



CITY OF PROVIDENCE
Angel Taveras, Mayor

January 9th, 2014

Providence City Council
c/o City Clerk's Office
25 Dorrance Street
Providence, RI 02903

Re: Zipcar Contract

Dear Sirs:

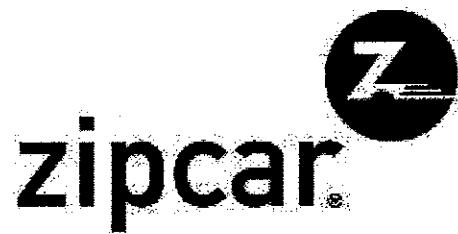
The Department of Sustainability respectfully requests that the enclosed contract between Zipcar, Inc. and the City of Providence be put on the upcoming City Council agenda for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Sheila Dornedy".

Sheila Dornedy
Director of Sustainability

CC: William Farrell, Alan Sepe



To: Zipcar's Municipal Clients

From: Michael Serafino, VP of Sales & Market Development

Zipcar is a convenient, low cost sustainable transportation alternative that is revolutionizing urban transportation. As part of this program, Zipcar looks to promote car sharing, reducing the number of cars in the local community and reducing the number of cars on local university and college campuses while increasing mobility for local residents and for students, faculty and staff of colleges and universities within or nearby your city. Zipcar's services are available to the entire 18+ university community and 21+ residents of the municipality and surrounding towns and/or cities. Through this program, local residents, students, and employees will experience a new found freedom and mobility without the hassles and costs of owning a car.

Everyone at Zipcar applauds your environmental and sustainability efforts and looks forward to working with you to insure early and ongoing program success. Welcome to 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 _____ day of _____, 2014, (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 Providence, a Rhode Island municipality with principal offices at 25 Dorrance Street, Providence, RI 02903 (hereafter the "City"). For good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby 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

All notices, requests and demands, and other communications required or permitted under this Agreement will be in writing and sent to the addresses 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.

City:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Approved as to form and correctness:

By: _____

Name: Jeffrey M. Padwa

Title: City Solicitor

Schedule A
Zipcar Services and Fees

1. Term of Agreement. 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 three (3) years. During the term of this Agreement, the City agrees that Zipcar shall be a car sharing service promoted and used by the City Administration.

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	Quarterly Fee
Up to 13	SmartWay or Smartway Elite	01/14/2014	01/13/2017	Waived

* The number of Zipcar Vehicles may be increased by mutual written agreement of the parties. Zipcar may decrease the number of Zipcar Vehicles at any time, in its sole discretion, by written notice to the City.

3. Zipcar Membership: Each employee or community member of the City that is a Zipcar member in good standing, as well as 18+ employees and students of Rhode Island School of Design, Brown University, and Johnson & Wales University, and residents of the local community that reside in or near the City who are 21+ years of age that are Zipcar members in good standing ("Community Members") shall be eligible to use Zipcar Vehicles (an "Eligible Person") at the usage rates set forth at www.zipcar.com 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 Community Member 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 at 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 at Zipcar's sole discretion. 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.

Zipcar will offer each eligible Community Member joining under a personal membership \$50 in free driving to be used during the first month of the Eligible Person's membership. Eligible Persons seeking a personal membership will pay a one time \$25 application fee and a \$60 annual fee. Zipcar will offer Eligible Persons joining under a business membership a discounted annual membership fee of \$25 per year and a one-time \$25 driving credit to be used during the first month of the Eligible Person's membership. Additionally, for business accounts, Zipcar will waive the standard \$75 business setup fee for business accounts with five (5) or more drivers. These rates and fees are determined by Zipcar in its sole discretion and are subject to change without notice.

In consideration of the City providing thirteen (13) parking spaces pursuant to Schedule B, Zipcar will waive the annual membership fee for up to 40 City employees that become Zipcar members during the term of this Agreement.

4. Marketing: Zipcar will provide City with a Zipcar Account Manager to act as a liaison between Zipcar and City, annual marketing plan and 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 highly visible, dedicated and reserved parking location(s) for each Zipcar Vehicle provided under Schedule A at no charge to Zipcar and shall post at such location(s) Zipcar signage and Tow Away Notices provided by Zipcar. The City agrees to increase the number of highly visible, dedicated and reserved parking location(s) totaling thirteen (13) spaces, which will be strategically located throughout the City and mutually agreed to by the parties, within one year from the Effective Date. The reserved parking locations will be accessible 24 hours, 7 days per week. In addition, at Zipcar's request, City agrees to provide additional, highly visible, dedicated and reserved parking location(s) for Zipcar Vehicles, at no charge to Zipcar, to enable Zipcar to meet the demand for Zipcar Vehicles. Such additional parking locations shall be mutually agreed to by the parties and the City shall make best efforts to accommodate these locations within ten days of Zipcar's request. City agrees to maintain the parking location(s) free of debris, snow, ice and hazards to the best of the city's ability. City will actively ticket and tow non-Zipcar vehicles parked in Zipcar car spots 24/7.

2. Administration; Marketing: City will assign an administrator who will be the point of contact for billing. In addition, City shall designate a marketing coordinator to coordinate the marketing and promotion of the Zipcar service to such employees and residents of the Providence community. City shall aggressively promote the Zipcar service as mutually agreed by the parties and shall use Zipcar's standard marketing materials and collateral provided by Zipcar. 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.

3. Use of Zipcar Name: City may not use, and may not permit any third party to 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 specialists 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. City Use: City will use best efforts to message to City employees and "sign up" 40 departmental drivers within the first 60 days of the start date of the service.

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. 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. **Insurance.** During the term of this Agreement, Zipcar will maintain the following insurance: (a) Commercial Automobile Liability in the amount of \$1,000,000 combined single limit (CSL), with Personal Injury Protection (PIP) and Uninsured (UI) and Underinsured Motorist (UIM) coverage at state minimum limits; (b) Commercial General Liability in the amount of \$1,000,000 each occurrence, general aggregate and products and completed operations aggregate; and (c) Commercial Excess in an amount of \$1,000,000 each occurrence and annual aggregate. Zipcar will add City as a designated insured on Zipcar's Commercial Automobile Liability policy and as an additional insured on Zipcar's Commercial General Liability Insurance policy. Eligible Persons are insured as described in the Member Agreement. At City's request, Zipcar will provide City with a certificate of insurance evidencing such coverage.

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. City hereby gives Zipcar the right to use City's name, logos, trademarks and service marks (i) to, in Zipcar's sole discretion, 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.

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.

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. EXCEPT WITH RESPECT TO CITY'S PAYMENT OBLIGATIONS AND EACH PARTY'S CONFIDENTIALITY OBLIGATIONS, NEITHER PARTY'S LIABILITY HEREUNDER WILL EXCEED THE FEES PAYABLE FOR THE SERVICES THAT ARE THE SUBJECT OF THE CLAIM. CITY ACKNOWLEDGES THAT THE PROVISIONS OF THIS SECTION REPRESENT A REASONABLE ALLOCATION OF RISK THAT IS REFLECTED IN THE FEES PAID BY CITY. THE FOREGOING LIMITATION OF LIABILITY IS NOT INTENDED TO LIMIT EITHER PARTY'S LIABILITY FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

7. **Confidentiality.** Each party acknowledges that during the term of this Agreement the other party may disclose information, whether orally, visually, or in tangible form, that is proprietary and confidential to the disclosing party and is disclosed or marked as

proprietary or confidential (hereafter "Confidential Information") and that the unauthorized disclosure of Confidential Information may cause irreparable harm to the disclosing party. Each party shall only use the Confidential Information to perform its obligations hereunder and will take all reasonable measures to safeguard and prevent the unauthorized disclosure of Confidential Information, but no less than the measures it takes to safeguard its own confidential information, including without limitation disclosing Confidential Information only to those of its employees with a need to know such information to perform their obligations hereunder and which have been advised of the confidential nature of the information and have agreed to protect the Confidential Information to the same extent as City hereunder. The parties acknowledge that it will be impossible to measure the damages that would be suffered by one party if the other party fails to comply with the provisions of this Section 7 and that in the event of any such failure, such party will not have an adequate remedy at law and shall, therefore, be entitled, in addition to any other rights and remedies, to obtain specific performance of the receiving party's obligations and to obtain immediate injunctive relief with respect thereto.

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 may terminate this Agreement effective as of the end of that period. The commitment of an act of bankruptcy (such as giving a general assignment for the benefit of creditors) or the filing of a bankruptcy petition will be deemed a breach if not vacated within thirty (30) days of filing. 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 to 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. Upon the termination of this Agreement, each party will promptly destroy or, on the other party's request, return all of the other party's Confidential Information, including all copies thereof. Sections 5, 6, 7, 8, and 9 of this Agreement shall survive any termination or expiration of this Agreement.

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 laws of the State of Rhode Island 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 the State of Rhode Island, and consent to the exclusive jurisdiction of such courts. In the event of any adjudication of any dispute under this Agreement, the prevailing party in such action will be entitled to reimbursement of its attorneys' fees and related costs by the other party. 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.