

Order 106-08/09

Passed: 11/17/08 9-0

EDWARD J. SUSLOVIC (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
DANIEL S. SKOLNIK (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

JAMES I. COHEN (5)
JOHN M. ANTON (A/L)
JILL C. DUSON (A/L)
NICHOLAS M. MAVODONES (A/L)

**ORDER APPROVING AGREEMENT WITH
U HAUL CO. OF MAINE, INC. D/B/A U CAR SHARE
AND DEDICATION OF FOUR ON-STREET PARKING SPACES**

ORDERED, that the Agreement with U-Haul Co. of Maine, Inc., d/b/a U Car Share for the provision of 4 dedicated on-street parking spaces for vehicles for the use of its members is hereby approved substantially in the form below:

* * *

**CARSHARING AND PARKING LICENSE AGREEMENT BETWEEN
U-Haul Co. of Maine, Inc. AND The City Of Portland, Maine**

THIS AGREEMENT ("Agreement") is made and entered into on November 17, 2008 by and between U-Haul Company of Maine, Inc. (dba "U Car Share") and the City of Portland, Maine ("City").

WHEREAS, City is the owner and/or operator of certain parking spaces ("Spaces"). See section 2 below for description of locations.

WHEREAS, U Car Share offers a car sharing service that makes certain vehicles owned or leased by U Car Share ("Vehicles") available to its members on a per-use basis. This membership will entitle enrolled members to park Vehicles in designated Spaces on the City's property, as described more fully in Section #2 below.

WHEREAS, City wishes to license to U Car Share the exclusive use of four (4) parking spaces in accordance with the provisions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants set forth below, U Car Share and City hereby agree as follows:

1. AGREEMENT TERM.

The term of this Agreement ("Term") shall be for a period of three years (with the option to renew and renegotiate the length of the term at the end of each year term). At any time during the term of this Agreement, either party may terminate this Agreement for its convenience with thirty (30) days advanced written notice to the non-terminating party.

2. PARKING SPACES AND FEES

City agrees to license to U Car Share on an exclusive use basis a total of four spaces with the option to add spaces as membership dictates and the option to move or remove the spaces and Vehicles with written notice to, and approval by, the City of Portland. Such approval for additional spaces or moving or removal of spaces may be granted or denied within the discretion of the City. The following described spaces are the property of the City of Portland and the initial four spaces to be licensed: Two (2) spaces will be located on Commercial Street - immediately to the east of the intersection with the Maine State Pier, with the Casco Bay Parking Garage on the opposite corner. The other two (2) spaces are proposed to be the first two spaces on Elm Street, (just off Congress Street.), across the street from the Elm Street - Parking Garage and downtown transportation Center and adjacent to the Public Library. These spaces will be marked off for "U Car Share Vehicle Use Only" within 30 days from the effective date of this Agreement. U Car Share will provide the necessary signs for each parking space. Upon two (2) weeks written notice to U Car Share, the City may relocate the Spaces. U Car Share will implement usage rates at its discretion to insure financial sustainability of the service. U Car Share usage rates include damage waiver, state minimum automobile liability insurance or \$350,000 (whichever is greater), fuel, 125 miles (\$0.20/mile after), 24 hour road-side assistance and gas.

U Car Share shall pay fees for use of the Spaces based on the City's prevailing loss of revenue for each parking space after one year of completed implementation in the City of Portland. The agreed to rate for parking spaces will be \$1,200.00 a year per space after an initial first year of no fees. If the Agreement is terminated by either party during the course of the year during which U Car Share has made a per space payment a pro-rated refund will be issued to U Car Share for the remaining portion of that year. A one-time fee for each parking space of \$150 will be charged to U Car Share by the City of Portland for converting each parking space for car share use only. Payment schedule to be determined.

Payment to be made payable to: City of Portland, Maine and Mailed to: John Peverada
Parking Manager 389 Congress St Portland, ME 04101

3. USE.

U Car Share and its members shall have the exclusive right to park Vehicles in the Spaces for the sole purpose of parking U Car Share Vehicles, and for no other use or purpose. City will provide 24-hour parking privileges and 24-hour in and out privileges for the Vehicles. City shall provide reasonable enforcement for use of the spaces but shall not be liable to any member, user or to U Car Share for use by any party in violation of the parking regulations. U Car Share shall not permit the accumulation of refuse, or dispose of liquid or other waste in or about the Spaces, nor cause or permit any nuisance or other condition or act that may interfere with the authorized use of the Spaces. City shall be responsible for all other cleaning and/or maintenance of the Spaces, to be provided on the same basis as for other City parking spaces. City is entitled to enter onto the Spaces at any time and for any purpose, including but not limited to maintenance and inspection of Spaces and the surrounding Property. U Car Share will adhere to, comply with and will be responsible for ensuring all city regulations regarding parking bans and the need to move vehicles for city street cleaning on a weekly basis, for repairs, maintenance, striping, plowing and snow removal are met and resolved by a U Car Share representative.

4. RISK OF LOSS

Parking is at the sole risk of U Car Share and U Car Share bears all risk of loss or damage to any Vehicles parked in the Spaces. City shall have no responsibility to guard or assume care, custody, or control of U Car Share's signage or Vehicles (including contents and/or any property belonging to U Car Share's members). City shall not be obligated to provide insurance for any Vehicles parked in the Spaces, and is not responsible for any damage to or loss of the Vehicles for any reason whatsoever, whether caused by fire, water, earthquake, liquefaction, theft, vandalism or any other known or unknown risk.

5. SIGNAGE

City shall install U Car Share clean signage at each of the Spaces and signage on the parking lot entrance signs. U Car Share will provide the signs, the City will have reasonable approval over it and the City will install the signs for each space. U Car Share will promptly replace any damaged or missing signage at City's request at U Car Share's sole cost and expense.

6. NOTICES

Any notices which may be required under this Agreement shall be in writing, effective when received and given by personal service, or by certified or registered mail, return receipt requested (effective upon receipt) to the addresses set forth below, or to such other address as may be specified in writing by the parties.

Car Share Company:
U Car Share, U-Haul
Mike Colman, Program Manager
2727 N. Central Avenue
Phoenix, AZ 85004

City of Portland
City Manager
389 Congress Street
Portland, ME 04101
pc: John Peverada, Parking Manager
(Tel) 207 874 8444 (Fax) 207 756 8259

7. INDEMNIFICATION

Subject to and within the limitations of liability and immunities of the Maine Tort Claims Act (14 M.R.S.A. 8101 et. seq.), the City shall indemnify, defend and hold harmless U Car Share, its officers, agents, and employees from and against any claims, damages, costs, expenses, or liabilities (collectively Claims") arising out of or in any way connected with this Agreement including, without limitation, Claims for loss or damage to any property, or for death or injury to any person or persons, but only in proportion to and to the extent that such Claims arise from the negligent or wrongful acts or omissions of the City, its officers, agents, or employees.

U Car Share shall indemnify, defend and hold harmless the City, its officers, agents, and employees from and against any Claims arising out of or in any way connected with this

Agreement, including, without limitation, Claims for loss or damage to any property or for death or injury to any person or persons, but only in proportion to and to the extent that such Claims arise from the negligent or wrongful acts or omissions of U Car Share, its officers, agents, employees or its members' use or operation of the Vehicles.

Notwithstanding the foregoing, in no event shall either party be liable to the other for incidental, special, or consequential damages of any nature claimed as a result of the breach of any term of this Agreement or termination of this Agreement.

8. LIABILITY INSURANCE

U Car Share shall provide the state minimum automobile liability insurance or \$350,000 whichever is greater. In addition, U Car Share shall provide the City with evidence of commercial general liability insurance in the minimum amount of \$400,000, including contractual liability insurance covering its obligation of defense and indemnification hereunder and naming the City as an additional insured thereon. U Car Share is solely responsible for complying with all Maine insurance requirements, including but not limited to filing of Form JB from the Bureau of Insurance.

9. TERMINATION FOR BREACH OF AGREEMENT

The failure of U Car Share to comply with any term or condition contained herein shall constitute a breach of this Agreement. In the event that U Car Share breaches this Agreement by failing to comply with any term or condition, City may, at its sole option, immediately terminate this Agreement.

10. PUBLICITY AND USE OF CITY'S NAME

U Car Share shall not use the name of the city, or any abbreviation thereof, or any name of which it is a part, or any trademarks or logos of the City, in any commercial context, such as may appear on products, in media (including websites), or in print advertisements in cases when such use may imply an endorsement or sponsorship of U Car Share, its products or services by the City. U Car Share's use of the City's name, trademarks, or logos in commercial advertisements, publications, websites, or promotional materials is prohibited unless such use has been approved in advance in writing by the City.

11. REPORTING

U Car Share shall provide to City quarterly reports on Vehicle usage and the number of members enrolled and their usage of Vehicles.

12. ASSIGNMENT

U Car Share shall not assign this Agreement without the express written consent of the City.

13. LIENS

U Car Share shall keep the Spaces free from any liens arising out of any work performed, materials furnished, or any other obligations incurred by U Car Share.

The individuals signing above on behalf of the parties hereby represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of the parties and that this Agreement is binding upon the parties in accordance with its terms.