

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
SUNNYVALE AWARDING NONEXCLUSIVE FRANCHISE TO
YELLOW CHECKER CAB COMPANY, INC., DBA CHECKER
CAB OF SILICON VALLEY AND DBA RAINBOW CAB**

WHEREAS, Chapter 5.36 of the Sunnyvale Municipal Code establishes a procedure for the consideration and award of nonexclusive taxi franchises by the City of Sunnyvale; and

WHEREAS, Yellow Checker Cab Company, Inc., dba Checker Cab of Silicon Valley and dba Rainbow Cab has applied for a nonexclusive taxicab franchise; and

WHEREAS, public notice in accordance with Sunnyvale Municipal Code Section 5.36.070 has been given that the City Council of the City of Sunnyvale would hold a public hearing for the purpose of determining whether to award the franchise; and

WHEREAS, the City Council finds that it would be in the best interest of the City of Sunnyvale to award a nonexclusive franchise for taxicab service to the Yellow Checker Cab Company, Inc., dba Checker Cab of Silicon Valley and dba Rainbow Cab.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. FRANCHISE GRANTED. The City of Sunnyvale hereby grants to Yellow Checker Cab Company, Inc., dba Checker Cab of Silicon Valley and dba Rainbow Cab (hereinafter "Franchisee"), a nonexclusive Franchise for taxicab service within the corporate boundaries of the City of Sunnyvale as such boundaries presently exist or as they may be changed during the term of this Franchise. The Franchisee shall conduct its operations under the Franchise in strict compliance with Sunnyvale City Charter and Chapter 5.36 of the Sunnyvale Municipal Code, and any amendments thereto, together with all applicable laws and regulations of the State of California, the United States or any regulatory agency having jurisdiction.

SECTION 2. TERM. The term for which this Franchise is granted shall be two years commencing May 15, 2017, and ending at 12:00 midnight on May 14, 2019. Pursuant to Sunnyvale Municipal Code section 5.38.120, the City's Director of Public Safety may approve up to two, two-year extensions, provided Franchisee remains in good standing. The total term, including any approved extensions, may not exceed six years and shall terminate no later than May 14, 2023.

SECTION 3. CONSIDERATION. The Franchisee shall pay quarterly to the City as consideration for the granting of this Franchise the amounts per vehicle as set forth in the City's Master Fee Schedule, which is incorporated by reference herein.

SECTION 4. USE OF CITY STREETS. The Franchisee hereby is given permission to use City streets for the purpose of providing taxicab service in accordance with the terms of this ordinance and the franchise agreement.

SECTION 5. GENERAL CONDITIONS. This Franchise is granted subject to the terms and conditions set forth in Exhibit A, "Taxicab Franchise and Agreement" attached and incorporated.

SECTION 6. ACCEPTANCE OF FRANCHISE TERMS AND CONDITIONS. This Franchise shall not become effective until the Franchisee accepts the Franchise by executing the Taxicab Franchise Agreement within ten (10) days after adoption of this ordinance.

SECTION 7. APPROVAL OF FRANCHISE AGREEMENT—EXECUTING AND ATTESTING. The Taxicab Franchise Agreement is hereby approved, and the City Manager is authorized to execute it on behalf of the City.

SECTION 8. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision or decisions shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 9. CEQA - EXEMPTION. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a project that has the potential for causing a significant effect on the environment.

SECTION 10. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 11. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in The Sun, the official publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on _____, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

RECUSAL:

ATTEST:

APPROVED:

City Clerk

Mayor

Date of Attestation:

(SEAL)

APPROVED AS TO FORM:

City Attorney

EXHIBIT A

CITY OF SUNNYVALE TAXICAB FRANCHISE AND AGREEMENT (Yellow Checker Cab Company, Inc., dba Checker Cab of Silicon Valley, dba Rainbow Cab)

THIS FRANCHISE AND AGREEMENT, dated _____, is between the CITY OF SUNNYVALE, a municipal corporation of the State of California (herein "City"), and YELLOW CHECKER CAB COMPANY, INC., DBA CHECKER CAB OF SILICON VALLEY and DBA RAINBOW CAB, a California corporation (herein "Franchisee").

RECITALS

WHEREAS, Franchisee has filed a verified application of a nonexclusive Franchise to operate a taxicab service pursuant to Chapter 5.36 of the Sunnyvale Municipal Code; and

WHEREAS, on _____ date _____, the City Council passed and adopted Ordinance No. _____, after Notice and Public Hearing, approving the award of such Franchise;

NOW, THEREFORE, in consideration of the award of a nonexclusive Franchise and of the mutual covenants and conditions as set forth herein, it is agreed as follows:

1. Grant of Non-Exclusive Franchise. City grants to Franchisee a nonexclusive Franchise to use the public streets, ways, alleys and places, as the same now or may hereafter exist, within the corporate limits of the City of Sunnyvale as they presently exist or as they may be changed during the term of this Franchise by annexations or detachments, in connection with furnishing the City of Sunnyvale and its inhabitants with taxicab service.

2. Term of Non-Exclusive Franchise. This Franchise shall be in effect for an initial term of two (2) years, beginning May 15, 2017, and ending at midnight on May 14, 2019. Pursuant to Sunnyvale Municipal Code section 5.38.120, the City's Director of Public Safety may approve up to two, two-year extensions, provided Franchisee remains in good standing. The total term, including any approved extensions, may not exceed six years and shall terminate no later than May 14, 2023.

3. Payment of Franchise Fees. The Franchisee during the term of this Franchise shall pay to the City the consideration based on the number of vehicles in service under the Franchise, as set forth in the City's Master Fee Schedule, as may be amended from time to time and which is incorporated by reference herein.

4. Franchisee Obligations.

The Franchisee shall:

A. Appear and defend all actions against the City arising out of the exercise of the Franchise and shall indemnify and save City, its officers, employees and agents harmless of and from all claims, demands, actions or causes of action of every kind and

description resulting directly or indirectly, arising out of, or in any way connected with, the exercise of the Franchise.

B. Obtain and keep in force during the term of the Franchise insurance in compliance with the requirements of Sunnyvale Municipal Code Section 5.36.300.

C. Comply with all other requirements of Sunnyvale Municipal Code Chapter 5.36 and any amendments thereto, and with all applicable laws and regulations of the State of California, and all applicable laws and regulations of the United States, or any regulatory agency having jurisdiction. Franchisee shall establish a controlled substance and alcohol certification program. The program shall be included in a written company policy. Each driver must sign for receipt of said policy, and the receipt shall be retained by Franchisee. A copy shall be provided to Department of Public Safety upon request. Every driver shall test negative for controlled substances as specified in 40 CFR Part 40 and 49 CFR Part 382.

5. Assignment of Franchise and Insolvency. The Franchise granted hereunder shall not be assignable, either voluntarily or by operation of law, without the prior approval of the City Council, by resolution. At least forty-five (45) days prior to the date for the formal transfer of such interest or ownership, the Franchisee shall so notify City in writing. If the Franchisee at any time during the term of this Franchise becomes insolvent, or if any proceeding in bankruptcy shall be instituted by or against the Franchisee, or if the Franchisee shall be adjudged bankrupt or insolvent by any court, or if a receiver or trustee in bankruptcy, or receiver of any property of the Franchisee shall be appointed in any suit or proceeding brought by or against the Franchisee, or if the Franchisee shall make an assignment for the benefit of creditors, then and in each and every such case this Franchise and the rights and privileges granted thereby shall immediately cease, and be forfeited and cancelled, without notice and without suit or other proceeding.

6. Transfer of Ownership Interest. If the Franchisee at any time during the term of this Franchise shall sell, exchange or otherwise transfer more than one-half of the equity interest in or ownership of the taxicab service business, whether with or without the property, equipment or other assets in connection therewith, permitted to be operated by the Franchise granted hereunder, the City Council shall have the right to cancel and revoke the Franchise following a hearing held after then (10) days' written notice thereof to the Franchisee. The right to cancel and revoke the Franchise shall not be triggered by any mortgage or deed of trust made in good faith by the Franchisee.

7. Amendments. This Franchise and Agreement may be amended by the City during its term with the consent of the Franchisee.

8. Compliance. The Franchise is granted to and is accepted by the Franchisee upon the express condition that the public streets, ways, alleys and places shall be used and taxicab service furnished in strict compliance with the terms of this Franchise Agreement, the Sunnyvale City Charter, and all applicable provisions of the Sunnyvale Municipal Code.

IN WITNESS WHEREOF, the parties have executed this Agreement.

"FRANCHISEE"

YELLOW CHECKER CAB CO., INC., DBA
CHECKER CAB OF SILICON VALLEY and
DBA RAINBOW CAB, a California
corporation

By _____
LAWRENCE SILVA
President

"CITY"

CITY OF SUNNYVALE, a municipal corporation

By _____
DEANNA J. SANTANA
City Manager

ATTEST:

KATHLEEN FRANCO-SIMMONS
City Clerk

APPROVED AS TO FORM:

By _____
MELISSA C. TRONQUET
Assistant City Attorney