PORT OF GALVESTON
REQUEST FOR DISCUSSION
AND TRUSTEE ACTION

BUSINESS ITEM

PREPARED BY:  Julio De Leon  Mobility Director  January 17, 2020

SUBJECT: Consider and Approve giving Port Director approval to execute contract with UBER and Lyft pending legal counsel’s review of agreement.

BACKGROUND: Currently no agreement exists with UBER and Lyft that governs the terminal access fees.

RECOMMENDATIONS: The Board of Trustees is respectfully requested to approve giving the Port Director authorization to execute a contract between the Galveston Wharves and UBER and Lyft which will set access fees and rules and regulations for these TNCs.

Respectfully Submitted By:

Rodger Rees, Port Director /CEO

DATE ACTION TAKEN:

Approved:  
Disapproved:  
Deferred To:  
Incorporated into Minutes:  

Motion By:  
Seconded By:  
Unanimous:  Yes  No
PORT OF GALVESTON
Briefing

CONSIDER AND APPROVE AMENDMENT TO THE PORT’S LEASE AGREEMENT
FOR OFFICE SPACE WITH SHEARMOOD PLAZA

Background

The Port of Galveston leases 10,898 square feet for office staff at the Shearn Mody Plaza. The Port recommends adding an additional 1,500 square feet to provide a Customer Service Parking and Ground Transportation office and recommends the ground floor space available in the Shearn Mody Plaza.

The Port of Galveston is currently the operator of nearly 4,000 parking spaces within close proximity of the cruise ship operations. These parcels are used for cruise parking, tenant parking, Party Boat customer parking and public parking.

Galveston Wharves Annual Parking Fee Revenue
Five-year Trend

<table>
<thead>
<tr>
<th>Year</th>
<th>Parking Fee Revenue (in millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019 est</td>
<td>8.12</td>
</tr>
<tr>
<td>2018</td>
<td>7.61</td>
</tr>
<tr>
<td>2017</td>
<td>6.67</td>
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<tr>
<td>2016</td>
<td>6.14</td>
</tr>
<tr>
<td>2015</td>
<td>6.31</td>
</tr>
</tbody>
</table>

Source 2018 CAFR

Parking is a significant source of revenue; and with passengers planned to grow by half a million over the next couple of years, revenue will continue climb. Parking is a part of the master plan, and will continue to be an important consideration during the the Port’s ongoing growth and development.

Core Parking Operations
  - Parking Facility Maintenance Programs
  - Parking System Revenue Control
  - Contract Management Parking Resource Allocation
  - Marketing/Promotion/Information Rate Setting
  - Parking Facility Development and Construction
  - Equipment and Technology Specifications Wayfinding and Signage
  - Equipment and Technology Maintenance Customer Service
  - Parking Enforcement Validation Programs
  - Employee Parking Facility Safety / Security / Risk Management
Parking affects people so directly – personal safety/security, finance, convenience, wayfinding, accessibility and customer service. As a result, parking creates the first and last impression of the Port. Therefore, it is important manage the “parking experience”. Over the past year, investments in technology, staff, processes, wayfinding, etc. have been implemented to provide better customer service, improve utilization of parking spaces, and to develop further innovative solutions.

Current Situation

Space is limited to one office trailer and not conducive to an efficient operation.

Fiscal Impact

$1,810 monthly

Staff Recommendation

The Board of Trustees is respectfully requested to approve a lease amendment to the existing agreement between Shearn Moody Plaza and the Port to add an additional 1,500 square feet for Customer Service Parking and Ground Transportation Office.
OPERATING AGREEMENT

THIS OPERATING AGREEMENT (the “Agreement”) is hereby made and entered into on ______________, 2020, by and between Lyft, Inc. (“Operator”), and the Board of Trustees of the Galveston Wharves (the “Port”). Operator and Port are sometimes hereinafter referred to individual as a “Party” or collectively as the “Parties”.

WHEREAS, the Port is a separate utility of the City of Galveston, Texas and operates the Port of Galveston located in Galveston, Galveston County, Texas;

WHEREAS, Operator desires to operate a transportation network business at the Port of Galveston wherein the network provided by Operator will be used to connect passengers to independent contractor drivers pre-arranged transportation services offered by Drivers (hereinafter defined);

WHEREAS, the Port has agreed to allow the Operator to conduct its business at the Port of Galveston, subject, however, to the terms and conditions of this Agreement; and

WHEREAS, the following definitions shall apply to this Agreement at all times:

(a) “App” shall mean the mobile smartphone application or platform developed by Operator that connects passengers with Drivers/Vehicles, as reviewed and approved by the Port.

(b) “Designated Areas” shall mean loading zones that are available to the general public to pick-up and drop-off passengers at the Port of Galveston.

(c) “Driver” means any individual who has been approved by Operator to use a vehicle to transport passengers whose rides are arranged through the Operator’s online-enabled application. For purposes of this Agreement, the term “Driver” applies at all times that Driver is on Port property by reason of the driver’s relationship with the Operator, regardless of whether the Vehicle is carrying a passenger.

(d) “Vehicle” shall mean the vehicle used by a Driver.

NOW, THEREFORE, in consideration of the promises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. OPERATIONS

1.1. Designated Areas. The Port grants to Operator the right to allow Drivers affiliated with Operator to use, in common with others so authorized, the Designated Areas to
provide the Permitted Use (hereinafter defined), subject to the terms and conditions hereinafter set forth. Operator shall also inform Drivers of their obligation to comply with the Port’s Tariff and regulations (as amended from time to time), all applicable local, state, and federal laws, rules, ordinances, regulations, and procedures, including (but not limited to regulations promulgated by the United States Maritime Administration, the United States Transportation Security Administration, or successor agencies, governing conduct on, and operations at, the Port of Galveston. Upon request, Drivers shall allow Port personnel access to an electronic waybill (described in Section 3.4). Operator shall perform, or have a third party perform, criminal background checks on each Driver before said Driver begins offering services at the Port of Galveston. Nothing in this Agreement shall be construed as granting or creating any license or franchise rights pursuant to any federal, state, or local laws, rules or regulations. Operator’s rights to use the Designated Areas shall be on a non-exclusive basis at all times. All Drivers shall maintain personal insurance for their Vehicles in accordance with state financial responsibility requirements at all times.

1.2. Rights of Ingress and Egress. Drivers affiliated with Operator shall have the non-exclusive rights of ingress and egress across Port property to conduct their permitted operations hereunder, provided that such ingress and egress activity: (a) shall not impede or interfere, in any way, with the operation of the Port of Galveston by the Port or the use of the Port of Galveston by its tenants, passengers, or employees; (b) shall be on roadways, and other areas designated by the Port from time-to-time; and (c) may be temporarily suspended by the Port in the event of an emergency or a threat to the Port of Galveston during the time period of such emergency or threat.

1.3. Changes to the Port of Galveston. Operator acknowledges and agrees that: (a) the Port shall have the right, at all times, to change, alter, and expand the Port of Galveston, including the terminals, roadways, and designated pick-up, drop-off, and staging areas; and (b) the Port has made no representations, warranties, and/or covenants to Operator regarding the design, construction, passenger or automobile traffic, or views of the Port. Without limiting the generality of the foregoing, Operator acknowledges and agrees that: the Port of Galveston may from time to time undergo renovation, construction, and other modifications; and the Port may from time-to-time adopt rules and regulations relating to security or other operational matters that may affect Operator’s business.

1.4. “As-Is” Condition. Operator accepts the Designated Areas and the Port of Galveston in their present condition and “as-is,” without representation or warranty of any kind, and subject to all applicable laws, ordinances, rules, and regulations.

1.5. Requirements. During the term of this Agreement, Operator shall have a non-exclusive, revocable license solely to: (a) operate a transportation network business (subject to this Agreement and all applicable laws, rules, ordinances and regulations) at the Port of Galveston utilizing smart phone mobile application technology to connect passengers with pre-arranged transportation services for hire; (b) permit Drivers to access the Operator’s App in order to transport such passengers and their personal baggage to and/or from the Port of Galveston in Vehicles inspected and approved by Operator or a
certified mechanic; and (c) permit Drivers in providing rides matched through the Operator’s App to use common-use Port of Galveston roadways for ingress and egress to and from the Port of Galveston’s passenger terminals. Nothing herein shall be deemed to grant Operator any exclusive right or privilege.

1.6. **Geo-Fence.** Operator shall demonstrate to the Port that Operator has established a Geo-Fence to manage its airport business and shall notify affiliated Drivers about the Geo-Fence.

2. **TERM; COMMENCEMENT DATE; TERMINATION**

2.1. **Term.** This Agreement shall be effective on the Commencement Date and shall be in effect for a period of one (1). The term shall renew, upon written mutual agreement of the Parties, for additional terms of one (1) year each.

2.2. **Commencement Date.** This Agreement shall hereafter be effective, and the “Commencement Date” shall be deemed to occur, on the date on which all of the following conditions precedent are satisfied, in the Port’s sole judgment:

(a) The Port shall have received certificates evidencing that Operator has obtained all insurance required by this Agreement;

(b) Operator shall have implemented a virtual perimeter that encompasses the real-world geographic area comprised by the Port (“Geo-Fence”). Operator will use the Geo-Fence and other tools, as appropriate, to manage its business and comply with the terms of this Agreement.

(c) Each Driver will maintain information on his or her smartphone while using the App that will be used in lieu of a tangible Port of Galveston decal or transponder. This information will allow the Port to confirm the following information for any Driver or Vehicle using the App while on Airport grounds:

   (1) Driver identity and color photo;
   
   (2) Vehicle make, model;
   
   (3) License plate number;

   (4) Certificates of insurance; and

   (5) An electronic waybill that meets the criteria set forth in Section 3.4.

2.3. **Termination.** This Agreement will continue in force for the one (1) year term set out in Section 2.1 above, unless sooner terminated as hereinafter provided:
(a) The Port shall have the right to terminate this Agreement upon the occurrence of an Event of Default (hereinafter defined) if Operator has not cured such Event of Default within thirty (30) days' after written notice thereof from the Port; or

(b) Either party may terminate this Agreement, at any time, for any reason, if the requesting Party gives not less than thirty (30) days' prior written notice thereof to the other Party, and the other Party consents in writing to the termination within thirty (30) days of receiving the request.

3. USE

3.1. Permitted Use. Operator and Drivers may use the Designated Areas only for the uses specified in this Agreement (collectively, "Permitted Use") and for no other purpose and shall not conduct any activity or operations at the Port of Galveston not expressly authorized by this Agreement.

3.2. No Exclusivity. Operator acknowledges and agrees that it has no exclusive rights to conduct the business described herein, and that the Port has the right, at all times, to arrange with others for similar activities at the Port of Galveston.

3.3. Transportation Requirements. In conducting its operations consisting solely of the Permitted Use, without limiting the generality of other provisions of this Agreement, Operator shall inform Drivers of the terms of this Agreement and the following transportation requirements, as amended from time-to-time by Airport Authority:

(a) Each Driver shall maintain, within such driver's vehicle at all times while upon Port grounds, a digital decal as described in Section 2.2(c);

(b) Each Driver shall be allowed to pick-up passengers at the Port of Galveston at the Designated Area, and will be allowed to drop-off passengers at the Designated Area;

(c) Each Driver must be able to produce, upon the request of any police officer or other Port representative, an electronic waybill meeting the requirements of Section 3.4;

(d) Once a Driver has made contact with the passenger(s) with whom such driver was matched, the Driver shall promptly load such passenger(s); and

(e) Each Driver shall limit such driver's curbside time to the time required for the prompt loading and unloading of passengers, and after loading passengers, such Driver shall thereafter promptly depart from the Port of Galveston.

3.4. Waybills. In lieu of a physical waybill and as an explicit requirement of the Port under this Agreement, every passenger drop-off and pick-up shall be documented electronically immediately after the completion of the ride to which it relates. Drivers shall, upon request, present a waybill to any Port official for inspection.
3.5. **No Advertising or Promotions.** No Vehicle shall post or display, on the exterior thereof, any signage or other displays except for Operator’s name and/or logo (or the signage of other transportation network companies).

3.6. **General Prohibited Activities.** Without limiting any other provision herein, Operator shall not, without the Port’s prior written consent: (a) cause or permit anything to be done, in or about the Designated Areas or the Port of Galveston, or bring or keep anything thereon, which would be reasonably likely to (i) increase, in any way, the rate or cost of insurance on the Port of Galveston, (ii) create a nuisance, or (iii) obstruct or interfere with the rights of others at the Port of Galveston or injure or annoy them; (b) commit, or suffer to be committed, any waste upon the Designated Areas or the Port of Galveston; (c) use, or allow the Designated Areas to be used, for any improper, immoral, unlawful or reasonably objectionable purpose; (d) place any loads upon the floor, walls, or ceiling which endanger the structure or obstruct the sidewalk, passageways, stairways, or escalators, in front of, within, or adjacent to the Designated Areas or the roadways; (e) do, or permit to be done, anything, in any way, which would be reasonably likely to materially injure the reputation or image of the Port or appearance of the Port of Galveston, (f) violate federal, state or local laws, ordinances or regulations or (g) violate the Port’s Tariff.

3.7. **Other Prohibited Activities.** Without limiting the generality of other provisions of this Agreement, Operator will convey to Drivers that the following activities are prohibited by Drivers:

(a) Turning off or disabling the App when a Vehicle is on Port of Galveston property, unless the Driver is departing the Port after a drop-off;

(b) Allowing operation of a Vehicle on Port of Galveston roadways by an unauthorized driver;

(c) Transporting a passenger in an unauthorized vehicle;

(d) Picking-up or discharging passengers, or their baggage, at any location other than the Designated Areas;

(e) Failing to provide information, or providing false information, to police officers or other Port personnel;

(f) Displaying, to a Port official, a waybill in an altered or fictitious form;

(g) Soliciting passengers on Port of Galveston property;

(h) Using or possessing any alcoholic beverage while on duty;

(i) Failing to operate a Vehicle in a safe manner;

(j) Failing to comply with posted speed limits and traffic control signs;
(k) Using profane or vulgar language;

(l) Attempting to solicit payment in excess of that authorized by law;

(m) Soliciting for or on behalf of any hotel, club, nightclub, or other business;

(n) Soliciting of any activity prohibited by the applicable laws, rules, or regulations;

(o) Operating a Vehicle which is not in a safe mechanical condition or which lacks mandatory safety equipment;

(p) Disconnecting any pollution control equipment;

(q) Using or possessing any illegal drug or narcotic while on Port of Galveston property;

(r) Operating a vehicle without proper certification or at any time during which Operator's authority is suspended or revoked; and

(s) Engaging in any criminal activity.

3.8. **Representative of Operator.** Operator shall provide the Port with the name, address, telephone, and email address for at least one qualified representative authorized to represent and act for Operator in matters pertaining to its operation and shall keep the Port informed, in writing, of the identity of each such person.

4. **FEES; REPORTING; AND RECORDKEEPING**

4.1. **Defined Terms.** As used in this Agreement, the following capitalized terms shall have the following meanings:

(a) "Trip" means each instance in which a Driver affiliated with an Operator enters Port of Galveston property and makes one or more stops to pick-up or drop-off one or more passengers on Port of Galveston property.

(b) "Per Trip Fee" means an amount equal to Four Dollars ($4.00) per passenger pick-up and an amount equal to Four Dollars ($4.00) per passenger drop-off.

(c) "Monthly Fee" means the product of the following: (i) the number of Trips conducted by the Operator's Vehicles in one calendar month, and (ii) the Per Trip Fee then in effect.

4.2. **Payment Requirements and Reports.**

(a) Within thirty (30) days after the close of any calendar month, Operator shall submit its operations report to the Port for the previous calendar month (the "Monthly Report"). The Monthly Report shall be in an agreed-upon electronic format (as specified by the Port) and shall contain the total number of Trips for the reporting period. All such information shall be accurate at all times.
(b) Operator agrees to pay a Monthly Fee to the Port, which shall constitute a total of the Per Trip Fees assessed for each pick-up and drop-off in the relevant month. The Monthly Fee is due, in full, and received by the Port, within thirty (30) days after the close of any calendar month. All payments hereunder, including Monthly Fees, shall be paid at the office of the Port, or at such other place or manner as the Port may designate in writing.

(c) All payments hereunder, including Monthly Fees, shall be paid in lawful money of the United States of America, free from all claims, demands, setoffs, or counterclaims of any kind. Any payments hereunder, including Monthly Fees, not paid when due shall be subject to a service charge of one and one-half percent (1.5%) per month, or if lower, the maximum amount allowed by law.

4.3 Books and Records.

(a) Operator agrees to maintain and make available (in physical or electronic form) to the Port at Operator's place of business or a mutually agreed upon third party location, during regular business hours, accurate and detailed books and accounting records reflecting its performance of its obligations under this Agreement. Operator shall use either reasonable efforts to work towards maintaining such books and records in accordance with generally accepted accounting principles (“GAAP”) or shall actually maintain such books and records in accordance with GAAP, unless otherwise agreed to by the Port. Upon the Port's reasonable prior written request, which shall not occur more than twice per calendar year, Operator shall permit the Port to audit and examine such books and records relating to its performance of its obligations under Sections 4.1–4.2 of this Agreement at Operator's place of business or a mutually agreed upon third party location. Operator shall maintain such data and records in an accessible location and condition for a period of not less than five (5) years from the expiration of this Agreement or the last date of operations at the Port of Galveston, whichever is later.

(b) Should any examination, inspection and audit of Operator's books and records by the Port disclose an underpayment by Operator of the consideration due, Operator shall promptly pay the Port the amount of such underpayment. If said underpayment exceeds five percent (5%) of the consideration due, Operator shall reimburse the Port for all reasonable costs incurred in the conduct of such examination, inspection, and audit.

5. ASSIGNMENT

5.1 No Assignment. Operator shall not assign, encumber, or otherwise transfer, whether voluntarily or involuntarily or by operation of law, this Agreement, or any right hereunder, without the Port's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed (the term “Transfer” shall mean any such assignment, encumbrance, or transfer). The Port's consent to one Transfer shall not be deemed a consent to any subsequent Transfers. Any Transfer made without the Port's consent shall constitute a default hereunder and shall be voidable at the Port's election. Notwithstanding the above, Operator shall retain the right to transfer this Agreement, or any right hereunder, to an affiliate of Operator.
5.2. **Change of Control.** The sale or other transfer of a controlling percentage of the capital stock or membership interests of Operator, whether by merger, stock sale, or otherwise, or the sale or transfer of more than fifty percent (50%) of the value of the assets of Operator related to the operations hereunder, shall be deemed a Change of Control, not a Transfer, and shall not be subject to the restrictions in Section 5.1. The phrase “controlling percentage” means the ownership of, and the right to vote, stock, or interests possessing more than fifty percent (50%) of the total combined voting power of all classes of Operator's capital stock or interests issued, outstanding and entitled to vote for the election of directors.

6. **COMPLIANCE WITH LAWS**

At all times, Operator shall cause its use of the Port of Galveston and its operations under this Agreement to comply with all applicable laws, ordinances, orders, directives, rules, codes, regulations and decrees of federal, state, and local governmental entities and agencies, and their respective departments, agencies, authorities and boards (individually, a “Governmental Entity” or, collectively, “Governmental Entities”), and all grant assurances provided by the Port to any federal or state Governmental Entity in connection with the Port’s ownership or operation of the Port of Galveston, and all other applicable rules, regulations, policies, and procedures of the Port, as the same may be amended, modified or updated from time-to-time, including, but not limited to, those relating to health and safety, especially those pertaining to public safety such as safe driving practices, seat belts, and child seats/restraints. For purposes of this Agreement, the term “Governmental Entity” shall also mean and include, without limitation, the Port, the City of Galveston, the State of Texas, the U.S. Department of Transportation, the United States Maritime Administration, and the United States Transportation Security Administration.

7. **WAIVER; INSURANCE**

7.1. **Waiver.** Operator covenants and agrees that the Port shall not, at any time or to any extent whatsoever, be liable, responsible, or in any way accountable for any losses, liabilities, judgments, suits, claims, damages, costs, and expenses, of any kind or nature (collectively, “Losses”), which (a) at any time after the effective date of this Agreement may be suffered or sustained by Operator or any Driver arising out of Operator's operations, or (b) are caused, in whole or in part, by any act or omission (whether negligent, non-negligent, or otherwise) of Operator or any Driver. This waiver shall not extend to such Losses caused in whole or in part by any act, omission, or negligence of the Port or its employees, officers, directors, contractors, or agents, including Losses caused by the sole gross negligence or willful misconduct of the Port.

7.2. **Insurance.** Operator shall procure and maintain, at its sole cost and expense and at all times during the term of this Agreement, insurance of the kind and in the amount hereinafter provided, by financially responsible and qualified companies eligible to do business in the State of Texas, or the Texas Department of Insurance approved eligible surplus lines insurer, covering all operations under this Agreement (including those of
Drivers). Prior to the Commencement Date, Operator shall provide a certificate of insurance to the Port showing that Operator has complied with the obligations of this Section. The certificate of insurance required of this Section shall provide an obligation that the insurer provide the certificate holder (the Port) with at least thirty (30) days prior written notice of cancellation. The Port shall be an additional insured under each insurance policy insuring or covering Operator’s and/or Operator’s Drivers operations at the Port of Galveston. The following insurance coverages are required to be provided by Operator under this Agreement:

(a) Commercial Automobile Liability Insurance with limits of not less than One Million Dollars ($1,000,000) for each accident for third party bodily injury and property damage. This coverage applies to Vehicles operated by Drivers while:

i. The Driver is located on Port of Galveston premises during the course of providing an accepted trip including the picking-up and dropping-off of passenger(s);

ii. The Driver is located on Port of Galveston premises immediately following the conclusion of a requested trip and while in the course of exiting Port of Galveston premises; and

iii. The Driver has logged into the App controlled by the Operator and is “available to receive requests” for transportation services from passengers using the App and the Driver is located on Port of Galveston premises.

“Available to receive requests” means the App is in a state such that an applicable request would be transmitted to the Driver’s smartphone for acceptance by the Driver. This policy shall not apply to rides originating in New York City where Drivers are professionally licensed and carry insurance in amounts mandated by the Taxi and Limousine Commission (“TLC”).

(b) Commercial General Liability Insurance of not less than One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) in the aggregate, insuring the Operator from liability from bodily injury (including wrongful death), personal injury, and damage to property resulting from the performance of this Agreement by Operator.

All Vehicles must be included under Operator’s Commercial Automobile Liability Policy or covered by a blanket coverage form or endorsement; and all employees of Operator must be covered under Operator’s General Liability policy. The limits of the foregoing insurance shall not, in any way, limit the liability of Operator under the terms of this Agreement. In addition, the foregoing insurance policies are primary insurance to any other insurance held by the Port with respect to obligations assumed by Operator under this Agreement.

7.3. Notice. Each Party hereto shall give to the other Party, prompt and timely written notice of any loss arising out of this Agreement, meaning any and all losses, liabilities, judgments, suits, claims, damages, costs, and expenses (including reasonable attorney’s fees, investigation costs, remediation costs, and court costs), of any kind or nature, coming to its knowledge which in any way, directly or indirectly, contingently or otherwise, affects
or might affect either, and each shall have the right to participate in the defense of the same to the extent of its own interest.

7.4 Confidentiality of Records. Any information that Operator makes available to the Port pursuant to this Agreement is deemed to be confidential and proprietary information ("Operator’s confidential information"), regardless of whether the records are marked as such, and shall not be disclosed to anyone without Operator’s express written permission unless required to be disclosed by applicable law or a court order, including without limitation the Texas Public Information Act, provided that the Port notifies Operator of such requirement promptly prior to disclosure, and provided further that the Port makes diligent efforts to limit disclosure pursuant to any available bases set forth in the Texas Public Information Act or other applicable law. If the Port determines that it must disclose such information, then the Port will provide Operator five (5) business days prior to the proposed disclosure such that Operator may seek court intervention concerning the potential disclosure of Operator’s confidential information. If the Port is required to release Operator’s confidential information, it nevertheless shall use any available authorities to redact personal or business confidential information from such records to the extent consistent with applicable law and the final judgment.

8. DEFAULT; REMEDIES

8.1. Event of Default. The occurrence of any one or more of the following events shall constitute a breach of this Agreement and an "Event of Default":

(a) Operator shall fail, duly and punctually, to pay Monthly Fees (or to submit any Monthly Report), or to make any other payment required hereunder, when due to the Port, and such failure shall continue beyond the date specified in a written notice of such breach or default from the Port, which date shall be no earlier than the tenth (10th) business day after the effective date of such notice;

(b) A Transfer occurs without the prior approval of the Port as set forth in section 5.1;

(c) Operator fails to obtain and maintain the insurance required hereunder, or to provide copies of the insurance certificates to the Port as required herein; or

(d) Operator fails to keep, perform, and observe each and every other promise, covenant, and agreement set forth in this Agreement, and such failure continues for a period of more than thirty (30) days after delivery by the Port of a written notice thereof.

8.2. Remedies. Upon the occurrence and during the continuance of an Event of Default, the Port shall have the following rights and remedies in addition to any and all other rights and remedies available to the Port under this Agreement, at law, or in equity: (a) the Port may elect to terminate this Agreement; and (b) nothing herein shall be deemed to limit the Port’s right to terminate this Agreement as provided in Section 2.
8.3. **Cumulative Rights.** The exercise by the Port of any remedy provided in this Agreement shall be cumulative and shall in no way affect any other remedy available to the Port under law or in equity.

8.4. **Fines/Penalties.** By operating on the Port of Galveston, Operator and Drivers affiliated with Operator shall be subject to applicable laws, ordinances, rules and regulations including any fines or penalties in connection therewith. The Port shall have no obligation to Operator to impose fines on, or otherwise take action against, any other person or entity at the Port of Galveston.

9. **GOVERNMENTAL PROVISIONS**

9.1. **No Representations.** Operator acknowledges and agrees that neither the Port, nor any person on behalf of the Port, has made, and the Port hereby disclaims, any representations or warranties, express or implied, regarding the business venture proposed by Operator at the Port of Galveston, including any statements relating to the potential success or profitability of such venture. Operator represents and warrants that it has made an independent investigation of all aspects of the business venture contemplated by this Agreement.

9.2. **Limitation on Damages.** Notwithstanding anything in this Agreement to the contrary, in no event will either party be liable to the other party for any consequential, incidental, or special damages, or lost revenues or lost profits.

10. **GENERAL PROVISIONS**

10.1. **Notices.** Except as otherwise specifically provided in this Agreement, any notice, demand, or other correspondence given under this Agreement shall be in writing and given by prepaid certified mail (return receipt requested), or reputable overnight courier (such as Federal Express), to: (a) Operator at its Notice Address; or (b) the Port at its Notice Address; or (c) such other address as either Operator or the Port may designate as its new address for such purpose by notice given to the other in accordance with this Section. Any notice hereunder shall be deemed to have been given and received, and effective, two (2) days after the date when it is mailed. For convenience of the Parties, copies of notices may also be given by facsimile or electronic mail; however, neither Party may give official or binding notice by facsimile or electronic mail.

**Operator’s Notice Address:** Lyft, Inc.  
c/o Bakari Brock  
185 Berry Street, Suite 5000  
San Francisco, CA 94107  
w/ Copy to Legal Department  
w/ electronic copy to legalnotices@lyft.com
10.2. **Waiver of Performance.** The waiver by either Party of performance of any provisions of this Agreement shall not constitute a future waiver of performance of such provisions.

10.3. **Entire Agreement.** The Parties intend that this Agreement shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous written or oral agreements or understandings. The Parties further intend that this Agreement shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts hereof and changes therefrom) may be introduced in any judicial, administrative, or other legal proceeding involving this Agreement.

10.4. **Amendments.** Except as specifically provided herein, amendments to this Agreement require written agreement of the Parties. Notwithstanding the foregoing, if a Governmental Entity requires modifications or changes to this Agreement as a condition precedent to the granting of funds for the improvement of the Port of Galveston, Operator shall agree to make such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required.

10.5. **Interpretation.** The headings and captions of this Agreement have been inserted for convenience of reference only, and such captions or headings shall in no way define or limit the scope or intent of any provision of this Agreement. This Agreement has been negotiated at arm’s length and between persons sophisticated and knowledgeable in the matters dealt with herein, and shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Agreement.

10.6. **Successors and Assigns.** Subject to the provisions of Section 5, the terms and conditions contained in this Agreement shall bind and inure to the benefit of Operator and the Port, and, except as otherwise provided herein, to their personal representatives and successors and assigns.

10.7. **Severability.** If any provision of this Agreement or the application thereof to any person, entity, or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each other provision of this Agreement shall be valid and be enforceable to the full extent permitted by law.
10.8. **Governing Law.** This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of Texas, without regard to conflict of law principles which would apply the law of any other jurisdiction. Any dispute arising out of this Agreement, including, but not limited to, any issues relating to the existence, validity, formation, interpretation, or breach of this Agreement, shall be brought and litigated exclusively in a state district court located in Galveston, Texas; and the Parties consent to the exclusive jurisdiction thereof.

10.9. **Authority.** Operator represents and warrants that Operator is a duly authorized and existing entity, that Operator has and is duly qualified to do business in Texas, that Operator has full right and authority to enter into this Agreement, and that each and all of the persons signing on behalf of Operator are authorized to do so. Upon the Port’s request, Operator shall provide the Port with evidence reasonably satisfactory to the Port confirming the foregoing representations and warranties.

10.10. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

**IN WITNESS WHEREOF,** the Parties have caused their respective duly authorized representatives to execute this Agreement on ________________, 2020.

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**BOARD OF TRUSTEES OF THE GALVESTON WHARVES**

**LYFT, INC.**

By: ________________________________
Printed: Rodger Rees
Title: Port Director/CEO

By: ________________________________
Printed: Bakari Brock
Title: Sr. Director, Business Operations
Memorandum of Agreement
Between Port of Galveston & Rasier, LLC

This Memorandum of Agreement ("Agreement"), is made and entered into by and between the Board of Trustees of the Galveston Wharves, also known as the Port of Galveston ("Port") and Rasier, LLC, a limited liability company organized and existing under the laws of the state of Delaware ("TNC").

Recitals: In a good faith effort to provide transportation network company service to the passenger facilities operated by Port at the Port of Galveston in Galveston, Texas (the "Port of Galveston"), the Port and TNC agree to execute this Agreement to grant TNC the ability to offer its mobile application ("app") at the Port of Galveston and authorize TNC drivers the right and privilege to provide on-demand transportation services using TNC's app at the Port of Galveston.

Agreement: For good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. Upon execution of this Agreement and obtaining a Port User Permit, including providing the Port with payment therefor, TNC will be authorized to conduct business at the Port of Galveston. This Agreement shall be in effect for a period of one (1) year thereafter. The term shall then renew, upon written mutual agreement of the parties, for additional terms of one (1) year each. TNC shall renew its Port User Permit on an annual basis for the term of this Agreement.

2. TNC shall pay to the Port, for the privilege of operating at the Port, an amount equal to FOUR DOLLARS ($4.00) per passenger pick-up and an amount equal to FOUR DOLLARS ($4.00) per passenger drop-off anywhere inside the Geo-Fence ("Per Trp Fee"). The "Geo-Fence" is the boundary is shown on Exhibit A attached hereto. Payment of the Per Trip Fee for the preceding month shall be made to the Port no later than the twentieth (20th) day of the following calendar month. For purposes of this Agreement, a "month" will be considered to begin on the first (1st) day of each calendar month and will conclude on the final day of that calendar month. If the Agreement is executed and operation begins on some day other than the first day of a calendar month, the first payment of the Per Trip Fee only shall be prorated from the start date of operations under this Agreement through the final day of that calendar month.

3. TNC acknowledges and agrees that: (a) the Port shall have the right, at all times, to change, alter, and expand Port property at the Port of Galveston, including the terminals, roadways, and designated pick-up, drop-off, and staging areas; and (b) the Port has made no representations, warranties, and/or covenants regarding the design, construction, passenger or automobile traffic, or views of the Port. Without limiting the generality of the foregoing, TNC acknowledges and agrees that (1) the Port may from time-to-time undergo renovation, construction, and other Port modifications and (2) the Port may from time-to-time adopt or modify provision of its Tariff and/or other rules and
4. TNC shall, no later than the fifteenth (15th) day of each calendar month, submit to the Port a report detailing the total number of pick-ups and drop-offs made at the Port in the preceding calendar month (the “TNC Activity Report”). Upon Port's reasonable request, Port shall have the right to audit such TNC activity records directly relating to the TNC Activity Report and TNC's performance under this Agreement no more than twice per year at an agreed-upon location in Galveston County, Texas.

5. TNC shall comply with and shall inform its affiliated TNC drivers of their obligation to comply with the Port's Tariff and regulations (as they may also be published or modified in the future), and all applicable local, state, and federal laws, rules, ordinances, and regulations, including (but not limited to) regulations promulgated by the United States Maritime Administration, and the United States Transportation Security Administration governing conduct on, and operations at, the Port of Galveston.

6. All TNC drivers and vehicles, upon entering Port property and during transport of a passenger, shall be covered by auto liability insurance with limits of no less than $1,000,000 combined single limit for death, bodily injury, and property damage. Port shall be an additional insured under the auto liability policy maintained by TNC.

7. Each TNC driver will maintain, on his or her smartphone, a “digital decal” while using the app on Port of Galveston property that will be used to substitute for a tangible Port transponder. The digital decal will allow the Port, at any and all times, to confirm the following information for any TNC driver using the app while operating at the Port of Galveston:
   a) TNC driver identity and color photo;
   b) Vehicle make and model;
   c) License plate number;
   d) Certificates of insurance in accordance with State Law;
   e) An electronic waybill.

8. No TNC vehicle shall stage prior to receiving a trip request on Port of Galveston property. TNC vehicles shall only enter Port of Galveston property in the course of a drop off or upon notification of imminently arriving rider(s) for pick-up.

9. Without limiting the generality of other provisions of this Agreement, the following activities are prohibited by TNC drivers:
   a) Turning off or disabling the app when a TNC vehicle is on Port of Galveston property, unless the TNC driver is departing the Port of Galveston after a drop-off;
   b) Allowing operation of a TNC vehicle on Port of Galveston roadways by an unauthorized driver;
   c) Transporting a passenger in an unauthorized vehicle;
   d) Picking-up or discharging passengers, or their baggage, at any location other than the TNC passenger pick-up area(s);
e) Failing to provide information, or providing false information, to police officers or Port personnel;
f) Displaying, to a Port official, a waybill or digital decal in an altered or fictitious form;
g) Soliciting passengers not through the online application on Port of Galveston property;
h) Using or possessing any alcoholic beverage while on duty;
i) Failing to operate a vehicle in a safe manner;
j) Failing to comply with posted speed limits and traffic control signs;
k) Using profane or vulgar language;
l) Attempting to solicit payment in excess of that authorized by law;
m) Soliciting for or on behalf of any hotel, club, nightclub, or other business;
n) Soliciting of any activity prohibited by the applicable laws, rules, or regulations;
o) Operating a vehicle which is not in a safe mechanical condition or which lacks mandatory safety equipment;
p) Disconnecting any pollution control equipment;
q) Using or possessing any illegal drug or narcotic while on Port property;
r) Operating a vehicle without proper certification or at any time during which TNC’s authority is suspended or revoked; and
s) Engaging in any criminal activity.

10. TNC shall provide the Port with the name, address, telephone, and email address for at least one qualified representative authorized to represent and act for TNC in matters pertaining to its operation and shall keep the Port informed, in writing, of the identity of each such person.

11. This Agreement will continue in force until terminated as hereinafter provided:

a) The Port shall have the right to terminate this Agreement upon the occurrence of an Event of Default (hereinafter defined) if Operator has not cured such Event of Default within thirty (30) days’ after written notice thereof from the Port; or

b) Either party may terminate this Agreement, at any time, for any reason, if the requesting Party gives not less than thirty (30) days’ prior written notice thereof to the other Party, and the other Party consents in writing to the termination within thirty (30) days of receiving the request.

12. The occurrence of any one or more of the following events shall constitute a breach of this Agreement and an “Event of Default”:
a) Operator shall fail, duly and punctually, to pay Monthly Fees (or to submit any Monthly Report), or to make any other payment required hereunder, when due to the Port, and such failure shall continue beyond the date specified in a written notice of such breach or default from the Port, which date shall be no earlier than the tenth (10th) business day after the effective date of such notice;

b) A Transfer occurs without the prior approval of the Port as set forth in section 5.1;

c) Operator fails to obtain and maintain the insurance required hereunder, or to provide copies of the insurance certificates to the Port as required herein; or

d) Operator fails to keep, perform, and observe each and every other promise, covenant, and agreement set forth in this Agreement, and such failure continues for a period of more than thirty (30) days after delivery by the Port of a written notice thereof.

13. Any information that TNC makes available to Port pursuant to this Agreement is deemed to be confidential and proprietary information ("TNC's confidential information"), regardless of whether the records are marked as such, and shall not be disclosed to anyone without TNC's express written permission unless required to be disclosed by applicable law or a court order; including without limitation the public records laws, provided that Port notifies TNC of such requirement at least five (5) days prior to disclosure and allows TNC reasonable opportunity to object to production, and provided further that Port makes diligent efforts to limit disclosure pursuant to any available bases set forth in the Texas Public Information Act, Tex. Govt. Code § 552.001 et seq, or other applicable law. If Port is required to release TNC's confidential information, it nevertheless shall, if authorized by law, redact personal or business confidential information from such records to the extent consistent with applicable law and the final judgment.

14. This Agreement is made under and shall be governed by the laws of the State of Texas, without regard to conflicts of laws principles which would apply the law of any other jurisdiction. Venue for any dispute arising out of or concerning this Agreement, either administrative or judicial, shall be proper and lie exclusively in Galveston, Texas.

15. This Agreement is the complete agreement of the parties hereto and may not be modified or amended except by a written modification signed by the Port and TNC.

IN WITNESS WHEREOF, Port has caused this Agreement to be executed by its Port Director, and TNC has caused the same to be executed by its appropriate and authorized officer effected as of this _____ day of January, 2020.
BOARD OF TRUSTEES OF
THE GALVESTON WHARVES:

By: ____________________________ Date: ____________________________
Printed Name: Rodger E. Rees
Title: Port Director/CEO

Rasier, LLC:

By: ____________________________ Date: ____________________________
Printed Name: ____________________________
Title: ____________________________