

**REQUEST TO ESTABLISH EXCLUSIVE TAXICAB
FRANCHISE AGREEMENTS**

RECOMMENDATION

Staff recommends that Council:

1. Authorize the City Manager to execute a taxicab franchise agreement (See attachment) with All Yellow Taxi and Administrative Services Cooperative of Gardena, California and Bell Cab Company of Hawthorne and United Independent Taxi of Los Angeles.
2. Authorize staff to develop a starter program.
3. Authorize additional permits above and beyond the ceiling amount of 140 per year (35 per company) to be granted to the various taxi companies.

BACKGROUND

At its regular meeting of March 11, 2003, the City Council approved the awarding of franchises to four (4) taxicab companies that had competed in the RFP process held earlier this year. The price of a permit for a cab to operate in the City of Hermosa Beach was set at \$1100.00 per cab per year. The Council instructed the City Attorney to draft a franchise agreement. A taxicab franchise agreement has been completed and is attached. The agreement has been sent to the four companies for their review. Staff also met with representatives from the various cab companies on March 26, 2003 to obtain suggestions and ideas on the creation of a starter program.

ANALYSIS

The purpose of meeting with the taxi companies on March 26 was to solicit ideas on how a starter program could operate effectively with 4 competing companies. It became obvious to staff based on the comments and recommendations of the different cab companies that the City would have to contract with an independent company to provide a starter for the downtown area on weekend evenings. Most of the companies recommended that the cost of this program could be paid for by the drivers/companies through an arrangement independent of the annual permit. This would be similar to the program at the Los Angeles airport where patrons pay an additional \$2.50 to take a cab out of the airport. This extra charge pays for the starter program at LAX. Staff also contacted the Company at LAX (company name: ACS) that conducts the starter program and they expressed interest in assisting the City of Hermosa Beach with a program here.

An additional option for Council to consider is to increase the number of available permits. With the establishment of a starter program, more control of the downtown

cabs should be achieved and as such, the ceiling amount of 140 permitted cabs (35 permits per company) will no longer be necessary. One idea is to allow the three companies that have been operating in town be allowed to purchase not just the minimum of 35 permits, but be allowed to purchase additional permits up to the number they currently operate with. For example, Administrative Services Cooperative (South Bay Yellow Cab) has 99 permits, All Yellow Taxi has 45 permits and United Independent Taxi has 47 permits. This is a total of 191 permits. While each company will be required to purchase 35 permits, South Bay Yellow Cab can purchase additional permits up to the 99 they currently have if they so desire. All Yellow Taxi can purchase up to 45 permits and United Independent Taxi can purchase up to 47. In the event that any or all of these companies choose not to purchase up to these established limits, any remaining permits of the 191 will be available to Bell Cab if they so choose to purchase additional permits above their original 35. Another idea is to increase the number of available permits to 50 for each company. Each company would still purchase a minimum of 35 permits with the option to purchase up to 15 additional permits. This would raise the overall ceiling to 200. Of course the Council can also consider granting an unlimited number of permits to each company again with a minimum of 35 permits each. Upon the approval of Council, staff will begin to issue permits as soon as possible with a start date of June 1, 2003.

Staff further recommends that those taxicab companies that will no longer operate in Hermosa Beach be paid off for the unused terms of their existing permits. Their permits will expire on June 1 and that date will be used to determine the amount of reimbursement that each company will receive. The cost of these reimbursements is approximately \$1165.00.

FISCAL IMPACT

The issuance of 140 permits at \$1100 each will bring in a minimum of \$154,000 annually. If the additional permits are offered, extra revenues of up to \$66,000 (200 permits) could be realized. The amount of revenue generated from the taxi permits in FY 2001/02 was approximately \$91,000.

Respectfully submitted,

Concur:

MICHAEL LAVIN, CHIEF OF POLICE
HERMOSA BEACH POLICE DEPARTMENT

STEPHEN BURRELL
CITY MANAGER

Fiscal Impact:

Viki Copeland, Finance Director

TAXICAB FRANCHISE AGREEMENT

THIS TAXICAB FRANCHISE AGREEMENT (“Agreement”) is entered into as of the ____ day of _____, 2003, by and between the **CITY OF HERMOSA BEACH**, a California municipal corporation, organized and existing under the laws of the State of California (“City”) and _____, a _____ (“Franchisee”).

RECITALS

This Agreement is entered into on the basis of the following facts, understandings, and intentions of the parties:

- A. **Chapter 5.72 of Title 5 of the Hermosa 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 for service initiating within the City, and to limit such taxicab service to only those operators to whom a franchise is awarded.**
- B. **The City has determined that considerations of public safety and consumer protection require a degree of regulation of taxicab service attainable only through the issuance of nonexclusive franchises.**
- C. **Franchisee is a taxicab operator qualified to operate a taxicab service in the City under and pursuant to a nonexclusive franchise.**
- D. **Franchisee has applied for, and on the basis of its qualifications and the representations contained in its proposal, been awarded the opportunity to enter into a nonexclusive franchise agreement for the operation of taxicabs in the City.**
- E. **Franchisee proposes to operate a taxicab service in the City in full compliance with the requirements of this Agreement and the**

provisions of Chapter 5.72 of Title 5 of the Hermosa Beach Municipal Code and all other applicable ordinances and laws.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties agree to as follows:

1. Grant of Franchise. City hereby grants to Franchisee a non-exclusive franchise to operate not fewer than [] and not more than [] taxicabs for the provision of taxicab service originating within the territorial boundaries of City.

2. Term of Franchise. The franchise granted by this Agreement shall commence [], 2003, for a term of three (3) years, and expire on [], 2006, unless sooner terminated as provided hereinbelow.

3. Consideration. In consideration of the rights granted hereunder, Franchisee shall pay to City an annual franchise fee of \$1,100 per franchised taxicab, payable upon Franchisee's submittal of an executed copy of this Agreement to City, and annually thereafter for each year this Agreement is in effect on the anniversary date of this Agreement. Failure of Franchisee timely to pay the annual franchise fee shall be a material breach of this Agreement. All late payments are subject to a ten percent penalty during the first ten days of the applicable contract period, increased to fifteen percent during days eleven through twenty, and twenty percent for days twenty-one and beyond. Non-payment of franchise fees is grounds for immediate termination of the Agreement. Proceeds for any Franchisee operations performed during non-payment periods will be deducted from the Franchisee's security deposit.

4. Scope of Franchised Services. Franchisee shall have the right, utilizing its own employees and contractors, to provide taxicab services to customers originating service within the territorial boundaries of the City. Franchisee shall be permitted to utilize employees, licensed subcarriers, or a combination thereof to achieve its full complement of vehicles and drivers. The City reserves the right to approve in advance the form and content of any agreement to be used between Franchisee and its licensed drivers.

Taxicab services shall be provided in full compliance with the requirements of this Agreement and Chapter 5.72 of Title 5 of the Hermosa Beach Municipal Code. 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 this Agreement.

Franchisee agrees to abide by any and all: (1) applicable rules, regulations, orders, and restrictions now in force or which may be hereafter adopted by City with respect to its operations; (2) orders, directives, or conditions issued, given, or imposed by the 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 lawfully exercising jurisdiction within the City.

Franchisee agrees to operate its vehicles in City only when a current and valid decal or sticker has been permanently affixed to the vehicle in the appropriate location. Failure to have a current and valid decal or sticker affixed on a vehicle while operating in City shall mean that Franchisee does not have City approval to operate said vehicle in City, which shall constitute a material breach of this Agreement. City reserves the right to determine the frequency of and occasions when new or replacement decals or stickers may be issued.

5. Rates. Franchisee's taxicabs shall charge those rates for taxicab service approved by the City Council. Franchisees shall provide discounted rides for senior citizens (age 55 and older).

6. Operational Requirements.

- A. Meters. Each and every taxicab operated under the franchise shall be equipped with a working meter to calculate the fares. All trips under this franchise agreement shall be metered, except for approved flat fee trips. In order to provide flat fee trips, Franchisee must submit for City approval a list of destinations available for flat fee trips and the total cost of each trip. All flat fee trips must originate in Hermosa Beach. City reserves the right to audit meters and vehicles for accurate measurement and metering of fares. All meters shall be in compliance with Los Angeles County Department of Weights and Measures specifications and standards for taxi/vehicle for hire meters.**
- B. Routing.** Franchisee shall, at all times, utilize the most cost effective routing of trips when transporting passengers pursuant to the franchise authority provided under this Agreement, unless otherwise instructed by the passengers.

- C. Nonsmoking vehicles/drivers. Franchisee shall provide, upon request, non-smoking vehicles for patrons. The Franchisee shall advise those requesting such vehicles of the time delay, if any, associated with specifying a non-smoking vehicle. Drivers shall refrain from smoking while in the presence of customers.
- D. Radios. Each vehicle shall be equipped with a functional two-way radio and/or a mobile display terminal capable of being used to communicate with its central dispatching office at all times while operating in the City.
- E. English speaking drivers. 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. The City may require Franchisees to provide independent third party verification of the driver's ability.
- F. Response to complaints. Franchisee shall be required to log and resolve all written and oral complaints received from the public or City within 10 business days. Franchisee shall respond in writing to complaints received and shall report to City the results of any investigation or actions taken.
- G. Drug/Alcohol testing. Franchisee shall have a drug-testing program in place for all personnel (employee and contract). Franchisee shall return to the City the driver permit for any driver who fails a random drug/alcohol test. Drivers who fail a random test shall not be eligible to have their permit reinstated until authorized by a City of Hermosa Beach representative. Test results for any driver who fails a random test shall immediately be forwarded to the City of Hermosa Beach.
- H. ADA compliance. Franchisee shall comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the performance of its taxicab services under this Agreement.
- I. Driver uniforms. Each of Franchisee's drivers shall wear a distinctive uniform that projects a professional appearance and clearly identifies the wearer as and employee of Franchisee. This uniform(s) shall be subject to approval by the City. All clothing must be neat and clean.
- J. Driver identification cards. Franchisee's drivers and coordinators shall wear a valid photographic identification badge issued by the City at all times while in the City. Upon termination of a driver, Franchisee shall be responsible for a timely retrieval of City badges and returning of said badges to the City.

- K. Driver training. Franchisee shall submit to the City and maintain throughout the term of this Agreement a program for training its drivers pursuant to a training manual developed by Franchisee. Franchisee shall require all of its drivers, including drivers hired after execution of this Agreement, to attend the training program. The program content shall be subject to review and approval by City and shall include, but not be limited to, the following: City Rules and Regulations, vehicle inspection, 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. Each driver must be full qualified to operate the vehicles specified herein and must possess a valid California Driver's License of the appropriate class.

- L. Fingerprinting of drivers. The Franchisee, at its expense shall make each of its drivers available for fingerprinting and a background investigation to be performed by the Hermosa Beach Police Department prior to issuance of an identification card. Drivers who currently possess a valid City of Hermosa Beach Taxicab Identification Card and who are currently employed by the company(s) awarded the franchise will be required to complete an updated application packet. However, those drivers will not be required to submit to another fingerprint check.

7. **Vehicles.**

- A. Franchisee shall report to the City, the manufacturer, model year, vehicle type, vehicle identification number ("VIN"), license plate number, company identification number, passenger capacity, and proof of commercial registration for each of Franchisee's vehicles used in its operation in the City.

At the commencement of this Agreement, all vehicles shall be no more than seven (7) model years old. Each vehicle operated under this franchise agreement shall be clean inside and out, free of exterior body damage, mechanically safe, and in excellent working order. The City reserves the right to object to any of Franchisee's vehicles, and to require that the vehicle be cleaned, repaired, or removed from service.

- B. Franchisee shall file with the City a description (either photographic or otherwise) adequate to identify the color scheme and markings common to Franchisee's vehicles and distinguish them visually from vehicles used by other operators.

- C. When a Franchisee replaces a vehicle due to damage or another reason, the replacement vehicle must be no more than seven (7) model years old. A vehicle inspection report will be required before receiving a permit to use it in the City.

- D. Franchisee shall submit a copy of its vehicle maintenance program, including its preventative maintenance program, to the City, which will be in effect throughout the term of this agreement. This program shall be in accordance with the vehicle manufacturer's warranty specifications and any applicable State and Federal laws.

Such program shall describe the maintenance facility to be used, schedule of maintenance, and maintenance record keeping. The City shall have the right to inspect Franchisee's maintenance records and facilities during regular business hours and its vehicles or an unscheduled, unannounced basis to audit said program for compliance with this agreement.

- E. Each vehicle shall be subject to inspection by the City at any time. Vehicles that fail inspection shall not be used to pick up passengers until deficiencies are corrected.

8. **Insurance.** Franchisee shall have and maintain in place, all of the insurance coverage as specified below. The Franchisee shall comply with all items specified by this Agreement. All insurance policies secured 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. The Insurance Endorsement Forms attached to the Request for Proposals shall be utilized to provide evidence of insurance.

Franchisee shall maintain the types of insurance and limits as follows:

(1) **COMMERCIAL GENERAL LIABILITY INSURANCE** - a policy for occurrence coverage, including all coverage provided by and to the extent afforded by Insurance Services Office Form CG0001 ed. 11/88 or 11/85, with no special limitations affecting City. The limit for all coverage under this policy shall be no less than \$1,000,000 dollars per occurrence. City, its employees, officials, volunteers and agents, shall be added as additional insured 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. The City of Hermosa Beach Insurance Endorsement Form No.1 (General Liability) must be executed by the applicable underwriters.

(2) **COMMERCIAL AUTO LIABILITY INSURANCE** - a policy including all coverage 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 shall be no less than \$1,000,000 dollars per accident. City, its employees, officials, volunteers and agents, shall be added as additional insured by endorsements to the policy. The insurer shall agree to provide the City with thirty (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. The City of Hermosa each Insurance Endorsement Form No.2 (Auto) must be executed by the applicable insurance underwriters.

(3) WORKERS COMPENSATION INSURANCE - a policy which meets all statutory benefit requirements of the Labor Code, or other applicable law, of the State of California. Employers Liability Insurance with a minimum limits of no less than one million dollars (\$1,000,000) per claim. The policy shall contain, or be endorsed to include, a waiver of subrogation in favor of City.

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 sixty (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:

- (1) Either the insurer shall eliminate, or reduce, such deductibles or self-insured retentions with respect to City and its officials, volunteers, employees and agents (with additional premium, if any, to be paid by Franchisee); or
- (2) Franchisee shall provide satisfactory financial guarantee for payment of losses and related investigations, claim administration, and defense expense.

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 fifteen (15) days prior to the expiration date of any policy of insurance required by this Agreement, Franchisee shall deliver to City a binder or certificate 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.

All late payments are subject to a ten percent penalty during the first ten days of the contract period, increased to fifteen percent during days eleven through twenty, and twenty percent for days twenty-one through thirty. Non-payment of franchise fees is grounds for immediate termination of the contract at any time. Proceeds for any Franchisee operations performed during non-payment periods will be deducted from the Franchisee's security deposit.

9. **Record Keeping.** Franchisee shall at all times during the term of this Agreement maintain and keep permanent books, ledgers, journals, and other records wherein are kept entries accurately reflecting all gross revenue derived from the business transacted

in the City. In addition, Franchisee shall keep and maintain a daily record of all "trips" and the passenger counts and fares collected from each trip with supporting verifiable documents showing the driver's name and signature, actual arrival and departure trip times, registration number of vehicle, and reservation numbers, if applicable. City may require Franchisee to use City's forms for said records.

It is agreed that examination of the books, ledgers, journals, and accounts of Franchisee will be conducted in accordance with generally accepted auditing standards applicable in the circumstances and that as such, said examinations do not require a detailed audit of all transactions. City may use testing and sampling methods in verifying reports submitted by Franchisee. Deficiencies ascertained by the use of such testing and sampling methods by applying the percentages of error obtained from such testing and sampling to the entire period of reporting under examination will be binding upon Franchisee and to that end shall be admissible in court to prove any amounts due City from Franchisee.

10. **Security Deposit.** Franchisee shall deposit and maintain with City a security deposit in the amount of Ten Thousand dollars (\$10,000), against which City may deduct any delinquent fees, liquidated damages, or other charges incurred pursuant to any provision or by virtue of a violation of this Agreement. The security deposit shall take the form of either a cashier's check payable to the City of Hermosa Beach, a bond guaranteeing payment, or such other form as is acceptable to Finance Director, and shall be subject to approval as to legal form by the City Attorney.

11. **Advertising.** Franchisee shall, at his own expense, provide advertising to the Hermosa Beach public and businesses of the availability of its services.

12. **Assignment of Agreement.** Franchisee shall not, in any manner, directly or indirectly, by operation of law or otherwise, assign, hypothecate, transfer, or encumber this Agreement, or the rights herein granted, or any portion thereof or any interests therein, without the prior written consent of City. Consent to one assignment shall not be deemed to be a consent to any subsequent assignment. When and if the proper consent of the City to an assignment is received, the terms and conditions of this Agreement shall be binding upon and shall insure to the benefit of the successors, heirs, and assigns of the parties hereto.

13. **Representative of Franchisee.** Franchisee shall at all times retain one (1) 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.

14. **Customer Service Cards.** The City reserves the right to place either a placard or cards within the passenger area of each cab informing customers of the City's representative who may be contacted if the patron would like to comment on the service provided. Additionally, the Franchisee may be required to produce, display and make available customer survey cards for patrons.

15. **Indemnification.** Franchisee shall indemnify, defend, and hold harmless City, and its officers, agents and employees, from and against any and all liability, damages, expenses, causes of action, suits, claims, costs, fees, penalties, or judgments, of any nature whatsoever, including

reasonable attorneys fees and costs of suit, brought by or owed to third parties, arising out of or in connection with the operations and activities of Franchisee and its drivers and other personnel in the exercise of its rights and performance of its operations under this Agreement.

16. Suspension and Termination.

- A. City shall have the right to terminate this Agreement without cause by giving ninety (90) days written notice to Franchisee. Upon receipt of a notice of termination, Franchisee shall: (1) promptly discontinue all services in the City; (2) promptly remove all vehicle decals; and (3) promptly return all driver identification cards issued by the City. In the event of a termination, City will refund on a pro rata basis the franchise fee paid for that year of service and will return the security deposit remaining on deposit with City.
- B. City shall have the right to suspend Franchisee's operations under the franchise in the event of a lapse in required insurance or any other violation of this Agreement or of the provisions of Chapter 5.72 of the Hermosa Beach Municipal Code that, in the judgment of the City Manager, create an immediate safety hazard. In the event of a suspension, all Franchisee's taxicab operations in the City shall cease until such time as the suspension is lifted. The suspension shall remain in effect for as long as the violation remains uncured.
- C. All terms and specifications of this Agreement are material and binding, and failure to perform any portion of the work described herein shall be considered a breach of this Agreement. Failure or delay by Franchisee to perform any term or provision of this Agreement constitutes a default under this Agreement. Upon receipt of notice in writing from City, the Franchisee must immediately commence to cure, correct, or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence.

The City may exercise any the rights and remedies for default set forth in this Section if a default continues for a period of seven (7) days after written notice to Franchisee unless, if the nature of the default is such that more than seven (7) days are reasonably required for its cure, then Franchisee shall not be deemed to be in default if it has commenced a cure within the seven (7) day period and thereafter diligently prosecutes such cure to completion within thirty (30) days after receipt of written notice thereof. No additional time to cure shall be allowed for failure to pay any amount due to City under this Agreement, or if the nature of the default is such that the health, welfare, or safety of the public is endangered as determined by the City Manager. The notice of default shall specify the nature of the default. Delay in giving a notice of default shall not constitute a waiver of any default nor shall it change the time of default. Any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, nor deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

City reserves the right to terminate this Agreement in the event that Franchisee fails to cure any default within the required time. City shall further have the right to terminate this Agreement if Franchisee violates any material provision of any applicable law or ordinance; fails to maintain the insurance required by Section 8 or fails to pay to City any monies due City pursuant to this Agreement (and fails to remedy such default within five (5) days after written notice thereof from City); fails to maintain in force all required licenses and permits; violates any orders or filings of any regulatory body having jurisdiction over Franchisee relative to its operations under this Agreement, provided that Collector may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of this Agreement shall be deemed to have occurred until a final decision adverse to Franchisee is entered; if Franchisee fails to make any payment required under this Agreement and/or refuses to provide City with required information, reports, and/or records in a timely manner as provided for in this Agreement; if Franchisee practices, or attempts to practice, any fraud or deceit upon City; or if Franchisee commits more than three defaults within a twelve month period, regardless of whether they are cured.

Franchisee may respond in writing to a notice of intent to terminate from the City Manager. The matter will then be referred to the City Council for consideration pursuant to this Section. The City Council will set the matter for a hearing and the City Clerk shall give Collector thirty (30) days written notice of the time and place of the hearing. At the hearing, the City Council shall consider the all relevant evidence and testimony and if the City Council determines that the Franchisee is in breach of this Agreement as above described, the Council, in the exercise of its discretion, may order Franchisee to take remedial actions to cure the breach or impose any other remedy in accordance with this Agreement, including but not limited to termination. The decision or order of the City Council shall be final and binding.

17. **Independent Contractor.** Franchisee is, and shall at all times remain as to City, a wholly independent contractor. Franchisee shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Franchisee or any of Franchisee's employees, except as set forth in this Agreement. Franchisee shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner employees of City. Franchisee shall be solely responsible for the acts and omissions of its officers, employees, subcontractors and agents. Franchisee or its officers, employees, subcontractors and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits that accrue to City employees by virtue of their employment with City.

18. **Governing Law.** This law of the State of California shall govern this Agreement. In the event of litigation between the parties, venue in State trial courts shall lie exclusively in Los

Angeles County. In the event of litigation in a United States District Court, exclusive venue shall lie in the Central District of California.

19. **Attorney Fees.** Should legal action be brought by either party to enforce any provision of this Agreement, the prevailing party in such action shall be entitled to its actual attorneys' fees, court costs, and other litigation expenses including, without limitation, expenses incurred for preparation and discovery, expert witness fees, and expenses relating to appeals, if any. The entitlement to recover such fees, costs and expenses shall accrue upon the commencement of the action regardless of whether the action is prosecuted to final judgment.

20. **Binding on Successors.** The provisions of this Agreement shall inure to the benefit to and be binding on the successors and permitted assigns of the parties.

21. **Parties In Interest.** Nothing in this Agreement, whether express or implied, is intended to confer any rights on any persons other than the parties to it and their representatives, successors and permitted assigns.

22. **Waiver.** The waiver by either party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision. The subsequent acceptance by either party of any monies that become due hereunder shall not be deemed to be a waiver of any preexisting or concurrent breach or violation by the other party of any provision of this Agreement.

23. **Entire Agreement.** This Agreement represents the full and entire Agreement between the parties regarding the matters covered herein.

24. **Captions.** The captions in this Agreement are for convenience of reference only and are not intended to be used in the construction of this Agreement nor to alter or affect any of its provisions.

25. **References to Laws.** All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided.

26. **Interpretation.** This Agreement shall be interpreted and construed reasonably and neither for nor against either party, regardless of the degree to which either party participated in its drafting. Each of the parties has received the advice of legal counsel prior to signing this Agreement. Each party acknowledges no other party or agent or attorney has made a promise, representation, or warranty whatsoever, express or implied, not contained herein concerning the subject matter herein to induce another party to execute this Agreement. The parties agree no provision or provisions may be subject to any rules of construction based upon any party being considered the party "drafting" this Agreement.

27. **Amendment.** This Agreement may not be modified or amended in any respect except by a writing signed by the parties.

28. **Discrimination.** Franchisee shall not discriminate in any of its operations based upon race, color, creed, religion, sex, marital status, age, disability, national origin, ancestry or medical condition.

29. **Conflict of Interest.** Franchisee confirms that it has no financial, contractual, or other interest or obligation that conflicts with or is harmful to performance of its obligations under this Agreement. Franchisee shall not during the term of this Agreement knowingly obtain such an interest or incur such an obligation, nor shall it employ or subcontract with any person for performance of this Agreement who has such incompatible interest or obligation.

30. **Notice.** All notices permitted or required under this Agreement shall be in writing, and shall be deemed made when delivered to the applicable party's representative as provided in this Agreement. Additionally, such notices may be given to the respective parties at the following addresses, or at such other addresses as the parties may provide in writing for this purpose.

Such notices shall be deemed made when personally delivered or when mailed forty-eight (48) hours after deposit in the U.S. mail, first-class postage prepaid, and addressed to the party at its applicable address.

CITY OF HERMOSA BEACH
1315 Valley Drive
Hermosa Beach, CA 90254

Attention: _____

FRANCHISEE:

Attention: _____

31. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement on behalf of the party for whom they are signing.

32. **Severability.** If any non-material provision of this Agreement is for any reason deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement that shall be enforced as if such invalid or unenforceable provision had not been contained herein.

Executed as of the day first above stated:

For City of Hermosa Beach

For Franchisee

Steve Burrell
City Manager

Name:
Title:

Approved as to Form:

Michael Jenkins
City Attorney

Attest:

City Clerk