

ORDINANCE NO. _____

AN ORDINANCE GRANTING A FRANCHISE TO COVE TAXI TO OPERATE A TAXICAB SERVICE IN THE CITY OF KILLEEN, TEXAS, AND SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR THE REGULATION OF THE TAXICAB SERVICE; PROVIDING AN INDEMNITY CLAUSE; ESTABLISHING THE FRANCHISE TERM AND EFFECTIVE DATE; PROVIDING A TERMINATION PROVISION; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN ADOPTION CLAUSE; PROVIDING A REPEALER CLAUSE AND PROVIDING A CODE AMENDMENT CLAUSE.

WHEREAS, the City Council of the City of Killeen, Texas has, pursuant to Article XI of its Home Rule Charter, considered and approved by a majority of the City Council this ordinance at three separate regular meetings, specifically January 26, 2016, February 9, 2016, and March 8, 2016, the last of which took place not less than thirty days from the first; and

WHEREAS, at each reading of this Ordinance the City Council gave careful consideration to the qualifications of Cove Taxi, hereafter called the Franchisee, including its business ability, financial condition, legal qualifications and general character; and

WHEREAS, the City Council of the City of Killeen, Texas, after consideration, analysis, and deliberation, has approved and found sufficient the business ability, financial condition, legal qualifications, and general character of the Franchisee; and

WHEREAS, the City Council of the City of Killeen, Texas, has determined that it is in the best interest of and consistent with the public convenience and necessity of the citizens of the City of Killeen to grant a franchise to Franchisee to operate a taxicab service within the City of Killeen, Texas, in accordance with the terms and conditions set forth herein; **NOW, THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KILLEEN:

SECTION 1: TITLE

This ordinance shall be known and may be cited as the “Cove Taxi Franchise.”

SECTION 2: GRANT OF AUTHORITY

(A) The City of Killeen, hereinafter called the City, grants to Cove Taxi, hereinafter called Franchisee, the right, privilege and franchise to operate a taxicab service on the streets of the City in accordance with this ordinance.

(B) In accordance with Article XI of the City Charter, this franchise and grant of right to use and occupy the City streets, sidewalks, and other public easements for the purposes herein set forth are non-exclusive and do not establish priority for use over other franchise holders, permit holders, and the City’s own use of public property, so long as such use does not conflict with state and federal laws governing taxicab service. The City hereby expressly reserves the right to grant a similar franchise, permit, or license for use of the streets, sidewalks, and other public easements or property to any person at any time during the period of this franchise. Additionally, Franchisee shall respect the rights and property of the City and other authorized users of streets, sidewalks, and other public easements or property. Disputes between Franchisee and other parties over the use of the streets, sidewalks, and other public easements shall be submitted to the City Engineer for resolution.

SECTION 3: FRANCHISE TERM AND EFFECTIVE DATE

The franchise term and the rights, privileges and authority hereby granted shall take effect and be enforced sixty (60) days from and after the final passage hereof, and shall continue in force and effect for a term of five (5) years unless, on review, the City Council finds that the taxicab franchise is subject to forfeiture or cancellation for good cause, and provided that within thirty (30) days after the date of the final passage of this franchise ordinance, Franchisee shall file with the City Secretary its unconditional acceptance of the terms of the franchise ordinance and promise to comply with and abide by all its provisions, terms and conditions.

SECTION 4: POLICE POWERS AND LAWS

In accepting this franchise, the Franchisee acknowledges that its rights are subject to the police power of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public; and it agrees to comply with all applicable general laws, regulations, and ordinances enacted by the City pursuant to such power. The right is hereby reserved to the City to adopt, in addition to the provisions herein contained and in addition to any other existing applicable ordinances, such additional applicable ordinances and regulations as it shall find necessary in the exercise of its police power; provided such additional ordinances shall be reasonable and shall not conflict with the laws of the State of Texas or the United States of America.

SECTION 5: FARES

Franchisee shall charge such fares as set forth in Chapter 29, Division 4 of the City of Killeen Code of Ordinances.

SECTION 6: RECORDS

(A) Franchisee must maintain complete records of all dispatched calls in accordance with Chapter 29, Section 305(b)(6) of the City of Killeen Code of Ordinances.

(B) Franchisee's records of its operation and financial dealings shall be available for inspection by the City in accordance with Chapter 29, Section 306(D) of the City of Killeen Code of Ordinances.

SECTION 7: INDEMNIFICATION

(A) Franchisee shall indemnify, defend, and save harmless the City, its officers, agents, and employees, against and from any and all claims by or on behalf of any person, firm, or corporation or on account of any suit, judgment, execution, claim, or demand whatsoever against the City resulting from the act or omission of Franchisee, the conduct of or management of the franchise or from any negligence arising from any occurrence in connection with same on the part of the Franchisee, its servants, agents, licensees, officers, or employees and growing out of its relation with independent contractors and subcontractors, or from any breach or default of any covenant or agreement on the part of the Franchisee in the operation or maintenance of its taxicab service in the City or on account of the Franchisee's failure to perform in accordance with its obligations under this franchise. This includes, but is not limited to, all claims for property damage, personal injuries, and death arising out of any claim or invasion of the right of privacy, for defamation of any person, firm, or corporation, or the violation or infringement of any copyright, trademark, trade name, service machine, or patent, federal or antitrust or civil rights violation, or any other right of any person, firm, or corporation and, for this purpose, brought by or occurring to the City or any third parties or other persons whatsoever, including all costs, damages, counsel fees, expenses, and liabilities incurred in or about any such claim or proceeding brought therein. It is expressly provided, however, that the Franchisee's duty of indemnification runs only to claims of liability made against the City, its officers, agents, and employees, and the Franchisee shall have not duty to indemnify third parties or other persons.

(B) For this purpose, Franchisee shall carry property damage and general liability insurance with a responsible and solvent insurance company or companies authorized to do business in the State of Texas, in accordance with Chapter 29, Section 33 of the City of Killeen Code of Ordinances.

(C) The City shall be a named insured and the term "City" shall include all authorities, boards, commissions, divisions, departments, and offices of the City and the individual officers, members, employees, and agents thereof in their official capacities while acting on behalf of the City.

(D) The City shall notify Franchisee in writing within five (5) business days after the presentation of any claim or demand, either by suit or otherwise, made against the Franchisee. Failure by the City to properly notify Franchisee in accordance with the foregoing of any such claim, suit, or demand against the City shall not release Franchisee from its obligations to indemnify the City as provided herein, unless Franchisee's legal rights are substantially impaired thereby.

(E) Each policy shall require that thirty (30) days prior to a cancellation of or material change in policies, notice thereof shall be given to the City Secretary.

(F) Insurers shall have no right of recovery against the City, it being the intention that the insurance policies shall protect the Franchisee and the City, and shall be primary coverage for all losses covered by the policies.

(G) Companies issuing the insurance policies shall have no recourse against the City for payment of any premiums or assessments that are set at the sole risk of the Franchisee.

(H) Any policy clause regarding "other insurance" or a similar clause shall not apply to the City where the City is an insured on the policy.

(I) Nothing in this agreement shall be construed as a waiver of the City's sovereign immunity, other forms of immunity and rights and protections of the Texas Tort Claims Act.

SECTION 8: ASSIGNMENT

This franchise is granted in reliance on the apparent ability of Franchisee to perform its obligations under the franchise, and this franchise may not be assigned by Franchisee in whole or in part without the consent of the City.

SECTION 9: WARRANTY

Nothing in this ordinance, and nothing in the actions of the City in dealing with Franchisee, shall constitute a warranty to any person as to any level of taxicab service, or as to the fitness or safety of any of the equipment of the Franchisee.

SECTION 10: INSPECTIONS AND MAINTENANCE

It is Franchisee's responsibility to maintain and inspect all vehicles it owns or operates on a regular basis. Franchisee shall establish and conduct a routine vehicle inspection program on all vehicles under its control. If the City has reason to suspect that vehicles operated by the Franchisee on City streets are not in compliance with all local, State, and Federal regulations, or has general health and safety concerns about any vehicle operated for general public use in the City, then the City may cause Franchisee's vehicles to be inspected by the appropriate agency or agencies. Such inspection shall be coordinated between the City and Franchisee.

SECTION 11. ACTIVE FLEET; COLOR SCHEME

Franchisee shall maintain an active fleet of at least five (5) taxicabs at all times. The color scheme for Franchisee shall be a red taxicab with white lettering.

SECTION 12. COMPLIANCE WITH CITY TRANSPORTATION ORDINANCE

Franchisee shall comply with the provisions of Chapter 29, City of Killeen Code of Ordinances and all amendments enacted thereto during the period of this franchise.

SECTION 13. CONTROL OF TAXICABS

Franchisee must own, lease, or contract for control of each taxicab used in the taxicab franchise.

SECTION 14. SUSPENSION OF FRANCHISE

The City Manager may suspend this franchise upon a determination that the Franchisee has:

- (a) substantially breached the terms of this franchise;
- (b) failed to comply with the provisions of the Killeen City Code that regulate taxicabs, taxicab franchise grantees, and taxicab drivers, as well as all applicable federal, state, and local laws, regulations, rules, and ordinances, including, but not limited to, the Americans with Disabilities Act of 1990;
- (c) become delinquent in the payment of any fees, charges, or ad valorem taxes required by law in connection, directly or indirectly, with the operation of Franchisee's taxicab service;
- (d) failed to comply with a correction order issued to Franchisee within the time specified in the order; or
- (e) intentionally or knowingly impeded the City Manager or his designee or a law enforcement agency in the performance of their duties.

Following the suspension of this franchise, the Franchisee may submit to the City Manager a written request for reinstatement of this franchise, together with the grounds to support such reinstatement. The City Manager or his designee shall, following receipt of such request, inspect the operation of the suspended Franchisee to determine if the deficiency causing the suspension has been corrected by the Franchisee. After the inspection, the City Manager shall reinstate this franchise or deny reinstatement.

The Franchisee may, within fourteen calendar days after notice of the City Manager's denial, file an appeal to the City Secretary, and the City Secretary shall cause the appeal to be placed on the City Council agenda. The City Council shall then hold a hearing, giving the Franchisee at least thirty days notice thereof, and upon the conclusion of such hearing shall cancel this franchise if cause exists.

SECTION 15. FORFEITURE OF FRANCHISE

(A) This franchise is subject to forfeiture in the event of the holder's conviction for violations of the provisions of Chapter 29, City of Killeen Code of Ordinances or upon a showing that the taxicab franchise holder has substantially breached the terms of this franchise.

(B) This franchise is subject to forfeiture if the franchise holder fails to pay an outstanding final judgment that arises out of circumstances related to taxicab service against the franchise holder or a person described in Section 29-302(B)(1)(a), (b), or (c).

(C) This franchise shall be subject to forfeiture and cancellation after notice and hearing, as provided in Section 15 above, upon:

- (1) Proper showing that the Franchisee has substantially breached the terms of this franchise;
- (2) The Franchisee's becoming delinquent in the payment of any fees charged or ad valorem taxes upon any vehicle, equipment, or other property of the Franchisee used or operated directly or indirectly in connection with the Franchisee's taxicab service;
- (3) Failure of the Franchisee to accept calls and provide service to the public in accordance with the provisions of the Killeen City Code of Ordinances which regulate taxicabs, taxicab franchise grantees, and taxicab drivers; or
- (4) Proper showing that the City Manager has suspended this franchise or has denied Franchisee a reinstatement of this franchise based upon Franchisee's failure to correct a deficiency causing the suspension of this franchise.

SECTION 16: FRANCHISEE'S ACCEPTANCE AND PROMISE

Upon adoption of this franchise and execution hereof by Franchisee, Franchisee agrees to be bound by all the terms and conditions contained herein, as evidenced by filing with the City Secretary, in writing, within thirty (30) days after the final passage of this franchise, unconditional acceptance of this franchise. Such acceptance shall contain its promise to comply with and abide by all its provisions, terms, and conditions. The acceptance and promise shall be sworn to, by and on behalf of the Franchisee, before a notary. In the event the acceptance is not filed as provided for herein, this ordinance and the rights and privileges hereby granted shall terminate and become null and void.

SECTION 17: FRANCHISE FEE AND PAYMENT TO THE CITY

An initial non-refundable application fee of Three Hundred Dollars (\$300.00) has been paid at the time of application. Thereafter, a renewal fee of One Hundred Dollars (\$100.00) is due and payable on or before December 31 of each year during the term of this franchise. The annual franchise permit fee shall be Fifty Dollars (\$50.00) per taxicab, and the airport authority permit shall be Forty Dollars (\$40.00) per year. Franchise permit fees for additional taxicabs placed in service for less than a full year shall be prorated from the date of service.

SECTION 18: COMPLIANCE WITH LAW

Franchisee shall fully comply with all applicable state, federal and local laws and regulations as those laws may now read or be hereinafter amended, including, but not limited to, applicable provisions of the Charter and City Code of the City of Killeen, Texas.

SECTION 19: NOTICE PROVISIONS

Notices required under this ordinance shall be by certified mail, hand-delivery or facsimile to the parties listed below. Other addresses and/or parties may be designated in writing.

CITY:
City of Killeen
City Manager (or designee)
P.O. Box 1329
Killeen, Texas 76541
FAX: (254) 634-8399

FRANCHISEE:
Clarence Page
Cove Taxi
806 N. 1st Street
Copperas Cove, Texas 76522
FAX: (254) 542-2581

SECTION 20: SEVERABILITY CLAUSE

If any provision of this ordinance or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION 21: ADOPTION CLAUSE

Subject to the provisions of Section 2, this ordinance shall become effective on May 6, 2016.

SECTION 22: REPEALER CLAUSE

All ordinances and parts of ordinances inconsistent with or in conflict with the provisions of this ordinance shall be and are hereby expressly repealed.

SECTION 23: AMENDMENT OF CODE OF ORDINANCES

The Code of Ordinances of the City of Killeen, Texas, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

HAVING BEEN READ at three separate regular meetings, in accordance with the Charter of the City of Killeen, the first reading being on the 26th day of January 2016, the second reading being on the 9th day of February 2016, at which meetings a quorum

was present, held in accordance with the provisions of V.T.C.A., Government Code, Section 551.001, et seq.

PASSED AND APPROVED after its third and final reading at a regular meeting of the City Council of the City of Killeen, Texas, this 8th day of March 2016, at which meeting a quorum was present, held in accordance with the provisions of V.T.C.A., Government Code, Section 551.001, et seq.

APPROVED

Scott Cospers, MAYOR

ATTEST:

Dianna Barker, CITY SECRETARY

APPROVED AS TO FORM:

Kathryn H. Davis, CITY ATTORNEY