

#4



**Request for City Council Committee Action
From the Department of Public Works**

Date: September 14, 2006 (postponed from August 22, 2006)
To: Honorable Sandra Colvin Roy, Chair Transportation & Public Works Committee
Referral to: Honorable Paul Ostrow, Chair Ways & Means Budget Committee

Subject: **Transfer of the Transtop Bus Shelter Franchise to CBS Outdoor and
Extension of Shelter Franchise to 2015
Public Hearing**

Recommendation:

- a. Present August 22 TPW report, new Exhibit D - Bus Shelter Advertising Comparables, and new Exhibit E - Appendix G Ordinance changes modified on 9-14-06
- b. Conduct a public hearing regarding changes to City Code of Ordinances Appendix G – Bus Stop Shelters Franchise
- c. Adopt the modified City Code of Ordinances Appendix G – Bus Stop Shelter Franchise as presented in Exhibit E modified on 9-14-06 pending the City Attorney's further additions to Section 30 Appeal Process to City Engineer Decisions.

Attachments:

- Exhibit D – Bus Shelter Advertising Comparables
- Exhibit E -- Recommended Appendix G Ordinance Changes modified on 9-14-06

EXHIBIT D

BUS SHELTER ADVERTISING COMPARABLES

Market	Population	# of Shelters	Percentage	Min Guarantee	Term	Trash Services	Non-Revenue Shelters	Other Considerations
San Diego, CA	1,255,540	435	0%	\$35/shel/month	10	Yes	Yes	No snow removal costs
Dallas, TX	1,213,825	No bus shelter advertising franchise						
Indianapolis, IN	784,118	No bus shelter advertising franchise						
San Francisco, CA	739,426	1100	0%	\$40/shel/month	10	No	Yes	No snow removal costs
Fort Worth, TX	624,067	No bus shelter advertising franchise						
Milwaukee, WI	578,887	60	0%	\$42/shel/month	7	No	No	
Seattle, WA	573,911	No bus shelter advertising franchise						
Denver, CO	557,917	150	0%	\$17/shelter/yr	Year to year	Yes	No	
Las Vegas, NV	545,147	1000	0%	\$25/shel/month	10	Yes	No	Ads on trash receptacles to fund services. No snow removal costs.
Oklahoma City, OK	531,324	92	0%	\$17/shel/month	20	No	No	No snow removal costs
Cleveland, OH	452,208	No bus shelter advertising franchise						
Kansas City, MO	444,965	No bus shelter advertising franchise						
Tulsa, OK	382,457	115	12%	None	10	No	No	No snow removal costs
Minneapolis	372,811	230	13%	\$40/shel/month will increase to \$58/shel/month	6 to 9 years, typical 10 yr term	No	Yes, put up by Metro Transit	Snow removal costs = \$34,894 in 2005
St. Louis, MO	352,000	350	7.5%	\$7/shel/month	15	No	Yes, put up by the Transit Authority	
Wichita, KS	355,126	No bus shelter advertising franchise						
Pittsburgh, PA	327,898	260	5%	\$6 - \$26/shel/mo; graduated over 10 yrs	10	Yes	A few	Vendor provides receptacle; City picks up the trash
Buffalo, NY	287,698	No bus shelter advertising franchise						
St. Paul, MN	284,037	100	10%	None	10	No	No	Snow removal costs = \$14,703

Source: Transtop, includes a mix of various franchise providers such as CBS Outdoor, Clear Channel, Lamar and others.

**EXHIBIT A-E - RECOMMENDED APPENDIX G ORDINANCE CHANGES
(originally dated 8-14-06 and modified on 9-14-06 as noted below)**

APPENDIX G BUS STOP SHELTERS FRANCHISE*

*Editor's note: Appendix G contains the Bus Stop Shelters Franchise as adopted by 79-Or-233, enacted by the council Nov. 9, 1979, and approved by the mayor the same date.

An ordinance originally granting a franchise to Transtop of Minnesota, Inc. and subsequently a-transferred to CBS Outdoor, Inc., to own, operate and maintain shelters for transit passengers in the City of Minneapolis, Minnesota, setting forth conditions accompanying the grant of franchise and providing for the regulation and use of said shelters and the advertising placed thereon.

WHEREAS, Transtop has had a franchise since 1979; and

WHEREAS, the City of Minneapolis has received a notice from Transtop to transfer their franchise to CBS Outdoor, Inc.; and

WHEREAS, Transtop/CBS Outdoor, Inc. requests to extend the franchise term to 2015; and

WHEREAS, the City of Minneapolis has, following reasonable notice, conducted a public hearing and public negotiation affording all persons reasonable opportunity to be heard, which proceeding was concerned with the analysis and consideration of the technical ability, financial condition, legal qualifications and general character of the franchisee; and

WHEREAS, the City of Minneapolis after such consideration, analysis and deliberation, has approved and found sufficient the technical capabilities, financial condition, legal qualification and character of said franchisee;

NOW, THEREFORE, the City Council of the City of Minneapolis do ordain as follows: That there is hereby created, granted and established a franchise until November 8, 2015 for the construction, operation and maintenance of shelters for transit passengers with commercial advertising displayed thereon within the City of Minneapolis to CBS Outdoor, Inc.

Section 1. Title. This ordinance shall be known and may be cited as the "Bus Stop Shelters Franchise," hereinafter "franchise," and it shall become a part of the ordinances of the City.

Section 2. Definitions. The following terms shall mean:

2.1 City: The City of Minneapolis, Minnesota, a municipal corporation.

2.2 Company: ~~Transtop of Minnesota, Inc.~~ or CBS Outdoor, Inc.

2.3 Council: The City Council of the City of Minneapolis.

2.4 City Engineer: ~~The Public Works Department~~ Minneapolis City Engineer and Director of Public Works or their a designee thereof.

Section 3. Grant. The City hereby grants to the Company a nonexclusive bus stop shelter franchise subject to all the terms and conditions as herein provided.

Section 4. Rights and privileges of company. The franchise granted by the City pursuant to this ordinance shall grant to the Company the right and privilege to construct, operate and maintain upon the public right-of-way of streets and highways within the City, at such locations as may be designated by the City, shelters with advertising displayed thereon on the terms and conditions hereinafter set forth.

Section 5. Agreement. Upon adoption of this franchise and execution hereof by the Company, Company agrees to be bound by all the terms and conditions contained therein.

The Company also agrees to provide all services set forth in its application and by its acceptance of the franchise the Company specifically agrees that the invitation for applications and the Company's application are thereby incorporated by reference and made a part of the franchise and this ordinance. In the event of a conflict between the application of the Company and the provisions of this ordinance, that provision which provides the greatest benefit to the City, in the opinion of the Council, shall prevail.

Section 6. Term; renewal. The term of the franchise granted by the City pursuant to this ordinance for a minimum of one hundred ninety (190) shelters shall be for a period of ten (10) years from and after the effective date hereof. Thereafter, the franchise may be renewed for an additional ten-year term on such terms and conditions as may be mutually acceptable to the City and Company.

The term of the franchise shall be renewed and extended from November 9, 1989 to November 8, 1999. The franchise may be renewed for an additional ten (10) years from November 9, 1999 to November 8, 2009, by written agreement of the City and Company; provided, that a refusal by either party to renew the franchise shall be based on clearly reasonable grounds, including the refusal of either party to agree upon modifications to this ordinance that are reasonably requested by the other party; however, neither party shall require as a condition of such renewal the amendment of any provision of this ordinance relating to the franchise fee, unless the reasonable financial or performance expectations of such party have been substantially unmet during the term of the franchise.

Section 6A: Franchise Extension. ~~If the franchise is extended after November 8, 2009 for an additional six years to November 8, 2015, the Company will provide and continue to maintain a minimum of two hundred thirty (230) shelters within three (3) months of the execution of the extension. As an explicit pre-condition of the extension of the franchise, the Company shall provide and continue to maintain a minimum of two hundred thirty (230) shelters within three (3) months of the execution of the extension of this franchise and continuing thereafter.~~

The franchise is non-exclusive. The City may award other franchises at any time. The City at anytime may issue request for proposals, go through the selection and approval process and award a future franchise agreements prior to November 8, 2015.

If the City awards a future franchise agreement that is to replace the Company's agreement, then ~~the~~ the City may award a future franchise agreement to begin implementation after April 1, 2015 and have a staged phase out transition to be fully implemented by November 8, 2015 such that no gap in shelters shall exist. The Company and the ~~future franchisee~~ succeeding to those locations shall cooperate to ~~remove~~, replace, and relocated existing and future shelters to provide a seamless transition. No additional compensation or discount shall be provided to the Company during this transition period.

(90-Or-009, § 1, 1-12-90)

Section 7. Commencement of term. The franchise term shall commence with the adoption of this ordinance, provided that the Company has filed within thirty (30) days after publication of the ordinance, a written acceptance with the City Clerk in such form as the City Attorney may prescribe, and provided further that the bond, the evidence of comprehensive liability insurance and letter of credit, which are required by this ordinance, shall have been filed and approved by the City Attorney within ninety (90) days after the publication of the ordinance.

Section 8. Area. This franchise is granted for the entire area of the City of Minneapolis as it exists and as its borders may from time to time be changed.

Section 9. Police powers. In accepting this franchise, the Company acknowledges that its rights hereunder are subject to the police power of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public; and it agrees to comply with all applicable general laws and ordinances enacted by the City pursuant to such power.

Section 10. Other franchises. No bus stop shelters with advertising displayed thereon shall be allowed to occupy or use the right-of-way of any street or highway within the City of Minneapolis without a franchise. This shall not, however, include non-advertising shelters constructed by Metro Transit. The rights hereby granted are not exclusive and the City may grant like rights to other persons during the term of this franchise.

Section 11. Notices. All notices from Company to the City pursuant to this franchise shall be to the City Engineer unless otherwise stated herein, or to any other officer of the City designated by the Council. Company shall maintain within the metropolitan area, throughout the term of this franchise, an address for service of notices by mail. Company shall also maintain within the metropolitan area, a local office and telephone number for the conduct of matters related to this franchise during normal business hours. (90-Or-009, § 2, 1-12-90)

Section 12. Fee for franchise; minimum fee. (a) In consideration of the rights granted the Company by this franchise, the Company agrees to pay the City a fee based upon the annual gross revenues that the Company derives from advertising on shelters located within the City in accordance with the following schedule:

- (1) Twelve (12) percent for the remainder of 1989.
- (2) Six (6) percent in 1990.
- (3) For 1991 and thereafter the following percentages of annual gross revenues:
 - a. If annual gross revenues are less than seven hundred thousand dollars (\$700,000.00): Six (6) percent.
 - b. If annual gross revenues are seven hundred thousand dollars (\$700,000.00) or more, but less than nine hundred thousand dollars (\$900,000.00): Eight (8) percent.
 - c. If annual gross revenues are nine hundred thousand dollars (\$900,000.00) or more, but less than one million one hundred thousand dollars (\$1,100,000.00): Ten (10) percent.
 - d. If annual gross revenues are one million one hundred thousand dollars (\$1,100,000.00) or more, but less than one million four hundred thousand dollars (\$1,400,000.00): Twelve (12) percent.
 - e. If annual gross revenues are more than one million four hundred thousand dollars (\$1,400,000.00): Thirteen (13) percent.

Notwithstanding subsection (3) above, the franchise fee for the years 2000, 2001 and 2002 shall be no less than twelve (12) percent, and shall be thirteen (13) percent for 2003 through ~~2009~~2015.

By renewing this franchise from November 9, 1999 to November 8, 2009, the company guarantees that the franchise fee paid to the City, after adjustment for credits allowed to the company, shall be at least one hundred thousand dollars (\$100,000.00) each for the years 2000, 2001 and 2002, and, at least one hundred ten thousand dollars (\$110,000.00) each for the years 2003 through 2009. If necessary, the fee payable for the final quarter of any year in which said minimum guarantee applies shall be computed and adjusted as provided in subsection (b) of this section so that no less than the minimum guaranteed fee shall be paid to the City with respect to any year.

~~If the franchise is extended to November 8, 2015~~ As a specific pre-condition to the extension of the franchise, the Company shall increase the franchise fee guarantee to the City, after adjustments for credits allowed to the Company, shall be at least one hundred fifteen thousand dollars and no cents (\$115,000.00) in 2006, and ~~escalating shall increase~~ by five thousand dollars and no cents (\$5,000.00) per year thereafter reaching a minimum guarantee of one hundred sixty thousand dollars and no cents (\$160,000.00) in 2015.

(b) The fee shall be paid to the City quarterly within thirty (30) days after the expiration of each calendar quarter. Each payment shall be based upon the gross revenues received in the calendar quarter immediately preceding the day of payment, except in the case of the last payment when the fee shall be paid within thirty (30) days after the expiration, termination or cancellation of the contract. The quarterly fee payment due shall be determined by multiplying the gross revenues for the quarter by that percentage that would be applied under subsection (a) assuming that the annual gross revenues will be four (4) times the gross revenues for the first quarter, two (2) times the revenue for the

first and second quarters cumulatively, and one and one-third (1 1/3) times the revenue for the first, second and third quarters cumulatively. The fee payment due for the final quarter of the year shall be computed and adjusted, so that the total annual fee paid will be correct, applying the applicable percentage set forth in subsection (a) to the actual gross revenues for the entire year.

(c) The gross revenue is defined as all advertising revenue derived directly or indirectly by the company, its affiliates, subsidiaries, parent or any person in which the company has a financial interest, from or in connection with the operation of the franchise prior to any deduction; provided, however, that this shall not include any taxes on services furnished by the Company herein imposed directly upon any advertiser by the City, state or other governmental unit and collected by the Company on behalf of said governmental unit.

(d) The company shall receive a credit against the franchise fee equal to ten (10) percent of that portion of its annual Minneapolis shelter maintenance costs that exceeds the maintenance ceiling amount. The maintenance ceiling amount shall be eighty-four thousand dollars (\$84,000.00) for 1990 and shall be adjusted for 1991 and annually thereafter in a percentage equal to annual increases in the consumer price index (CPI). The shelter maintenance costs shall include the unrecovered cost of repairs made to Minneapolis shelters due to damage and vandalism. The credit shall be applied first to the portion of the franchise fee that is payable for the first quarter of the calendar year following the year that the credit accrues, beginning with the portion of maintenance costs incurred in 1990, if any, to be credited against the first quarterly payment of 1991. Any portion of a credit that cannot be used because insufficient fee payments are due may be carried over to be applied against fee payments with respect to the ensuing quarters of the same year, but may not be carried over to be applied against fee payments for ensuing years. Under no circumstances shall the credit allowed the Company hereunder result in any obligation of the City to pay or reimburse the Company for any shelter maintenance costs, nor shall such credit entitle the Company to set off such costs against any monetary or nonmonetary obligations or duties owed by the Company to the City other than the franchise fee. The maintenance ceiling amount shall be set at one hundred six thousand four hundred eighty dollars (\$106,480.00) for the year 2000 subject to annual adjustment for 2001 and thereafter in a percentage equal to annual CPI adjustments. (90-Or-009, § 3, 1-12-90; 99-Or-120, § 1, 10-29-99)

Section 13. Accounts and records. The Company shall keep books of account and records of all business transacted and costs incurred in connection with the purchase, manufacture and installation of the shelters and advertising on shelters, showing all financial transactions including receipts and disbursements and the particulars thereof in a form satisfactory to the City Comptroller-Treasurer. Company shall make such books of account and records available at all reasonable times for inspection, examination or audit by city officers, employees or agents. Company shall submit such statements in regard to revenue as the City Comptroller-Treasurer may reasonably require. The Company shall file annually with the City Comptroller-Treasurer, no later than one hundred twenty (120) days after the end of the Company's fiscal year, a copy of a financial report applicable to the Minneapolis bus shelter system, including an income statement relating to its operations during the fiscal year and a balance sheet, both of

which shall be certified as correct by an independent certified public accountant, and a statement of its properties, equipment and facilities which are located upon the streets, highways and public places within the City giving its investment in such facilities on the basis of original cost less applicable depreciation. These reports shall be certified as correct by an authorized officer of the Company and there shall be submitted along with them such other reasonable information as the City shall request with respect to the Company's facilities and expenses related to its bus stop shelter system operations within the City.

The Company shall also file with the City Clerk copies of its articles of incorporation, bylaws, agreements with any other person relating to the ownership of the bus stop shelter system, and amendments of such documents as they become effective.

Section 14. Insurance. The Company shall, during the entire term of the franchise, maintain in force, at its own expense, a policy of comprehensive liability insurance approved by the City Attorney, to be filed and maintained with the City Clerk. The insurance policy shall insure the City, members of its boards and commissions and its officers and employees, and the Company from all liability on account of injuries, death or damage to any person or persons and damage to property arising out of or resulting from or in connection with the construction, operation, maintenance, location, placement or removal of any shelter or other facility of the Company, or occasioned by any of the activities of the Company, its officers, agents or employees under this franchise Commercial General Liability insurance with limits of at least \$1,000,000 general aggregate, \$1,000,000 products - completed operations \$1,000,000 personal and advertising injury, 50,000 each occurrence fire damage and \$100,000 medical expense any one person. The policy shall be on an "occurrence" basis, shall include Contractual liability coverage and the City shall be named an additional insured. The policy shall be of a type in which coverage is restored immediately after the occurrence of any loss or accident from which liability may thereafter accrue. The policy shall contain an endorsement which shall provide that no cancellation shall become effective without thirty (30) days' prior notice in writing to the City of intent to cancel or not to renew. In the event such insurance is canceled and the Company shall fail to immediately replace it with another equivalent policy, the City may terminate the franchise and declare it to be forfeited. (90-Or-009, § 4, 1-12-90)

Section 15. Indemnification. (a) The Company shall fully indemnify, defend and save harmless the City, its officers, boards, commissions and employees from any and all claims, suits, actions, liability and judgments for damages (including but not limited to expenses for reasonable legal fees and disbursements assumed by the City in connection therewith):

- (1) For injury or death to any person or persons or damage to property arising from or in connection with the acts of the Company, its officers, agents or employees in the construction, operation, maintenance, location, placement or removal of any bus stop shelter or other facility of the Company;
- (2) Arising out of the placement or display of any advertisements, notices, signs or posters on any shelter; or
- (3) Arising out of the exercise of any other right or privilege under the franchise.

(b) In the event that suit is brought or that damages or other recourse shall be sought against the City, either independently or jointly with the Company on account of or arising out of any injury, death, property damage or activity of the Company referred to in subparagraph (a) of this section, the Company, upon notice by the City, shall defend the City in such suit or action at the cost of the Company, and in the event of final judgment being obtained against the City, either independently or jointly with the Company, the Company shall indemnify the City and pay such judgment with all costs and hold the City harmless therefrom. The Company shall pay all expenses incurred by the City in defending itself with regard to all damages and liability referred to in this section. Nothing herein shall be deemed to prevent the City from participating in the defense of any litigation by its own counsel at its own sole cost and expense.

Section 16. Assignment or transfer. (a) The franchise shall not be sold, assigned or transferred, either in whole or in part, or leased, sublet, or mortgaged in any manner, nor shall title thereto, either legal or equitable or any right, interest or property therein, pass to or vest in any person without the prior consent of the City Council. Any assignee, lessee, mortgagee and any person or entity having or acquiring any interest, right or title in or to the facilities that are installed or operated hereunder must show financial responsibility as determined by the City and agree to comply with all provisions of the franchise. Any document by which any interest, right or title to the franchise or the facilities that are installed or operated hereunder are transferred to or vested in any person shall, by its terms, be expressly subordinate to the terms and conditions of the franchise.

(b) The Company shall promptly notify the City by certified mail, return receipt requested, of any actual or proposed change in, or transfer of, or acquisition by any other party of, control of the Company or the facilities installed hereunder. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. Any transfer, sale or assignment of the franchise, or control of the company, or facilities that are installed or operated hereunder shall be cause for forfeiture of the franchise unless and until the City shall have consented thereto, which consent shall not be unreasonably withheld. The City shall be deemed to have consented to a transfer or acquisition of stock in the Company unless the City disapproves the same within thirty (30) days after it receives notice of any proposed or actual transfer of stock or notifies the Company within thirty (30) days that additional time is necessary to consider the matter. The Company shall, when it files its acceptance of this franchise, also file a list of its stockholders, all agents or nominees of the Company, and all persons having a beneficial interest therein stating the nature of such interest.

Section 17. Locations. No shelter shall be placed upon the public street or highway right-of-way until the following procedure has been accomplished and the location has been approved by the City Engineer:

(a) The Company shall give written notice and a site plan to abutting property owners and the City Engineer at least fourteen (14) days prior to the date set for official plan submittal to the City.

(b) The Company shall submit to the City Engineer, and any other public body that the Engineer may designate a site plan, a description of how electrical service will be provided and any unique shelter design required to accommodate the shelter to the

location, and any other information the City Engineer may require. No shelter may be placed upon the public right-of-way unless the site plan is approved by the City Engineer.

(d) The Company shall notify all utility locators and submit to the City Engineer proof that such notice has been given.

(e) The Company must obtain all building and other required permits from the City or any other agency of government as the law requires, including a permit from the proper road authority if other than the City.

Section 18. Performance bond. Within ninety (90) days after the publication of this ordinance, the Company shall file with the City Clerk a performance bond in the amount of two hundred thousand dollars (\$200,000.00) in favor of the City. The bond shall be maintained throughout the term of the franchise and until the Company shall have liquidated all of its obligations with the City. In the event the Company fails to comply with any law, ordinance or regulation governing the franchise or fails to well and truly observe, fulfill and perform each term and condition of the franchise, including the Company's application which is incorporated as though fully set out herein, there shall be recoverable, jointly and severally, from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation due the City, indemnification for the cost of removal and storage of any shelter, plus a reasonable allowance for attorney's fees, including the City's legal staff, and costs up to the full amount of the bond.

The bond shall also be conditioned upon the removal at the expiration or termination of the franchise of the Company's shelters and the restoration of the streets and public places of the City to their former condition. The bond shall contain an endorsement that no cancellation shall be effective until ninety (90) days after receipt by the City Clerk of a written notice of intent to cancel or not to renew sent by certified mail, return receipt requested. No cancellation shall be effective if the surety has received notice by the City of the Company's default. The bond may not be canceled and shall remain in effect in the period commencing at the expiration or termination of the franchise and for three hundred sixty-five (365) days thereafter.

From and after July 28, 1986, the required amount of the performance bond shall be fifty thousand dollars (\$50,000.00). (86-Or-182, § 1, 8-8-86)

Section 18A. Optional letter of credit. In lieu of the performance bond required under Section 18, the Company may elect to give the City a letter of credit for fifty thousand dollars (\$50,000.00) issued by a bank in the metropolitan area. The letter of credit shall provide that it may be drawn upon under the same circumstances as a surety would be subject to a claim under its bond as provided in section 18 with respect to the performance bond, except that the letter of credit shall be subject to a draw without any previous demand upon, or notice to the Company. The letter of credit shall also be subject to a draw if it is effective for a limited term and is not replaced by a replacement letter of credit at least thirty (30) days before expiration. The letter of credit shall also be in a form approved by the City Attorney and shall be on file with the City Clerk and remain so until three hundred sixty-five (365) days after the expiration or termination of the franchise. (90-Or-009, § 5, 1-12-90)

Section 19. Reserved.

Editor's note: 90-Or-009, § 6, adopted Jan. 12, 1990, repealed § 19, which section pertained to a required letter of credit, and which was § 19 of 79-Or-233, enacted Nov. 9, 1979, the original franchise set out in this Appendix.

Section 20. Removal of shelter. (a) The City Engineer may order Company to remove any shelter when ~~it~~ the City Engineer reasonably determines that it is no longer of any benefit to the public, when there is no longer a bus stop at the location or when it finds that maintenance is inadequate under Section 23 herein. If the City requires removal of a bus shelter because of relocation of all or part of a bus route, because of inadequate maintenance, or because if it is no longer of any benefit to the public, the City Engineer shall give the Company thirty (30) days after written notice to remove the shelter.

(b) If a shelter must be temporarily removed for construction done by any governmental unit or its contractor, Company shall, after being given two (2) weeks' written notice, remove the shelter. If the company fails to remove the shelter within said two-week period, the city may cause the shelter to be removed. The City may also, upon two (2) weeks' written notice by the City Engineer, order the Company to temporarily remove a shelter for an abutting owner's construction at such owner's expense.

(c) Except as provided in subsection (b), if the Company fails promptly to remove a shelter when ordered to do so by the City Engineer, the City may have the shelter removed within thirty (30) days after written notice to the Company, and the Company shall pay the cost of removal or storage thereof.

(d) If the City requires the permanent or temporary removal of more than four (4) shelters in one (1) calendar year, the City shall grant a credit of eight hundred dollars (\$800.00) per shelter for each such removal above four (4). If the City, through its forces or contract forces, provides the electrical conduit work and concrete work needed to relocate a removed shelter, no credit shall be due for that removal. The credit shall be credited against the franchise fee when the quarterly franchise fee is paid to the City with respect to the first quarter of the following year, commencing in 1991. The credit for removal costs shall be readjusted annually to reflect any increase in the consumer price index (CPI). There shall, however, be no credit with respect to shelters ordered removed for inadequate maintenance, for abutting owners' construction, or for construction by or for any governmental unit other than the city, nor with respect to shelters ordered to be removed by the city because of the discontinuance or relocation of bus stops by metro transit or its successor. No credit shall be granted for removal of any shelter unless the company gives notice to the city of its intention to claim the credit and the City Engineer authorizes the credit prior to or within sixty (60) days after the removal of the shelter, which authorization shall not be unreasonably withheld. If there is a non-city governmental construction project, the City of Minneapolis shall use its best efforts to inform the other governmental unit as early as possible in the project to work with the company to have the removal and relocation expenses covered by the governmental unit doing the project. No part of this ordinance shall be deemed to prohibit the company from obtaining moving expense reimbursement from any entity other than the city. (90-Or-009, § 7, 1-12-90; 99-Or-120, § 2, 10-29-99)

Section 21. City Engineer to regulate installation. The City Engineer shall regulate the installation of shelters and if, in the opinion of the City Engineer, the shelter installation is hazardous the City Engineer may order the Company to take necessary steps at its own cost to remove or relocate the shelter or make the necessary repairs to correct the hazard. The City Engineer has the right to conduct reasonable inspections of shelters for this purpose.

In regulating the installation of shelters, the City Engineer shall regulate the size of shelters installed, its orientation or placement on the site, and any preparatory or remedial site work. When the City has approved a site plan, the Company shall submit detailed amended plans showing any discrepancies between the site plan approved and the work completed.

Section 22. City may require shelters; installation schedule. The City may require the Company to install shelters at such locations [as] it may designate within the City and may require the Company to take the procedural steps necessary for the approval of such locations as specified in Section 17 herein within thirty (30) days after it designates such location or locations.

Shelters shall be installed at a location within three (3) months after the location is approved by the City Engineer; provided, however, that the Company shall not be required to install more than one hundred (100) shelters in any three-month period. The months of December, January, February and March shall not be included in determining either three-month period. If the Company establishes that the cost of maintaining a shelter during any six-month period exceeds the actual costs of installing the shelter the Company shall not be required to keep and maintain a shelter at such location; otherwise no shelter may be removed from an approved location without the consent of the City Engineer. The City shall not permit any other bus stop shelter franchisee to install a shelter within one (1) block of a shelter installed and maintained by the Company.

The City may have interest and desire to implement a Primary Transit Network (PTN) or high frequency network of transit routes throughout the City. A key element will be the branding and labeling of such a network. The Company will cooperate and use its best efforts and knowledge to work with the City on short term and long term mutually agreeable solutions with such network branding and labeling that may include paint colors, adding re-arranging or changing signage and changing others characteristics shelter aspects to be consistent with the branding and labeling for the PTN. The Company will allow mutually agreeable signs, stickers, or other PTN schedule information to be placed on the shelters that identifies the network. The Company has agreed to, if requested by the City Engineer, that PTN painting of shelters will be allowed and such painting costs shall be fixed at \$100 per shelter on the defined PTN to be paid by the City. The Company will then operating and maintain the modified shelters operate and maintain the shelters as modified to conform to the branding and labeling of the PTN.

The Company shall produce an annual shelter replacement plan and submit to the City Engineer by February 1 of each calendar year. When any shelter is replaced, relocated or

newly added, the City and the Company shall consider locations along the PTN network as having higher priority for replacements, relocations, or additions.

Section 23. Maintenance. The Company will maintain all shelters to the reasonable satisfaction of the City Engineer as set out below. Maintenance includes cleaning and washing the entire shelter inside and out, removal of graffiti, stickers, posters, notices, and the like, removal of litter, weeds and grasses inside and adjacent to the shelter, repair and replacement of damaged or broken parts, the supply of replacement parts, replacement of burned-out lighting fixtures, the supply of electrical energy, and clearing snow from inside the shelter, and cleaning snow, dirt and debris in the area between the shelter and the curblin. The Company shall clean and wash each shelter at least twice every month, or more frequently if required, to keep each shelter free of any noticeable accumulation of dirt and dust marks.. The Company shall remove graffiti, stickers, posters, litter and weeds at each shelter at least once a week, or more frequently if required, to keep each shelter free of any noticeable accumulation of graffiti, stickers, posters, litter or weeds. The Company shall clean any accumulation of snow from inside the shelter and from the area between the shelter and the curblin within forty-eight (48) hours after a snowfall.

The Company shall inspect each shelter at least once every four (4) calendar days for any damaged or broken parts or burned-out lighting fixtures and the Company shall repair or replace damaged or broken parts and burned-out lighting fixtures within twenty-four (24) hours after the Company becomes aware of the damage, breakage or burnout.

Section 24. Advertising. The Company shall limit advertising to one-third of the area of the vertical surface of the shelter. Advertising must be displayed on one (1) or both sides of a single panel of the shelter, which panel shall not be larger than four (4) feet by six (6) feet in dimension except for specially designed advertising that compliments the ad panel on shelters and that does not obstruct patron visibility, create potential hiding spots or create a significant distraction for the traveling public. The specially designed advertising shall be reviewed and approved by the City Engineer based solely on these criteria. The Company shall not permit obscene, ~~immoral~~ or indecent advertising. ~~The company shall not display advertising for the election campaigns of candidates for the offices of Minneapolis mayor or council member, but may, in its discretion, display other political advertisements.~~ The Company shall not allow more than thirty (30) percent of the Company's combined total advertising space on all shelters in the City to pertain to alcoholic beverage products at any time. The Company shall not place any alcoholic beverage advertising within five hundred (500) feet of any church, school or playground. ~~The Company, in accepting this franchise, agrees to remove any advertising which the Council determines to be inappropriate to the particular location or surroundings of the shelter or inappropriate as a use of the public street right of way.~~ The Company shall provide equal access to all advertisers at reasonable rates. ~~The Company shall, upon notice, remove any advertisement of a private company or a commercial product or service that has been placed or displayed on a shelter on the same street and within one (1) city block of any property owned or leased by a company which is in competition~~

~~with, or which, as its principal and primary business, markets a product or service which is in competition with the company, product or service which is advertised.~~

The City has the right to use up to five (5) percent of the advertising panels for public service announcements with a sixty (60) day advance notice ~~and based on a space available basis. such space shall be subject to availability~~Space available basis means that advertising panels that have not been sold and open advertising panels are available. The City's public service announcements may be rotated to different shelter locations as advertising panels are sold to advertisers. City shall provide the public service announcement advertising posters ready to be installed.

Advertising may be placed on shelters only in accordance with the Minneapolis Zoning Ordinance. (90-Or-009, § 8, 1-12-90; 99-Or-120, § 3, 10-29-99)

Section 25. Forfeiture. (a) The City shall, in addition to any other rights it may have, have the right to declare that the Company has forfeited the franchise in the event of a substantial breach of its terms and conditions including, but not limited to, the following circumstances:

- (1) If the Company becomes insolvent or is declared bankrupt or makes any assignment for the benefit of its creditors; or
- (2) If the Company assigns or transfers or attempts to assign or transfer the franchise, or sells or leases or attempts to sell or lease any of its shelters without the Council's permission; or
- (3) If the Company fails to install shelters on schedule as required in Section 22 of this ordinance, or fails to conform to the specifications contained in its application or the invitation for applications, or fails to construct the shelters in a workmanlike manner to the satisfaction of the City Engineer and in conformity with this ordinance, or if the Company refuses or neglects when so ordered to take down, rebuild or repair any defective or unsatisfactory work or to maintain the shelter as required under Section 23 herein; or
- (4) If the Company fails to remove any shelter when ordered to do so in accordance with this ordinance; or
- (5) If the Company refuses or neglects to comply with any reasonable order of the City Engineer; or
- (6) If the Company persists in any course of conduct in violation of any of the provisions of this ordinance; or
- (7) If the City receives notice of intention not to renew or the Company fails to keep in force its insurance, bond and letter of credit required herein.

The foregoing shall not constitute a substantial breach if the breach occurs as a result of circumstances over which the Company has no control. The Company shall not be excused by mere economic hardship nor by the neglect of its officers, agents or employees.

(b) The City Engineer may make a written demand by certified mail, that the Company comply with any such provision, rule, order or determination under or pursuant to this franchise. Such notice shall be entitled "Forfeiture and Termination Notice." If the violation by the Company continues for a period of thirty (30) days or more following

such written demand, without having been corrected or remedied, the matter of forfeiture and termination of the franchise shall then be taken before the City Council. The City shall cause to be served upon the Company at least twenty (20) days prior to the date of such council meeting a written notice of intent to terminate the franchise, including the time and place of the meeting. Public notice shall be given of the meeting and issue which the Council is to consider. The City Council, or a committee thereof, shall hear and consider the issue and the Council shall, in its discretion, determine whether there has been a substantial breach. If the Council determines that there has been a substantial breach, the Company shall have such period of time as the Council may set, but not less than thirty (30) days in which to cure the breach, provided that no opportunity for cure need be given for fraud or misrepresentation. At the expiration of the period of time set for compliance, the Council may terminate the franchise forthwith upon finding that the Company has failed to cure the breach. If the Company fails to cure, the City or any stockholder of the Company may cure and the expense incurred shall be a debt of the Company to the stockholder or the City, as the case may be.

(c) In the event of forfeiture, the Company shall also forfeit to the City all equipment and facilities that may be located along, over or under any street or highway within the City, unless such property is removed by the Company within ninety (90) days from the date of forfeiture. The performance bond posted in accordance with Section 18 shall remain posted to insure that the streets, highways and public places from which such equipment is removed shall be placed in good condition.

Section 26. Disposition of shelters on expiration of franchise. (a) In the event that the franchise expires and is not renewed, the City may purchase the shelters and facilities then in place upon such terms and for such consideration as may be agreed to by the City and the Company prior to the expiration of the franchise. If prior to the expiration of the franchise or within ninety (90) days following such expiration the City elects to award a franchise to any other person or company, and the City elects to have the new franchisee operate and maintain the shelters which have been installed pursuant to this franchise, then the new franchisee shall purchase such shelters on such terms and for such consideration as may be agreed to by the new franchisee and the Company.

(b) Notwithstanding the provisions of paragraph (a) of this section, in the event that the term of this franchise expires and the City and Company have not renewed the franchise for an additional term, the Company shall at its own expense remove all of the shelters and facilities which it has installed or caused to be installed upon or below the public streets and highways or public places of the City and shall restore the streets and highways of the City to their former condition in a manner satisfactory in the judgment of the City Engineer. If the Company fails to remove all such shelters and facilities within ninety (90) days after the expiration of the franchise, the City may have the shelters and facilities removed and require the Company to pay the cost of such removal. In the event that the shelters and facilities have not been sold pursuant to paragraph (a) of this section or removed by the Company, all right and title to the shelters shall be deemed to have passed to and vested in the City. The Company agrees that in such circumstances it will execute such documents as the City Attorney may require to transfer the title to such shelters and facilities.

Section 27. Right of abutting property owner to construct shelter. Abutting property owners shall have the first right and privilege to construct, operate and maintain shelters upon the public right-of-way of streets and highways of the City, at locations on or adjacent to the property of the owner. ~~Fourteen~~ Within fourteen (14) calendar days after written notice by the Company, the abutting property owner shall give written notice to the City Engineer and the Company of its election to construct a shelter at a given location ~~no later than the date of the public hearing for the location of any shelter~~. If the abutting property owner so elects, the Company may not construct a shelter at that location unless the abutting property owner consents in writing or fails to take affirmative measures to construct the shelter within ninety (90) days of its election. By electing to exercise its aforementioned first right and privilege, the abutting owner agrees to:

- (a) Permit no advertising on the shelter;
- (b) At all times maintain insurance pursuant to the terms of Section 14 of this ordinance;
- (c) Acknowledge that its rights are subject to the police power of the City pursuant to Section 9 of this ordinance;
- (d) Defend, indemnify and hold harmless the City, its officers and employees according to the terms and conditions of Section 15 of this ordinance;
- (e) Submit all plans, specifications and drawings to the City Engineer for approval prior to commencement of construction of the shelter. The City Engineer shall regulate the installation of the shelters pursuant to Section 21. If the structural design of the shelter is similar to the structural design of the Company's shelter, the City Engineer shall require for his approval that the design, plans and engineering specifications be at least substantially equivalent in quality to those of the Company's shelters;
- (f) Maintain its shelter pursuant to Section 23 of this ordinance.

In the event the abutting owner fails to comply with any of the terms and conditions hereof, the City may require the owner to remove the shelter at its own expense.

Section 28. Civil rights. The Company shall at all times comply with the provisions of Chapter 139 of the Minneapolis Code of Ordinances and applicable state and federal law regarding nondiscrimination and civil rights.

Section 29. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 30. Appeal Process to ~~the~~ City Engineer Decisions. The City Engineer shall follow the applicable requirements contained in this chapter and determine if there is a basis for denying the request because a shelter would endanger the health, safety or welfare of the public or would cause hardship or damage to nearby property owners. If the City Engineer ~~denies the request~~ denies a location installation (Section 17) or requests a shelter removal (Section 20c) or denies a specialty advertising design (Section 24), the Company may, within thirty (30) days of notice of denial or request, appeal this decision to the appropriate City Council committee which shall make its recommendation

concerning the application to the full City Council. The Company's appeal shall [process & obligations].