

TAXICAB FRANCHISE AGREEMENT

THIS TAXICAB FRANCHISE AGREEMENT ("Agreement") is entered into as of the 1st day of June, 2017, 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 _____, ("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 was originally awarded the opportunity to enter into a nonexclusive Franchise Agreement for the operation of taxicabs in the City in May 2003. Both the Franchisee and the City agreed to renew the Agreement for an additional three years, ending May 31, 2009, and two consecutive three year Agreements were renewed thereafter, ending May 31, 2015. A status quo Agreement remained in effect through May 2017. The Franchisee and the City desire to renew the nonexclusive Franchise Agreement one additional year, beginning June 1, 2017 and ending May 31, 2018.
- 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 20 taxicabs for taxicab service initiated within the territorial boundaries of City, subject to the following:

1.1 Should Franchisee fail to seal 20 taxicabs within sixty days of execution of this agreement, the number of taxicabs authorized herein shall be reduced to the number of vehicles for which valid taxicab permits have been issued by the City by that date.

1.2 Should more taxicab permits become available because another Franchisee has failed by the deadline to seal its full complement of taxicabs, the City will allocate the unused permits equally among the remaining Franchisees that request additional permits. In that event, the number of taxicabs authorized herein shall be increased to the number of vehicles for which the City issues and Franchisee accepts valid taxicab permits, and the total number of authorized taxicabs for the term of the franchise shall be noted by handwritten interlineations on this page.

2. **Term of Franchise.** The franchise granted by this Agreement shall commence June 1, 2017, for a term of one (1) year, and expire on May 31, 2018, unless sooner terminated as provided herein below.

3. **Consideration.** In consideration of the rights granted hereunder, Franchisee shall pay to City an annual franchise fee of \$750.00 per franchised taxicab, payable upon Franchisee's submittal of an executed copy of this Agreement, and \$100.00 per franchised taxicab sealed after the 20 taxicab minimum requirement has been met. 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 initiating service within the territorial boundaries of the City. Franchisee shall be permitted to utilize employees, licensed sub carriers, 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).

Franchisees are entitled to participate in the taxi voucher program providing supplemental transportation services to senior citizens and the disabled. Every participating taxi driver operating under the franchise must honor the voucher when utilized by an eligible resident.

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. Hailing of Patrons. Hailing of patrons shall not be done by any audible device; including, but not limited to, horns, sirens, whistles, bells or alarms.
- G. Response to complaints. Franchisee shall be required to log and resolve all written and oral complaints received from the public or City within ten (10) business days. Franchisee shall respond in writing to complaints received and shall report to City the results of any investigation or actions taken.
- H. 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 the Police Chief or his/her designee. Test results for any driver who fails a random test shall immediately be forwarded to the City of Hermosa Beach.
- I. 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.
- J. Driver uniforms. Each of Franchisee's drivers shall wear a distinctive uniform that projects a professional appearance and clearly identifies the wearer as an employee of Franchisee. This uniform(s) shall be subject to approval by the City. All clothing must be neat and clean.

- K. 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.
- L. 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 fully qualified to operate the vehicles specified herein and must possess a valid California Driver License of the appropriate class.
- M. 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.
- N. Starters. Franchisee will provide personnel to act as "Starters," whose responsibility will be to regulate the safe and timely movement of passengers into licensed taxicabs at the staging areas. Each staging area will be staffed by two Starters who will queue the passengers at the Staging Area Signs on a first come-first serve basis and direct them into the first available licensed taxicab. These Starter services will be provided on Friday and Saturday nights and on major holidays, such as; Labor Day, Memorial Day, the Fourth of July, Halloween and New Year's Eve; and St. Patrick's Day (the evening after the parade) from 11:00 p.m. until 2:30 a.m. (3.5 hours). Each Franchisee will provide one starter, for a total of four starters working cooperatively to perform this service during these times. The Police Chief may require additional starters as may be dictated by the circumstances and Franchisee shall comply with such request. The Franchisee will make every effort to work collaboratively with the other Taxicab Franchisees to ensure that each Franchisee is providing the same number of personnel to act as Starters. The taxicab staging areas shall be located at the main taxi stand on Hermosa Avenue, just South of Pier and

the secondary taxi stand on Hermosa Avenue, just North of Pier, or as otherwise determined by the Police Chief. A taxi holding area, prior to entering the staging area, shall be established on 13th Street between Beach Drive and the entrance to Lot C. A starter shall be positioned at the holding area facility to expedite taxi movement. Failure by the Franchisee to provide the required Starters on the above designated days during the specified hours will result in a collective fine of \$1,000 being levied on all four (4) companies.

- O. Parking on Private Property. Franchisee's drivers shall not park, stand, or idle their vehicles on private property while waiting for a service call without the permission of the property owner.

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, and during the entire period this Agreement is in effect, none of Franchisee's vehicles operated under this franchise agreement shall be more than eight (8) 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 eight (8) 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. **Clean Air Vehicles.** One hundred percent of Franchisee's fleet must be clean air vehicles. If certain special purpose vehicles (disabled access, vans used for school transportation, or larger passenger volume vehicles to accommodate large parties) are not commercially available as clean air models at the time of the signing of the Agreement or by adoption of a City Ordinance, these special purpose vehicles, which may not exceed twenty-five percent (25%) of the total authorized vehicles under each Franchisee's allocation, will be exempt from the requirement until a commercial clean air model is available. At that time, the City and Franchisees will negotiate an implementation schedule.

Gasoline or diesel powered Clean Air vehicles for purposes of this requirement shall meet or exceed and be maintained within the specifications of the following ratings provided by the California Air Resources Board (CARB):

- Super Ultra Low Emissions Vehicle (SULEV)
- Partial Zero Emissions Vehicle (PZEV)
- Advanced Technology Partial Zero Emissions Vehicle (AT PZEV)
- Zero Emissions Vehicle (ZEV)

Additionally, vehicles used in the operation of the franchise, in the percentages listed above, must be either a Low Carbon Fuel vehicle (i.e., compressed natural gas vehicle) achieving a minimum "well-to-wheels" greenhouse gas reduction of 10% in accordance with the Governor's Executive Order S-01-7, or a Hybrid electric vehicle achieving a minimum of thirty-three (33) miles per gallon in City use according to the U.S. Environmental Protection Agency.

9. **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 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 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 Beach 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 minimum limits of not 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 therefore, 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 Agreement. Proceeds for any Franchisee operations performed during non-payment periods will be deducted from the Franchisee's security deposit.

10. **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.

11. **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.

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

13. **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 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 inure to the benefit of the successors, heirs, and assigns of the parties hereto.

14. **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.

15. **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.

16. **Indemnification.** Franchisee shall indemnify, defend with counsel approved by City, 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, expert fees and costs of suit, of every nature 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, regardless of City's passive negligence, but excepting such loss or damage which is caused by the sole active negligence or willful misconduct of the City. Franchisee shall reimburse the City its costs of defense, including without limitation reasonable attorney's fees, expert fees and all other costs and fees of litigation. Franchisee shall promptly pay any final judgment rendered against the City (and its officers, officials, employees and volunteers) covered by this indemnity obligation. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the laws of the State of California and will survive termination of this Agreement.

17. **Termination.** 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.

18. **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 not 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.

19. **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.

20. **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.

21. **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.

22. **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.

23. **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.

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

25. **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.

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

27. **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.

28. **Amendment.** City may promulgate Administrative Rules and Regulations and amend or modify this Agreement by a writing signed by the parties.

29. **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.

30. **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.

31. **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: Chief of Police

FRANCHISEE:

Attention: _____

32. **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.

33. **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

Sergio Gonzalez
City Manager

Name:
Title:

Approved as to Form:

Michael Jenkins
City Attorney

Attest:

Elaine Doerfling
City Clerk