

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number \_\_\_\_\_

Meeting Type: Regular

Meeting Date: 2/11/2016

Action Requested By:  
Parking

Agenda Item Type  
Resolution

Subject Matter:

"Resolution authorizing the Mayor to enter into a Parking License Agreement between the City of Huntsville and Zipcar, Inc."

Exact Wording for the Agenda:

"Resolution authorizing the Mayor to enter into a Parking License Agreement between the City of Huntsville and Zipcar, Inc."

**Note: If amendment, please state title and number of the original**

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

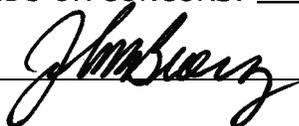
[Empty box for providing details on why the action is required, recommended, and what Council action will provide, allow, and accomplish.]

Associated Cost:

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: \_\_\_\_\_



Date: 2/4/2016

## ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Parking Council Meeting Date: 2/11/2016

Department Contact: Cyndi Wall Phone # 256/427-6803

Contract or Agreement: Agreement

Document Name: "Resolution authorizing the Mayor to enter into a Parking License Agreement between..."

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance:

Account Number: 1000-53-53100-515250-00000000-

1000-53-00000-4/20200 - Parking Space fees

### Procurement Agreements

<u>Select...</u>	<u>Select...</u>
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### Grant-Funded Agreements

<u>Select...</u>	Grant Name: <input style="width: 90%;" type="text"/>
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Department	Signature	Date
1) Originating	<i>[Signature]</i>	<u>2-4-16</u>
2) Legal	<i>[Signature]</i>	<u>2-5-16</u>
3) Finance	<i>[Signature]</i>	<u>2-10-16</u>
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

RESOLUTION NO. 16-\_\_\_\_\_

**BE IT RESOLVED** by the City Council of the City of Huntsville, Alabama, does hereby declare in accordance with Code of Alabama (1975) that the Mayor be, and is hereby authorized to enter into a Parking License Agreement by and between the City of Huntsville and Zipcar, Inc., on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as a "Parking License Agreement between the City of Huntsville and Zipcar, Inc.," consisting of thirteen (13) pages and the date of February 11, 2016 appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

**ADOPTED** this the 11<sup>th</sup> day of February, 2016.

\_\_\_\_\_  
President of the City Council of  
the City of Huntsville, Alabama

**APPROVED** this the 11<sup>th</sup> day of February, 2016.

\_\_\_\_\_  
Mayor of the City of  
Huntsville, Alabama

**PARKING LICENSE AGREEMENT  
BETWEEN THE CITY OF HUNTSVILLE  
AND ZIPCAR, INC.**

**PARKING LICENSE AGREEMENT  
BETWEEN THE CITY OF HUNTSVILLE  
AND ZIPCAR, INC.**

This Parking License Agreement ("Agreement") is made this 11th day of February 2016, by and between the CITY OF HUNTSVILLE, a municipal corporation organized under the laws of the State of Alabama ("City"), and ZIPCAR, INC., a Delaware corporation authorized to conduct business in the State of Alabama ("Zipcar"). City and Zipcar are sometimes hereinafter referred to as a "Party" and collectively as the "Parties."

**RECITALS**

**WHEREAS**, Zipcar is a fee-based car-sharing service that operates throughout the United States; and

**WHEREAS**, Zipcar desires to use parking spaces in Huntsville; and

**WHEREAS**, City desires to lease certain parking spaces owned and maintained by the City to Zipcar for its operations in Huntsville; and

**WHEREAS**, the City and Zipcar desire to set forth the terms and conditions pursuant to which City will lease certain parking spaces to Zipcar for the exclusive use of Zipcar vehicles ("Car Share Vehicles"); and

**WHEREAS**, the City's Director of Parking and Public Transportation (the "Director), or his designee, is charged with the administration of the Agreement;

**NOW THEREFORE**, in consideration of the terms and conditions herein, the parties agree as follows:

1. **Permitted Spaces**: Subject to the terms and conditions of this Agreement, the City will issue parking permits to Zipcar solely for parking of Car Share Vehicles in the following designated/marked on-street parking spaces (the "Parking Spaces") in the following locations in downtown Huntsville:

- 308 Fountain Circle

\_\_\_\_\_  
President of the City Council of the  
City of Huntsville, Alabama  
Date: 2/11/2016

- 700 Dorothy Ford Lane
- 104 Washington Street, NE

The exact location of the spaces at the above-listed addresses shall be determined by the Director.

2. Permit Fee: Zipcar shall pay the City the sum of fifty-six dollars (\$56.00) per month per each space for which a permit is issued.

3. Term: The term of this Agreement shall be one (1) year commencing on \_\_\_\_\_. The parties may, by mutual agreement, extend the term for one (1) additional year. If the parties desire to extend the term, then each party shall confirm in writing its intent to do so at least thirty (30) days prior to the existing term.

4. Use of Permitted Spaces by Zipcar:

a. The City will grant to Zipcar one Parking Permit for each of the Permitted Spaces. Each Parking Permit shall be assigned to a specific Car Share Vehicle. The Car Share Vehicle shall prominently display the issued Parking Permit on the front windshield at all times while parking in the designated Parking Space. Zipcar shall have the right to transfer Parking Permits to qualified replacement Car Share Vehicles.

b. Except as provided in 4(a) above, the Parking Permits are non-transferable and shall not be sub-leased, transferred, or assigned to any other company, organization, entity or person, and shall only be used for the Car Share Vehicle, or a replacement Car Share Vehicle, to which it has been assigned to park in Parking Spaces. Failure to comply with the requirements of this provision may be subject to a parking citation and/or immediate termination of this Agreement by City.

c. The Parking Permits issued by City to Zipcar under this Agreement are a license to park only, and shall be used solely by Zipcar and its members for the parking of Car Share Vehicles in the Parking Spaces under the terms and conditions herein. Zipcar and its members are authorized to use the Parking Spaces solely for Car Share Vehicles and Zipcar and its members may park and retrieve the vehicles used in connection with Zipcar's self-service, unattended car sharing program. Zipcar and its members will generally have access to and may park in the designated Parking Spaces twenty-four (24) hours a day, seven (7) days a week, except when the City closes public access to any of the parking facilities or restricts public access to any of the parking spaces at its discretion, provided City will use reasonable effort to provide Zipcar with forty-eight (48) hour written notice and relocation to a temporary parking facility.

d. Zipcar and its members will have reasonable ingress and egress rights through the City parking facilities to access the Parking Spaces for the limited purpose stated in this Agreement. Access to the Parking Spaces by Zipcar and its members shall, at the City's option, be by card, pass, bumper sticker, decal or other appropriate identification issued by the City or the parking facilities' operator or manager. Zipcar shall pay the standard charge for the replacement cards, passes, or other identification if lost or damaged.

e. Zipcar hereby acknowledges that City shall not be responsible for security of any of the Car Share Vehicles, nor any articles of movable personal property, equipment, or possessions in the Car Share Vehicles. Zipcar shall park the Car Share Vehicles in the Parking Spaces at its sole risk.

f. Zipcar covenants and agrees that neither Zipcar nor any of its agents shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Parking Spaces or any other City Property. Zipcar shall immediately notify City if and when Zipcar learns or has reason to believe there has been any release of Hazardous Material in, on or about the Parking Spaces or any other City Property. For the purposes of this Agreement, the term "Hazardous Materials" shall mean any substance or material which is capable of posing a risk of injury to health, safety or property, including all those materials and substances designated as hazardous or toxic by any federal, state or local law, ordinance, rule, regulation or policy.

g. If Zipcar or any of its agents, causes or permits the release of any Hazardous Materials in, on, under or about the Parking Spaces or any other City property, Zipcar shall, promptly, at no expense to City, take any and all appropriate actions to return the Parking Spaces or other City property affected thereby to the condition existing prior to such release and otherwise investigate and remediate the release in accordance with all applicable laws and requirements.

h. Zipcar shall indemnify and defend City from and against all third party claims or lawsuits brought against City during or after the term of this Agreement relating to any release of Hazardous Materials directly and proximately caused by Zipcar or its agents as set forth in Section 4. (g) above and will pay all damages finally awarded by a court of competent jurisdiction or agreed to by Zipcar in settlement. The foregoing indemnity includes, without limitation, all costs associated with the investigation and remediation of Hazardous Material and with the restoration of the Parking Spaces or any other City property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and re-vegetation of the Parking Spaces or other City property.

i. In its use of the Parking Spaces, Zipcar shall at all times comply, and shall require its employees, agents, and invitees to comply, with any rules and regulations established by City (“Rules”). City may modify or amend such Rules from time to time with at least thirty days prior written notice to Zipcar and neither Zipcar nor its employees, agents, or invitees shall have any right to approve or consent to any change in the Rules; provided, however, that if Zipcar is unable or unwilling to comply with any modification, Zipcar may terminate this Agreement without penalty.

5. Acknowledgements by Zipcar: Zipcar acknowledges and agrees to each of the following:

a. Zipcar shall not use or occupy any of the Parking Spaces in any unlawful manner or for any illegal purpose, or permit to be carried on any offensive, immoral, noisy or hazardous use or any use in violation of the conditions of this Agreement or any applicable local, state or federal laws. Zipcar shall take all reasonable precautions to eliminate immediately any nuisances or hazards relating to its activities on or about the Parking Spaces hereunder.

b. Zipcar shall not cause knowingly any waste, damage or injury on or about the Parking Spaces or other City property.

c. Zipcar shall not make any changes, modifications, improvements or alterations to the Parking Spaces including the placement of any signs, drop boxes, kiosk, or any other fixtures or personal properties on or about the Parking Spaces without the express written consent of the Director.

d. Zipcar shall keep the Parking Spaces and all of City's property free from any liens arising out of any work performed, materials furnished or obligations incurred by or for Zipcar.

e. Zipcar shall be solely responsible for any maintenance in and around the Parking Spaces to the reasonable satisfaction of City. The Parking Spaces shall be maintained at all times in the condition the Parking Spaces were provided to Zipcar and shall be kept reasonably clear of any debris, litter, trash, garbage, graffiti, and any other form of blight or public nuisance. Zipcar shall pick up trash and debris in the immediate vicinity of the Parking Spaces (defined as 15 feet on all sides of the Parking Spaces) and dispose of trash appropriately.

f. Zipcar understands and acknowledges that City may not provide any security for the Parking Spaces and City shall not be responsible for any damages of property or person under this Agreement except as provided herein, except damage resulting directly and exclusively from the gross negligence of City or its agents and not contributed to by the acts,

omissions or negligence of Zipcar, its agents or invitees. City shall not be liable in any manner, and Zipcar hereby waives any claims, for any damage arising out of or relating to the Parking Spaces, except damage resulting directly and exclusively from the gross negligence or willful misconduct of City or its agents and not contributed to by the acts, omissions or negligence of Zipcar, its agents or invitees.

g. If Zipcar or any of its members, agents or invitees damages, injures, or disturbs any of the Parking Spaces, or any portion thereof, Zipcar shall promptly notify City of that occurrence and shall promptly repair such damage. Without limiting any of its other rights hereunder, if Zipcar fails to make such repairs within thirty days from the date of notice, City may immediately take all actions it deems proper to repair the Parking Spaces and shall, thereafter, notify Zipcar of the cost of the repairs, which shall be at Zipcar's sole expense.

h. City has a limited budget for parking enforcement and may be unable to respond to complaint(s) relating to unauthorized use of the Parking Spaces. City shall not be liable in any manner, and Zipcar hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of or relating to the unauthorized use of the Parking Spaces.

6. Signage and Markings:

a. Zipcar shall be responsible for producing and maintaining all signage for the Parking Spaces. Signage will be erected by the City. All signage (including maintenance of the said signage) shall be subject to approval by the City.

b. All signs installed as part of this Pilot Program shall comply with the City of Huntsville sign ordinance.

c. No other signs shall be authorized under the Pilot Program except as provided in this Section 6.

7. Termination and Surrender:

a. In addition to any other termination rights set forth herein, either Party may terminate this Agreement for any reason with ten business days written notice to the other Party. The Director is empowered to terminate this Agreement on behalf of City.

b. In the case of damage to or destruction of any or all of the Parking Spaces by fire, earthquake, flooding, or any other casualty, whether insured or uninsured, City may immediately terminate this Agreement by providing written notice to Zipcar.

c. Upon the expiration or earlier termination of this Agreement, Zipcar shall surrender to City the Parking Spaces, in the same condition as they were provided to Zipcar, reasonable wear and tear excepted. On or before the expiration or earlier termination hereof, Zipcar shall, at its sole cost, remove any and all of Zipcar's property from the premises. Any items of Zipcar's property remaining on or about the premises after the expiration or earlier termination of this Agreement may, at City's option, be deemed abandoned and the property of the City. If Zipcar fails to surrender the Parking Spaces to City on the expiration date or earlier termination of the term as required by this Section, Zipcar shall indemnify City against all losses resulting from Zipcar's failure to surrender the premises.

8. Rights Reserved to the City: The City reserves and retains all of the following rights unless provided otherwise in this Agreement:

a. All rights to use, operate, maintain, repair, enlarge, modify, expand, replace and reconstruct any parking facilities where the Parking Spaces are located; and

b. All rights to use, operate, maintain, repair, enlarge, modify, expand, replace and reconstruct any parking facilities where the Parking Spaces are located; and

c. The right to inspect the Parking Spaces at any time to determine whether Zipcar is in compliance with its obligations hereunder and to cure or attempt to cure any such default; and to do any maintenance or repairs to the premises that City has the right or the obligation, if any, to perform hereunder; and

d. In the event of any emergency, as determined by City, City may, at its sole option and without notice, enter the Parking Spaces and alter or remove Zipcar's personal property on or about the Parking Spaces. City shall have the right to use any and all means City considers appropriate to gain access to any portion of the Parking Spaces in an emergency. In such case, City shall not be responsible for any damage or injury to any such property, nor for the replacement of any such property. City shall not be liable in any manner, and Zipcar hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of City's entry onto the Parking Spaces other than that arising from City's or its employees or agents negligence; and

e. Any other rights not specifically granted to Zipcar under this Agreement for use of the Parking Spaces shall be reserved to City.

The enumeration of the above-listed rights retained by the City does not, in any way, limit or abrogate any other right of the City.

9. As Is Condition of the Premises:

a. Zipcar represents and warrants that Zipcar has conducted a thorough and diligent inspection and investigation, either independently or through agents of Zipcar's own choosing, of the Parking Spaces and the suitability of the Parking Spaces for Zipcar's intended use. Zipcar is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Parking Spaces are suitable for its operations and intended uses.

b. Zipcar acknowledges and agrees that the Parking Spaces are being accepted in their "AS IS, WITH ALL FAULTS" condition, without representation or warranty of any kind, and subject to all applicable laws governing the use, occupancy, management, operation and possession of the Parking Spaces. Without limiting the foregoing, this Agreement is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Parking Spaces, or any portion thereof, whether or not of record. Zipcar acknowledges and agrees that City nor any of its agents have made, and City hereby disclaims, any representations or warranties, express or implied, concerning: (i) title or survey matters affecting the Parking Spaces, (ii) the physical, geological, seismological or environmental condition of the Parking Spaces, (iii) the quality, nature or adequacy of any utilities serving the Parking Spaces, (iv) the present or future suitability of the Parking Spaces for Zipcar's business and intended uses, (v) any other matter whatsoever relating to the Parking Spaces premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

10. Insurance Requirements:

Zipcar shall procure and maintain throughout the term of this Agreement, or as later indicated, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the use of the Parking Spaces by Zipcar, its agents, representatives, employees, customers or subcontractors.

**A. MINIMUM SCOPE OF INSURANCE:**

1. Commercial General Liability

Products and Completed Operations

Contractual Liability

Personal Injury and Advertising Injury

Broad Form Property Damage Liability

Severability of Interests

Waiver of Subrogation

Per Project Aggregate Limits

2. Automobile Liability

Business Automobile Liability providing coverage for all owned, hired and non-owned autos. Coverage for loading and unloading shall be provided under either automobile liability or general liability policy forms. Waiver of subrogation to be included.

3. Worker's Compensation Insurance

Statutory protection against bodily injury, sickness or disease or death sustained by employee in the scope of employment. Protection shall be provided by a commercial insurance company or a recognized self-insurance fund authorized before the State of Alabama Industrial Board of Relations. Waiver of subrogation shall be included.

4. Employers Liability Insurance

Covering common law claims of injured employees made in lieu of or in addition to a worker's compensation claim.

B. MINIMUM LIMITS OF INSURANCE

1. General Liability

Commercial General Liability on an occurrence form for bodily injury and property damage:

\$2,000,000	General Aggregate Limit
\$2,000,000	Products - Completed Operations Aggregate
\$2,000,000	Personal and Advertising Injury
\$1,000,000	Each Occurrence

2. Automobile Liability

\$700,000 Combined Single Limit per accident for bodily injury and property damage with \$300,000 of excess insurance.

3. Worker's Compensation

As required by the State of Alabama Statute.

4. Employers Liability

\$100,000 Bodily Injury  
\$500,000 Policy Limit by Disease

**C. OTHER INSURANCE PROVISIONS:**

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

**1. General Liability and Automobile Liability Coverages Only:**

a. The City, its agents and their officers, employees, representatives and specified volunteers are to be covered as Additional Insureds, as their interests may appear, as respects: liability arising out of activities performed by or on behalf of Zipcar and its sub-contractors, if any, for products used by and completed operations of Zipcar, or automobiles owned, leased, hired or borrowed by Zipcar. The coverage shall contain no special limitations on the scope of protection afforded to the City, its agents and their officers, employees, representatives or specified volunteers. Waiver of subrogation shall be included.

b. The City's insurance coverage shall be primary insurance as respects the City, its agents and their officers, employees, representatives, and specified volunteers, as their interests may appear. Any insurance or self-insurance maintained by the City, its agents and their officers, officials, employees, representatives or specified volunteers shall be excess of Zipcar's insurance and shall not contribute to it.

c. 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.

**2. All Coverages:**

a. Zipcar is responsible to pay all deductibles. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Cancellation of coverage for non-payment of premium will require ten (10) days' written notice to the City. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, employees, agents or specified volunteers.

**D. ACCEPTABILITY OF INSURERS:**

Insurance is to be placed with insurers qualified to do business in the State of Alabama with an A. M. Best's rating of no less than A- V.

**E. VERIFICATION OF COVERAGE:**

The City of Huntsville shall be indicated as a Certificate Holder, and Zipcar shall furnish the City with Certificates of Insurance reflecting the coverage required by this document. The A. M. Best Rating and deductibles, if applicable, shall be indicated on the Certificate of Insurance for each insurance policy. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

**F. HOLD HARMLESS AGREEMENT:**

**1. Other Than Professional Liability Exposures:**

Zipcar, to the fullest extent permitted by law, shall, at Zipcar's expense, indemnify and defend the City of Huntsville, its elected and appointed officials, employees, agents and specified volunteers against all third party claims, arising out of or resulting from or Zipcar's gross negligence or willful misconduct and shall pay all damages finally awarded by a court of competent jurisdiction or agreed to by Zipcar in settlement, provided that any such claim (1) is attributable to personal injury, including bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including loss of use resulting there from and (2) is caused by, in whole or in part, by the gross negligence or willful misconduct of Zipcar, or any of its subcontractors, sub consultants, or anyone directly or indirectly employed by it or anyone for whom Zipcar is legally liable. Such obligation should not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.

**2. Indemnity:**

In claims against any person or entity indemnified under this Section 10.F by an employee of Zipcar, any one directly or indirectly employed by Zipcar or anyone for whose acts Zipcar may be liable, the indemnification obligation under this Paragraph shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Zipcar or a

Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

11. No Privity of Contract with Third Parties: Nothing contained in this Contract shall create, or be interpreted to create, privity or any other contractual agreement between the City and person or entity other than Zipcar.

12. Independent Contractor: In the performance of this work it is understood between the parties that Zipcar and its employees, agents, subcontractors and consultants, if any, shall be acting as independent contractors and not as an employee of the City of Huntsville. Zipcar shall have no authority to obligate the City to any indebtedness or other obligation.

13. Notices: All notices to be delivered hereunder shall be delivered to the other party by placing the same in the United States Mail, First Class postage prepaid, by prepaid overnight service through Federal Express, DHL or United Parcel Services or by hand delivery, to the addressee, addressed as follows:

To City: City of Huntsville, Alabama  
Attn: Director of Parking and Public Transportation  
500B Church Street  
Huntsville, AL 35801

To Zipcar "Zipcar"  
Zipcar, Inc.  
Attn: CFO  
25 First Street  
4<sup>th</sup> Floor  
Cambridge, MA 02141

14. Governing Law: Regardless of choice of law provisions, this agreement shall be governed by the law of the State of Alabama.

15. Venue: The Exclusive venue of any action to enforce this agreement shall be in the Circuit Court of Madison County, Alabama or, if federal jurisdiction is appropriate, the United States District Court for the Northern District of Alabama, Northeastern Division.

16. No Waiver: The City's failure to enforce any breach of any term, covenant or condition contained herein shall not be deemed to be a waiver of such terms, covenants or

conditions, or any subsequent breach of the same, or any other term, covenant or condition contained herein.

17. No Assignment: Zipcar shall not assign its rights hereunder, nor shall it delegate any of its duties hereunder without the written consent of the City provided, however, that Zipcar may assign this Agreement to its successor in a merger, acquisition or other change of control, including without limitation the sale of all or substantially all of Zipcar's assets, stock or business to which this Agreement relates. Subject to the provisions of the immediately preceding sentence, the City and Zipcar, respectively, bind themselves, their successors, assigns and legal representatives to the other party to this Agreement and to the successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement.

18. Non-Discrimination: In consideration of the signing of this Agreement, the parties hereto for themselves, their agents, officials, employees, and servants agree not to discriminate in any manner on the basis of race, color, creed, age, sex, disability or national origin with reference to the subject matter of this contract, no matter how remote. This nondiscrimination provision shall be binding on the successors and assigns of the parties with reference to the subject matter of this Agreement

19. Miscellaneous Provisions:

a. This Agreement is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Agreement.

b. The words "include," "includes," or "including," as used in this Agreement, shall be deemed to be followed by the phrase, "without limitation."

c. The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

d. Words or terms used as nouns in this Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

e. Time limitations contained herein, or provided for hereby, are of the essence of this Agreement.

20. Entire Agreement: This Agreement represents the entire agreement between the City and Zipcar and supersedes all prior communications, negotiations, representations or agreements, either written or oral. This agreement may be amended only by written instrument signed by both the City and Zipcar.

21. **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 ZIPCAR'S INDEMNIFICATION OBLIGATIONS AND EACH PARTY'S CONFIDENTIALITY OBLIGATIONS, NEITHER PARTY'S LIABILITY HEREUNDER WILL EXCEED \$5,000. CITY ACKNOWLEDGES THAT THE PROVISIONS OF THIS SECTION REPRESENT A REASONABLE ALLOCATION OF RISK THAT IS REFLECTED IN THE FEES PAID BY CITY.

**IN WITNESS WHEREOF**, the parties have executed this agreement on the day and year first above written.

ATTEST:

CITY OF HUNTSVILLE, a municipal  
corporation within the State of Alabama

\_\_\_\_\_  
KENNETH BENION  
Clerk-Treasurer

By \_\_\_\_\_  
Name: TOMMY BATTLE  
Title: Mayor

ZIPCAR, INC., a Delaware corporation  
authorized to conduct business in the State of  
Alabama

By \_\_\_\_\_  
Name:  
Title: