REPORT TO MAYOR AND COUNCIL

NO: 10-268

Council Meeting: October 19, 2010

SUBJECT: Award of Taxicab Franchise to Yellow Checker Cab Co., Inc., dba Checker Cab of Silicon Valley

REPORT IN BRIEF

A taxicab franchise application and required fees have been received from Yellow Checker Cab Co., Inc., DBA Checker Cab of Silicon Valley. Staff conducted an investigation into the applicant's background as required by Municipal Code Section 5.36.050. After careful review, staff determined that the applicant meets the mandatory code requirements as established. Staff recommends that Yellow Checker Cab Co., Inc., DBA Checker Cab of Silicon Valley be awarded a non-exclusive taxicab franchise for the period of November 27, 2010 through November 26, 2012 per applicant's request.

BACKGROUND

There are currently six valid taxicab companies franchised to operate within the City of Sunnyvale. They are Yellow Checker Cab Co., Inc, DBA Checker Cab of Silicon Valley, A Orange Cab, A-1 American Cab Company, Yellow Cab Co. Peninsula, Inc., ACME Yellow LLC DBA ACME Cab, and California Cab. Yellow Checker Cab Co., Inc., DBA Checker Cab of Silicon Valley has previously operated with a valid franchise agreement, which will expire on October 18, 2010. They have been granted an extension to continue operations until a new ordinance is awarded pursuant to section 5.36.120 of the Municipal Code.

Yellow Checker Cab Co., Inc., DBA Checker Cab of Silicon Valley acknowledges and accepts the requirements of the Municipal Code as well as the taxicab franchise agreement. Yellow Checker Cab Co., Inc., DBA Checker Cab of Silicon Valley is also aware of the right of the City of Sunnyvale to revoke or suspend the taxicab franchise if it is determined that there is a violation or non-compliance of the terms contained in Municipal Code Section 5.36.

EXISTING POLICY

The term "non-exclusive franchise" as used in the Sunnyvale Municipal Code means that the city does not limit the number of like franchises in operation at one time. If an applicant meets the provisions as outlined in the Municipal Code, then the franchise to operate a taxicab service should be issued.

The City's non-exclusive franchise requirements are derived from Municipal Code Chapter 5.36. It is unlawful to operate any taxicab in the City unless the

owner applies for and obtains a franchise to do so. The City Council may deny a franchise to any applicant if:

1. The applicant has been convicted of certain criminal offenses.

2. The proposed color scheme or other insignia may tend to confuse the identification with other franchises already operating within the city.

3. The applicant has been in violation of any law or Municipal Code regulation relating to the conduct of a taxicab business.

4. The applicant has had a taxicab license revoked or suspended in the City of Sunnyvale or any other jurisdiction within five years prior to the date of application.

5. Any other reasonable cause exists which, within the City Council's sound discretion would render the proposed operation undesirable to the City of Sunnyvale.

A franchise is issued for a term of two years. At the expiration of the term, the franchise is deemed expired and is no longer valid unless a new franchise is issued under the provisions of Municipal Code Chapter 5.36.

DISCUSSION

The owners of Yellow Checker Cab Co., Inc., DBA Checker Cab of Silicon Valley have submitted information and documentation to demonstrate compliance with each of the criteria identified in Municipal Code Chapter 5.36, as outlined below.

1. Local Contact Requirement – Yellow Checker Cab Co., Inc., DBA Checker Cab of Silicon Valley has provided a toll-free telephone number to its dispatchers, together with sufficient phone lines to provide for prompt response to callers.

2. Vehicles – Yellow Checker Cab Co., Inc., DBA Checker Cab of Silicon Valley is the registered owner of forty-five (45) company owned vehicles that have been identified for operation under this franchise. The taxicabs are identical in color schemes and markings; they are orange with the company name in yellow lettering on the door and checkerboards on the front fenders. The telephone numbers are on the rear fenders. Additionally, in honor of National Breast Cancer Awareness month (October), five (5) taxicabs will be marked with partial "wraps" containing a pink ribbon with "Pink Ride: Taxicab, Limousine & Para-transit Association" printed on them. These markings will be located on

the hood, trunk, front and rear bumpers, and side window stickers. These markings will not cover the taxicab numbers and other required markings. A portion of the proceeds from these marked taxicabs will be donated to a national breast cancer charity.

3. Taximeter – Each taxicab, which has been identified for operation under the franchise, is equipped with a taximeter which must be inspected annually by the Santa Clara County Sealer of Weights and Measures. Staff has been provided with compliance reports for the vehicles identified for operation under this franchise agreement.

4. Insurance – A certificate of valid insurance has been provided from ISU Insurance Services of Irvine DBA Norton Services, Ins. Services, in the amount of $1,000,000 combined single limit, as well as $1,000,000 Auto Liability/Property/Bodily Injury. This insurance will be in effect, with the City of Sunnyvale listed as Additional Insured, with a 30 day prior notice of cancellation clause as required. The company understands that it may not operate without proper insurance. Staff has reviewed the Certificate of Insurance and found that it meets the requirements of the Municipal Code.

5. Criminal History – A criminal history check of the applicant was conducted as required per code. The applicant has not been convicted of any felonies, narcotic violations, or crimes of moral turpitude as referenced in the Municipal Code.

6. Experience of Owner – The investigation has revealed that the applicant, Larry Silva, is the president of the company and as been in the taxi cab company for over 25 years. He currently operates Yellow Checker Cab Co., Inc., DBA as Checker Cab of Silicon Valley providing services in the south bay area including the San Jose International Airport.

7. Personnel – Individual drivers were not identified in the application, but each will be required to obtain a taxicab driver's permit issued by the Department of Public Safety. The applicant is aware of the requirement to maintain five (5) permitted drivers while operating in the City of Sunnyvale. The applicant is also adhering to the random drug testing requirements as established by State Law and is utilizing Schlim, McCabe and Associates for his Medical Review Officer Services.

8. Fees – The applicant has paid the required franchise application fee of $1,173.00. The applicant agrees to pay the quarterly vehicle fees that are due during the month following the quarter the agreement is signed and each quarter thereafter during the term of the franchise. The

applicant has agreed to complete a Taxicab Franchise Questionnaire listing driver and vehicle information each quarter during the term of the franchise.

9. Fare Schedule – Yellow Checker Cab Co., Inc., DBA Checker Cab of Silicon Valley has filed their fare schedule with the Department of Public Safety in accordance with Section 5.36.280.

FISCAL IMPACT

Granting a taxicab franchise will have a minor fiscal impact relating to costs of monitoring the franchise for compliance. The revenue generated from this franchise due to application fees ($1,173), quarterly vehicle fees ($116 per vehicle, per quarter), and the business license fee ($35) is estimated to be approximately $43,000 during the term of the agreement. This does not include revenue generated by the driver permits ($196 per driver), as this amount fluctuates due to driver turn over during the term of the agreement. The associated fees do not represent full cost recovery for the overall program administration, primarily because costs are passed directly to drivers, making for a difficult balance between the need for service and the cost of regulation. Staff estimates the city annual subsidy of less than $600 per Franchise and $700 per vehicle to be in the best interest of the city in maintaining taxi services to the community.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

ALTERNATIVES

1. Introduce and adopt an ordinance awarding a non-exclusive franchise for taxicab service to Yellow Checker Cab Co., Inc., DBA Checker Cab of Silicon Valley for the period of November 27, 2010 through November 26, 2012 per applicant's request, and authorize the City Manager to execute necessary documents of agreement.

2. Do not introduce or adopt an ordinance awarding a non-exclusive franchise to Yellow Checker Cab Co., Inc., DBA Checker Cab of Silicon Valley for the period of November 27, 2010 through November 26, 2012, per applicant's request.

RECOMMENDATION

Staff recommends Council approve alternate #1.

Reviewed by:

Don Johnson, Chief, Department of Public Safety
Prepared by: Rachel Vasquez, Sr. Office Assistant

Approved by:

Gary M. Luebbers
City Manager

Attachments

A. Non-exclusive Franchise Ordinance
B. Taxicab Franchise and Agreement

ORDINANCE NO. _____

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

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 Co., Inc., dba Checker Cab of Silicon Valley, 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 interests of the City of Sunnyvale to award a nonexclusive franchise for taxicab service to the applicant;

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 Jasraj Bhata (fka Bikram Singh), doing business as Yellow Cab Co. Peninsula, Inc. (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 November 27, 2010, and ending at midnight on November 26, 2012.

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 the "Taxicab Franchise and Agreement," in the form attached hereto and incorporated herein.

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

SECTION 10. 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 _____, 2010, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, 2010, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST: APPROVED:

_____ _____
City Clerk Mayor

Date of Attestation:_____

(SEAL)

APPROVED AS TO FORM AND LEGALITY:

_____
David Kahn, City Attorney

TAXICAB FRANCHISE AND AGREEMENT

THIS FRANCHISE AND AGREEMENT, dated _____, 2010, is between the CITY OF SUNNYVALE, a municipal corporation of the State of California (herein "City") and Yellow Checker Cab Co., Inc., dba Checker Cab of Silicon Valley (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 _____, 2010, the City Council adopted Ordinance No. _____, after Notice and Public Hearing, approving issuance 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. 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 for a term of two (2) years, beginning November 27, 2010, and ending at midnight on November 26, 2012.

2. 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, which is incorporated by reference herein.

3. 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 DPS upon request. Every driver shall test negative for controlled substances as specified in 40 CFR Part 40 and 49 CFR Part 382.

4. 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.

5. 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.

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

7. 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.

YELLOW CHECKER CAB CO., INC., dba
CHECKER CAB OF SILICON VALLEY

By_____
Larry Silva, President

CITY OF SUNNYVALE
A Municipal Corporation

By_____
Gary Luebbers, City Manager

ATTEST:

_____
Kathleen Franco Simmons, City Clerk

APPROVED AS TO FORM:

DAVID KAHN, CITY ATTORNEY

By _____
Robert L. Boco, Assistant City Attorney