(e) *Approval Does Not Constitute Waiver.*

Approval by Franchisor of a Transfer of the Franchise does not constitute a waiver or release of any of the rights of

Franchisor under this Franchise Agreement, whether arising before or after the date of the Transfer.

(f) *Processing Fee.*

As a condition of considering a Transfer, Franchisor may require that the transferor or the transferee pay Franchisor's out-of-pocket expenses and a reasonable fee, as specified in Section 11(d), in considering the application for Transfer of the Franchise.

12. Miscellaneous Provisions

(a) *Compliance With Laws.*

The Franchisee shall comply with all federal and state laws, as well as City ordinances, resolutions, rules and regulations heretofore and hereafter adopted or established during the entire term of its Franchise.

(b) *Captions.*

The captions to sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

(c) *No Recourse Against Franchisor.*

Without limiting such immunities as Franchisor or other Persons may have under applicable law, the Franchisee shall have no recourse whatsoever against Franchisor or its officials, boards, commissions, agents or employees for any loss, costs, expense or damage arising out of any provision or requirement of this Agreement or because of the enforcement of this Agreement or

Franchisor's exercise of its authority pursuant to this Agreement, or applicable law, unless the same shall be caused by criminal acts or by willful or gross negligence.

(d) *Rights and Remedies.*

(1) The rights and remedies reserved to the parties by this Agreement are cumulative and shall be in addition to and not in derogation on of any other rights and remedies which the parties may have with respect to the subject matter of this Agreement.

(2) Franchisor hereby reserves to itself the right to intervene in any suit, action or proceeding involving any provision of this Agreement.

(3) Specific mention of the materiality of any of the provisions herein is not intended to be exclusive of any others for the purpose of determining whether any failure of compliance hereunder is material and substantial.

(4) No Franchisee shall be relieved of its obligation to comply with any of the provisions of this Agreement by reason of any failure of Franchisor to enforce prompt compliance. Nor shall any inaction by Franchisor be deemed to waive a provision voiding any provision of this Agreement.

(e) *No Accord or Satisfaction.*

No acceptance of any payment by Franchisor shall be construed as a release or an accord and satisfaction of any claim Franchisor may have for further or additional sums payable under this Agreement or for the performance of any other obligation of the Franchisee.

(f) *Equal Employment Opportunity.*

The Franchisee shall not refuse to employ, discharge from employment, or discriminate against any Person in compensation or in terms, conditions, or privileges of employment because of race, color, religion, national origin, sex, or age. The Franchisee shall comply with all federal, state, and local laws and regulations governing equal employment opportunities, as the same may be from time to time amended.

(g) *Force Ma jeure.*

The Franchisee shall not be deemed in default with provisions of its Franchise where performance was rendered impossible by war or riots, civil disturbances, floods, or other natural catastrophes beyond the Franchisee's control, and a Franchise shall not be revoked or the Franchisee penalized for such noncompliance, provided that the Franchisee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with its Franchise without unduly endangering the health, safety, and integrity of the Franchisee's employees or property, or the

health, safety, and integrity of the public, Public Rights-of-Way, public property, or private property.

(h) *Calculation of Time.*

Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required under this Franchise Agreement, and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of duration time.

(i) *Severability.*

If any term, condition, or provision of this Agreement shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by Franchisor and shall thereafter be binding on the Franchisee and Franchisor.

AGREED TO THIS _____ DAY OF _____, 1994.

[INSERT NAME OF FRANCHISOR]

By: _____

ATTEST:

APPROVED AS TO FORM:

[INSERT NAME OF OPERATOR],
a [state] [corporation/partnership]

By: _____
[title]

EXHIBIT A -- FORM OF CONSTRUCTION PLAN