

ORDINANCE NO. _____

AN ORDINANCE GRANTING MICHAEL J. BLEVINS, D/B/A ON TYME TAXI & COURIER SERVICE, A FRANCHISE TO PROVIDE TAXI SERVICES WITHIN THE BOUNDARIES OF THE CITY OF KYLE, TEXAS; PROVIDING AN AGREEMENT PRESCRIBING CONDITIONS, TERMS, AND REGULATIONS GOVERNING THE OPERATION OF THE TAXI SERVICES; PROVIDING PENALTIES FOR NONCOMPLIANCE WITH FRANCHISE; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR PUBLIC NOTICE PURSUANT TO THE OPEN MEETINGS ACT; ESTABLISHING AN EFFECTIVE DATE; AND MAKING SUCH OTHER FINDINGS AND PROVISIONS RELATED HERETO.

RECITALS

WHEREAS, Article XI of the City's charter gives the City council the power to grant by ordinance a non-exclusive franchise of all providers of public services, including taxi services, for an effective period not to exceed ten (10) years; and,

WHEREAS, except as specifically authorized and provided otherwise by state law, the City's Charter mandates that no provider of taxi services shall provide any service within the City requiring the use or occupancy of any street, public right-of-way, or property without the City Council's determination to grant a franchise or permit the use of such City facilities; and,

WHEREAS, the City's Charter provides that all grants of franchise as authorized in the Charter shall be subject to the right of the City Council to impose regulations and restrictions on the franchise as enumerated in Sec. 11.06 of the Charter as may be deemed desirable or conducive to the health, safety, welfare and accommodation of the public; and,

WHEREAS, this ordinance shall be passed only on two readings held after a public hearing for which ten (10) days' notice is given; and,

WHEREAS, On Tyme Taxi & Courier Service has requested and desires to be granted a franchise from the City of Kyle for the purpose of providing Taxi services originating or terminating within the boundaries of the City of Kyle or outside the boundaries of Kyle with a destination within the City of Kyle;

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS, THAT:

Section 1. Findings. The above foregoing recitals are hereby found to be true and correct and are incorporated herein as findings of fact.

Section 2. Franchise granted; scope and purpose. A non-exclusive franchise is hereby granted vis-à-vis this ordinance to Tyme Taxi & Courier Service to operate taxi services as described herein originating within the service area of Tyme Taxi & Courier Service that is located in the City limits and extraterritorial jurisdiction of the City of Kyle, Texas (hereinafter the “City”) or origination outside of the City limits and extraterritorial jurisdiction of the City of Kyle, Texas with a destination within such area. Tyme Taxi & Courier Service may use and occupy the City’s streets, avenues, alleys and any and all public property belonging to or under the control of the City for the purpose of operating its Taxi Services as described herein.

Section 3. Franchise recognized as a contract. In accordance with Article XI of the City’s Charter, the franchise being granted by this ordinance is recognized as a contract (“Agreement”) between Tyme Taxi & Courier Service and the contractual rights as contained herein shall not be impaired by the provisions of Article XI. The terms and conditions set forth in the Agreement, which is attached hereto as EXHIBIT “A” and incorporated herein by reference, shall govern and regulate the operation by Tyme Taxi & Courier Service of its taxi services as described herein.

Section 4. Codification. This ordinance shall be codified in the City of Kyle Code of Ordinances at Appendix B, FRANCHISES.

Section 5. Conflict. Any and all ordinances, and parts thereof, that are in conflict herewith are hereby repealed to the extent of the conflict only.

Section 6. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this ordinance is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion will be deemed a separate, distinct, and independent portion. Such declaration will not affect the validity of the remaining portions hereof, which other portions will continue in full force and effect. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision will thereupon return to full force and effect without further action by the City and will thereafter be binding on Tyme Taxi & Courier Service and the City.

Section 7. Open Meetings. It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Ch. 551, Local Gov’t Code.

Section 8. Effective Date. This Ordinance shall be in full force and take effect from and after the date of its final passage and publication as required by law.

PASSED AND APPROVED on First Reading the _____ day of _____, 2016.

PASSED AND ADOPTED on Second Reading the _____ day of _____, 2016.

THE CITY OF KYLE, TEXAS

By: _____
R. Todd Webster, Mayor

ATTEST:

APPROVED AS TO FORM:

Jennifer Vetrano, City Secretary

Frank Garza, City Attorney

EXHIBIT “A”

FRANCHISE AGREEMENT

THIS AGREEMENT is made and entered into by and between the CITY OF KYLE, TEXAS, a home rule city and political subdivision of the State of Texas (“City”) and On Tyme Taxi & Courier Service (Service Provider).

RECITALS

WHEREAS, Taxi Service Provider agrees to provide Taxi Services in the City pursuant to this Agreement; warrants that it holds all required permits for the required services; has all the necessary vehicle permits issued by the State of Texas; and employs drivers who are duly licensed by the State of Texas to provide Taxi services; and

WHEREAS, the City hereby finds and determines that Taxi Service Provider is able to provide adequate Taxi services and employ qualified, licensed personnel in connection with its Taxi Service as defined herein; and,

WHEREAS, the City’s charter incorporates that an agreement be entered into between the City and a franchisee;

NOW THEREFORE, the City of Kyle and Taxi Service Provider mutually agree as follows:

Section 1 **Definitions**

The following definitions shall apply in the interpretation and enforcement of this Agreement and in compliance with the ordinance:

Taxi. A car, usually fitted with a taximeter, that may be hired, along with its driver, to carry passengers to any specified destination.

Operator. An individual in actual physical control of a taxi which is in motion or which has the engine running.

Person. Any individual, firm, partnership, association, corporation or organization of any kind, including any governmental agency other than the United States.

Agreement. This document granting a franchise to Buda Taxi Services, LLC and all attachments and exhibits herein.

Service Provider – Taxi company to which this franchise agreement is granted.

City. The City of Kyle.

Section 2
Contents of Application to Provide Taxi Services

1. Representations; warranties; revocation of franchise. In making this grant of non-exclusive franchise, the City has relied upon information provided by Service Provider to the City, and the City's expectations of the operations and performance of any and all franchisees. Service Provider agrees that all statements, representations and warranties provided to the City are true and correct to the best of the Service Provider's knowledge at the time of submission; and further agrees that the City's grant of franchise may be revoked upon discovery of any material misstatement of fact contained therein.

2. Application. Service Provider shall complete an application by the City to operate within the City and its extraterritorial jurisdiction. An application shall contain the following:

- a. The name and address of the provider or franchisee of the taxi services for which a franchise is being granted;
- b. All appropriate and required documentation to establish the "form of business" by which the taxi company will operate, including but not limited to:
 - partnership agreement(s)
 - articles of incorporation
 - certificate of good standing from the State of Texas
 - name & address of officers and directors
 - the trade and all other names, if any, under which the applicant does business, along with a certified copy of an assumed name certificate stating such name or names or articles of incorporation stating such name or names;
- c. Pro forma or actual income statement and balance sheet;
- d. Attachment showing any past business experience, particularly in providing passenger transportation;
- e. Motor vehicle information including a list of all vehicles the applicant proposes to use in the operation of the taxicab service and the description of the operations of the proposed taxicab service and the location of the fixed facilities to be used in the operation.
- f. The applicant must provide the proposed insignia and color scheme for the applicant's taxicab
- g. Documentary evidence of payment of ad valorem taxes on the real and personal property to be used in connection with the operation of the proposed

taxicab service

Section 4
Term of Agreement

This Agreement will remain in full force and effect for a period of two (2) years, commencing on the effective date the ordinance is passed on second reading by the Kyle city council. The City shall have the sole option to renew this franchise for an additional two (2) years upon the written request of the Service Provider.

Section 5
Service Area

Service Provider may provide service in all areas originating or terminating within the Kyle City limits or ETJ.

Section 6
Disclosure of Rider Information

Service Provider as a franchisee agrees that any unauthorized disclosure of specific rider-related information to the public is forbidden. If Service Provider as a franchisee is determined to have disclosed specific rider related information to the public without the permission of the rider or authorized rider representative, the City may terminate this agreement and forfeit Service Provider's franchise status.

Section 7
Minimum Standards for Taxi Franchisees

The City Code Enforcement Division shall be the enforcing agency for the terms contained in this Agreement and may take the following actions:

1. Inspect the premises, vehicles, equipment, and personnel of Service Provider to assure compliance to this Agreement and perform any other inspections as deemed necessary by law or for the benefit of the public safety, health or welfare;
2. Recommend to the city council the temporary or permanent suspension of a franchise in the event of non-compliance with the terms of this Agreement;
3. Receive complaints from the public, other enforcing agencies, and others regarding any infractions allegedly committed by Service Provider, and review or otherwise investigate any complaints, and recommend corrective action after Service Provider has had a responsible time to respond to said allegations;
4. Maintain all records of compliance with this Agreement and other

applicable State and County regulations;

5. Require Service Provider to have displayed in a prominent position in each vehicle used for passenger transportation services the following information:
 - Complete fee schedule
 - Complaint policy as approved by the City
 - Contact information for Service Provider for customer complaints
 - Contact information for the City of Kyle Code Enforcement Division for customer complaints
 - Drivers name & vehicle number
6. Require Service Provider to restore at its expense all public or private property to a condition equal to or better than that before being damaged or destroyed by Service Provider.
7. Require Service Provider to reimburse the City for any expenses incurred for staff time and resources to conduct inspections.

Section 8 **Violations; Penalties**

The Chief of Police shall have the power and authority to review this Franchise Agreement at any time and to assess a penalty against Service Provider for its failure to comply with the franchise Agreement, this charter, the ordinances of the City, or the laws of the state. If in the opinion of the city council the requirements of the franchise Agreement, charter, ordinances or state law are not being complied with, the Chief of Police shall so notify Service Provider in writing stating the provisions Service Provider has failed to comply with and setting a deadline for correction of the noncompliance. The Chief of Police may assess and enforce a reasonable penalty based upon the facts, issues and circumstances determined at the hearing if noncompliance is found. If Service Provider does not correct the noncompliance within a reasonable time established by the Chief of Police for correction, the city council may impose penalties, place Service Provider on probation, suspend the franchise or repeal or cancel the franchise. Penalties may be imposed and fines collected by the City as follows:

1. First offense: probation, suspension, or termination of the franchise, including up to a fine not to exceed five hundred dollars (\$500.00) levied against Service Provider, for which Service Provider is responsible to pay or otherwise said franchise may be terminated by the city council.
2. Second offense: probation, suspension, or termination of the franchise, including up to a fine not to exceed one thousand dollars (\$1,000.00) if within one (1) year of the first offense, levied against Service Provider, for which Service

Provider is responsible to pay or otherwise said franchise may be terminated by the city council.

3. Third offense: probation, suspension, or termination of the franchise, including up to a fine not to exceed two thousand dollars (\$2,000.00) if within one (1) year of the second offense, levied against Service Provider, for which Service Provider is responsible to pay or otherwise said franchise may be terminated by the city council.
4. Fourth and subsequent offenses: If within one (1) year of the third offense, City staff shall recommend to the city council permanent termination of the franchise, upon which city council may accept or deny staff recommendation, or at its discretion, the city council may impose suspension, probation, or termination of the franchise and this Agreement.

Section 9

Default

Exclusive of the penalties set forth hereinabove, Service Provider shall be declared to be in default of this Agreement at the discretion of the city council if Service Provider violates or contravenes in any of the terms or conditions of the Ordinance or this Agreement. The city council may terminate the franchise if Service Provider is found to be in default.

Section 10

Majority vote

Service Provider may be liable for fines or other penalties set forth in this Agreement, including termination of its franchise, or found to be in default, only upon a finding by majority vote of the city council.

Section 11

State Permits and City Franchise Requirements

Service Provider, either as owner, agent, or otherwise, shall furnish, operate, conduct, maintain, advertise, or otherwise be engaged in or profess to be engaged in providing taxi service within the City unless and until Service Provider holds a valid permit for each vehicle used in such taxi service operation and has a valid franchise for the operation of such service by the City pursuant to this Agreement.

Section 12

Franchise Fees to City

Service Provider shall, during the life of said franchise, pay to the City, to the attention of the City's director of finance, three and one-half percent (3.5%) of the total amount billed to and collected from riders or customers for the taxi service fees and any other income derived

from the operation of the taxi service within the City limits, which said remittance shall be made monthly on or before the tenth (10th) day of each calendar month. The compensation provided for in this Section shall be in lieu of any other fees or charges imposed by any other ordinance now or hereinafter in force during the life hereof, but shall not release Buda Taxi Services, LLC from the payment of ad valorem taxes levied or to be levied on local property it owns.

The purpose of the franchise fee is to fund the City monitoring Service Provider operations and for the cost of administrative staff, vehicle inspections, and wear and tear upon the City's roadways.

Section 13 **Quarterly Reports**

It shall be the duty of Service Provider to file with the City's director of finance a sworn statement for each calendar quarter, which said statement shall report the total amount billed and collected for taxi service within the City limits for the preceding three (3) months, which statement shall be filed within ten (10) days following the end of the third month. Service Provider herein shall be required to adequately maintain a system of bookkeeping, which books shall be subject to reasonable audits by the City in executive session and such skilled person or persons as the City may designate so as to enable the City to periodically check the accuracy of the accounts kept and to compute fairly and accurately the percentage of the amounts privately billed that may be due to the City from Service Provider.

Section 14 **Cessation of Activity upon Termination of Franchise**

1. Upon cancellation, suspension, or termination of Service Provider franchise, by actions taken by either the city council or Service Provider, Service Provider shall immediately cease operations that are granted under the franchise.
2. Service Provider shall not permit any individual whose license or credentials are invalid to drive a taxi or provide taxi services with the taxi operator.

Section 15 **Rates and Charges to Riders or Customers**

Service Provider shall comply with the schedule of rates that Service Provider has attached to this Agreement as EXHIBIT "B" and which is incorporated herein by reference. Service Provider may amend the schedule of rates only upon the adoption of an ordinance approving said amendment.

Section 16 **Insurance**

Prior to providing any taxi services in the City limits, Service Provider will provide proof of insurance coverage in the types, forms and amounts required by state law and this Agreement. Failure to maintain such insurance through the term of this Agreement will be cause for termination of the franchise granted herein. Service Provider shall be required to obtain and maintain in effect throughout the term of this Agreement a public liability insurance policy in an amount of not less than \$1,000,000. A copy of the insurance policy shall be filed with the City's finance director within 10 days of the grant of the franchise. Service Provider shall not operate its service during any periods for which insurance lapses for any reason.

Section 17 **Nondiscrimination**

No individual shall be denied or subjected to discrimination in the receipt of services for activities made possible by or resulting from this Agreement on the grounds of race, color, religion, gender, sexual orientation, national origin, disability, age or marital status. Material violation of this provision shall be considered a default of this Agreement.

Section 18 **Records, Reports**

Service Provider shall maintain the following records:

1. Record of dispatch showing time call for service was received, time taxi dispatched, time arrived for pickup, time arrived at destination, time in service, and time returned to base;
2. A trip record that shall be so designed as to provide the rider or customer with a copy of it and that may serve as a receipt for any charges paid;
3. Maintenance of a daily report log for the purpose of identifying all individuals transported in any given day;
4. Daily driver and attendant checklist and inspection report which shall list contents and description of operations for each vehicle, signed by the individual verifying vehicle operations and equipment; and,
5. If private records are kept, including operational, vehicular maintenance, driver/attendant training certifications, insurance certifications, traffic compliance, accident records, financial, tax and related records, shall be open at any reasonable time for inspection and audit by the city manager or designee, or any professionally trained accountant/auditor; but Service Provider may deem and mark certain materials as proprietary and confidential or protected by state or federal law, which may still be viewed by the city manager, designee or accountant/auditor representing the City but not disclosed to the general public unless a Texas Attorney General Ruling or court of competent jurisdiction so orders such a public release.

Section 19
Transfer and Assignment

This non-exclusive franchise Agreement and the rights, privileges, permissions, and authorities granted herein are personal to Service Provider and cannot be sold, transferred, leased, assigned, or otherwise disposed without prior written approval from the City.

Section 20
Private Taxi Services Personnel

Drivers employed by Service Provider shall be:

1. At least eighteen (18) years of age;
2. Citizens of the United States;
3. Licensed by the State of Texas to operate the vehicle occupied; and,
4. Certified as having obtained any legally required training as may be required by any regulatory bodies having jurisdiction over the provision of taxi services to the general public.
5. Will have submitted a sworn statement that the driver has not been finally convicted within the past seven years of a felony or the following offenses involving moral turpitude which adversely affects the applicant's ability to provide safe and reliable passenger transportation:
 - a. Prostitution or related offenses;
 - b. Driving while intoxicated;
 - c. Driving while under the influence of drugs;
 - d. Violations of the Controlled Substance Act;
 - e. Rape, murder, attempted murder, aggravated assault;
 - f. Theft offenses of a class B misdemeanor or higher; or
 - g. A felony or other offense involving moral turpitude which adversely affects the applicant's ability to provide safe and reliable passenger transportation.

Section 21
Indemnification

As a condition of the grant of this Agreement, and in consideration thereof, Service Provider shall defend, indemnify, and hold the City harmless against all claims for damages to persons, individuals or property by reason of its franchise operations, or any way arising out of performance under this Agreement, directly, or indirectly, when or to the extent injury is caused, or alleged to have been caused, wholly or in part, by any act, omission, negligence, or misconduct of Service Provider or any of its contractors, subcontractors, officers, agents, or

employees, or by any person for whose act, omission, negligence, or misconduct, Service Provider is by law responsible. This provision is not intended to create liability for the benefit of third parties but is solely for the benefit of Service Provider and the City. In the event any claim is made against the City that falls under this indemnity provision, the City shall promptly but no later than five (5) business days, provide Service Provider with the a copy of the claim with a written notice that such is deemed to fall under this provision. Service Provider shall then take over the defense of the claim with attorneys of its and/or its insurer's choosing. Service Provider shall indemnify and hold the City harmless of and from any such liability, including any court costs, expenses, and reasonable attorney fees incurred by the City in defense thereof and incurred at any stage. Upon commencement of any suit, proceeding at law or in equity against the City relating to or covering any matter covered by this indemnity, wherein Service Provider has agreed by accepting this Agreement to indemnify and hold the City harmless, or to pay said settlement, final judgment, and costs, as the case may be, the City shall provide Service Provider immediate written notice of such suit or proceeding, whereupon Service Provider shall provide a defense to any such suit or suits, including any appellate proceedings brought in connection therewith, and pay as aforesaid, any settlement, costs or judgments that may be rendered against the City by reason of such damage suit.

Section 23

Compliance with Laws and Regulations

During the term of this Agreement, the City and Service Provider agree they will comply with all applicable state, federal and local laws and regulations. Failure to comply on the part of Service Provider may be grounds for the imposition of penalties or sanctions, including up to termination of this Agreement. Failure to comply of the part of the City may be grounds for Service Provider to terminate this Agreement without prior consent or approval by the City.

Section 24

No Waiver; Cumulative Remedies

Service Provider will not be excused from complying with any of the terms of conditions of this Agreement because of failure of the City, on one or more occasions, to insist upon or to seek compliance with any such terms or conditions, or because of any failure on the part of the City or Service Provider to exercise, or delay in exercising, any right or remedy hereunder, nor will any single or partial exercise of any right or remedy preclude any other right or remedy. Service Provider agrees that the City will have the specific rights and remedies set forth herein. These rights and remedies are in addition to any and all other rights or remedies now or hereafter available to the City, and will not be deemed waived by the exercise of any other right or remedy. The rights and remedies provided in this Agreement and in the taxi Service Ordinance are cumulative and not exclusive of any remedies provided by law, and nothing contained in this Agreement will impair any of the rights or remedies of the City under applicable law. The exercise of any such right or remedy by the City will not release Service Provider from its obligations or any liability under this Agreement, except as expressly provided for in this Agreement or as necessary to avoid duplicative recovery from or payments by Service Provider. Neither the provision of performance security, nor the receipt of any damages recovered by the City thereunder, will be construed to excuse faithful performance by Service Provider or limit the liability of Service Provider for damages, either

to the full amount of the posted security or otherwise.

Section 25
Administration

The city manager or designee will administer or direct the administration of this Agreement.

Section 26
Notices

Any notice, request, or demand which may be or is required to be given under this Agreement will be delivered in person at the address stated below or may be deposited with the United States Postal Service, certified or registered mail, postage prepaid, to the party and address stated below:

FRANCHISEE:

On Tyme Taxi & Courier Service
Owner: Michael J Blevins
218 Pincea Place
San Marcos, Texas 78666
401-580-4437

CITY OF KYLE, TEXAS ("CITY"):

City of Kyle
ATTN: City Manager
100 W. Center Street
P.O. Box 40
Kyle, TX 78640
Fax: (512) 262-3987

Section 27
Governing Law

This Agreement will be deemed to be executed in the City of Kyle in the State of Texas, and will be governed in all respects, including validity, interpretation and effect, and construed in accordance with the laws of the State of Texas, as applicable to contracts entered into, and to be performed entirely with this State.

Section 28
Modification or Amendment

This Agreement may not be modified, amended, or changed in any way unless such modification, amendment or change is approved by the city council, and the terms and conditions thereof expressed in a written document, signed by both parties.

Section 29
Entire Agreement

The preparation, execution, and delivery of this Agreement by the parties have been induced by no representations, statements, warranties or agreements other than those expressed herein. This Agreement embodies the entire understanding by and between the City and Service Provider. There are no further or other agreements or understandings, written or oral, in effect between the City and Service Provider relating to the subject matter of this Agreement unless such agreements or understandings are expressly referred to and incorporated herein.

Section 30
Corporate Authority

The undersigned warrant that each has the requisite corporate authority to execute this Agreement and bind each party to the terms of this Agreement.

Section 31
Severability

If any section, subsection, sentence, clause, phrase, or other portion of this Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion will be deemed a separate, distinct, and independent portion. Such declaration will not affect the validity of the remaining portions hereof, which other portions will continue in full force and effect. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision will thereupon return to full force and effect without further action by the City and will thereafter be binding on Service Provider and the City.

Section 32
Effective Date

This Agreement shall be in full force and take effect from and after the date of the final passage or the ordinance in which the Agreement is incorporated and upon the signing and attesting of said Agreement as witnessed below.

THE CITY OF KYLE, TEXAS

By: _____
R. Todd Webster, Mayor

ATTEST:

APPROVED AS TO FORM:

Amelia Sanchez, City Secretary

Frank Garza, City Attorney

EXHIBIT “B”

SCHEDULE OF RATES