

Lease Agreement
By and between
The City of Somerville Acting through
The Purchasing Department
And
ZIPCAR, INC.

CONTRACT #

CONTRACT VALUE: \$33,600.00

PO#

PO Amount: \$

Contract period: 01/01/2016 to 12/31/2017

(This lease is below the statutory threshold set forth in G.L. c. 30B, s. 16 and is not subject to a public procurement process under G.L. c. 30B, s. 16.)

CONTRACT FOR: LEASE OF SEVEN (7) CITY-OWDED PARKING SPACES

LESSEE: Zipcar, Inc.
2 Liberty Square
Boston, MA 02109
617- 995-4241

ACCORDING TO THE SPECIFICATIONS CONTAINED HEREIN.

LEASE AGREEMENT
BY AND BETWEEN
CITY OF SOMERVILLE
ACTING THROUGH ITS PURCHASING DEPARTMENT

And
Zipcar, Inc.
2 Liberty Square
Boston, MA 02109
(617) 995-4241

WHEREAS, the City desires to utilize certain property in a manner that will continue a car sharing program for the citizens of Somerville;

WHEREAS, General Laws chapter 30B, §16 authorizes a governmental body to dispose of available real property by lease;

WHEREAS, since the fair market value of the property has been determined to be less than \$25,000.00, the City is not required to invite proposals for the lease of this Property under G. L. c. 30B, §16. The Board of Aldermen approved a lease to the current car sharing program operating in the City of Somerville at a rate of 100% of the current fair market value of the parking spaces as outlined below;

WHEREAS, pursuant to M.G.L. c. 40, §3, the Board of Aldermen authorized such a lease;

NOW THEREFORE, The City of Somerville acting through the Purchasing Department and Zipcar, Inc. for and in consideration of the promises and the mutual obligations herein contained and other valuable consideration, the receipt and sufficiency of which is acknowledged do hereby covenant and agree as follows:

Seven (7) City-owned parking spaces located on City of Somerville owned property for the purposes of a car-sharing program. The locations of these spaces are as follows: two (2) at the Buena Vista Lot in Davis Square, two (2) at the CVS Lot Magoun Square, two (2) at the Rite Aid Lot in Davis Square, and one (1) at the Broadway Lot Lower Broadway in front of Mt. Vernon (the "Leased Premises"). Lessee may place Lessee signage advertising the Lessee services in such locations as Lessee and the City of Somerville may mutually agree from time to time, including without limitation placing Zipcar No Parking and Tow Away Zone Signs adjacent to the Parking Spaces, and placing a postcard box adjacent to the Parking Spaces.

I. LESSEE'S OBLIGATION

- A. The Lessee reaffirms and agrees to all obligations and representations in contract.
- B. The Lessee agrees that the lease payment shall be \$200 per space for seven (7) City-

owned parking spaces, for a total of \$1400 per month for the period from January 1, 2016 through December 31, 2017.

C. The Purchasing Department may at its sole discretion amend this in the event that the awarding authority finds that it is in the best interest of the City.

II. CONTRACTS

ARTICLE I. DEFAULT; TERMINATION; REMEDIES

A. Events of Default.

The following shall constitute events of default under this Contract:

1. The Lessee has made any material misrepresentation to the City; or
2. A judgment or decree is entered against the Lessee approving a petition for an arrangement, liquidation, dissolution or similar relief relating to bankruptcy or insolvency; or
3. The Lessee files a voluntary petition in bankruptcy or any petition or answer seeking any arrangement, liquidation or dissolution relating to bankruptcy, insolvency or other relief for debtors; or
4. The Lessee seeks or consents or acquiesces in the appointment of any trustee or receiver, or is the subject of any other proceeding under which a court assumes custody or control over the Lessee or of any of the Lessee's property; or
5. The Lessee becomes the defendant in a levy of an attachment or execution, or a debtor in an assignment for the benefit of creditors; or
6. The Lessee is involved in a winding up or dissolution of its corporate structure; or
7. Any failure by the Lessee to perform any of its obligations under this Contract, including, but not limited to, the following:
 - (I) failure to commence performance of this Contract at the time specified in this Contract due to a reason or circumstance within the Lessee's reasonable control,
 - (ii) failure to perform this Contract with sufficient personnel and equipment or with sufficient material to ensure the completion of this Contract within the specified time due to a reason or circumstance within the Lessee's reasonable control,
 - (iii) failure to perform this Contract in a manner reasonably satisfactory to the City,

- (iv) failure to promptly re-perform within reasonable time the Services or Supplies that were properly rejected by the City as erroneous or unsatisfactory,
 - (v) discontinuance of the Services or Supplies for reasons not beyond the Lessee's reasonable control,
 - (vi) failure to comply with a material term of this Contract, including, but not limited to, the provision of insurance and nondiscrimination; or
8. Any other acts specifically and expressly stated in this Contract as constituting a basis for termination of this Contract.

B. Termination Upon Default.

In the event of a default by the Lessee, the City, acting through its Chief Procurement Officer, may, at its option, terminate this Contract immediately by written notice of termination. Notwithstanding the above, in the event of a default by the Lessee, the City, acting through its Chief Procurement Officer, may give notice in writing of a default, which notice shall set forth the nature of the default and shall set a date, by which the Lessee shall cure the default. If the Lessee fails to cure the default within the time as may be required by the notice, the City, acting through its Chief Procurement Officer, may, at its option terminate the Contract.

C. Termination For Convenience.

1. Notwithstanding any language to the contrary within the body of this Contract, the City may terminate this Contract, without cause at any time, effective upon the termination date stated in the notice of termination.
2. If the Contract is terminated under this subsection, the Lessee shall be entitled to be paid for Supplies and/or Services delivered and accepted prior to notice of termination at the prices stated in the Contract or bid documents. Any Supplies and/or Services delivered after notification of termination but prior to the effective termination date must be approved in writing in advance by the City in order to be eligible for payment. In no event shall the Lessee be entitled to be paid for any Supplies and/or Services delivered after the effective date of termination.

D. Obligations Upon Termination.

Upon termination of this Contract with or without cause, the Lessee shall immediately, unless otherwise directed by the City:

1. Cease performance upon the stated termination date;
2. Surrender to the City the Lessee's work product, which is deliverable under the Contract, whatever its state of completion; and
3. Return all tools, equipment, documents, correspondence, drawings, plans, models, or any other items whatsoever belonging to or supplied by the City;

E. Rights and Remedies.

1. The City shall have the right to:
 - a) disallow all or any part of the Lessee's invoices not in material compliance with this Contract; and
 - b) temporarily withhold payment pending correction by the Lessee of any deficiency; and
 - c) sue for specific performance or money damages or both, including reasonable attorneys' fees incurred in enforcing any Lessee obligations hereunder; and
 - d) pursue remedies under any bond provided; and
 - e) pursue such other local, state and federal actions and remedies as may be available to the City.
2. Any termination shall not effect or terminate any of the rights or remedies of the City as against the Lessee then existing, or which may accrue because of any default.
3. No remedy referred to in this subsection is intended to be exclusive, but shall be cumulative, and in addition to any other remedy referred to above or otherwise available to the City or Lessee at law or in equity.

ARTICLE II. INSURANCE

The Lessee shall deposit with the City certificates of insurance issued by companies qualified to do business in the Commonwealth of Massachusetts in form and substance satisfactory to the City, with limits equal to or greater than those set forth in **Appendix B** attached hereto and made a part of this Contract. Such certificates shall name the City of Somerville as an additional insured and shall contain an endorsement requiring thirty (30) calendar days written notice to the City and the City's approval prior to cancellation or change in amounts, types or scope of coverage. The Lessee shall deliver to the City new certificates of insurance at least ten (10) calendar days prior to expiration of the prior insurance and shall furnish the City with the name, business address and telephone number of the insurance agent. Lessees who are sole proprietors and who do not carry workers' compensation coverage shall certify in writing that they do not have any employees.

ARTICLE III. GENERAL PROVISIONS

- A. Governing Law.** This Contract shall be governed by the laws of the Commonwealth of Massachusetts.
- B. Complete Agreement.** This Contract supersedes all prior agreements and understandings between the parties and may not be changed unless mutually agreed upon in writing by both parties.
- C. Condition of Enforceability Against the City.** This Contract is only binding upon, and enforceable against, the City if: (1) the Contract is signed by the Mayor; (2) endorsed with approval by the City Auditor as to appropriation or availability of funds; (3) endorsed with approval by the City Solicitor as to form; and (4) funding is appropriated for this Contract or otherwise made available to the City.
- D. Taxes.** Purchases incurred by the City are exempt from Federal Excise Taxes and Massachusetts Sales Tax, and prices must exclude any such taxes. Tax Exemption Certificates will be furnished upon request. The City of Somerville's Massachusetts Tax Exempt Number is: **M046 001 414**.
- E. Indemnification.** The Lessee agrees to take all reasonably necessary precautions to

prevent injury to any persons or damage to property during the term of this Contract and shall indemnify and save the City harmless against all damages, loss or expense, including judgments, costs, attorneys' fees and interest resulting in any way, from any negligent or willful act or omission on the part of the Lessee, its agents, employees or sub-contractors or resulting directly or indirectly from the Lessee's performance under this Contract.

- F. Independent Contractor.** The Lessee is an independent contractor and is not an employee, agent or representative of the City.
- G. Assignment.** The Lessee shall not assign this Contract or any interest herein, without the prior written consent of the City.
- H. Sub-Contractors.** The Lessee shall not engage any other company, sub-contractor or individual to perform any obligation hereunder, without the prior written consent of the City.
- I. Discrimination.** It is understood and agreed that it shall be a material breach of this Contract for the Lessee to engage in any practice which shall violate any provision of G.L. c. 151B, relative to discrimination in hiring, discharge, compensation or terms, conditions or privileges of employment because of race, color, religious creed, national origin, sex, sexual orientation, age, or ancestry.
- J. Severability.** In the event that any paragraph or provision of this Contract shall be held to be illegal or unenforceable, such paragraph or provision shall be severed from this Contract and the entire Contract shall not fail on account thereof, but shall otherwise remain in full force and effect.
- K. Notice.** The parties shall give notice in writing by one of the following methods: (i) hand-delivery; (ii) facsimile; (iii) certified mail, return receipt requested; or (iv) federal express, express mail, or any other nationally recognized overnight delivery service:
 - 1. To the Lessee at the address set forth herein or the following
Tel #: 617-698-5176
 - 2. To the City addressed to:
Name: Purchasing Director

Address: Somerville City Hall
93 Highland Avenue
Somerville, MA 02143

Fax No.: 1-617-625-1344

with a copy to: City Solicitor, City Hall, 93 Highland Avenue, Somerville, MA 02143;

Fax No. (617) 776-8847.

Notice shall be effective on the earlier of (I) the day of actual receipt, or (ii) one day after tender of delivery.

- L. Captions.** The captions of the sections in this Contract are for convenience and reference only and in no way define, limit or affect the scope or substance of any section of this Contract.
- M. Additional Provisions.** Other conditions governing this Contract are set forth in the following appendices:

Appendix A – Certificate of Authority

Appendix B – Certificate of Insurance

Appendix C – Board of Alderman Approval

The above-described appendices are, by this clause, made an integral part of this Contract. The Contract documents are to be read collectively and complementary to one another; any requirement under one shall be as binding as if required by all. In the event of any conflict or inconsistency between the provisions of this Contract and any of this Contract's documents, the provisions of this Contract shall prevail. In the event of any conflict or inconsistency between this Contract, the Contract's documents and any applicable state law, the applicable state law shall prevail.

ARTICLE IV. REPRESENTATIONS AND CERTIFICATIONS OF THE LESSEE

The Lessee hereby represents and certifies under the penalties of perjury:

- A. Organization.** The Lessee is a duly organized and validly existing: corporation and is qualified to do business and is in good standing in the Commonwealth of Massachusetts, with full power and authority to consummate the transactions contemplated hereby.

- B. Authority.** (Not applicable to Sole Proprietorship). This Contract has been duly executed and delivered on behalf of the Lessee by its president/ treasurer/ general partner/trustee/other: _____ (select one) to and in full compliance with the authority granted by its organizational documents and its votes or resolutions, which authority has not been amended, modified or rescinded as of the date hereof.
- C. Non-Collusion.** This Contract was made without collusion or fraud with any other person and was in all respects bona fide and fair. As used in this paragraph, the word, "person," shall mean any natural person, joint venture, partnership, corporation, or other business or legal entity.
- D. Tax and Contributions Compliance.** The Lessee is in full compliance with all laws of the Commonwealth of Massachusetts relating to taxes and to contributions and payments in lieu of taxes. The Lessee's federal tax identification number is: 04-3499525. The Lessee certifies that it has provided the City with an accurate tax identification number (TIN). In the event that the City is fined by the IRS for an incorrect TIN provided by the Lessee, the Lessee agrees to reimburse the City for the amount of the fine.
- E. Municipal Taxes and Liens.** The Lessee has paid all outstanding real estate, personal property or excise tax, water charges, fines and or any other municipal lien charges due to the City of Somerville.
- F. Conflict of Interest.** The Lessee certifies that no official or employee of the City has a financial interest in this Contract or in the expected profits to arise therefrom, unless there has been compliance with the provisions of G. L. c. 43, § 27 (Interest in Public Contracts by Public Employees), and G. L. c. 268A, § 20 (Conflict of Interest).
- G. Licenses and Permits:** The Lessee shall be in possession of all required licenses and permits for any activity which may occur from the Lessee's operations under this Contract. The Lessee shall submit copies of such licenses and/or permits upon request.
- H. Debarment or Suspension.** The Lessee certifies that it has not been debarred or suspended under G. L. c. 29, § 29F, nor will it contract with a debarred or suspended subcontractor on any public contract.

ARTICLE V. WARRANTIES (NOT APPLICABLE)

- A. The Lessee warrants that (1) the Supplies sold are merchantable, (2) that they are fit for the purpose for which they are being purchased, (3) that they are absent any latent defects and (4) that they are in conformity with any sample which may have been presented to the City.
- B. The Lessee guarantees that upon inspection, any defective or inferior Supplies shall be replaced without additional cost to the City. The Lessee will assume any additional cost accrued by the City due to the defective or inferior Supplies.
- C. For specific terms and conditions of the Lessee's warrantee see Appendix B (Section titled "Customer Service / Warranty").

ARTICLE VI. LIVING WAGE (NOT APPLICABLE)

If this Contract is for Services in the amount of ten thousand dollars (\$10,000.00) or more, the Lessee must execute a "Living Wage Ordinance Compliance Form" (N/A) and hereby represents and certifies under the penalties of perjury that it complies with the provisions of the Somerville Living Wage Ordinance.

IN WITNESS WHEREOF, the City and the Lessee have executed this Contract as a sealed instrument as of the date first written above.

CITY OF SOMERVILLE

I hereby certify that the total contract amount is \$_____, and that an unencumbered balance of \$_____ is available for the first fiscal year of this contract. I further certify that a sum of \$_____ is hereby encumbered for against the appropriate account for the purposes of this contract.

Ed Bean
City Auditor

Joseph A. Curtatone
Mayor

Angela M. Allen
Purchasing Director

Suzanne Rinfret
Director, Traffic and Parking

Approved as to Form:

Francis X. Wright, Jr.
City Solicitor

CONTRACTOR
Zipcar, Inc.

X _____
Signature of Authorized Agent

Printed Name of Authorized Agent

2 Liberty Square Boston, MA 02109
Address:

TIN: _____

FOR CORPORATIONS ONLY:

I certify that the individual signing on behalf of the corporation has the authority to do so.

Clerk's Signature

Print or Type Clerk's Name

APPENDIX A
Certificate of Authority



**Certificate of Authority
(Corporations Only)**

Instructions: Complete this form and sign and date where indicated below.

1. I hereby certify that I, the undersigned, am the duly elected Clerk/Secretary of

(Insert Full Name of Corporation)

2. I hereby certify that the following individual _____
(Insert the Name of Officer who Signed the Contract and Bonds)

is the duly elected _____ of said Corporation.
(Insert the Title of the Officer in Line 2)

3. I hereby certify that on _____
(Insert Date: Must be on or before Date Officer Signed Contract/Bonds)

at a duly authorized meeting of the Board of Directors of said corporation, at which a quorum was present, it was voted that

(Insert Name of Officer from Line 2) (Insert Title of Officer from Line 2)

of this corporation be and hereby is authorized to make, enter into, execute, and deliver contracts and bonds in the name and on behalf of said corporation, and affix its Corporate Seal thereto, and such execution of any contract of obligation in this corporation's name and on its behalf, with or without the Corporate Seal, shall be valid and binding upon this corporation; and that the above vote has not been amended or rescinded and remains in full force and effect as of the date set forth below.

4. **ATTEST:**

Signature: _____
(Clerk or Secretary)

AFFIX CORPORATE SEAL HERE

Printed Name: _____

Printed Title: _____

Date: _____

(Date Must Be on or after Date Officer Signed Contract/Bonds)

APPENDIX B
Certificate of Insurance

INSURANCE SPECIFICATIONS

INSURANCE REQUIREMENTS FOR AWARDED VENDOR ONLY:

Prior to commencing performance of any work or supplying materials or equipment covered by these specifications, the contractor shall furnish to the Office of the Purchasing Director a Certificate of Insurance evidencing the following:

A. GENERAL LIABILITY - Comprehensive Form

Bodily Injury Liability.....\$ One Million

Property Damage Liability.....\$ One Million

B. COVERAGE FOR PAYMENT OF WORKER'S COMPENSATION BENEFIT PURSUANT TO CHAPTER 152 OF THE MASSACHUSETTS GENERAL LAWS IN THE AMOUNT AS LISTED BELOW:

WORKER'S COMPENSATION.....\$ Statutory

EMPLOYERS' LIABILITY.....\$ Statutory

C. AUTOMOBILE LIABILITY INSURANCE AS LISTED BELOW:

BODILY INJURY LIABILITY.....\$ STATUTORY

1. A contract will not be executed unless a certificate (s) of insurance evidencing above-described coverage is attached.
2. Failure to have the above-described coverage in effect during the entire period of the contract shall be deemed to be a breach of the contract.
3. All applicable insurance policies shall read:
"CITY OF SOMERVILLE" as a certificate holder and as an additional insured for general liability only along with a description of operation in the space provided on the certificate.

**Certificate Should Be Made Out To:
City Of Somerville
Purchasing Department
93 Highland Avenue
Somerville, Ma. 02143**

Note: If your insurance expires during the life of this contract, you shall be responsible to submit a new certificate(s) covering the period of the contract. No payment will be made on a contract with an expired insurance certificate.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:	
	PHONE (A/C, No. Ext):	FAX (A/C, No):
INSURED	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A :	NAIC #
	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						<input type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

ADD "X" HERETO CERTIFY THAT THE CITY OF SOMERVILLE IS AN ADDITIONAL INSURED

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

DESCRIPTION OF PROJECT, SOLICITATION NUMBER AND THAT THE CITY OF SOMERVILLE IS A CERTIFICATE HOLDER AND ADDITIONAL INSURED

CERTIFICATE HOLDER

CERTIFICATES SHOULD BE MADE OUT TO:

CITY OF SOMERVILLE
c/o PURCHASING DEPARTMENT
93 HIGHLAND AVE
SOMERVILLE, MA 02143

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

APPENDIX C
Board of Alderman Approval