

TAXICAB FRANCHISE AGREEMENT

This Agreement is made on January 1, 2015, by the CITY OF MANHATTAN BEACH, a municipal corporation, ("City"), and **YELLOW CAB OF SOUTH BAY COOPERATIVE, INC.**, a California corporation (hereinafter referred to as "Franchisee") (collectively, the "Parties").

RECITALS

1. Chapter 4.108 of the Manhattan Beach Municipal Code authorizes the City, in the exercise of its constitutional police powers, to award one or more nonexclusive franchises for the operation of taxicab services, and to limit taxicab service to only those operators to whom a franchise is awarded.

2. Franchisee has applied for and, on the basis of its qualifications and the representations contained in its proposal, has been awarded the opportunity to enter into a nonexclusive franchise agreement for the operation of taxicabs in the City pursuant to this Agreement.

3. Franchisee represents that it is a taxicab operator qualified by virtue of experience, training, education, and expertise to be granted such a franchise.

4. Franchisee proposes to operate a taxicab service in the City in full compliance with the requirements of this Agreement and the provisions of the Manhattan Beach Municipal Code and all other applicable ordinances, laws, and rules and regulations, as may be amended from time to time.

5. The Parties acknowledge that this Agreement shall not impact or govern the operation of charter-party carriers of passengers in the City.

NOW, THEREFORE, in consideration of the Parties' performance of the promises, covenants, and conditions stated herein, the Parties hereto agree as follows:

1. **Grant of Franchise.** City hereby grants a non-exclusive franchise to Franchisee for the provision of taxi services originating within the City's boundaries.

2. **Term of Franchise.** This Agreement shall be for a term of 5 years, beginning on January 1, 2015 and continuing through December 31, 2019, unless extended or terminated as provided below.

2.1 **Termination.** City may terminate the franchise immediately pursuant to Chapter 4.108 of the Municipal Code. Upon receipt of a termination notice, Franchisee shall: (1) promptly discontinue all services affected; (2) promptly remove all vehicle decals authorizing operations within the City; and (3) return any and all City-issued identification, equipment or materials associated with this Agreement.

2.2 Suspension/Revocation. City may suspend or revoke the franchise pursuant to Chapter 4.108 of the Municipal Code.

2.3 Agreement Extension(s). Options to extend may be granted, in one-year increments, by mutual agreement of the City and Franchisee.

3. Nature of Franchise. The rights and responsibilities of Franchisee shall include the following:

3.1 Restrictions and Regulations

A. Franchisee shall abide by all: (1) applicable rules, regulations, orders, and restrictions which are now in force or which may be hereafter adopted by City with respect to taxicab operations; (2) orders, directives, or conditions issued, given, or imposed by City with respect to the use of roadways, driveways, curbs, sidewalks, and parking areas in and about the City; (3) applicable laws, ordinances, statutes, rules, regulations, or orders of any governmental authority, federal, state, or municipal, lawfully exercising jurisdiction over the City; including Ordinances for: Taxi Cab Stands, Clean Air Vehicle and Exclusive Taxi Pick-Up Agreements for Compensation, and any not listed in this Agreement.

B. Franchisee shall operate its vehicles in the City only when a current and valid decal sticker has been permanently affixed to the vehicle in the appropriate location. Failure to have a current and valid decal affixed on a vehicle while operating in the City shall mean that Franchisee does not have City approval to operate said vehicle in the City. Franchisee understands that under said circumstances the driver of the vehicle is subject to citation, the vehicle is subject to impound, and Franchisee may receive a suspension or termination of its operating rights. City reserves the right to determine the frequency of and occasions when new or replacement decals or stickers may be issued.

C. Franchisee shall adhere to City regulations regarding appropriate loading and unloading of passengers and shall utilize the designated Taxi Stands throughout the City rather than "trolling" for passengers or parking illegally at metered spaces. For the non-exclusive use of one taxi stand parking space, Franchisee shall pay the City, on an annual basis, its proportionate share of the City's anticipated revenue from each parking space, which is \$5,944 for calendar year 2015. In that the City has entered into a franchise agreement with four franchisees, that amount is \$1,486 for 2015. This fee is payable annually and will be invoiced with the annual franchise payment due January 1 of each year for the term of this Agreement. This amount is equivalent to the amount of revenue expected to be generated by a single metered parking space in a year. The City may, at its sole discretion, adjust this fee in the event the City raises its parking meter rates.

D. Franchisee shall be prohibited from entering into any agreement, for

which consideration is exchanged, whether formal or informal, whereby a property owner or business owner or operator, or an employee of a business owner or operator agrees to allow only a particular franchise operator or operators to provide service to the exclusion of other franchise operators, wherein the term "consideration" shall mean money or any other thing of monetary value.

3.2 Authorized Vehicles

Franchisee shall report to the City the Year, Make, Model, Certified MPG, Passenger Capacity, Franchisee Vehicle Number, License Plate Number, Vehicle Identification Number ("VIN"), Owner/Driver Name(s) and CA Driver's License Number(s), and Proof of Commercial Registration for each of Franchisee's vehicles used in its operation in the City. Franchisee shall also clearly identify those vehicles which are Low Emission Vehicles and which are wheelchair vans.

As of the commencement of each year of the Franchise, all vehicles shall be no more than 8 model years old at any point during the franchise period, as follows:

<u>Year of Franchise</u>	<u>Model Year</u>
January 1, 2015 - December 31, 2015	2007 and greater
January 1, 2016 - December 31, 2016	2008 and greater
January 1, 2017 - December 31, 2017	2009 and greater
January 1, 2018 - December 31, 2018	2010 and greater
January 1, 2019 - December 31, 2019	2011 and greater

The same policy will apply to any option year(s) attached to this Franchise.

A. **CLEAN AIR VEHICLES** - Franchisee shall adhere to City regulations regarding Clean Air Vehicles wherein vehicles used in the operation of the franchise must achieve a minimum rating of 47 City MPG as rated by the US Department of Energy website www.fueleconomy.gov.

The Franchisee's fleet shall consist of clean air vehicles, as follows:

<u>Compliance Date</u>	<u>Minimum % of Fleet</u>
December 31, 2015	25%
December 31, 2016	50%
December 31, 2017	75%
December 31, 2018	100%

If a franchisee uses special purpose vehicles (e.g., wheel chair accessible vans, vans used for school transportation, or larger passenger volume vehicles to accommodate larger parties), twenty-five percent of the total number of authorized vehicles may be excluded from the fleet for the purpose of calculating the percentage of clean air

vehicles required.

B. WHEELCHAIR ACCESSIBLE VANS - Franchisee shall comply with all provisions of the Americans with Disabilities Act (ADA). In addition, a minimum of 5% or two vehicles, whichever is greater, must be wheelchair accessible vans (Must meet all ADA definitions including: floor area, interior height clearance, side-entry loading clearance and ramp or lift design specifications; all required wheelchair/passenger securement straps shall be maintained in the taxicab at all times, in good working order, with permanent markings indicating the taxicab designation/number).

C. CITY PERMIT – City shall issue 65 permit decals to the Franchisee after Franchisee satisfies all requirements of this Agreement and all applicable laws. If, during the franchise period, the Franchisee needs replacement decals, the Franchisee shall provide the old decal to the City as proof of non-duplication. Prior to obtaining a new decal from the City, Franchisee shall report to the City in writing the Year, Make, Model, Certified MPG, Taxi Cab Vehicle Number, License Plate Number, Vehicle Identification Number (“VIN”), Owner/Driver Name(s) and CA Driver’s License Number(s), and Proof of Commercial Registration for each replacement vehicle. A fee of \$10 shall be paid to the City for processing the replacement decal request and for providing the replacement decal.

D. VEHICLE INSPECTIONS - Each vehicle shall be subject to inspection by the City at any time (not limited to one time per year). Vehicles which fail inspection shall not be used to pick up passengers until deficiencies are corrected. Additionally, in accordance with the vehicle manufacturer’s warranty specifications and any applicable State and Federal laws, Franchisee shall maintain a vehicle maintenance program, including preventative maintenance, which will be in effect throughout the term of this Agreement. City reserves the right to inspect Franchisee’s vehicle maintenance records and facilities during regular business hours and its vehicles on an unscheduled, unannounced basis to audit said program for compliance with this Agreement.

E. FRANCHISEE NAMES, LOGOS AND COLOR SCHEMES - Franchisee shall file with City a description and vehicle photograph depicting the color scheme and markings common to Franchisee’s vehicles, which distinguishes them visually from vehicles used by another operator.

F. METERS/RATES - Each and every cab operated under the Franchise shall be equipped with a working meter to calculate the fares. All trips under this Agreement shall be metered. No flat fee trips are permitted. The meters shall be capable of issuing a printed receipt for each trip. Additionally, the City reserves the right to audit meters and vehicles for accurate measurement and metering of fares. All meters shall be in compliance with the specifications and standards for taxi/vehicle for hire meters. No rates shall exceed customer rates as established by the Los Angeles County Department of Transportation (LADOT) and the Board of Taxicab Commissioners.

3.3 Authorized Drivers

A. EMPLOYEES AND SUBCONTRACTORS - Franchisee shall be permitted to utilize employees, licensed subcarriers, or a combination thereof to achieve its full complement of vehicles and drivers. Each driver must be fully qualified to operate the vehicles specified herein and must possess a valid California Driver's License of the appropriate class. Franchisee shall verify that driver(s) must possess the appropriate documentation.

The City reserves the right to approve in advance the form and content of any agreement to be used between Franchisee and its licensed sub-carriers. Franchisee shall verify documentation authorizing driver(s) to work in the United States of America; it will be the responsibility of the firm to verify eligibility.

B. TRAINING - Franchisee shall maintain throughout the Agreement term a program for training its drivers pursuant to a training manual developed by Franchisee. Franchisee shall require all of its drivers to attend the training program, and any other drivers subsequently utilized by Franchisee during the term of the franchise. City Rules and Regulations, vehicle operation, vehicle safety procedures, knowledge of traffic laws, passenger assistance and customer service, effective communication skills, and knowledge of Franchisee's authorized service area and passenger fares.

C. IDENTIFICATION - Franchisee is responsible for placing a placard identification card inside each vehicle with the following specifications: driver(s) picture identification (from every driver of said cab), drivers first and last name, taxi cab number, company name and logo, company address and phone number. Placard must be placed in a conspicuous place visible to the passenger area.

D. UNIFORMS - Each driver shall wear a uniform which projects a professional appearance and clearly identifies the wearer as an employee of Franchisee.

E. ENGLISH SPEAKING PERSONNEL - Personnel hired or contracted by the Franchisee who have dealings directly with the public they are serving, such as drivers and dispatchers, shall be proficient in the English language and be able to communicate effectively with the public.

F. BACKGROUND - The Franchisee, at its expense, shall have each driver fingerprinted and a background investigation performed. No person convicted of a felony or required to register as a sex offender may operate a vehicle under this Agreement.

G. DRUG/ALCOHOL TESTING - Franchisee shall have a drug testing program in place for all personnel (employee and contract). No franchisee shall employ any person as a driver who has been convicted for driving under the influence of a controlled substance, including alcohol. Upon request, Franchisee shall provide a copy

of current company policy and results of the testing shall be made available to the City.

3.4 Service Standards

A. **CONDUCT** - Franchisee and its drivers, coordinators, and other personnel shall, in the performance of all duties pursuant to this Agreement, conduct themselves with the highest degree of courtesy and service. The Franchisee shall be directly and solely responsible for the conduct of its drivers, coordinators, or other personnel utilized under authority of this Agreement.

B. **DISCOUNTED RATES** - Franchisee shall provide a 10% discount for disabled passengers and senior citizen (age 62 and better) passengers for rides within the Manhattan Beach city limits.

C. **ROUTING** - Franchisee shall, at all times, utilize the most cost effective routing of trips when transporting passengers, unless otherwise instructed by the passengers.

D. **RESPONSE TO COMPLAINTS** - Franchisee shall be required to log and resolve all written and oral complaints received from the public or City in a timely manner. Franchisee shall respond in writing to complaints received and shall report to City the results of any investigation or actions taken.

3.5 Representative of Franchisee

Franchisee shall at all times retain one qualified representative authorized to represent and act for it in matters pertaining to its operation, and shall keep City informed in writing of the identity of each such person.

3.6 Change in Ownership

Should the ownership of Franchisee substantially change during the term of this Agreement, Franchisee shall be obligated to notify the City within 10 days of the effective date of any such change. City shall have 10 days from receipt of such notice to terminate this Agreement at its sole discretion. Failure by Franchisee to provide said notice shall be considered a material breach of this Agreement. For purposes of this Agreement, a change in ownership shall be deemed to have occurred when a controlling interest in Franchisee has been transferred to any party not having a controlling interest on the date this Agreement was executed by City.

4. **Compensation**. Franchisee shall compensate City as follows:

2015 **65** x \$923 per cab = **\$59,995.00** per year

Subsequent annual franchise payments will be adjusted by the Consumer Price

Index as published by the U.S. Department of Labor as follows:

Series Id: CUURA421SA0
Not Seasonally Adjusted
Area: Los Angeles-Riverside-Orange County, CA
Item: All items
Base Period: 1982-84=100

The adjustment will be based on the change in the index for the prior twelve month period from September to September or \$25, whichever is greater. The City shall notify the Franchisee of the change and the net adjustment to the annual per cab fee, which will be payable by January 1st for the following year. Using September 2014 as an example, the adjustment would be calculated as follows:

September 2013 CPI	239.611
September 2014 CPI	243.623
Index Change	4.012
Percentage Change	1.7%
Dollar Change	\$15.27 per cab (equal to \$898 x 1.7%)
Minimum Increase	\$25.00
New Rate	\$923.00 per cab

All late payments are subject to a 10 percent penalty during the first 10 days of the contract period, increased to 15 percent during days 11 through 20, and 20 percent for days 21 through 30. Non-payment of franchise fees is grounds for immediate termination of the Agreement.

5. **Insurance Requirements.**

5.1 **Commencement of Franchise.** Franchisee shall not commence its exercise of rights under this Agreement until it has obtained City approved insurance. Before beginning work hereunder, during the entire period of this Agreement, for any extensions hereto, and for periods after the end of this Agreement as indicated below, Franchisee must have and maintain in place all of the insurance coverages required in this Section. Franchisee's insurance shall comply with all items specified by this Agreement. Any subcontractors shall be subject to all of the requirements of this Section and Franchisee shall be responsible to obtain evidence of insurance from each subcontractor and provide it to City before the subcontractor commences any services on behalf of Franchisee relevant to this Agreement.

All insurance policies used to satisfy the requirements imposed hereunder shall be issued by insurers authorized to do business in the State of California. Insurers shall have a current A.M. Best's rating of not less than A-:VII unless otherwise approved by City.

5.2 Coverages, Limits and Policy Requirements.

Franchisee shall maintain the types of coverages and limits indicated below:

A. **COMMERCIAL GENERAL LIABILITY INSURANCE** - a policy for occurrence coverage, including all coverages provided by and to the extent afforded by Insurance Services Office Form CG 0001 ed. 11/88 or 11/85, with no special limitations affecting City. The limit for all coverages under this policy shall be no less than \$2,000,000.00 per occurrence. City, its employees, officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide the City with 30 days prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by City. In the event the policy contains such an "other insurance" clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed under this Agreement. An endorsement form acceptable to the City's Risk Manager shall be executed by the applicable insurance underwriters.

B. **COMMERCIAL AUTO LIABILITY INSURANCE** - a policy including all coverages provided by and to the extent afforded by Insurance Services Office form CA 0001, ed. 12/93, including Symbol 1 (any auto) with no special limitations affecting the City. The limit for bodily injury and property damage liability shall be no less than \$1,000,000 per accident. City, its employees, officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide the City with 30 days prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by City. In the event the policy contains such an "other insurance" clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed under this Agreement. An endorsement form acceptable to the City's Risk Manager shall be executed by the applicable insurance underwriters.

C. **WORKERS' COMPENSATION INSURANCE** - a policy which meets all statutory benefit requirements of the Labor Code, or other applicable law, of the State of California. The minimum coverage limits for said insurance shall be no less than one million dollars per claim. The policy shall contain or be endorsed to include a waiver of subrogation in favor of City.

5.3 Additional Requirements. The procuring of such required policies of insurance shall not be construed to limit Franchisee's liability hereunder, or to fulfill the indemnification provisions and requirements of this Agreement. There shall be no recourse against City for payment of premiums or other amounts with respect thereto. City shall notify Franchisee in writing of changes in the insurance requirements. If

Franchisee does not deposit copies of acceptable insurance policies with City incorporating such changes within 60 days of receipt of such notice, Franchisee shall be deemed in default hereunder.

Any deductibles or self-insured retentions must be declared to and approved by City. Any deductible exceeding an amount acceptable to City shall be subject to the following changes: either the insurer shall eliminate or reduce such deductibles or self-insured retentions with respect to City and its officials, employees and agents (with additional premium, if any, to be paid by Franchisee); or Franchisee shall provide satisfactory financial guarantee for payment of losses and related investigations, claim administration and defense expenses.

5.4 Verification of Compliance. Franchisee shall furnish City with original endorsements effecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by the insurer to bind coverage on its behalf. All endorsements are to be received and approved by City before work commences. Not less than 15 days prior to the expiration date of any policy of insurance required by this Agreement, Franchisee shall deliver to City a binder or certificates of insurance with respect to each renewal policy, bearing a notation evidencing payment of the premium therefor, or accompanied by other proof of payment satisfactory to City.

6. Non-Liability of Officials and Employees of the City. No official or employee of City shall be personally liable for any default or liability under this Agreement.

7. Non-Discrimination. Franchisee covenants there shall be no discrimination based upon race, color, creed, religion, sex, marital status, age, sexual orientation, handicap, national origin, or ancestry, in any activity pursuant to this Agreement.

8. Independent Contractor. Franchisee is and shall at all times remain, as to City, a wholly independent contractor. Neither City nor any of its agents shall have control over the conduct of Franchisee or any of Franchisee's employees, except as herein set forth. Franchisee shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of City.

9. Compliance with Law. Franchisee shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.

10. Notices. All notices shall be personally delivered or mailed to the below listed addresses. These addresses shall be used for delivery of service of process.

A. Address of Franchisee is as follows:

**Yellow Cab of South Bay Cooperative, Inc.
2129 W Rosecrans Ave
Gardena, CA 90249**

B. Address of City is as follows:

Finance Director,
City of Manhattan Beach
1400 Highland Ave
Manhattan Beach, CA 90266

(With a copy to):

City Attorney
City of Manhattan Beach
1400 Highland Ave
Manhattan Beach, CA 90266

11. **Limitations Upon Assignment.** Neither this Agreement nor any portion shall be assigned by Franchisee without prior written consent of City. Any attempt by Franchisee to assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

12. **Personnel.** Franchisee represents that it has, or shall secure at its own expense, all personnel required to perform under this Agreement. All personnel engaged in the work shall be qualified to perform such Scope of Work.

13. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.

14. **Indemnification.** Franchisee shall defend, indemnify, and hold harmless City, its officials, and every officer, employee and agent of City (collectively "City") from any claim, liability or financial loss (including, without limitation, attorneys fees and costs), injuries to property or persons (including without limitation, attorneys fees and costs) arising out of any acts or omissions of Franchisee, its officials, officers, employees or agents in connection with the performance of this Agreement, except for such claim, liability or financial loss or damage arising from the gross negligence, sole negligence, or willful misconduct of City, as determined by final arbitration or court decision or by the agreement of the Parties. Franchisee shall defend City, with counsel of City's choice, at Franchisee's own cost, expense, and risk, and shall pay and satisfy any judgment, award, or decree that may be rendered against City. Franchisee shall

reimburse City for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Franchisee's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Franchisee or City. All duties of Franchisee under this Section shall survive termination of this Agreement.

15. **California Law.** Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the appropriate branch of the Los Angeles County Municipal or Superior Court.

16. **Interpretation.** Agreement shall be interpreted as though prepared by both parties.

17. **Preservation of Agreement.** Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

18. **Entire Agreement; Modification.** This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that no representations, by any party which are not embodied herein and that no other agreement, statement or promise not contained in this Agreement shall be valid and binding. Any modification of this Agreement will be effective only if it is in writing signed by the parties.

19. **Attorneys' Fees.** In the event that legal action is necessary to enforce the provisions of the Agreement, or to declare the rights of the parties hereunder, the parties agree that the prevailing party in the legal action shall be entitled to recover all attorneys' fees and court costs incurred in connection with the action from the opposing party.

[Signatures begin next page]

IN WITNESS THEREOF, the parties hereto have executed this Agreement on the day and year first shown above.

YELLOW CAB OF SOUTH BAY COOPERATIVE, INC.

By: Jan Zahy

Name: MALIK. Z - YOUSUF .

Title: PRESIDENT YELLOW CAB OF SOUTH BAY COOPERATIVE, INC

By: Ernesto Gutierrez

Name: Ernesto Gutierrez

Title: Board Member, yellow CAB of South Bay Cooperative, Inc.

CITY OF MANHATTAN BEACH

Mark Danaj, City Manager

ATTEST:

Liza Tamura, City Clerk

APPROVED AS TO FORM:

Quinn Barrow, City Attorney