

RESOLUTION NO. 2011-183

Adopted by the Sacramento City Council

March 29, 2011

AGREEMENT WITH ZIPCAR FOR A CAR SHARE PROGRAM IN SACRAMENTO

BACKGROUND

- A. In February 2010, the Department of Transportation released a Request for Qualifications (RFQ) to establish a new car share program in Sacramento and solicit a car share provider.
- B. Two car share companies, Zipcar and Connect by Hertz, responded to the RFQ and Zipcar was selected to initiate the car share program.
- C. Zipcar will start this pilot car share program with ten (10) vehicles that will be located in the downtown and midtown areas of Sacramento. Per the terms of this Agreement, the City will dedicate and reserve ten (10) parking spaces at no charge to Zipcar.
- D. Zipcar will provide the City with Zipcar signs and the City will install the signs at each parking space provided to Zipcar for Zipcar's use. Zipcar will own the signs and will maintain the signs after installation by the City.
- E. The City will charge Zipcar an encroachment fee of \$190 per each sign.
- F. As part of its Marketing Program Zipcar plans to use the City' seal for the following: 1) Printed collateral; 2) Related advertising to support program adoption (online and print), if applicable; 3) Vehicle and location merchandising; 4) Pre and post sales website to support the program (i.e. microsite, reservation system); 5) Social Media efforts (such as Facebook, Twitter, Foursquare and Yelp); 6) Customer list on Zipcar.com, if applicable; 7) Any press release or materials issued/used to support related media efforts.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The City Manager is authorized to execute an Agreement with Zipcar for a car share program in Sacramento.
- Section 2. The City Council deems it to be in the public interest and authorizes Zipcar to use the City of Sacramento's seal for the above mentioned purposes.
- Section 3. Exhibit A is incorporated into and made part of this Resolution.

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Exhibit A – Agreement

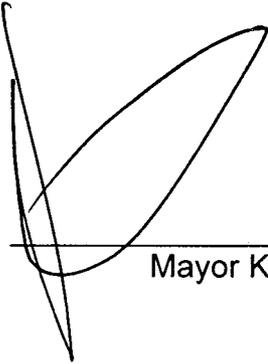
Adopted by the City of Sacramento City Council on March 29, 2011 by the following vote:

Ayes: Councilmembers Ashby, Cohn, D Fong, R Fong, McCarty, Pannell, Schenirer, Sheedy, and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: None.



Mayor Kevin Johnson

Attest:



Shirley Concolino, City Clerk



zipcar

"Zipcar for Municipalities" Program Agreement

This "Zipcar for Municipalities" Program Agreement, including all schedules attached hereto (hereafter the "Agreement") is made as of the 29th day of March, 2011 (the "Effective Date"), by and between Zipcar, Inc., a Delaware corporation with principal offices at 25 First Street, Cambridge, MA 02141 (hereafter "Zipcar"), and the City of Sacramento, a California municipality with principal offices at 915 I Street, Sacramento CA 95814 (hereafter the "City"). For good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

This Agreement consists of this signature page and the following schedules, which are incorporated by reference and made a part of this Agreement:

- Schedule A: Zipcar Services and Fees
- Schedule B: City's Obligations
- Schedule C: General Terms and Conditions
- Schedule D: City's License Agreement
- Schedule E: Initial Pricing
- Schedule F: Signage

All notices, requests and demands, and other communications required or permitted under this Agreement will be in writing and sent to: City: City of Sacramento Attn: Director of Transportation, 915 I Street, Room 2000, Sacramento, CA 95814 and Zipcar: to the address set forth above. A notice will be deemed effective: (a) upon delivery, if delivered personally to a party; (b) 1 business day after deposit, if delivered to a nationally recognized courier service offering guaranteed overnight delivery; or (c) 3 business days after having been deposited in the United States mails, certified mail, postage prepaid, return receipt requested.

This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original and which together will constitute one and the same instrument. The signature of any of the parties may be evidenced by a facsimile copy of this Agreement bearing such signature and such signature will be valid and binding as if an original executed copy of the Agreement has been delivered.

In Witness Whereof a duly authorized representative of each party has executed this Agreement as of the Effective Date.

Zipcar, Inc.
 By: *T. S. Ramesh*
 Name: T. S. RAMESH
 Title: VP of Controller
 City: _____
 By: _____
 Name: _____
 Title: _____

City:
 By: _____
 Name: _____
 Title: _____
 City:
 By: _____
 Name: _____
 Title: _____

[Signature]
 APPROVED AS TO FORM:
 CITY ATTORNEY

Schedule A
Zipcar Services and Fees

1. **Term of Agreement; Exclusivity.** The initial term of this Agreement will commence on the Effective Date and, unless terminated earlier in accordance herewith, will continue for a period of two years. This Agreement may be renewed for three (3) successive one year terms upon mutual agreement executed at least thirty (30) days prior to the end of the then current term. During the term of this Agreement, City agrees that Zipcar shall be the only car sharing service promoted and used by City.

2. **Number of Vehicles; Quarterly Fee:** Zipcar will provide dedicated car sharing vehicle[s] (“Zipcar Vehicles”) to City as follows:

No. of Vehicles*	Vehicle Make and Model	Start Date	End Date
10			

* *The number of Zipcar Vehicles may be increased, by mutual written agreement of the parties. Zipcar will maintain a minimum of 10 vehicles for the initial twelve months of this Agreement. Zipcar may decrease the number of Zipcar Vehicles at any time after the initial twelve months, in its sole discretion, by written notice to City; provided, however, that if Zipcar permanently reduces the number of Zipcar Vehicles below 10, the City may terminate this Agreement upon no less than thirty (30) days written notice to Zipcar. Further, Zipcar, in its sole discretion, by written notice to City, may replace Zipcar Vehicles with similar Zipcar vehicles.*

3. **Zipcar Membership:** Zipcar members in good standing shall be eligible to use Zipcar Vehicles (an “Eligible Person”) at the usage rates set forth in Schedule E and subject to Zipcar’s then current policies and procedures, including without limitation the terms and conditions of Zipcar’s member agreement. To become a Zipcar member, a person shall complete Zipcar’s membership application at www.zipcar.com and, if approved for membership by Zipcar, shall enter into Zipcar’s member agreement in the form set forth at www.zipcar.com. Zipcar may revise the membership application and member agreement from time to time in its sole discretion. Eligible Persons shall be responsible for paying Zipcar’s annual membership fee, Zipcar Vehicle usage rates, and such additional fees and charges as set forth by Zipcar in the Zipcar member agreement and at www.zipcar.com and as adjusted from time to time in Zipcar’s sole discretion. Notwithstanding the foregoing, the prices set forth in Schedule E shall not be modified during the initial twelve month period following the Effective Date. The member agreement is by and between Zipcar and its member. It is understood and agreed the City is not a party to the member agreement and is not entitled to the rights or subject to the obligations thereof.

4. **Marketing:** Zipcar will provide the City with a Zipcar Account Manager to act as a liaison between Zipcar and the City. The Zipcar Account Manager will prepare an annual marketing plan and will provide Zipcar’s standard marketing materials and collateral to promote the car sharing program to City’s students and employees. In addition, Zipcar shall provide and City shall install and fill, Zipcar’s standard signage and collateral/postcard drop boxes.

Schedule B
City Obligations

1. Parking: City will provide up to 25 highly visible, dedicated and reserved parking location (s) commensurate with the number of Zipcars provided pursuant to Schedule A at no charge to Zipcar and shall provide additional mutually agreed to parking location(s) for each additional Zipcar Vehicle in excess of 25 provided under Schedule A at a rate to be mutually agreed to by the parties. Zipcar shall post at such location(s) Zipcar signage and Tow Away Notices provided by Zipcar. The reserved parking locations will be accessible 24 hours, 7 days per week. City agrees to maintain the parking location(s), consistent with city-wide practices. The additional terms and conditions set forth in Schedule D shall apply to City's provision of parking spaces to Zipcar.

2. Administration; Marketing: City shall designate a coordinator to coordinate the marketing and promotion of the Zipcar service to residents of the City. City shall use Zipcar's standard marketing materials and collateral provided by Zipcar to promote the Zipcar car sharing program. City may create co-branded marketing materials at City's expense upon mutual written agreement of the parties, subject to City's compliance with Zipcar's co-branding guidelines and Zipcar's review and approval prior to dissemination. The City will fill the collateral/postcard boxes.

3. Use of Zipcar Name. City may not use Zipcar's name or logo without Zipcar's prior written consent which will not be unreasonably withheld or delayed. Zipcar may release one press release announcing the parties' relationship hereunder with the prior consent of City, which shall not be unreasonably withheld. Zipcar communications specialist will work with City on any public or media communications and City will adhere to mutually agreed upon PR guidelines which shall be provided to City by Zipcar from time to time. City agrees to use best efforts to notify Zipcar at least one week in advance of an written article, television story, or other third party publication being released in which City has discussed its car sharing program and/or Zipcar, shall provide Zipcar with a copy of the publication at least one week before its release, and shall use best efforts to have the publisher make such modifications as Zipcar may reasonably request.

4. Signs Installation.

Zipcar will provide the City with the Zipcar signs described in Schedule F attached hereto, and the City will, at no cost to Zipcar, install the signs at each parking space provided to Zipcar for Zipcar's use hereunder. Zipcar will own the signs and will maintain the signs after installation by City.

The City will issue Zipcar a Revocable Encroachment Permit at a cost of \$190 per each sign.

Schedule C

General Terms and Conditions

1. **Services; Relationship of the Parties.** Subject to the terms and conditions of this Agreement, Zipcar will provide the services (the "Services") and Zipcar vehicles (the "Zipcar Vehicles") set forth in Schedule A. City will perform the obligations set forth on Schedule B and provide the parking spaces mutually agreed to by the parties pursuant to Schedule D. The relationship of the parties to this Agreement is solely that of independent contractors. Neither party will have any authority to contract with third parties on behalf of the other party or to expressly or impliedly represent that it has any such authority, to any person.
2. **Reserved.**
3. **Reserved.**
4. **Publicity.** Zipcar may release a press release announcing the parties' relationship hereunder with the prior consent of City, which shall not be unreasonably withheld. Unless otherwise expressly permitted in this Agreement, neither party will use the other party's name, logos, trademarks or service marks in any manner without the other party's prior written approval. Upon Council approval, City hereby gives Zipcar the right to use City's name, logos, trademarks and service marks (i) to, as may be mutually agreed by the parties, create marketing and advertising materials for City to use to promote the Service to its employees and (ii) on Zipcar's customer list which will be displayed on Zipcar's website and in other publications. Specifically Zipcar will use the City's name and logos for the following: 1) printed collateral; 2) Related advertising to support program adoption (online and print), if applicable; 3) Vehicle and location merchandising; 4) Pre and post sales website to support the program (i.e. microsite, reservation system); 5) Social Media efforts (Facebook, Twitter, Foursquare, Yelp, etc.); 6) Customer list on Zipcar.com, if applicable; 7) Any press release or materials issued/used to support related media efforts
5. **DISCLAIMER OF WARRANTIES.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, ZIPCAR MAKES NO WARRANTIES WITH RESPECT TO THE SERVICES OR THE SUBJECT MATTER OF THIS AGREEMENT AND HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. NO WARRANTY IS MADE THAT THE SERVICES WILL MEET CITY'S REQUIREMENTS. THE PROVISIONS OF THIS SECTION SHALL SURVIVE ANY TERMINATION OF THIS AGREEMENT.
6. **LIMITATION OF LIABILITY.** NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF DATA OR INTERRUPTION OF BUSINESS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS. THE FOREGOING LIMITATION OF LIABILITY IS NOT INTENDED TO LIMIT EITHER PARTY'S LIABILITY FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THE PROVISIONS OF THIS SECTION SHALL SURVIVE ANY TERMINATION OF THIS AGREEMENT.
7. **Confidentiality**
 - A. All proprietary and other information received from Zipcar by CITY will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "confidential" when it is provided to CITY, CITY shall give notice to Zipcar of any request for the disclosure of such information. Zipcar shall then have five (5) days from the date it receives such notice to enter into an agreement with the CITY, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by CITY in any legal action to compel the disclosure of such information under the California Public Records Act. Zipcar shall have sole responsibility for defense of the actual "confidential" designation of such information.
 - B. The parties understand and agree that any failure by Zipcar to respond to the notice provided by CITY and/or to enter into an agreement with CITY, in accordance with the provisions above, shall constitute a complete waiver by Zipcar of any rights regarding the information designated "confidential" by Zipcar, and such information shall be disclosed by CITY pursuant to applicable procedures required by the Public Records Act.
8. **Termination.** If either party breaches this Agreement and fails to cure such breach within thirty (30) days after receipt of notice of that breach from the other party then the other party, then the other party may terminate this Agreement effective as of the end of that period. It is recognized that some breaches are not capable of cure, such as a cessation of business. With respect to any such incurable breach by a party, if it remains possible or give notice, then upon such notice by the other party this Agreement will be deemed terminated. If it is not possible then this Agreement will be deemed to terminate automatically upon such breach. No termination for cause will be deemed a waiver of any claim for damages by the terminating party.
9. **Miscellaneous.** Each party represents and warrants to the other that it has the authority to enter into this Agreement and is not under any obligation to any third party that would conflict with this Agreement. This Agreement is the entire agreement between the parties with respect to the subject matter hereof and supersedes all other prior and contemporaneous agreements and understandings, oral and written, between the parties with respect to the subject matter hereof. Additional or different terms in any purchase order or similar document will not modify or add to the terms of this Agreement. This Agreement may be amended only by a written agreement between the parties. If one party fails to enforce any provision of this Agreement, such party will not be precluded from enforcing the same provision at another time. This Agreement and the rights granted under it may not be assigned or transferred by either party without the written consent of the other party; provided, however, either party will have the right to assign this Agreement to its successor in the event of a merger, acquisition or other consolidation, including without limitation the sale of all or substantially all of its assets or stock or business to which this Agreement relates. In the event that any provision of this Agreement is held by a court or other tribunal of competent jurisdiction to be unenforceable, such provision will be deemed modified to the minimum extent necessary to render the provision enforceable in a manner that most closely represents the original intent of the parties and the remaining terms and conditions of this Agreement will remain in full force and effect. This Agreement shall be governed by and construed in accordance with law of the State of California without regard to conflicts of laws provisions thereof. The parties agree that the sole jurisdiction and venue for actions related to the subject matter hereof shall be the state and federal courts located in California. The paragraph headings contained in this Agreement are for convenience only and are not intended to be used nor may they be used in the interpretation of this Agreement. Neither party will be responsible for delays or failures in performance resulting from acts beyond its control. Such acts include but are not limited to acts of God,

labor conflicts, acts of war or civil disruption, governmental regulations imposed after the fact, public utility out failures, industry wide shortages of labor or material, or natural disasters.

Schedule D
License Agreement

1. Grant of a Limited License. City grants to Zipcar a license (the "License") to use the parking spaces located at the following locations, which parking spaces shall be mutually agreed to by the parties _ (the "Licensed Property"). The Licensed Property may be amended from time to time during the term of the Agreement by mutual written agreement of the parties to add or remove locations from the Licensed Property.

Location #1
Sac City Hall I street between 9th and 10th
Notes: on street right in front of city hall

Locations #2
10th & L Street
Notes: Capitol Walkway

Location #3
16th & J Street

Location #4
18th & L Street

Location #5
28th & J Street

2. No Assignment. The rights licensed to Zipcar in the Licensed Property pursuant to this Agreement may not be assigned by Zipcar except as permitted under Schedule C.

3. Revocation on Notice. Either party may revoke this Agreement at any time on thirty (30) days' advance written notice to the other party. The date for termination for the License created herein shall be specified in the applicable written notice.

4. Surrender/Condition. On or before the day specified in any notice of revocation given under Paragraph 3, or at the conclusion of this termed Agreement, Zipcar shall remove all of Zipcar's personal property, and all third party personal property located on the Licensed Property which was placed on the Licensed Property with Zipcar's consent. Zipcar shall return the Licensed Property to City in good order and repair and free from any hazardous substances which arrived on the Licensed Property during the period of this Agreement.

5. Insurance.

During the entire term of this Agreement, Zipcar shall maintain the insurance coverage described in this Section. No compensation will be provided for Zipcar's insurance premiums.

It is understood and agreed by the Zipcar that its liability to the City shall not in any way be limited to or affected by the amount of insurance coverage required or carried by the Licensee in connection with this License.

A. Minimum Scope & Limits of Insurance Coverage

- (1) Commercial General Liability Insurance, providing coverage at least as broad as ISO CGL Form 00 01 for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence.
- (2) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, and property damage,

caused by Zipcar's negligence with limits of not less than one million dollars (\$1,000,000) on a combined single limit basis. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of Zipcar.

- (3) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Worker's Compensation policy shall include a waiver of subrogation.

B. Additional Insured Coverage

- (1) Commercial General Liability Insurance: The City, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insured on Zipcar's Commercial General Liability Insurance policy.

C. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- (1) Zipcar's insurance coverage shall be primary insurance as respects City, its officials, employees and volunteers. Any insurance or self-insurance maintained by City, its officials, employees or volunteers shall be in excess of Licensee's insurance and shall not contribute with it.
- (2) Coverage shall state that Zipcar's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (3) Zipcar will endeavor to provide City with thirty (30) days written notice of cancellation.

D. Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section must be declared to and approved by the City Risk Management Division in writing prior to execution of this Agreement.

E. Verification of Coverage

- (1) Zipcar shall furnish City with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the City representative.
- (2) The City may withdraw its offer of license or cancel this Agreement if the certificates of insurance and endorsements required have not been provided prior to or promptly after execution of this Agreement by providing Zipcar with written notice within ten (10) days from the Effective Date of this Agreement. The City may cancel this Agreement if the insurance is canceled or Zipcar otherwise ceases to be insured as required herein.

F. Contractors and Subcontractors

Zipcar shall require and verify that all contractors and subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subsection A.

**Schedule E
Initial Pricing**

The following sets forth Zipcar's pricing for the Zipcar car sharing services as of the Effective Date. This pricing is subject to change from time to time in Zipcar's sole discretion. Notwithstanding the foregoing, the prices set forth in this Schedule E shall not be modified during the first twelve (12) months from the Effective Date.

	18+/21+ students, faculty and staff at UC Davis	21+ Local Residence	Zipcar for Business and Government	
Member Application Fee	Waived	\$25	One time \$75 account set-up fee	
Annual Fee	\$35	\$50	\$25 for each driver on the account	
Credit	\$35 to be used first 30 days	\$50 to be used first year	None	
Weekday Hourly Driving Rates	\$6.80 to \$8/hr-\$56.1 to \$66/day	\$6.80 to \$8/hr-\$56.1 to \$66/day	\$8/hr to \$66/day	
Weekend Hourly Driving Rates	\$7.65 to \$9/hr-\$61.2 to \$72/day	\$7.65 to \$9/hr-\$61.2 to \$72/day	\$9/hr to \$72/day	
Free Mile allotted per day	180	180	180	
Rate (per mile) for Excessive Mileage	.45 cents	.45 cents	.45 cents	
Extra Value Plans	Tier One- \$50	Tier Two- \$75	Tier Three- \$125	Tier Four- \$250
Member Application Fee	\$0	\$0	\$0	\$0
Driving Rate Discount	10%	10%	10%	15%
Monthly Fee	\$50 pre-paid driving credit commitment	\$75 pre-paid driving credit commitment	\$125 pre-paid driving credit commitment	\$250 pre-paid driving credit commitment
Roll Over	\$50- one month roll over	\$75- one month roll over	\$125- two month roll over	\$250- two month roll over
Weekday Hourly Driving Rates	10% discount \$7.20/hr- \$59.40/day	10% discount \$7.20/hr- \$59.40/day	10% discount \$7.20/hr- \$59.40/day	15% discount \$6.80/hr- \$56.10/day
Weekend Hourly Driving Rates	10% discount \$8.10/hr- \$64.80/day	10% discount \$8.10/hr- \$64.80/day	10% discount \$8.10/hr- \$64.80/day	15% discount \$7.65/hr- \$61.20/day
Free Mile allotted per day	180	180	180	180
Rate (per mile) for Excessive Mileage	.45 cents	.45 cents	.45 cents	.45 cents

Schedule F
Signage

[See Attached]