

Order 268-14/15

Passage: 9-0 on 6/1/2015

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
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JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

Effective 6/11/2015

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING THE TEMPORARY OPERATING AGREEMENT
BETWEEN THE CITY OF PORTLAND AND UBER**

ORDERED, that the Temporary Operating Agreement between the City of Portland and Uber is approved in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the Acting City Manager to execute said document and any other related documents necessary or convenient to carry out the intent of said documents.

TEMPORARY OPERATING AGREEMENT

This Temporary Operating Agreement (hereinafter “Agreement”) is entered into this [DAY] day of [MONTH], 2015, between CITY OF PORTLAND, a political subdivision of the State of Maine, whose address is 389 Congress Street, Portland, Maine 04101 (hereinafter “City”), and RASIER, LLC, a Delaware limited liability company and subsidiary of Uber Technologies, Inc. commonly referred to as “Uber”, whose address is 1455 Market Street, San Francisco, California 94103 (hereinafter “Rasier”).

WHEREAS, Rasier is a transportation network company (TNC) that desires to continue operating in Portland; and

WHEREAS, notwithstanding the above, City is currently reviewing its Vehicle-For-Hire (VFH) regulations as they pertain specifically to TNCs and agrees to allow Rasier to operate in the City of Portland during this review, subject to the terms and conditions set forth below.

NOW, THEREFORE:

I. City and Rasier agree as follows:

A. The following definitions shall apply to this Agreement:

“Rasier Partner” means an individual who:

1. Receives connections to potential passengers and related services from a TNC in exchange for payment of a fee to the TNC; and
2. Uses a Rasier Partner Vehicle to offer or provide TNC Services requested through the Rasier digital platform in return for compensation or payment of a fee.

“Rasier Partner Vehicle” means a personal or noncommercial vehicle that is used by a Rasier Partner and is

1. Owned, leased or otherwise authorized for use by the Rasier Partner; and
2. Not a taxicab, limousine, or for-hire vehicle.

“Transportation Network Company” (TNC) means an individual, partnership, association, corporation, or other entity that uses a digital platform to connect passengers to drivers who use a personal or other noncommercial vehicle to provide TNC Services.

“Transportation Network Company (TNC) Services” means transportation of a passenger between points chosen by the passenger and prearranged with a Rasier Partner through the Rasier digital platform. TNC services begin when a Rasier Partner accepts a request for transportation received through the Uber app,

TNC services continue while the Rasier Partner transports the passenger in the Rasier Partner's vehicle, and terminate when the passenger reaches his or her intended destination and exits the Rasier Partner's vehicle.

B. Rasier does not waive its right to contest the applicability of any future City ordinance, laws or rules to Rasier, the Rasier platform, or Rasier Partners offering services through the Rasier platform.

II. Rasier agrees as follows:

A. Insurance.

Insurance. Rasier and a Rasier Partner shall comply with all applicable insurance requirements mandated by Maine laws pertaining to insurance, including but not limited to, automobile liability insurance. The following is also required and may be provided by an authorized or an eligible surplus lines insurer:

1. When logged into platform but not providing TNC Services: The following automobile liability insurance requirements shall apply during the time that a Rasier Partner is logged into the Uber platform and available to receive requests for transportation but is not performing TNC Services:
 - (a) Automobile liability coverage that provides at least the minimum coverage requirements per 29-A M.R.S. § 1605 and 24 M.R.S. § 2902.
 - (b) Automobile liability insurance in the amounts required in subparagraph (a) of Section 1 shall be maintained by Rasier and provide coverage in the event the Rasier Partners' own personal automobile liability policy excludes coverage according to its policy terms or does not provide coverage of at least the requirements in subparagraph (a) of Section 1.
2. When providing TNC Services: The following automobile liability insurance requirements shall apply while a Rasier Partner is providing TNC Services:
 - (a) Provides primary automobile liability insurance that recognizes the Rasier Partner's provision of TNC Services;
 - (b) Provides automobile liability insurance of at least \$1,000,000 for death, bodily injury and property damage;
 - (c) Provides uninsured and underinsured motorist coverage to the extent required by 24-A M.R.S. § 2902; and
 - (d) Provides medical payment coverage to the extent required by 29-A M.R.S. § 1605-A.

- (e) The coverage requirements of this Part II(A) may be satisfied by any of the following: Automobile liability insurance maintained by the Rasier Partner; automobile liability insurance maintained by Rasier; or any combination of the immediately preceding two.
3. In any claims coverage investigation, Rasier shall cooperate with a liability insurer that also insures the driver's personal vehicle. Rasier shall include the precise dates and times at which an incident occurred that involved the Rasier Partner while the Rasier Partner was logged into their digital network.
 4. Insurance Deficiency. In every instance where insurance maintained by a Rasier Partner to fulfill the above insurance requirements has lapsed, failed to provide the required coverage, denied a claim for the required coverage or otherwise ceased to exist, insurance maintained by Rasier shall provide the coverage required by this section beginning with the first dollar of a claim.
 5. Primary Coverage. Rasier shall submit documentation to City that it has secured primary automobile liability insurance coverage in the amount of at least \$1,000,000 per occurrence for the driver for incidents involving the driver while providing TNC services. Rasier's policy shall provide blanket coverage for non-owned automobiles active on the Rasier platform.
 6. Certificate of Insurance/Additional Insured. Within fourteen (14) business days of executing this Agreement, Rasier shall provide to the City a certificate of insurance for the policy(ies) required herein, naming Rasier as the insured. The policy(ies) shall be accompanied by a commitment from the insurer that such policy will not be canceled, modified, or coverage reduced without at least thirty (30) days' prior notice to the City.
 7. No contractual hold harmless required in the terms of service shall be used to evade the insurance requirements of this agreement.

B. Background Check. Prior to allowing a Rasier Partner to act as a Rasier Partner and accept trip requests from its digital network, and annually thereafter, Rasier shall conduct a local, state and federal criminal background check and obtain and review the criminal history in accordance with M.E. Rev. Stat. Title 10: Chapter 209-B for each potential Rasier Partner to determine whether that person has been convicted within the last ten (10) years of the following offenses:

1. DUI or other drug related driving violations or severe infractions;
2. Hit and Runs;
3. Fatal accidents;
4. History of reckless driving;
5. Violent crimes;
6. Sexual offenses;
7. Gun related violations; and
8. Resisting/evading arrest.

If it is determined that a person has been convicted of any of the foregoing, that person shall not be permitted to be a Rasier Partner. Rasier will maintain electronic records of such criminal history report for the duration of this Agreement and, if requested, Rasier shall make these records available for inspection to the City at a mutually agreed setting.

- C. Driver History Report. Prior to permitting a person to act as a Rasier Partner and annually thereafter, Rasier shall obtain and review a traffic/driving history report for such person. Any person with: (1) more than three (3) moving violations in the three-year period prior to such check; or (2) a major violation in the three-year (3) period prior to such check (including, but not limited to, attempting to evade the police, reckless driving, or driving on a suspended or revoked license) shall not be permitted to be a Rasier Partner. Rasier will maintain electronic records of such driving history reports for the duration of this Agreement and, if requested, Rasier shall make these records available for inspection to the City at a mutually agreed setting.
- D. Driver Requirements. Rasier shall ensure that all Rasier Partners are at least twenty-one (21) years of age; and possess a valid driver's license, proof of vehicle registration and current automobile liability insurance. Rasier must annually secure physical or digital proof of Rasier Partner's personal insurance. Rasier shall maintain accurate and up-to-date records of all Rasier Partners providing services through the Rasier platform, and, if requested, Rasier shall make these records available for inspection to the City at a mutually agreed setting.. Rasier shall also take reasonable steps to notify Rasier Partners of their obligations under this Agreement.
- E. Driver Drug/Alcohol and Tobacco Use. Rasier shall implement a zero-tolerance policy on the use of drugs or alcohol applicable to any Rasier Partner, provide notice of the policy on its website, as well as the procedures to report a driver the passenger reasonably suspects was under the influence of drugs or alcohol during the course of the ride, and immediately suspend said driver upon receipt of a passenger complaint alleging a violation of the policy. The suspension shall last the duration of the investigation. Tobacco use shall also not be permitted while the Rasier Partner is available on Raiser's digital platform.
- F. Driver/Vehicle Identification. Once a passenger and a Rasier Partner have been matched, Rasier's digital platform shall display for the passenger the name and photograph of the Rasier Partner as well as a description of the make, model and license plate number of the Rasier Partner Vehicle.
- G. Vehicles Used; Safety Inspection. Rasier Partners' Vehicles shall be street-legal four (4)-door vehicles that are no more than ten (10) model years of age. No Rasier Partner Vehicle shall display a top light or electronic identification signage and shall not be marked with the word "taxi", "taxicab" or "cab." All vehicles must have an annual safety inspection in accordance with the State of Maine's requirements for personal vehicles. Within fourteen (14) business the effective date of this Agreement or of being activated on Rasier's digital platform, all Rasier Partner

vehicles currently operating shall have and pass a safety inspection conducted by an automobile technician that is certified by the National Institute for Automotive Service Excellence (ASE). Rasier Partners shall keep proof of their vehicle inspection with them at all times in their Rasier Partner Vehicle and produce a copy of same upon request by the City.

Such inspection/procedure shall, at a minimum, include an inspection of the following components:

- (1) Foot brakes;
- (2) Emergency parking brake;
- (3) Suspension/steering mechanism;
- (4) Windshield;
- (5) Rear window and other glass;
- (6) Windshield wipers;
- (7) Headlights;
- (8) Taillights;
- (9) Turn indicator lights;
- (10) Brake lights;
- (11) Front seat adjustment mechanism;
- (12) Doors (open/close/lock);
- (13) Horn;
- (14) Speedometer;
- (15) Bumpers;
- (16) Muffler and exhaust system;
- (17) Condition of tires, including tread depth;
- (18) Interior and exterior rear view mirrors; and
- (19) Safety belts for driver and passengers.

- H. Customer Service. Rasier shall maintain a website and provide a twenty-four (24)-hour customer service telephone number or email address. Rasier shall also implement a rating system on its digital platform to monitor the quality of the service and cleanliness of the vehicle, and, if requested, Rasier shall make these records available for inspection to the City at a mutually agreed setting.
- I. Service of Process. Rasier shall maintain an agent for service of process in Maine.
- J. Passenger Receipt. Upon completion of a trip, Rasier shall transmit an electronic receipt to the passenger's email address or mobile application documenting the origination and destination of the trip and a description of the total amount paid, if any.
- K. No Solicitation or Street-Hails. Rasier Partners shall only accept rides booked through a digital platform and shall not solicit or accept street-hails.
- L. Rate Disclosure. It is understood that Rasier Partners may offer service for compensation, no-charge, or suggested compensation. Rasier shall disclose rates used to determine any compensation or suggested compensation on its app and

website. Before a trip is accepted, a rider must have the option to view and agree to the estimated fare.

- M. Surge-pricing. When Rasier utilizes surge-pricing through its software application in areas and times of high demand, the software application must: (1) provide clear and visible indication that dynamic pricing is in effect prior to when a potential ride requests a ride; (2) include a feature that requires riders to confirm that they understand that dynamic pricing will be applied in order for the ride request to be completed; and (3) provide a fare estimator that enables the user to estimate the cost under dynamic pricing prior to requesting the ride.
- N. Taxicab Zones. Rasier Partners shall not use any marked taxicab zones.
- O. Jetport Operating Requirements. Rasier acknowledges that the City owns and operates the Portland Jetport (“Jetport”). Nothing in this agreement shall prevent the Jetport from promulgating rules and regulations for Rasier and Rasier Partners operating on its property.
- P. Audit. Rasier must maintain accurate records as required under this Agreement. Upon the City’s request, and no more than semi-annually, Rasier shall make these records available for inspection to the City for purposes of conducting an audit of Rasier’s compliance with this Agreement. These audits shall occur at a mutually agreed setting.
- Q. Records. The City may inspect, at a mutually agreed setting, those records held by Rasier whose review is specifically necessary for the investigation and resolution of a complaint.
- R. Confidentiality. The City shall not disclose any records obtained from Rasier pursuant to this Agreement unless the City is required to do so by applicable law or court order or Rasier has consented to such release. In the event that a third party submits a request to the City for such records, the City shall: (1) assert applicable exemptions to the request as set forth in the Maine Freedom of Access Act; and (2), upon receipt of such request, notify Rasier that it has received a request and inform Rasier of whether it will release the requested record(s) so that Rasier has an opportunity to take steps to prevent disclosure.
- S. Payment to City. Within ten (10) days from the effective date of this Agreement, Rasier shall pay to the City ten thousand dollars (\$10,000.00) to cover any administrative and regulatory costs associated with this Agreement and Rasier’s operations in the City for one year from the effective date of this Agreement. In the event this Agreement is not extended beyond October 30, 2015, Rasier’s payment shall be credited toward any fee that it is required to pay under a subsequent Agreement or City ordinance or legislation governing TNC operations in the City such that Rasier’s \$10,000 payment will apply toward one (1) year of operations from the effective date of this Agreement.
- T. Accessibility. Rasier shall not allow Raiser Partners to refuse to accept a passenger

who is disabled, or to charge a higher fare or additional fee to a person who is disabled, based on the person's disability, use of a support animal, wheelchair, crutches, or other mobility assistance device.

- U. Compliance. It is understood and agreed that Rasier and Rasier Partners are not agents, servants or employees of the City.

III. City agrees as follows:

- A. Rasier may operate in the City of Portland so long as Rasier and Rasier Partners comply with the terms and conditions set forth in this Agreement.
- B. City will not enforce the provisions in Chapter 30 of its Code of Ordinances or any other applicable Vehicle-for-Hire regulations against Rasier and Rasier Partners during the term of this Agreement, unless such enforcement stems from a violation of any of the provisions of this Agreement. This paragraph does not apply to any rules and regulations that the City/Jetport promulgates with regard to Rasier or Rasier Partner's operating at the Jetport.

IV. General Provisions:

- A. Effective Date/Term. This Agreement goes into effect on the date of approval by the City Council on behalf of the City and continues in full force and effect until and through October 30, 2015, unless otherwise extended by both parties in writing.
- B. Termination. Notwithstanding anything contained herein to the contrary, either party may, in its sole discretion with or without cause, terminate this Agreement upon thirty (30) days' written notice to either party.
- C. Enforcement. City shall have the authority to enforce the requirements of this Agreement. Failure to adhere to the requirements of this Agreement by Rasier or any Rasier Partner may result in, among other things, fines or penalties in an amount equal to the fines or penalties for similar violations under the City's VFH Code, or termination of this Agreement, at the City's discretion.
- D. Entirety of Agreement. This Agreement constitutes the entire Agreement between the City and Rasier. Any previous Agreement, assertion, statement, understanding, or other commitment before the date of this Agreement, whether written or oral, shall have no force or effect. No agreement, assertion, statement, understanding, or other commitment during the term of this Agreement, or after the term of this Agreement, shall have any legal force or effect unless properly executed in writing by Rasier and the City.

DATED: _____

ATTEST:

[NAME]

[TITLE]

PORTLAND, MAINE BY ITS
CITY MANAGER

By: _____

XXXXXX, CITY MANAGER

DATED: _____

XXXXXX
RASIER, LLC BY ITS _____

DATED: _____ ATTEST:

RASIER, LLC

By: _____

Type or Print Name:

Title/Position: