



Public Hearing
MINUTES OF MEETING
February 4, 2019

PUBLIC HEARING – February 4, 2019

LEGISLATIVE CHAMBERS, 5TH FLOOR, HAZLETT BUILDING, ELMIRA, NY

6:50 P.M. - Public Hearing in relation to the proposed renewal of a one-year agreement with Lyft, Inc. for the operation of a transportation network business at the Elmira Corning Regional Airport at a cost of \$2.00 to be paid by Lyft, Inc. for each pre-arranged pickup at the Airport.

Legislature was called to order by the Chairman of the Chemung County Legislature. The following members were present when the Clerk called roll:

| | | | |
|--|--|---|--|
| Pastrick <input checked="" type="checkbox"/> | Manchester <input checked="" type="checkbox"/> | Sweet <input checked="" type="checkbox"/> | Brennan <input checked="" type="checkbox"/> |
| Margeson <input checked="" type="checkbox"/> | Hyland <input checked="" type="checkbox"/> | Sonsire <input checked="" type="checkbox"/> | Woodard <input checked="" type="checkbox"/> |
| Burin <input checked="" type="checkbox"/> | Chalk <input checked="" type="checkbox"/> | Briggs <input checked="" type="checkbox"/> | McCarthy <input checked="" type="checkbox"/> |
| Drake <input checked="" type="checkbox"/> | Smith <input checked="" type="checkbox"/> | Strange <input checked="" type="checkbox"/> | |

A public hearing was held by the Chemung County Legislature for the above-referenced purpose. The hearing was held in the Legislative Chambers and was called to order by the Chair of the Legislature, and he turned the meeting over to the Attorney for the Legislature who served as the Hearing Officer.

The Hearing Officer read the Notice of Public Hearing, advised the public of the rules governing a public hearing, and asked if anyone wished to speak. He requested that the record show no one appeared for this matter.

Having determined that everyone who wished to be heard had there and then been heard, the public hearing was declared closed at 6:55 p.m.

OPERATING AGREEMENT

THIS OPERATING AGREEMENT (the "Agreement") is hereby made and entered into on, by and between Lyft, Inc., ("Operator*"), and the County of Chemung, New York ("Chemung County"). Operator and Chemung County are sometimes hereinafter referred to individual as a "Party" or collectively as the "Parties".

WHEREAS, Chemung County is the owner and operator of the Elmira Coming Regional Airport (the "Airport") located in Chemung County, New York;

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

WHEREAS, Chemung County has agreed to allow the Operator to conduct its business at the Airport, 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 Chemung County.
- (b) "Designated Areas" shall mean loading zones that are available to the general public to drop off passengers at the Airport
- (c) "Designated Pick-Up Area" shall mean the area designated by Chemung County for Drivers to pick up passengers at the Airport. This area will be marked by signage and is shown on the attached map of the Airport. The Designated Pick-Up Area is one of the Airport's Designated Areas.
- (d) "Driver" or "Drivers" 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 Airport property by reason of the driver's relationship with the Operator, regardless of whether the Vehicle is carrying a passenger.
- (e) "Vehicle" shall mean the vehicle used by a Driver.

NOW, THEREFORE, in consideration of the premises, 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 - Chemung County 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 the relevant rules and guidelines. Upon request, Drivers shall allow Chemung County personnel access to electronic waybill information (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 Airport 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 Airport 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 Airport by Chemung County or the use of the Airport by its tenants, passengers or employees;
- (b) shall be on roadways, and other areas designated by Chemung County from time to time; and
- (c) may be temporarily suspended by Chemung County in the event of an emergency or a threat to the Airport during the time period of such emergency or threat

1.3. Changes to Airport - Operator acknowledges and agrees that:

- (a) Chemung County shall have the right, at all times, to change, after and expand the Airport including the terminals, roadways and designated pick-up, drop-off and staging areas; and
- (b) Chemung County has made no representations, warranties and/or covenants to Operator regarding the design, construction, passenger or automobile traffic, or views of the Airport. Without limiting the generality of the foregoing, Operator acknowledges and agrees that
- (c) the Airport may from time to time undergo renovation, construction and other Airport modifications; and
- (d) Chemung County 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 Airport 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 Airport 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 Airport 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 Airport roadways for ingress and egress to and from the Airport's passenger terminal. Nothing herein shall be deemed to grant Operator any exclusive right or privilege.

1.6. Geo-Fence - Operator shall demonstrate to Chemung County that Operator has established a Geo-Fence (hereinafter defined) 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) year thereafter (the Term").

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 Chemung County's sole judgment

- (a) Chemung County 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
- (c) geographic area comprised by the Airport and has boundaries that are acceptable to Chemung County ("Geo-Fence"). Operator will use the Geo-Fence and other tools, as appropriate, to manage its airport business and comply with the terms of this Agreement.
- (d) Each Driver has maintained information on his or her smartphone while using the App that
- (e) will be used in lieu of a tangible Airport decal or transponder. This information will allow the
- (f) Airport to confirm the following information for any Driver or Vehicle using the App while on
- (g) Airport grounds:
 - (1) Driver identity and color photo;
 - (2) Vehicle make, model;
 - (3) License plate number;
 - (4) Certificates of insurance; and
 - (5) The electronic equivalent of a waybill that meets the criteria set forth in Section 3.4.

2.3. Termination - This Agreement will continue in force until the end of the Term unless terminated as hereinafter provided:

- (a) Chemung County 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 Chemung County, except in the instance of an Event of Default caused by the failure to obtain and/or maintain the requisite insurance in which case the Agreement is terminated immediately upon written notice; 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 Airport 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 Chemung County has the right, at all times, to arrange with others for similar activities at the Airport

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 Chemung County;

- (a) Each Driver shall maintain, within such driver's vehicle at all times while upon Airport grounds, a digital decal as described in Section 2.2(c);
- (b) Each Driver shall be allowed to pick-up passengers at the Airport at the Designated Pick-Up 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 Chemung County representative, the electronic equivalent of a waybill meeting the requirements of Section 3.4;
- (d) Once a Driver has made contact with the passengers) with whom such driver was matched, the Driver shall promptly load such passengers); 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 Airport; and
- (f) Each Driver must be properly licensed.

3.4. Waybills - In lieu of a physical waybill and as an explicit requirement of Chemung County under this Agreement, every passenger pick-up shall be documented electronically immediately after the completion of the ride to which it relates. Drivers shall, upon request, present the electronic equivalent of a requested waybill to any Chemung County 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 Chemung County's prior written consent

- (a) cause or permit anything to be done, in or about the Designated Areas or the Airport, or bring or keep anything thereon, which would be reasonably likely to
 - i. increase, in any way, the rate of fire insurance on the Airport,
 - ii. create a nuisance, or
 - iii. obstruct or interfere with the rights of others on the Airport or injure or annoy them;
- (b) commit, or suffer to be committed, any waste upon the Designated Areas or the Airport;
- (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; or
- (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 Chemung County or appearance of the Airport.

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 Airport property, unless the Driver is departing the Airport after a drop-off;

- (b) Allowing operation of a Vehicle on Airport roadways by an unauthorized driver,
- (c) Transporting a passenger in an unauthorized vehicle;
- (d) Picking-up passengers, or their baggage, at any location other than the Designated Pick-Up Area or discharging passengers, or their baggage, at any location other than a Designated Area;
- (e) (Failing to provide information, or providing false information, to police officers or Airport personnel;
- (f) Displaying, to an Airport official, a waybill in an altered or fictitious form;
- (g) Soliciting passengers on Airport 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 duty or on Airport 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 Chemung County with name, address, telephone and email address for at least one qualified representative authorized to represent and act for Operator in matters pertaining to its operations at the Airport, and shall Keep Chemung County informed, in writing of the identity of each such person.

3.9. Operator's Responsibility for Driver Violations – Upon notice from the Chemung County that a driver has committed a violation of Section 3.6 or 3.7 that endangers public safety or has committed more than one violation on separate instances. Operator shall take reasonable remedial action and promptly inform Chemung County of the remedial action taken. It shall be considered a material breach of this Agreement should the driver repeatedly engage in the prohibited activities listed in Sections 3.6 and 3.7.

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 Airport property and picks up one or more passengers on Airport property
- (b) Per Trip Fee – means a fee of \$2.00 for each Trip
- (c) Monthly Fee – means the product of the following:
 - i. The number of Trips conducted by the Operator's Vehicles in one calendar month
 - 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 certified operations report to Chemung County for the previous calendar month (the

“Monthly Report”). The Monthly Report shall be in an agreed-upon electronic or paper format (as specified by Chemung County), 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 Chemung County, which shall constitute a total of the Per Trip Fees assessed for each pick-up in the relevant month. The monthly Fee is due, in full, and received by the Chemung County, 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 Chemung County, or at such other place or manner as Chemung County 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 Chemung County 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 Section 4.1-4.2 of this agreement. Operator shall use either reasonable efforts to work toward maintaining such books and records in accordance with generally accepted accounting principles (“GAAP”), or shall actually maintain in accordance with GAAP, unless otherwise agreed to by the Chemung County. Upon Chemung County’s reasonable prior written request, which shall not occur more than twice per calendar year, Operator shall permit the Chemung County 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 Airport whichever is later.
- (b) Should any examination, inspection and audit of Operator’s books and records by the Chemung County disclose an underpayment by Operator of the consideration due, Operator shall promptly pay Chemung County the amount of such underpayment if said underpayment exceeds five percent (5%) of the consideration due, Operator shall reimburse the Chemung County 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 Chemung County’s prior written consent, which consent may be granted or denied in Chemung County’s sole and absolute discretion (the term Transfer" shall mean any such assignment encumbrance, or transfer). Chemung County’s consent to one Transfer shall not be deemed a consent to any subsequent Transfers. Any Transfer made without Chemung Count/s consent shall constitute a default hereunder and shall be voidable at Chemung County’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 AND RULES AND REGULATIONS

6.1 Compliance with Laws.

- (a) At all times, Operator shall cause its use of the Airport 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 Chemung County to any federal or state Governmental Entity in connection with the Chemung County's ownership or operation of the Airport, and all other applicable rules, regulations, policies, and procedures of Chemung County, 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, Chemung County, State of New York, U.S. Department of Transportation, Federal Aviation Administration, and Transportation Security Administration.
- (b) Operator understands and acknowledges that Chemung County has given to the United States of America, acting by and through the Federal Aviation Administration, certain assurances with respect to nondiscrimination, which have been required by Title VI of the Civil Rights Act of 1964, as effectuated by Title 49 of the Code of Federal Regulations, Subtitle A - Office of the Secretary of Transportation, Part 21, as amended, as a condition precedent to the government making grants in aid to Chemung County for certain Airport programs and activities, and that Chemung County is required under said Regulations to include in every agreement or concession pursuant to which any person or persons other than Chemung County, operates or has the right to operate any facility on the Airport providing services to the public, the following covenant, to which Operator agrees, as follows: " Operator, in its operation at and use of [Airport], covenants that
 - i. no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities;
 - ii. that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and

- iii. that the grantee, licensee, permittee, etc., shall comply with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Subtitle A, Office of the Secretary of Transportation, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation Effectuations of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.”
- (c) Operator agrees to furnish its services on a fair, equal and not unjustly discriminatory basis to all users thereof and to charge fair, reasonable, and not unjustly discriminatory prices for each unit or service; provided that Operator may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- (d) Operator hereby agrees not to discriminate against any employee or applicant for employment, with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment, because of race, color religion, national origin, age, sex, height, weight or marital status or because of a handicap that's unrelated to the individual's ability to perform the duties of a particular job or position.
- (e) Operator shall comply with and shall advise Drivers that they must comply with all applicable provisions of the Americans with Disabilities Act (“ ADA“) and Section 504 of the Rehabilitation Act of 1973, 29 U.S .C. § 701 (“ Rehabilitation Act”), and all applicable regulations promulgated thereunder, as the ADA, the Rehabilitation Act, and regulations related thereto may be amended from time to time.
- (f) As a condition of accepting and executing this Agreement. Operator shall comply with all provisions of Title VI of the Civil Rights Act of 1964, Executive Order No. 12250 of the President of the United States, and all regulations promulgated thereunder, as the Act and regulations may be amended from time to time, which are applicable (a) to Operator, (b) to the benefits, services, activities and programs provided in connection with this Agreement, (c) to the Chemung County, and (d) to the benefits, services, activities and programs of the Chemung County, and if any funds under this Agreement are provided by the federal government which are applicable to the federal government and its benefits, services, activities and programs. Without limiting the applicability of the preceding sentence, Operator shall comply with 45 Code of Federal Regulations Part 80 et seq. and all other regulations promulgated under Title VI of the Civil Rights Act of 1964, if applicable, as they may be amended from time to time, which are applicable to the benefits, services, programs and activities provided by the Chemung County through contracts with outside contractors.
- (g) In the event of breach of any of the above covenants, the Chemung County shall have the right to terminate the Agreement It is further understood and agreed that the Chemung County shall have the right to take such action as the Federal Government may lawfully direct to enforce these obligations.

6.2 Other Rules and Regulations - Operator agrees to observe and obey all reasonable rules and regulations promulgated from time to time by the Department of Transportation, the Federal Aviation Administration, the County of Chemung and the Elmira/Coming Regional Airport, governing the conduct and operation of the Airport and its facilities. Chemung County agrees that any rules and regulations promulgated by the County of Chemung or the Elmira/Coming Regional Airport shall not be inconsistent with any legally authorized rule or regulation of the Department of Transportation or of the Federal Aviation Administration. Operator will be advised of and provided copies of any rules and regulations adopted by Chemung County affecting Operator's operation at the Airport

7. WAIVER: INSURANCE: INDEMNIFICATION

7.1. Waiver - Operator covenants and agrees that Chemung County 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 Chemung County or its employees, officers, directors, contractors or agents, including Losses caused by the sole gross negligence or willful misconduct of Chemung County.

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 New York, or the New York 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 Chemung County, in a form acceptable to Chemung County, 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 (Chemung County) with at least thirty (30) days prior written notice of cancellation. 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 Two Hundred Fifty Thousand Dollars (\$1,250,000) 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 the airport premises during the course of providing an accepted trip including the picking-up and dropping-off of passengers);
 - ii. The Driver is located on the airport premises immediately following the conclusion of a requested trip and while in the course of exiting die airport 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 the airport 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
- (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 Chemung County 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 Chemung County 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 public records laws, provided that Chemung County notifies Operator of such requirement promptly prior to disclosure, and provided further that Chemung County makes diligent efforts to limit disclosure pursuant to any available bases set forth in the New York Freedom of Information Act or other applicable law. If the Chemung County determines that it must disclose such information, then the Chemung County will provide Operator ten (10) business days prior to the proposed disclosure such that Operator may seek court intervention concerning the potential disclosure of Operator's confidential information. If Chemung County 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.

7.5 Indemnification.

- (a) Operator agrees to indemnify, defend and hold harmless the Chemung County, its officers, officials, directors, agents, employees and representatives from and against any and all claims, suits, actions, liabilities, damages and/or expenses paid or payable to a third party (including, without limitation, legal fees and court costs), in each case brought by a third party, relating to any and all bodily injury (including death) and/or damage to property, arising in whole or in part from any act or omission of Operator and its employees, Drivers, agents and contractors in connection with:
- i. Operator's performance or exercise of this Agreement and rights granted under this Agreement
 - ii. an intentional act or a grossly negligent act or omission of any of Operator's officers, Drivers, agents, contractors and employees, related to this Agreement;
 - iii. the failure of Operator to comply with any applicable laws, ordinances, rules or regulations related to this Agreement; or
 - iv. any breach or default by Operator of any of its obligations under this Agreement.
- Notwithstanding the foregoing, Operator shall have no obligation under this Section for claims solely arising out of or related to the Chemung County's or its officers', officials', directors', agents', employees' or representatives' negligent acts or willful misconduct. Operator's obligations set forth in this Section are not and shall not be limited to the provision of any insurance policy maintained on behalf of Operator and/or any applicable law.
- (b) If any claim is brought against the Chemung County, its officers, officials, directors, agents, employees and representatives for which Operator has indemnified the Chemung County, Operator shall, upon written notice from the Chemung County, resist or defend such claims by use of counsel approved by the Chemung County, provided such approval shall not be unreasonably withheld, and provided that the Chemung County's approval of counsel will not be required where the claim is resisted or defended by counsel of an insurance carrier obligated to resist or defend such claim and provided further that the Chemung County may engage its own

counsel to participate in the defense of any such claim and the Operator will reimburse the Chemung County's reasonable costs therefor if the Chemung County believes in its sole discretion that applicable insurance may be insufficient to satisfy the claim.

- (c) The provisions of this indemnification Section, as they apply to occurrences or actual or contingent liabilities arising during the Term of this Agreement, shall survive the expiration or earlier termination of this Agreement
- (d) Nothing contained in this Agreement shall be construed as a waiver by the Chemung County nor as a limitation on the rights and defenses available to the Chemung County under law.

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 Chemung County, and such failure shall continue beyond the date specified in a written notice of such breach or default from Chemung County, which date shall be no earlier than the tenth (10**) business day after the effective date of such notice;
- (b) A Transfer occurs without the prior approval of the Chemung County 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 Chemung County 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 Chemung County of a written notice thereof

8.2. Remedies - Upon the occurrence and during the continuance of an Event of Default, Chemung County shall have the following rights and remedies in addition to any and all other rights and remedies available to the Chemung County under this Agreement at law, or in equity: (a) Chemung County may elect to terminate this Agreement; and (b) nothing herein shall be deemed to limit Chemung County's right to terminate this Agreement as provided in Section 2.

8.3. Cumulative Rights - The exercise by Chemung County of any remedy provided in this Agreement shall be cumulative and shall in no way affect any other remedy available to Chemung County under law or in equity.

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

9. GOVERNMENTAL PROVISIONS

9.1. No Representations - Operator acknowledges and agrees that neither Chemung County, nor any person on behalf of Chemung County, has made, and Chemung County hereby disclaims, any representations or warranties, express or implied, regarding the business venture proposed by Operator at the Airport, 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.

9.3 Subordination - This Agreement is subject and subordinate to the provisions of any agreement heretofore or hereafter made between the Chemung County and any Governmental Entity relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to the Authority for Airport purposes, or the expenditure of federal funds for the improvement or development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the Federal Aviation Act.

10. AIRPORT SECURITY PROGRAM AND SAFETY RESTRICTIONS - Operator is required at all times to comply with all rules and regulations issued by the U.S. Department of Homeland Security, Transportation Security Administration.

11. GENERAL PROVISIONS

11.1. 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) Chemung County at its Notice Address; or (c) such other address as either Operator or Chemung County may designate as its new address for such purpose by notice given to the other in accordance with this Section 11. 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

Chemung County's Notice Address:
Elmira Coming Regional Airport
Attn: Director of Aviation
276 Sing Sing Road, Suite 1
Horseheads, NY 14845

11.2. 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

11.3 No accord and satisfaction - No payment by Operator or receipt by the Chemung County of a lesser amount than the amount due hereunder shall be deemed to be other than on account of the amount due, and no endorsement or statement on any check or in any letter or other transmittal shall be

deemed an accord and satisfaction, and the Chemung County may accept such check or payment without prejudice to the Chemung County's right to recover the balance of any amount, or to the Chemung County's right to pursue any other remedy provided in this Agreement or by law.

11.4. 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.

11.5. 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 Airport, 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.

11.6. 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.

11.7. 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 Chemung County, and, except as otherwise provided herein, to their personal representatives and successors and assigns.

11.8. 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.

11.9. Governing Law - This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of New York. 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 or federal court located in New York; and the Parties consent to the exclusive jurisdiction thereof.

11.10. 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 New York, 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 Chemung County's request, Operator shall provide Chemung County with evidence reasonably satisfactory to Chemung County confirming the foregoing representations and warranties.

11.11. 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

COUNTY OF CHEMUNG

DATED:

BY: _____

DATED:

Lyft, Inc.

BY: _____



CHEMUNG COUNTY ROUTE SLIP * PERSONNEL REQUISITION

Public hearing relative to an agreement with Lyft, Inc. for the provision of ride-sharing service at the Elmira Corning Regional Airport

Resolution #: 01
Slip Type: OTHER
SEQRA status
State Mandated False

Explain action needed or Position requested (justification):

The Department of Aviation, on behalf of the Elmira Corning Regional Airport, is requesting authorization to enter into an agreement for the term of one year with Lyft Inc. to provide ride-sharing services at Elmira Corning Regional Airport. Prior Resolution No. 17-590. Public hearing to be held February 4, 2019 at 6:50 p.m.

NOTICE OF PUBLIC HEARING

PLEASE TAKE NOTICE that a public hearing will be held by the Chemung County Legislature in the Legislative Chambers, 5th floor, Hazlett Building, 203 Lake Street, Elmira, New York at 6:50 p.m. on February 4, 2019 for the purpose of HEARING ANY AND ALL COMMENT regarding the renewal of a one-year agreement with Lyft, Inc. for the operation of a transportation network business at the Elmira Corning Regional Airport at a cost of \$2.00 to be paid by Lyft, Inc. for each pre-arranged pickup at the Airport. This hearing will be held in the manner prescribed by General Municipal Law, and all parties in interest and citizens will be heard at that time by the Chemung County Legislature.

MINUTES OF PUBLIC HEARING:

PUBLIC HEARING – February 4, 2019

LEGISLATIVE CHAMBERS, 5TH FLOOR, HAZLETT BUILDING, ELMIRA, NY

6:50 P.M. - Public Hearing in relation to the proposed renewal of a one-year agreement with Lyft, Inc. for the operation of a transportation network business at the Elmira Corning Regional Airport at a cost of \$2.00 to be paid by Lyft, Inc. for each pre-arranged pickup at the Airport.

Legislature was called to order by the Chairman of the Chemung County Legislature. The following members were present when the Clerk called roll:

| | | | |
|--|--|---|--|
| Pastrick <input checked="" type="checkbox"/> | Manchester <input checked="" type="checkbox"/> | Sweet <input checked="" type="checkbox"/> | Brennan <input checked="" type="checkbox"/> |
| Margeson <input checked="" type="checkbox"/> | Hyland <input checked="" type="checkbox"/> | Sonsire <input checked="" type="checkbox"/> | Woodard <input checked="" type="checkbox"/> |
| Burin <input checked="" type="checkbox"/> | Chalk <input checked="" type="checkbox"/> | Briggs <input checked="" type="checkbox"/> | McCarthy <input checked="" type="checkbox"/> |

Item # 1

Drake

Smith

Strange

A public hearing was held by the Chemung County Legislature for the above-referenced purpose. The hearing was held in the Legislative Chambers and was called to order by the Chair of the Legislature, and he turned the meeting over to the Attorney for the Legislature who served as the Hearing Officer.

The Hearing Officer read the Notice of Public Hearing, advised the public of the rules governing a public hearing, and asked if anyone wished to speak. He requested that the record show no one appeared for this matter.

Having determined that everyone who wished to be heard had there and then been heard, the public hearing was declared closed at 6:55 p.m.

CREATION:

Date/Time:

2/4/2019 11:38:41 AM

Department:

APPROVALS:

Date/Time:

Approval:

Department:

ATTACHMENTS:

Name:

 [Lyft9518.docx](#)

Description:

Lyft Agreement

Type:

Cover Memo