JK
08/13/15
Item #4

AN ORDINANCE 2015-08-13-0684

AUTHORIZING THE CITY MANAGER TO ENTER INTO A TEMPORARY OPERATING AGREEMENT WITH LYFT, AND INDIVIDUAL TRANSPORTATION NETWORK COMPANIES, FOR A PERIOD OF NINE MONTHS.

* * * * *

WHEREAS, Transportation Network Companies (TNCs) have operated in San Antonio, and their use continues to grow in other cities in the United States and the world; and

WHEREAS, City Council wishes to permit the temporary operation and use of City streets by TNCs during a nine month evaluation period, in order to allow City staff additional time to further research and refine the regulations regarding their use and operation; and

WHEREAS, those TNCs wishing to operate in San Antonio must execute a temporary operating agreement (Attachment II) with the City, for a period of nine months from the date of launching or relaunching its activities in San Antonio, and must comply with the provisions and regulations contained in that agreement; and

WHEREAS, the temporary operating agreement to be executed with each of the TNCs wishing to make special use of City streets does not create any type of business relationship, franchise, joint venture, employment relationship, or otherwise, between the City and the TNCs; and

WHEREAS, those TNCs wishing to operate in San Antonio during the nine month evaluation period must either execute the attached temporary operating agreement with the City, or comply with the regulations set forth in Chapter 33 and Chapter 3, Division 4 of the City Code of San Antonio, Texas; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager, or her designee, is authorized to execute an operating agreement with Lyft, and an agreement that is materially and substantively the same, with every other TNC wishing to operate in San Antonio. A copy of the Lyft agreement is attached hereto and incorporated herein for all purposes as **Attachment I**. A blank copy of the agreement the City Manager, or her designee, is authorized to execute with other TNCs is attached hereto and incorporated herein for all purposes as **Attachment II**. The terms and conditions set forth in these agreements are hereby approved.

SECTION 2. Enforcement of the provisions in the City Code of San Antonio, Texas, ("City Code") Chapter 33, and Chapter 3, Division 4, and the rules and regulations developed pursuant to that chapter, shall be suspended against a TNC that enters into an agreement with the City of San Antonio as stated in Attachment I or II, during the term of the agreement.

SECTION 3. The terms of all agreements entered into between the City and a TNC pursuant to this ordinance shall commence upon execution and shall terminate nine months after the TNC begins service under this agreement, unless the agreement is terminated earlier pursuant to the terms of the agreement. If the agreement is terminated early, the TNC wishing to remain in service in San Antonio must abide by the provisions set forth in Chapter 33 and Chapter 3, Division 4 of the City Code.

SECTION 4. Funds generated by this ordinance from TNC operating permit fees will be deposited into Fund 11001000, Internal Order 217000000009 and General Ledger 4202300.

SECTION 5. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 6. This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 13th day of August, 2015.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

Martha G. Sepeda, Acting City Attorney

Agenda Item:	**4**
Date:	08/13/2015
Time:	12:35:22 PM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing the City Manager to enter into a temporary operating agreement with Lyft, and other Transportation Network Companies (TNCs) for a period of nine months. [Erik Walsh, Deputy City Manager; Anthony L. Treviño, Interim Chief of Police]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x			x	
Alan Warrick	District 2		x				
Rebecca Viagran	District 3			x			
Rey Saldaña	District 4		x				x
Shirley Gonzales	District 5			x			
Ray Lopez	District 6			x			
Cris Medina	District 7			x			
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10			x			

OPERATING CONTRACT
BY AND BETWEEN
LYFT, INC. AND THE CITY OF SAN ANTONIO, TEXAS

This contract is entered into by and between the City of San Antonio, Texas, a home-rule municipal corporation ("CITY"), and Lyft, Inc., a Delaware corporation ("LYFT").

I. TERM

1.1 This contract shall commence upon execution and shall terminate nine months after the first day that LYFT relaunches in San Antonio, unless the contract is terminated earlier pursuant to the provisions hereof.

II. DEFINITIONS

2.1 Transportation Network Company ("TNC") shall mean a person that uses an internet enabled application or digital platform to send or transmit an electronic, radio or telephonic communication through the use of a portable or handheld device, monitor, smartphone or other electronic device to connect passengers with transportation network drivers for transportation network operations.

2.2 Transportation Network Operation ("TNO") shall mean connecting passengers with transportation network operators for rides through a transportation network company.

2.3 LYFT Operator shall mean a person who receives connections to potential passengers and related services from LYFT in exchange for payment of a fee to LYFT; and uses a personal vehicle to offer or provide a prearranged ride to passengers upon connection through the digital network controlled by LYFT in return for compensation or payment of a fee.

2.4 LYFT Vehicle shall mean a vehicle that is used by a LYFT operator and is owned, leased, or otherwise authorized for use by the LYFT operator.

III. AUTHORITY TO OPERATE

3.1 Pursuant to this contract, the CITY agrees to permit LYFT to operate in the City of San Antonio, subject to the conditions and restrictions set forth herein.

3.2 Pursuant to Ordinance No. 2015-_____, the CITY agrees that the provisions of Chapter 33 of the CITY CODE applicable to TNCs, and Chapter 3, Division 4, and the rules and regulations developed pursuant to this chapter, will not be enforced against

LYFT, except as herein provided, or unless such enforcement stems solely and directly from a violation of any provisions in this contract,

IV. OPERATING FEE

4.1 LYFT shall pay an operating fee of $18,750.00 to the CITY within sixty calendar days of relaunching in San Antonio that will represent the required operating fee for the entire nine-month term of this agreement.

V. OPERATIONS

A. Rides

5A.1 LYFT operators shall only accept rides booked through LYFT's digital platform and shall not solicit or accept street-hails.

5A.2 Upon a passenger being matched with a LYFT operator, the interface used by LYFT to connect operators and passengers shall display for the passenger the first name and photograph of the operator and the make, model, and license plate number of the LYFT vehicle.

5A.3 LYFT shall provide a LYFT operator the option to identify whether the LYFT operator (1) has voluntarily undergone and passed a criminal background check as approved by the city; and (2) is a military veteran or active member of the military.

5A.4 LYFT shall provide a means for all users of the LYFT platform to report complaints to LYFT. LYFT shall investigate all complaints.

B. Fares

5B.1 LYFT may offer service for compensation, no-charge, or suggested compensation. LYFT shall disclose its rates used to determine any compensation or suggested compensation on its publicly accessible digital web portal.

5B.2 Upon completion of a trip, LYFT shall transmit an electronic receipt to the passenger's e-mail address or mobile application, documenting the origination and destination of the trip and a description of the total amount paid, if any.

C. Drivers

5C.1 LYFT operators shall (1) possess a valid state-issued driver's license; (2) possess proof of registration for their LYFT vehicle; and (3) be at least twenty-one years of age.

5C.2 LYFT operators shall possess current automobile liability insurance, as provided for herein. LYFT operators shall possess proof of both the LYFT operator's personal insurance and LYFT's liability insurance while serving as LYFT operators. In the event of a traffic accident, LYFT operators provide, on request to a peace officer or a person involved in an accident, evidence of financial responsibility by exhibiting the insurance policy. Such proof may be provided or displayed electronically.

5C.3 Prior to permitting a person to act as a LYFT operator on its digital network, and each year thereafter, LYFT shall obtain and review a criminal history research report for such person. The criminal background check shall be a national criminal background check, performed by a provider accredited by the National Association of Professional Screeners, which shall include a review of the national sex offender database. Any person who has been convicted, within the past seven years, of driving under the influence of drugs or alcohol, or who has been convicted at any time of homicide, kidnapping, any sexual offense, any assaultive offense, robbery, possession of a weapon in violation of Chapter 46 of the Texas Penal Code, violation of the Dangerous Drugs Act (Chapter 483 of the Texas Health and Safety Code), or the Controlled Substances Act (Chapter 481 of the Texas Health and Safety Code) that is punishable as a felony, or an offense under the laws of another state if the offense contains elements that are substantially similar to the elements of the specified Texas provisions, or use of a motor vehicle to commit a felony, shall not be permitted to be a LYFT operator. LYFT will maintain electronic records of such criminal background checks for a period of two years.

5C.4 Prior to permitting a person to act as a LYFT operator on its digital network, and each year thereafter, LYFT shall obtain and review a driving history research report for such person. Any person with more than three moving violations or a single major violation in the three-year period before the date of the driving history report shall not be permitted to be a LYFT operator. As used in this section, a "major violation" includes, but is not limited to, attempting to evade the police, reckless driving, or driving on a suspended or revoked license. LYFT will maintain electronic records of such driving history research reports for a period of two years.

5C.5 LYFT shall implement a policy prohibiting Lyft operators from refusing to provide service to an individual with a service animal unless the LYFT operator has a medically documented condition that prevents the LYFT operator from transporting animals.

5C.6 LYFT shall establish a LYFT operator training program designed to ensure that each LYFT operator properly operates his vehicle. The prohibition on using taxi stands and prohibition against refusing to provide service to passengers with service animals shall be made available for LYFT operators to review on the LYFT website or otherwise communicated to LYFT operators.

5C.7 LYFT shall implement a zero-tolerance policy on the use of drugs or alcohol applicable to any LYFT operator on the LYFT platform. LYFT shall provide notice to the users (1) of the zero-tolerance policy on its website and (2) of the procedures for reporting a

complaint about a LYFT operator the passenger reasonably suspects was under the influence of drugs or alcohol during the course of a ride. LYFT shall immediately suspend a LYFT operator upon receipt of a passenger complaint alleging a violation of the zero-tolerance policy. The suspension shall last the duration of the investigation.

5C.8 LYFT shall implement a zero-tolerance policy prohibiting discrimination (on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age, or disability), harassment, or sexual harassment by any LYFT operator on the LYFT platform. LYFT shall provide notice to the users (1) of the said zero-tolerance policy on its website and (2) of the procedures for reporting a complaint about an LYFT operator the passenger reasonably believes has engaged in discrimination, harassment, or sexual harassment in conducting business as a LYFT operator. LYFT shall immediately suspend a LYFT operator upon receipt of a passenger complaint alleging a violation of the zero-tolerance policy. The suspension shall last the duration of the investigation.

D. Insurance

5D.1 House Bill 1733 is a bill that was introduced during the 84th regular session of the Texas Legislature and became law on June 17, 2015, when it was signed by the governor of the State of Texas. The bill amends the Texas Insurance Code in order to establish automobile insurance requirements for TNCs and their drivers. The effective date of HB 1733 is January 1, 2016.

5D.2 LYFT agrees that it will comply with the requirements of HB 1733 and the applicable provisions of the Texas Insurance Code, as it will be amended by HB 1733, upon execution of this contract.

5D.3 As soon as practicable, LYFT shall provide to the CITY a certificate of insurance for the required policy, naming LYFT as the insured, with an endorsement naming the CITY as an additional insured. The policy shall be accompanied by a commitment from the insurer that any provision of the policy that relates to the CITY will not be canceled, modified, or reduced in coverage without at least thirty days' prior notice to the CITY.

E. Vehicles

5E.1 LYFT vehicles may be coupes, sedans, or light-duty vehicles, including, without limitation, vans, minivans, sport utility vehicles, hatchbacks, convertibles, and pickup trucks, that are legally permitted to operate on streets within the CITY.

5E.2 All LYFT vehicles shall have a safety inspection conducted prior to their operation pursuant to this contract. Said inspection shall be made pursuant to a procedure approved by the CITY. No vehicle failing to pass inspection may be utilized as a LYFT vehicle.

5E.3 The inspection shall, at a minimum, include an assessment of the following components:

1. foot brakes
2. parking brakes
3. Steering mechanism
4. windshield
5. rear window and other glass
6. windshield wipers
7. headlights
8. tail lights
9. turn indicator lights
10. top lights
11. front seat adjustment mechanism
12. doors (open, close, lock)
13. horn
14. speedometer
15. bumpers
16. muffler and exhaust system
17. condition of tires, including tread depth
18. Interior and exterior rear view mirrors
19. safety belts for operator and passengers

5E.4 LYFT and LYFT operators shall not use any marked taxi stands or commercial loading zones.

F. Records

5F.1 LYFT shall maintain accurate and current records of all LYFT operators providing TNO services through LYFT.

5F.2 LYFT shall maintain trip data by zip code for all trips originating within the CITY. Said data shall include both the trip origination zip code and the trip termination zip code. LYFT shall provide data on the percentage of trips originating and terminating in each CITY zip code to the CITY within ten business days following the end of each of the three three-month periods occurring during the term of this contract and within ten business days of the effective date of the termination of this contract. Said data shall be treated as confidential by the CITY.

5F.3 The release by the CITY of records or information disclosed to the CITY by LYFT in response to an open records request for is governed by Chapter 552 of the Texas Government Code. The release by the CITY of records or information disclosed to the CITY by LYFT in response to a subpoena or court order is governed by state or federal law. In the event that information provided by LYFT to the CITY pursuant to this contract is sought through an open records request, a subpoena, or a court order, the CITY shall promptly notify LYFT of such open records request, subpoena, or court order, so as to afford LYFT the opportunity to take actions to prevent disclosure.

G. Airport

5G.1 For each trip originating at the San Antonio International Airport (the "Airport"), LYFT shall pay $1.00 to the CITY. LYFT shall make said payment to the CITY within ten business days following the end of any calendar month during the term of this contract and within ten business days of the effective date of the termination of this contract.

5G.2 In lieu of decals, transponders or additional regulatory or technological measures, LYFT shall establish a geo-fence or other instrument which allows it to identify any trips originating at the San Antonio International Airport. LYFT shall provide the CITY a monthly report containing an itemization of trips originating at the San Antonio International Airport, including date.

H. Inspections

5H.1 The CITY shall provide LYFT with the names of CITY inspectors. The CITY inspectors shall conduct no more than 10 inspections per month during the term of this contract. LYFT agrees to ensure that the passenger accounts of any CITY inspectors remain open, unless the inspectors engage in misconduct that goes beyond the lawful exercise of the inspector's duties and responsibilities. Such inspector accounts shall remain open during the term of this contract with no notice to drivers that the account belongs to a city inspector. LYFT shall provide the CITY with a coupon code, or similar medium, that permits CITY inspectors to take a secret-shopper ride without charge for the purpose of conducting inspections during the term of this contract, with such coupon code or similar medium to provide no notice to drivers that the passenger is a city inspector.

I. Agent

5I.1 LYFT shall designate an agent whose place of work is located within the State of Texas.

5I.2 Upon execution of this contract, LYFT shall provide to the CITY the name, telephone number, facsimile number (if any), e-mail address, physical address, and office hours of its agent.

J. Town Hall

5J.1 LYFT agrees to participate in two town hall meetings organized by the CITY.

VI. TERMINATION

6.1 For purposes of this contract, "termination" of this contract shall mean termination by expiration of the contract term, as set out in Article I, or earlier termination pursuant to any of the provisions of this contract.

6.2 LYFT or the CITY may terminate this contract upon thirty days' written notice to LYFT or the CITY for any reason, in its sole discretion.

6.2 Should CITY terminate this contract prior to the expiration of its term, the CITY shall reimburse LYFT a pro rata amount of its operating fee for the period during which LYFT was precluded from operating pursuant to this contract.

VII. LICENSES AND CERTIFICATIONS

7.1 All licenses, legal certifications, or inspections required for the services, facilities, equipment, or materials and all applicable state and federal laws and local ordinances, except as otherwise provided for in this contract, must be complied with by LYFT. Failure to comply with this requirement may result in termination of this contract.

VIII. NON-EXCLUSIVE CONTRACT

8.1 LYFT acknowledges that this contract does not invest in LYFT the exclusive right to provide TNO services in the City of San Antonio during the term of this contract.

IX. NON-WAIVER

9.1 Unless otherwise specifically provided for in this contract, a waiver by either party of a breach of any of the terms, conditions, covenants, or guarantees of this contract shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant, or guarantee herein contained. Further, any failure of either party to insist in any one or more cases upon the strict performance of any of the covenants of this contract, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification, or discharge by either party hereto of any provision of this contract shall be deemed to have been made or shall be effective, unless expressed in writing and signed by the party to be charged. No act or omission by a party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

X. INDEMNIFICATION

10.1 LYFT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage (collectively "CLAIMS"), made upon the CITY directly or indirectly arising out of, resulting from or related to LYFT'S violation of this Contract, including any violation attributable to any agent, officer, director, representative, employee, consultant or

subcontractor of LYFT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Contract. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence or intentional misconduct of CITY, its officers or employees. IN THE EVENT LYFT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

10.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. The parties shall advise each other in writing within 24 hours of any claim or demand against either party that it reasonably believes are covered by LYFT's INDEMNITY obligations hereunder. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving LYFT of any of its obligations under this paragraph.

10.3 Defense Counsel - LYFT shall retain the right to select defense counsel in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by LYFT in writing. CITY shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense.

10.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of LYFT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for LYFT or any subcontractor under worker's compensation or other employee benefit acts.

10.5 It is expressly understood and agreed that LYFT is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions and that CITY shall in no way be responsible therefor.

XI. CHANGES AND AMENDMENTS

11.1 Except when the terms of this contract expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by both the CITY and LYFT.

11.2 It is understood and agreed by the parties hereto that changes in local, state, and federal rules, regulations, or laws applicable hereto may occur during the term of this contract and that any such changes shall be automatically incorporated into this contract without

written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation, or law.

XII. ENTIRE CONTRACT

12.1 This contract and its exhibits constitute the final and entire contract between the parties hereto and contain all of the terms and conditions agreed upon. No other contracts, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof, and only executed by the parties.

XIII. SEVERABILITY

13.1 If any clause or provision of this contract is held invalid, illegal, or unenforceable under present or future federal, state, or local laws, including, but not limited to, the CITY charter, CITY CODE, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality, or unenforceability shall not affect any other clause or provision hereof and that the remainder of this contract shall be construed as if such invalid, illegal, or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this contract that is invalid, illegal, or unenforceable, there be added as a part of the contract a clause or provision as similar in terms to such invalid, illegal, or unenforceable clause or provision as may be possible, legal, valid, and enforceable.

XIV. NOTICES

14.1 For purposes of this contract, all official communications and notices between the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY	LYFT
Assistant Police Director San Antonio Police Department 315 S. Santa Rosa San Antonio, Texas 78207	Lyft, Inc. c/o April Mims 548 Market Street San Francisco, CA 94104

XV. LAW APPLICABLE

15.1 THIS CONTRACT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

15.2 VENUE AND JURISDICTION FOR ANY LEGAL ACTION OR PROCEEDING BROUGHT OR MAINTAINED, DIRECTLY OR INDIRECTLY, UNDER OR IN CONNECTION WITH THIS CONTRACT SHALL LIE EXCLUSIVELY IN BEXAR COUNTY, TEXAS.

XVI. LEGAL AUTHORITY

16.1 The signer of this contract for LYFT represents, warrants, assures, and guarantees that he has full legal authority to execute this contract on behalf of LYFT and to bind LYFT to all of the terms, conditions, provisions, and obligations herein contained.

XVII. PARTIES BOUND

17.1 This contract shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns, except as otherwise expressly provided for herein.

XVIII. CAPTIONS

18.1 The captions contained in this contract are for convenience of reference only and in no way limit or enlarge the terms and/or conditions of this contract.

EXECUTED IN DUPLICATE ORIGINALS on _____, 2015.

CITY OF SAN ANTONIO	LYFT, INC.
	April L. Mims
_____	_____
Sheryl Sculley. City Manager	April L. Mims Public Policy Manager, Lyft

APPROVED AS TO FORM:

_____

Martha G. Sepeda
Acting City Attorney

OPERATING CONTRACT
BY AND BETWEEN
_____ AND THE CITY OF SAN ANTONIO, TEXAS

This contract is entered into by and between the City of San Antonio, Texas, a home-rule municipal corporation ("CITY"), and _____ ("TNC"), a _____ corporation.

I. TERM

1.1 This contract shall commence upon execution and shall terminate nine months after the first day that TNC launches or relaunches in San Antonio, unless the contract is terminated earlier pursuant to the provisions hereof.

II. DEFINITIONS

2.1 Transportation Network Company ("TNC") shall mean a person that uses an internet enabled application or digital platform to send or transmit an electronic, radio or telephonic communication through the use of a portable or handheld device, monitor, smartphone or other electronic device to connect passengers with transportation network drivers for transportation network operations.

2.2 Transportation Network Operation ("TNO") shall mean connecting passengers with transportation network operators for rides through a transportation network company.

2.3 TNC Operator shall mean a person who receives connections to potential passengers and related services from TNC in exchange for payment of a fee to TNC; and uses a personal vehicle to offer or provide a prearranged ride to passengers upon connection through the digital network controlled by TNC in return for compensation or payment of a fee.

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III. AUTHORITY TO OPERATE

3.1 Pursuant to this contract, the CITY agrees to permit TNC to operate in the City of San Antonio, subject to the conditions and restrictions set forth herein.

3.2 Pursuant to Ordinance No. 2015-_____, the CITY agrees that the provisions of Chapter 33 of the CITY CODE applicable to TNCs, and Chapter 3, Division 4, and the rules and regulations developed pursuant to this chapter, will not be enforced against

TNC, except as herein provided, or unless such enforcement stems solely and directly from a violation of any provisions in this contract,

IV. OPERATING FEE

4.1 TNC shall pay an operating fee of $18,750.00 to the CITY within sixty calendar days of relaunching in San Antonio that will represent the required operating fee for the entire nine-month term of this agreement.

V. OPERATIONS

A. Rides

5A.1 TNC operators shall only accept rides booked through TNC's digital platform and shall not solicit or accept street-hails.

5A.2 Upon a passenger being matched with a TNC operator, the interface used by TNC to connect operators and passengers shall display for the passenger the first name and photograph of the operator and the make, model, and license plate number of the TNC vehicle.

5A.3 TNC shall provide a TNC operator the option to identify whether the TNC operator (1) has voluntarily undergone and passed a criminal background check as approved by the city; and (2) is a military veteran or active member of the military.

5A.4 TNC shall provide a means for all users of the TNC platform to report complaints to TNC. TNC shall investigate all complaints.

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5B.1 TNC may offer service for compensation, no-charge, or suggested compensation. TNC shall disclose its rates used to determine any compensation or suggested compensation on its publicly accessible digital web portal.

5B.2 Upon completion of a trip, TNC shall transmit an electronic receipt to the passenger's e-mail address or mobile application, documenting the origination and destination of the trip and a description of the total amount paid, if any.

C. Drivers

5C.1 TNC operators shall (1) possess a valid state-issued driver's license; (2) possess proof of registration for their TNC vehicle; and (3) be at least twenty-one years of age.

5C.2 TNC operators shall possess current automobile liability insurance, as provided for herein. TNC operators shall possess proof of both the TNC operator's personal insurance and TNC's liability insurance while serving as TNC operators. In the event of a traffic accident, TNC operators provide, on request to a peace officer or a person involved in an accident, evidence of financial responsibility by exhibiting the insurance policy. Such proof may be provided or displayed electronically.

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5C.7 TNC shall implement a zero-tolerance policy on the use of drugs or alcohol applicable to any TNC operator on the TNC platform. TNC shall provide notice to the users (1) of the zero-tolerance policy on its website and (2) of the procedures for reporting a complaint

about a TNC operator the passenger reasonably suspects was under the influence of drugs or alcohol during the course of a ride. TNC shall immediately suspend a TNC operator upon receipt of a passenger complaint alleging a violation of the zero-tolerance policy. The suspension shall last the duration of the investigation.

5C.8 TNC shall implement a zero-tolerance policy prohibiting discrimination (on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age, or disability), harassment, or sexual harassment by any TNC operator on the TNC platform. TNC shall provide notice to the users (1) of the said zero-tolerance policy on its website and (2) of the procedures for reporting a complaint about a TNC operator the passenger reasonably believes has engaged in discrimination, harassment, or sexual harassment in conducting business as a TNC operator. TNC shall immediately suspend a TNC operator upon receipt of a passenger complaint alleging a violation of the zero-tolerance policy. The suspension shall last the duration of the investigation.

D. Insurance

5D.1 House Bill 1733 is a bill that was introduced during the 84th regular session of the Texas Legislature and became law on June 17, 2015, when it was signed by the governor of the State of Texas. The bill amends the Texas Insurance Code in order to establish automobile insurance requirements for TNCs and their drivers. The effective date of HB 1733 is January 1, 2016.

5D.2 TNC agrees that it will comply with the requirements of HB 1733 and the applicable provisions of the Texas Insurance Code, as it will be amended by HB 1733, upon execution of this contract.

5D.3 As soon as practicable, TNC shall provide to the CITY a certificate of insurance for the required policy, naming TNC as the insured, with an endorsement naming the CITY as an additional insured. The policy shall be accompanied by a commitment from the insurer that any provision of the policy that relates to the CITY will not be canceled, modified, or reduced in coverage without at least thirty days' prior notice to the CITY.

E. Vehicles

5E.1 TNC vehicles may be coupes, sedans, or light-duty vehicles, including, without limitation, vans, minivans, sport utility vehicles, hatchbacks, convertibles, and pickup trucks, that are legally permitted to operate on streets within the CITY.

5E.2 All TNC vehicles shall have a safety inspection conducted prior to their operation pursuant to this contract. Said inspection shall be made pursuant to a procedure approved by the CITY. No vehicle failing to pass inspection may be utilized as a TNC vehicle.

5E.3 The inspection shall, at a minimum, include an assessment of the following components:

1. foot brakes
2. parking brakes
3. Steering mechanism
4. windshield
5. rear window and other glass
6. windshield wipers
7. headlights
8. tail lights
9. turn indicator lights
10. top lights
11. front seat adjustment mechanism
12. doors (open, close, lock)
13. horn
14. speedometer
15. bumpers
16. muffler and exhaust system
17. condition of tires, including tread depth
18. Interior and exterior rear view mirrors
19. safety belts for operator and passengers

5E.4 TNC and TNC operators shall not use any marked taxi stands or commercial loading zones.

F. Records

5F.1 TNC shall maintain accurate and current records of all TNC operators providing TNO services through TNC.

5F.2 TNC shall maintain trip data by zip code for all trips originating within the CITY. Said data shall include both the trip origination zip code and the trip termination zip code. TNC shall provide data on the percentage of trips originating and terminating in each CITY zip code to the CITY within ten business days following the end of each of the three three-month periods occurring during the term of this contract and within ten business days of the effective date of the termination of this contract. Said data shall be treated as confidential by the CITY.

5F.3 The release by the CITY of records or information disclosed to the CITY by TNC in response to an open records request for is governed by Chapter 552 of the Texas Government Code. The release by the CITY of records or information disclosed to the CITY by TNC in response to a subpoena or court order is governed by state or federal law. In the event that information provided by TNC to the CITY pursuant to this contract is sought through an open records request, a subpoena, or a court order, the CITY shall promptly notify TNC of such open records request, subpoena, or court order, so as to afford TNC the opportunity to take actions to prevent disclosure.

G. Airport

5G.1 For each trip originating at the San Antonio International Airport (the "Airport"), TNC shall pay $1.00 to the CITY. TNC shall make said payment to the CITY within ten business days following the end of any calendar month during the term of this contract and within ten business days of the effective date of the termination of this contract.

5G.2 In lieu of decals, transponders or additional regulatory or technological measures, TNC shall establish a geo-fence or other instrument which allows it to identify any trips originating at the San Antonio International Airport. TNC shall provide the CITY a monthly report containing an itemization of trips originating at the San Antonio International Airport, including date.

H. Inspections

5H.1 The CITY shall provide TNC with the names of CITY inspectors. The CITY inspectors shall conduct no more than 10 inspections per month during the term of this contract. TNC agrees to ensure that the passenger accounts of any CITY inspectors remain open, unless the inspectors engage in misconduct that goes beyond the lawful exercise of the inspector's duties and responsibilities. Such inspector accounts shall remain open during the term of this contract with no notice to drivers that the account belongs to a city inspector. TNC shall provide the CITY with a coupon code, or similar medium, that permits CITY inspectors to take a secret-shopper ride without charge for the purpose of conducting inspections during the term of this contract, with such coupon code or similar medium to provide no notice to drivers that the passenger is a city inspector.

I. Agent

5I.1 TNC shall designate an agent whose place of work is located within the State of Texas.

5I.2 Upon execution of this contract, TNC shall provide to the CITY the name, telephone number, facsimile number (if any), e-mail address, physical address, and office hours of its agent.

J. Town Hall

5J.1 TNC agrees to participate in two town hall meetings organized by the CITY.

VI. TERMINATION

6.1 For purposes of this contract, "termination" of this contract shall mean termination by expiration of the contract term, as set out in Article I, or earlier termination pursuant to any of the provisions of this contract.

6.2 TNC or the CITY may terminate this contract upon thirty days' written notice to TNC or the CITY for any reason, in its sole discretion.

6.3 Should CITY terminate this contract prior to the expiration of its term, the CITY shall reimburse TNC a pro rata amount of its operating fee for the period during which TNC was precluded from operating pursuant to this contract.

VII. LICENSES AND CERTIFICATIONS

7.1 All licenses, legal certifications, or inspections required for the services, facilities, equipment, or materials and all applicable state and federal laws and local ordinances, except as otherwise provided for in this contract, must be complied with by TNC. Failure to comply with this requirement may result in termination of this contract.

VIII. NON-EXCLUSIVE CONTRACT

8.1 TNC acknowledges that this contract does not invest in TNC the exclusive right to provide TNO services in the City of San Antonio during the term of this contract.

IX. NON-WAIVER

9.1 Unless otherwise specifically provided for in this contract, a waiver by either party of a breach of any of the terms, conditions, covenants, or guarantees of this contract shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant, or guarantee herein contained. Further, any failure of either party to insist in any one or more cases upon the strict performance of any of the covenants of this contract, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification, or discharge by either party hereto of any provision of this contract shall be deemed to have been made or shall be effective, unless expressed in writing and signed by the party to be charged. No act or omission by a party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

X. INDEMNIFICATION

10.1 TNC covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage (collectively "CLAIMS"), made upon the CITY directly or indirectly arising out of, resulting from or related to TNC'S violation of this Contract, including any violation attributable to any agent, officer, director, representative, employee, consultant or

subcontractor of TNC, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Contract. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence or intentional misconduct of CITY, its officers or employees. IN THE EVENT TNC AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

10.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. The parties shall advise each other in writing within 24 hours of any claim or demand against either party that it reasonably believes are covered by TNC's INDEMNITY obligations hereunder. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving TNC of any of its obligations under this paragraph.

10.3 Defense Counsel - TNC shall retain the right to select defense counsel in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by TNC in writing. CITY shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense.

10.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of TNC, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for TNC or any subcontractor under worker's compensation or other employee benefit acts.

10.5 It is expressly understood and agreed that TNC is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions and that CITY shall in no way be responsible therefor.

XI. CHANGES AND AMENDMENTS

11.1 Except when the terms of this contract expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by both the CITY and TNC.

11.2 It is understood and agreed by the parties hereto that changes in local, state, and federal rules, regulations, or laws applicable hereto may occur during the term of this contract and that any such changes shall be automatically incorporated into this contract without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation, or law.

XII. ENTIRE CONTRACT

12.1 This contract and its exhibits constitute the final and entire contract between the parties hereto and contain all of the terms and conditions agreed upon. No other contracts, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof, and only executed by the parties.

XIII. SEVERABILITY

13.1 If any clause or provision of this contract is held invalid, illegal, or unenforceable under present or future federal, state, or local laws, including, but not limited to, the CITY charter, CITY CODE, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality, or unenforceability shall not affect any other clause or provision hereof and that the remainder of this contract shall be construed as if such invalid, illegal, or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this contract that is invalid, illegal, or unenforceable, there be added as a part of the contract a clause or provision as similar in terms to such invalid, illegal, or unenforceable clause or provision as may be possible, legal, valid, and enforceable.

XIV. NOTICES

14.1 For purposes of this contract, all official communications and notices between the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY	TNC
Assistant Police Director	_____
San Antonio Police Department	_____
315 S. Santa Rosa	_____
San Antonio, Texas 78207	_____

XV. LAW APPLICABLE

15.1 THIS CONTRACT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

15.2 VENUE AND JURISDICTION FOR ANY LEGAL ACTION OR PROCEEDING BROUGHT OR MAINTAINED, DIRECTLY OR INDIRECTLY, UNDER OR IN CONNECTION WITH THIS CONTRACT SHALL LIE EXCLUSIVELY IN BEXAR COUNTY, TEXAS.

XVI. LEGAL AUTHORITY

16.1 The signer of this contract for TNC represents, warrants, assures, and guarantees that he has full legal authority to execute this contract on behalf of TNC and to bind TNC to all of the terms, conditions, provisions, and obligations herein contained.

XVII. PARTIES BOUND

17.1 This contract shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns, except as otherwise expressly provided for herein.

XVIII. CAPTIONS

18.1 The captions contained in this contract are for convenience of reference only and in no way limit or enlarge the terms and/or conditions of this contract.

EXECUTED IN DUPLICATE ORIGINALS on _____, 2015.

CITY OF SAN ANTONIO

_____
Sheryl Sculley.
City Manager

_____
_____
_____
_____

APPROVED AS TO FORM:

_____
Martha G. Sepeda
Acting City Attorney

Office of the City Manager

Proposed Operating Agreement with Lyft

Erik Walsh
Deputy City Manager
City Council (A Session) – August 13, 2015

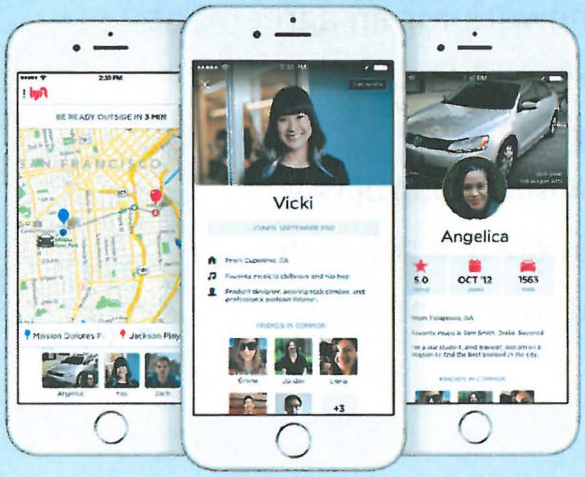
MAYOR TAYLOR'S CHARGE

- Framework for an agreement
- Intersecting Issues:
  - Safety
  - Transportation options
- Collaborative solutions
- Disruptive approach

PROPOSED AGREEMENT OVERVIEW

- 9-Month Term
- Background Checks
- Insurance
- Zero Tolerance Policy
- Inspections
- Data Sharing
- Operating Fees
- Town Hall Meetings

DRIVER PROFILE



CITY & SAPD's PUBLIC OUTREACH

- Promoting City background process
  - Public and riders
  - Drivers
- City Background Process
  - Operating fees to offset cost to drivers
  - City ID

5

NEXT STEPS AND STAFF RECOMMENDATIONS

- Preparations for re-launching Lyft operations
- Finalize agreements with other TNCs
- Staff recommends approval of this 9-month operating agreement with Lyft

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Office of the City Manager

THANK YOU

Erik Walsh
Deputy City Manager
City Council (A Session) – August 13, 2015