



Agenda Item #: \_\_\_\_\_

# Staff Report

## City of Manhattan Beach

**TO:** Honorable Mayor Cohen and Members of the City Council

**THROUGH:** Geoff Dolan, City Manager

**FROM:** Bruce Moe, Finance Director  
Steve Charelian, Revenue Services Manager

**DATE:** March 4, 2009

**SUBJECT:** Award of Five Year Taxicab Franchises to All Yellow, Bell, South Bay Yellow and United Independent Cab Companies to Provide Taxicab Services (First Year Revenue of \$136,950).

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### **RECOMMENDATION:**

Staff recommends that the City Council accept the Finance Subcommittee's recommendation to award four franchises to All Yellow Taxi (30 Cabs), Bell Cab (30 Cabs), South Bay Yellow Cab Cooperative (which includes Manhattan Yellow) (65 Cabs) and United Independent Cab (40 Cabs). Staff also recommends that Council authorize the City Manager to execute the agreements with each of the taxicab franchisees.

### **FISCAL IMPLICATION:**

The four franchises together will generate revenue of \$136,950 in the first year. In subsequent years, the franchise fee will be adjusted by the U.S. Department of Labor Consumer Price Index.

### **BACKGROUND:**

In 1998, Council implemented a franchise system which limits the number of taxicabs operating in Manhattan Beach. This limitation was imposed in response to Police Department concerns that the public's safety and welfare was being compromised due to the excessive number of taxi cabs trolling the streets in search of fares during certain days and hours (particularly in the Downtown and El Porto areas). Through the taxicab franchise system, we have been able to better control the manner and conditions under which taxis serving our community operate, as well as receiving additional revenue.

In 2005, through a competitive proposal process, City Council awarded three-year taxicab franchises to All Yellow Taxi, Bell Cab, South Bay Yellow Cooperative and United Independent Taxi. The four companies were authorized a total 165 cabs in Manhattan Beach. That franchise expired at the end of November 2008, at which time the contracts became month-to-month agreements. Renewal or solicitation of new proposals was postponed until Council direction on the issue of clean vehicle requirements was resolved.

**DISCUSSION:**

In December 2008, the City Council adopted an ordinance requiring franchised taxicab companies to phase-in clean air vehicles. During the deliberations on the ordinance, the existing franchise companies requested that the City Council consider waiving the solicitation of proposals<sup>1</sup> and award them new franchises in recognition of past service, and for supporting the new clean vehicle requirements. Council was open to the concept, and instructed staff to work through the Finance Subcommittee to determine if acceptable terms could be obtained.

Negotiations with each of the companies were recently conducted, and we have tentative agreements with the four incumbent franchisees, pending City Council approval. The Finance Subcommittee approved the contract awards and the financial terms. All companies have agreed to pay the City a franchise fee of \$830 per cab in the first year (unchanged from the prior franchise in recognition of the economy), which results in first year income of \$136,950. Subsequent annual franchise periods will be adjusted by a Consumer Price Index factor. The new franchise term will be five years, up from the prior three year term.

The taxicab allocation, which remains unchanged from the prior franchise, is as follows:

1. All Yellow Taxi – 30 cabs
2. Bell Cab – 30 cabs
3. South Bay Yellow Cooperative – 65 cabs
4. United Independent Taxi - 40 cabs

As provided for in the Vehicle for Hire ordinance, the Police Chief has determined that 165 cabs is appropriate and will ensure adequate service availability.

If awarded this evening, the franchise period will begin on April 1, 2009 and run through March 31, 2014. Staff recommends Council authorize the City Manager to execute the agreements which have been reviewed and approved as to form by the City Attorney.

Attachment: A. Sample Contract with Franchise Taxi Cab Companies

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<sup>1</sup> A competitive process for the franchises is not required by State law or by the City's Municipal Code. City Council may award franchises at their discretion.

## **TAXICAB FRANCHISE AGREEMENT - SAMPLE**

THIS AGREEMENT is made this 1st day of April, 2009, by the CITY OF MANHATTAN BEACH, a municipal corporation, ("CITY"), and YELLOW CAB OF SOUTH BAY COOPERATIVE, INC. a California corporation doing business as SOUTH BAY YELLOW CAB and MANHATTAN YELLOW CAB (hereinafter referred to as "FRANCHISEE").

### **RECITALS**

The following recitals are a substantive part of this Agreement:

1. City is desirous of regulating taxicab services for the benefit of the residents and visitors of Manhattan Beach and has determined that the most effective way to do so is by the granting of non-exclusive franchises which regulate the time, place and manner of provision of taxi services by private companies;
2. FRANCHISEE is qualified by virtue of experience, training, education, and expertise to be granted such a franchise.

### **AGREEMENT**

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Grant of Franchise.** CITY hereby grants a non-exclusive franchise to FRANCHISEE for the provision of taxi services within the City's boundaries.
2. **Term of Agreement.** This Agreement shall terminate on March 31, 2014 unless earlier terminated as provided below.
  - 2.1 **Termination.** CITY shall have the right to terminate this Agreement, without cause, by giving ninety (90) days written notice. Upon receipt of a termination notice, FRANCHISEE shall: (1) promptly discontinue all services affected (unless the notice directs otherwise); (2) promptly remove all vehicle decals authorizing operations within the City of Manhattan Beach; and (3) return any and all City-issued identification, equipment or materials associated with the franchise agreement. The City will return any unused franchise fees on a prorated basis upon successful completion of the termination process as determined by the City.
3. **Nature of Franchise.** The rights and responsibilities of FRANCHISEE shall include those outlined in the City's Request for Proposal #648-05, the Addendum dated March 15, 2005, and the FRANCHISEE's proposal, which are incorporated herein by this reference.
4. **Compensation.** CONTRACTOR shall compensate CITY as follows:

2009-2010      \$830 per cab                      \$24,900 per year

Subsequent annual franchise period 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 upon the change in the index for the prior twelve month period from February to February. The City shall then notify the FRANCHISEE of the change, and the net adjustment to the annual per cab fee, which will then be payable by April 1<sup>st</sup> for the following year. At no time shall an adjustment result in a lower franchise fee than the prior year fee. In the event the CPI is negative, the index will be considered equal to zero (-0-). Using February 2008 as an example, the adjustment would be calculated as follows:

February 2007 CPI	214.760
February 2008 CPI	221.431
Index Change	6.671
Percentage Change	3.1%
Dollar Change	\$25.73 per cab (\$830 + 3.1%)
New Rate	\$855.73 per cab

5. **Employees and Subcontractors.** FRANCHISEE may, at FRANCHISEE'S sole cost and expense, employ such other person as may, in the opinion of FRANCHISEE, be needed to comply with the terms of this Agreement, if such persons possess the necessary qualifications to perform such services.

6. **Insurance Requirements.**

6.1 **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.

## 6.2 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 one million dollars (\$1,000,000.00) 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 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 Manhattan Beach Insurance Endorsement Form No. 1 (General Liability) must 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 one million dollars (\$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 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 Manhattan Beach Insurance Endorsement Form No. 2 (Auto) must 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.

6.3 Additional Requirements. The procuring of such required policies of insurance shall not be construed to limit FRANCHISEE'S liability hereunder nor 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: 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.

6.4 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 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.

7. **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.

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

9. **No Agency.** It is agreed that FRANCHISEE shall act and be an independent contractor under this Agreement and not an agent or employee of CITY and shall have no right to represent or bind City in any way.

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

11. **Conflict of Interest and Reporting.** FRANCHISEE shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

12. **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.  
South Bay Cooperative, Inc.  
c/o Administrative Services Cooperative, Inc.  
2129 West Rosecrans Avenue  
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

13. **FRANCHISEE's Proposal.** This Agreement shall include CITY's RFP (Attachment A) and FRANCHISEE'S proposal (Attachment B) which are incorporated herein. In the event of any inconsistency between the terms of the RFP or proposal and this Agreement, this Agreement shall govern.

14. **Limitations Upon Assignment.** Neither this Agreement or any portion shall be assigned by FRANCHISEE without prior written consent of CITY.

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

17. **Indemnification.** FRANCHISEE agrees to indemnify, defend, and hold harmless CITY and its elective or appointive boards, officers, agents, attorneys and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees arising out of, or in any way connected with performance of the Agreement by FRANCHISEE, FRANCHISEE'S agents, officers, employees,

subcontractors, or independent contractors hired by FRANCHISEE. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by FRANCHISEE.

18. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any other agreements, oral or written. No promises other than those included in this Agreement shall be valid. This Agreement may be modified only by a written agreement executed by CITY and FRANCHISEE.

19. **California Law.** This 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.

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

21. **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.

22. **Entire Agreement.** 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. Any issue with respect to the interpretation or construction of this Agreement are to be resolved without resorting to the presumption that ambiguities should be construed against the drafter.

23. **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 attorneys' fees and court costs from the opposing party.

24. **Decals.** A total of sixty-five decals shall be issued by the City to the Franchisee after Franchisee successfully meets the contract advance requirements, including but not limited to, insurance, vehicle listing, etc. 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. A fee of ten dollars (\$10) will be paid to the City for processing the replacement decal request and for providing the replacement decal.



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

**“FRANCHISEE”**

Yellow Cab of South Bay Cooperative, Inc.  
South Bay Cooperative, Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_

**CITY OF MANHATTAN BEACH**

By: \_\_\_\_\_  
Geoff Dolan, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

By \_\_\_\_\_  
City Attorney