

## STAFF REPORT

**DATE:** September 25, 2012  
**TO:** City Council  
**FROM:** Stacey Winton, Administrative Analyst II  
Ken Hiatt, Director of Community Development and Sustainability  
**SUBJECT:** Car Sharing Program – Status Report and Agreement Amendment

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### **Recommendation**

Approve the attached Resolution, authorizing the City Manager to execute Amendment No. 2 to the “Zipcar for Municipalities” Program Agreement.

### **Fiscal Impact**

The City will receive annual rent payments for parking spaces from Zipcar pursuant to agreed amounts.

### **Council Goal(s)**

Enact policies that conserve resources and improve environmental quality.

Guiding Principles:

- Reduce the community’s carbon footprint
- Focus on mobility systems that will reduce carbon emissions.
- Promote reduction of resource consumption and waste generation, preserve agriculture, promote local food production, reduce automobile and energy use, foster a healthy and vibrant economic climate based on green technologies, and create a people-centric urban design environment.
- Actively participate in regional planning activities in the areas of transit, air quality, water resources, land use and agricultural and open space conservation

### **Background**

On July 27, 2010, the City Council approved a two year car sharing program with Zipcar. The program was implemented on October 1, 2010. The agreement was later amended on December 14, 2010.

Last Fall, staff provided a status report on the program and a request from Zipcar to add two additional vehicles. The Council asked staff to review appropriate parking usage charges for use of city owned parking spaces and to return to Council. This report is an update to the two year status report and an extension of the contact with amendments. The amended agreement is included as Attachment 1.

### **Agreement Modifications**

The Amended Agreement includes the following changes:

- **Contract Term**

The initial contract was for a two year term, which expires September 30, 2012. The Regents (UCOP) and UC Davis have recently extended their contract thru June 18, 2014. To maintain alignment with the UC contract, Davis’ contract period will end September 30, 2014.

- **Additional vehicles to the City fleet**

Due to high vehicle utilization and customer demand, Zipcar and the City will add additional vehicles to the City fleet, as needed, and in adherence with all contract terms. Parking locations will be identified and based on the least amount of impact as possible.

The first additional vehicle will be located near, but not in, the Amtrak parking lot. The Depot location was determined by a survey which asked members, if Zipcars were added to the fleet, which location would be the most convenient. Results included:

- 36% Amtrak Train Depot parking lot
- 33% Russell Blvd near Trader Joes
- 16% E St Plaza parking lot

To further validate this location, last fall, a trial period was conducted with two vehicles located at the Depot parking lot for three weeks. The vehicles were placed in the last row on the right side exiting the lot adjacent to the 20 minute spaces. During the trial period, utilization was 40.6%, particularly high given the new location, without marketing and the brief 3 week period. Staff believes that with the information from the survey, and the trial period results, locating an additional vehicle near the Depot parking lot will benefit user needs and assist in increasing train ridership.

- **Implement a charge for use of parking spaces**

Zipcar has agreed to pay rent for reserved parking privileges and signage installation. The downtown/core area was set at a higher rate, as it is considered a premiere parking area.

UC programs including Davis, Santa Barbara, Santa Cruz, Sacramento and the cities of Sacramento, San Francisco & Los Angeles have not have not required Zipcar to pay for parking spaces. However, UC Davis just executed a 2 year contract extension and will be charging \$696 annually, per space.

Below is a table of local parking rates/costs:

City	Permit type	Annual cost	Comments
Davis	X Commuter Permit	\$96	
Davis	D Employee Permit	\$30	
Davis	Residential Permit	\$12	
Davis	E St Paid Parking	\$610	Annual revenue per space
UC Davis	A Permit Faculty/staff	\$588	
UC Davis	L/M/N Permit-Staff/students living off campus	\$252-276	Remote lots

UC Davis	Vendor	\$696	Rate UCD is charging Zipcar
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The City has negotiated the following rental rates with Zipcar:

<u>Current&amp; Proposed Vehicle Locations</u>	<u>Per Vehicle</u>	<u>Annual Total</u>
Downtown parking spaces (3)	\$996	\$2,988
Outside Core area (2)	\$696	<u>\$1,392</u>
	<i>Total Amount</i>	\$4,380

- **Insurance**

The Davis coverage and liability levels have been amended to equal the language included in the UCOP agreement.

- **Alternative Vehicle Types & Features**

Due to customer requests, a Tahoe ready SUV will be added to the City’s fleet. Zipcar has a Honda CRV ready to release.

The City requested that all Davis Zipcar’s be equipped with a bike rack. Zipcar is interested in this feature and is reviewing bike rack options and installation requirement to mitigate potential issues with liability and vehicle damage. Once this issue is resolved, they have agreed to the program on the Davis vehicles.

- **Minimum Payment Guarantee**

Zipcar has removed all city payment requirements for Davis’ current fleet and all additional vehicles added to the fleet.

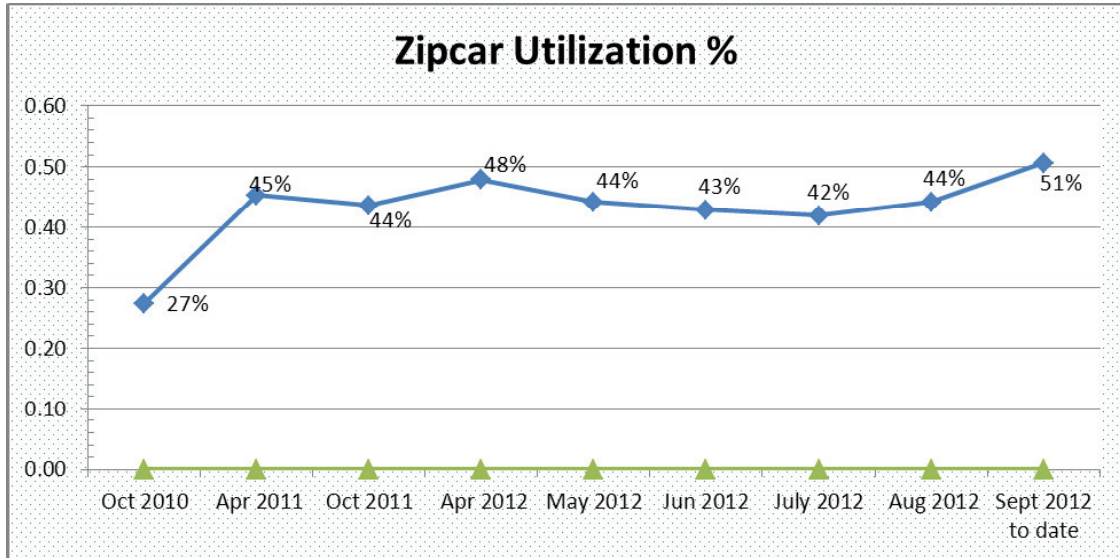
- **Non-Exclusivity Clause**

The City has added language that allows the City to contract with other car share service providers during the term of the agreement at our discretion.

**Program Usage/Statistics**

Vehicle utilization and membership has steadily increased over the term of the agreement. The City program currently has 148 members, in addition to UC Davis’ membership of 1,755 which includes student’s staff and faculty members.

Utilization percentages are based on the time a vehicle is reserved. Below is a graph showing the utilization progression since the program was implemented.



**Conclusion**

The Davis Zipcar program has proven to be very successful and will continue to grow over time and assist the City in meeting its carbon reduction goals identified in the Climate Action and Adaptation Plan. Staff recommends approval of the contract amendment.

**Attachments**

1. Amended Agreement
2. Resolution

**Attachment 1**



**“Zipcar for Municipalities” Program Agreement  
Amendment No. 2**

**This “Zipcar for Municipalities” Program Agreement**, including all schedules attached hereto (hereafter the "Agreement") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2012, (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 Davis, a California municipality with principal offices at 23 Russell Boulevard, Davis, CA 95616 (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

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: \_\_\_\_\_

**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 two (2) years. This Agreement will automatically renew for successive one (1) year periods unless either party gives the other written notice of termination at least thirty (30) days prior to the end of the then current term.

**2. Number of Vehicles; Monthly 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	Monthly Fee
5	Zipcars	10/1/2012	9/30/2014 To be extended if this Agreement is renewed per Section 1 above.	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 community member of the City who is (a) 21+ years of age or (b) 18-20 years of age and a student at local participating Zipcar university, (collectively, “Community Members”) shall be eligible to use Zipcar Vehicles at the usage rates set forth at [www.zipcar.com](http://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](http://www.zipcar.com) and, if approved for membership by Zipcar (an “Eligible Person”), shall enter into Zipcar’s member agreement in the form set forth at [www.zipcar.com](http://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](http://www.zipcar.com) and as adjusted from time to time at Zipcar’s sole discretion. Vehicle usage rates shall remain in alignment with the rates provided to Zipcar members affiliated with the UC, Davis program. 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.

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**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.

**5. Non Exclusive:** City may at its sole discretion, contract with other car share service providers during the term of this Agreement. If City chooses to participate with another car share service provider, City will provide Zipcar with 60 days' prior written notice of such arrangement and Zipcar shall have the right, but not the obligation, to terminate this Agreement upon receipt of such notice.

**Schedule B  
City Obligations**

**1. Parking:** City will initially provide five (5) highly visible, dedicated and reserved parking location (s) for each Zipcar Vehicle provided under Schedule A. Zipcar shall pay the following fees for such parking spaces:

2.

Parking Location	Monthly Rate (per parking space)
<u>Location</u> in downtown core (E Street Plaza/Amtrak) or similar location	\$83.00
<u>Location</u> outside core area (Russell Blvd) or similar location	\$ 58.00

If Zipcar is not entitled to use a space for the entire month, the monthly fee will be prorated for the number of days that Zipcar will not have use of the space.

The City shall, or shall permit Zipcar to, post at each parking location Zipcar signage and Tow Away Notices provided by Zipcar. The reserved parking locations will be accessible 24 hours, 7 days per week to Zipcar members and employees. In addition, at Zipcar’s request, City agrees to provide up to ten (10) additional, highly visible, dedicated and reserved parking location(s) for Zipcar Vehicles, at similar rental rates to those set forth above. Such additional parking locations shall be mutually agreed to by the parties. Once the spaces are agreed to by the City and Zipcar, the City shall make them available to Zipcar at the earliest feasible date. City agrees to maintain the parking location(s) free of debris, snow, ice and hazards.

**3. Administration; Marketing:** City shall designate a marketing coordinator to coordinate the marketing and promotion of the Zipcar service to employees and residents of the City community. City shall 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.

**4. 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 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.



## 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 Schedules A and B. City will perform the obligations set forth on Schedules A and 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. **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.

3. **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 website and in other Zipcar publications.

4. **DISCLAIMER OF WARRANTIES/LIMITATION OF LIABILITY.** 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. 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 \$5,000. THE FOREGOING LIMITATION OF LIABILITY IS NOT INTENDED TO LIMIT EITHER PARTY'S LIABILITY FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

5. **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.

6. **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. The commitment of an act of bankruptcy (such as a giving 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. No termination for breach 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 and 8 of this Agreement shall survive any termination or expiration of this Agreement.

7. **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. 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 on the signature page hereto. 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 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 Commonwealth of Massachusetts without regard to conflicts of laws provisions thereof. The parties agree that the sole jurisdiction and venue for actions related to the subject matter

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hereof shall be the state and federal courts located in Boston, Suffolk County, Massachusetts, 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 be 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.

**RESOLUTION NO. 12-XXX, SERIES 2012**

**RESOLUTION AUTHORIZING THE CITY MANAGER  
TO EXECUTE AMENDMENT NO. 2 TO THE  
ZIPCAR FOR MUNICIPALITIES PROGRAM AGREEMENT  
WITH ZIPCAR, INC. FOR CAR SHARING SERVICES**

WHEREAS, the City has an existing agreement, approved by City Council, with Zipcar Inc., for car sharing services; and

WHEREAS, the agreement was approved by Resolution No. 10-122, Series 2010 on August 2, 2010; and amended by Resolution No. 10-187, Series 2010 on December 14, 2010; and

WHEREAS, the existing agreement expires on September 30, 2012; and

WHEREAS, the City desires to amend provisions of the Agreement to clarify the City's and Zipcar's roles and responsibilities for certain aspects in the Agreement.

THEREFORE BE IT RESOLVED by the City Council of the City of Davis that the City Manager is hereby authorized to execute Amendment No. 2 to the Zipcar of Municipalities Program Agreement (attached hereto) and shall have authority to add vehicles to the City program if contract provisions are adhered to; and

BE IT FURTHER RESOLVED that all terms, conditions, and covenants of said agreement be, and the same are, hereby approved, ratified, and confirmed.

PASSED AND ADOPTED by the City Council of the City of Davis this 25<sup>th</sup> day of September, 2012 by the following vote:

AYES:

NOES:

Joseph F. Krovoza  
Mayor

ATTEST:

Zoe S. Mirabile, CMC  
City Clerk