

4600011499  
2012-0258

THE STATE OF TEXAS §

§

COUNTY OF HARRIS §

1. PARTIES

1.1. ADDRESS

1.1.1. THIS AGREEMENT FOR THE PURCHASE OF AN AUTOMATED MOTOR POOL SYSTEM ("Agreement") is made on the Countersignature Date between the CITY OF HOUSTON, TEXAS ("City" or "Customer"), a home rule city of the State of Texas, and ZIPCAR, INC. ("Contractor" or "Zipcar"), a Delaware corporation qualified to do business in Texas.

1.1.2. The initial addresses of the parties, which one party may change by giving written notice to the other party, are as follows:

City

City Purchasing Agent for  
Director of Administration and Regulatory  
Affairs Department  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251

Contractor

ZIPCAR, INC.  
25 First St., 4<sup>th</sup> floor  
Cambridge, MA 02141  
Attn: GM, FastFleet

The Parties agree as follows:

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**1.5. SIGNATURES**

The Parties have executed this Agreement in multiple copies, each of which is an original.

**ZIPCAR, INC.**

By:   
Name: Mark D. Norman  
Title: President

ATTEST/SEAL (if a corporation)  
WITNESS (if not a corporation)

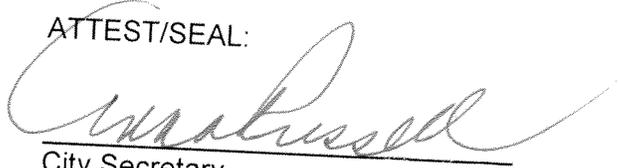
By:   
Name: Dean J. Breda  
Title: Secretary

**CITY OF HOUSTON, TEXAS**

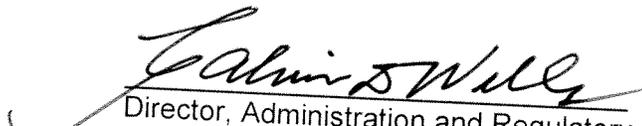
Signed by:

By:   
Mayor Matthew D. Appel

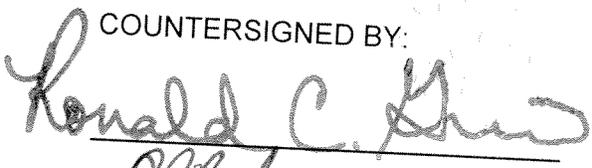
ATTEST/SEAL:

  
City Secretary

APPROVED:

  
Director, Administration and Regulatory  
Affairs Department

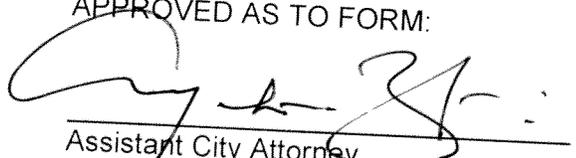
COUNTERSIGNED BY:

  
Ch B. King

APPROVED:

  
Director, Finance Department

APPROVED AS TO FORM:

  
Assistant City Attorney  
L. D. No. 0371200071001

DATE COUNTERSIGNED:

4-25-12

## 2. DEFINITIONS

As used in this Agreement, the following terms have the meanings set out below:

- 2.1. "**Agreement**" means this contract between the Parties, including all Exhibits, Change Orders and any written amendments agreed to by the Parties and authorized by City Council.
- 2.2. "**ARA Director**" means the Director of the Administration and Regulatory Affairs Department, or his designee.
- 2.3. "**City**" is defined in the preamble of this Agreement and includes its successors and assigns.
- 2.4. "**City Confidential Information**" shall have the meaning as defined in Section 3.14.
- 2.5. "**Comptroller of Public Accounts**" means the Comptroller of Public Accounts for the state of Texas.
- 2.6. "**Contractor**" is defined in the preamble of this Agreement and includes its successors and assigns.
- 2.7. "**Countersignature Date**" means the date this Agreement is countersigned by the City Controller.
- 2.8. "**Deliverables**" shall have the meaning as defined in Exhibit A of this Agreement (Scope of Services).
- 2.9. "**Director**" means the Director of the Fleet Management Department, or his designee.
- 2.10. "**Finance Director**" means the Director of the City's Finance Department, or his designee.
- 2.11. "**Grant Agreement**" shall have the meaning as defined in Section 3.20.
- 2.12. "**Grant Funds**" shall have the meaning as defined in Section 4.5.
- 2.13. "**Installation Site(s)**" refers to the location where work is to be performed by the Contractor.
- 2.14. "**Project**" shall have the meaning as defined in Exhibit A.
- 2.15. "**Services**" means all the work to be performed by the Contractor hereunder, including provision of all labor, materials, equipment, supplies and other incidentals necessary or convenient to the successful completion of the work.
- 2.16. "**Start Date**" shall have the meaning as defined in Section 3.4.

- 2.17. "System" or "FastFleet System" shall mean the FastFleet Program delivered and installed by Contractor and all the hardware, software, materials, equipment, brochures and other incidentals necessary or convenient to the successful operation of the FastFleet Program, as more fully described in Exhibit A.

### **3. DUTIES OF CONTRACTORS**

#### **3.1. Scope of Services**

In consideration of the payments specified in this Agreement, Contractor shall provide all labor, material, and supervision necessary to perform the Services described in Exhibit A.

#### **3.2. Coordinate Performance**

Contractor shall coordinate its performance with the Director and other persons that the Director designates. Contractor shall promptly inform the Director and other person(s) of all significant events relating to the performance of this Agreement.

#### **3.3. Reports**

Contractor shall submit the reports and progress updates required pursuant to the terms of this Agreement.

#### **3.4. Schedule of Performance**

The Director shall provide Contractor a written Notice to Proceed specifying a date to begin performance ("Start Date"). Contractor shall begin its performance within ten (10) days of the Start Date.

#### **3.5. Time Extensions**

If Contractor requests an extension of time to complete its performance, then the Director may, in his or her sole discretion, extend the time so long as the extension does not exceed thirty (30) days. The extension must be in writing but does not require amendment of this Agreement.

#### **3.6. Duty to Inspect**

Contractor represents that it or its agent has inspected and familiarized itself with all Installation Sites. Contractor has informed the Director of the steps to be taken in preparation of the Installation Sites. The City shall not pay additional compensation for work performed as the result of unusual conditions or obstacles encountered during the progress of the work.

#### **3.7. Prompt Payment of Subcontractors**

Contractor shall make timely payments to all persons and entities supplying labor, materials, or equipment for the performance of this Agreement. **CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE PAYMENTS, EXCEPT TO THE EXTENT THAT CONTRACTOR HAS NOT BEEN PAID BY CITY FOR AMOUNTS RIGHTFULLY OWED.**

**3.8. RELEASE**

**CONTRACTOR AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO CONTRACTOR'S PERFORMANCE UNDER THIS AGREEMENT EXCEPT TO THE EXTENT THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE.**

**3.9. INDEMNIFICATION**

**CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:**

- (1) CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**
- (2) CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND**
- (3) CONTRACTOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.**

**CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONTRACTOR'S INDEMNIFICATION IS LIMITED TO \$500,000 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.**

**3.10. INDEMNIFICATION - PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT**

CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CONTRACTOR FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CONTRACTOR SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.

CONTRACTOR SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS AND DOCUMENTS WITHOUT PRIOR WRITTEN NOTIFICATION TO THE CITY.

WITHIN 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONTRACTOR SHALL, AT ITS OWN EXPENSE, EITHER (1) OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS OR, (2) IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS. IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR DOCUMENTS, OR DISCONTINUE THE PROCESS, AND CONTRACTOR SHALL REFUND A PRORATED PORTION OF THE PURCHASE PRICE.

### 3.11. INDEMNIFICATION PROCEDURES

**3.11.1. Notice of Claims.** If the City or Contractor receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 30 days. The notice must include the following:

- a. a description of the event giving rise to the indemnification claim, in reasonable detail,
- b. the basis on which indemnification may be due, and
- c. the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 30 day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.

### 3.11.2. Defense of Claims

a. Assumption of Defense. Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Contractor shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Contractor must

advise the City as to whether or not it will defend the claim. If Contractor does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

b. Continued Participation. If Contractor elects to defend the claim, the City may, at its own expense, retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Contractor may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Contractor does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

### 3.12. Insurance

Contractor shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Agreement. All policies except Professional Liability and Worker's Compensation must name the City as an additional insured. The issuer of any policy shall (1) have a Certificate of Authority to transact insurance business in Texas or (2) be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition Best's Key Rating Guide. Contractor shall maintain the following insurance coverages in the following amounts:

- (1) Commercial General Liability insurance including Contractual Liability insurance:
  - \$500,000 per occurrence; \$1,000,000 aggregate
- (2) Worker's Compensation including Broad Form All States endorsement:
  - Statutory amount
- (3) Automobile Liability insurance
  - \$1,000,000 combined single limit
- (4) Employer's Liability
  - Bodily Injury by Accident  
\$1,000,000 (each accident)
  - Bodily Injury by Disease  
\$1,000,000 (policy limit)

- Bodily Injury by Disease  
\$1,000,000 (each employee)

(6) Excess Liability

- \$1,000,000

Defense costs are excluded from the face amount of the policy.  
Aggregate Limits are per 12-month policy period unless otherwise indicated.

All insurance policies must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City. **CONTRACTOR SHALL GIVE 30 DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED, MATERIALLY CHANGED OR NON-RENEWED.** Within the 30 day period, Contractor shall provide other suitable policies in lieu of those about to be canceled, materially changed, or non-renewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the Director, at his or her sole discretion, may:

- (1) immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default, or
- (2) purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Agreement.

**3.13. Warranties**

Contractor warrants that it shall perform all work in a good and workmanlike manner, meeting the standards of quality prevailing in Harris County, Texas for work of this kind. Contractor shall perform all work using trained and skilled persons having substantial experience performing the work required under this Agreement.

With respect to any parts and goods it furnishes, Contractor warrants:

1. that all items are free of defects in title, design, material, and workmanship,
2. that each item meets or exceeds the manufacturer's specifications and requirements for the equipment, structure, or other improvement in which the item is installed,
3. that each replacement item is new, except refurbished containers, in accordance with original equipment manufacturer's specifications, and of a quality at least as good as the quality of the item which it replaces (when the replaced item was new),
4. that no item or its use infringes any U.S. patent, copyright, or proprietary right ,

5. each item provided by Contractor under this Agreement will conform in all material respects to manufacturer's specifications and requirements for the item, and
6. that during the FastFleet Program Service Period set forth in Exhibit A-1, Contractor will repair or replace, at no cost to the City, any defective, damaged or inoperable item and where Contractor does not repair or replace items discovered during the Warranty Period to be defective, damaged or inoperable, Contractor shall refund the City the cost of the item.

**3.14. Confidentiality – Protection of Each Party's Interests**

Contractor, its agents, employees, contractors, and subcontractors shall hold all City information, data, and documents that are confidential (collectively, the "City Confidential Information") that they receive, or to which they have access, in strictest confidence. Contractor, its agents, employees, contractors, and subcontractors shall not disclose, disseminate, or use the City Confidential Information unless the Director authorizes it in writing. Contractor shall obtain written agreements from its agents, employees, contractors, and subcontractors which bind them to the terms in this Section.

City shall not: (a) access and/or use the FastFleet System other than with respect to the covered vehicles and for the covered drivers, (b) modify or make derivative works based upon the FastFleet System or any part thereof including third-party components, or directly or indirectly disassemble, decompile, or otherwise reverse engineer the FastFleet System or any portion thereof; or (c) use the FastFleet System, or allow the transfer, transmission, export, or re-export of the FastFleet System or any portion thereof other than in accordance with this Agreement or in violation of any export control laws or regulations administered by the U.S. Commerce Department, OFAC, or any other government agency. In the event of any unauthorized use, reproduction or distribution by any of City employees, agents or representatives, City shall use commercially reasonable efforts to terminate any such unauthorized use.

City acknowledges that during the term of this Agreement Contractor may disclose information, including but not limited to information regarding its business and business methods, whether orally, visually, or in tangible form, that is proprietary and confidential to Contractor and is disclosed or marked as proprietary or confidential (hereafter "Contractor Confidential Information") and that the unauthorized disclosure of Contractor Confidential Information may cause irreparable harm to Contractor. The FastFleet System, related documentation and other materials with respect to the FastFleet System constitutes Contractor Confidential Information. City shall only use the Contractor Confidential Information as expressly permitted hereunder and will take all reasonable measures to safeguard and prevent the unauthorized disclosure of Contractor Confidential Information, but no less than the measures it takes to safeguard its own confidential information.

Notwithstanding the foregoing, the City may disclose Contractor Confidential Information as required to comply with Texas Public Information Act (TPIA) requests or binding orders of governmental entities that have jurisdiction over it; provided that when required the City (a) gives the Contractor reasonable written notice, if allowed

by law, to allow the Contractor to seek a protective order or other appropriate remedy, (b) discloses only such Contractor Confidential Information as is required by the governmental entity, and (c) reasonably cooperates with the Contractor's efforts to obtain confidential treatment for any Contractor Confidential Information according to the provision of the Texas Public Information Act, *Tex. Gov't Code §§ 552*.

**3.15. Licenses and Permits**

Contractor, its agents, employees, contractors, and subcontractors shall obtain, maintain, and pay for all applicable licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule, or regulation to perform the Scope of Services.

**3.16. Use of Work Products**

**3.16.1.** The City may use all notes, plans, computations, databases, tabulations, exhibits, photographs, reports, brochures, manuals, underlying data and other work products (collectively, the "Documents") that Contractor prepares or obtains solely for the benefit of the City under this Agreement.

**3.16.2.** Contractor warrants that it owns the copyright to the Documents.

**3.16.3.** Contractor shall deliver the original Documents to the Director on request. Within thirty (30) days after this Agreement terminates and upon the written request of the Director, Contractor shall deliver to the Director the original Documents, and all other files and materials Contractor produces or gathers solely for the benefit of the City during its performance under this Agreement.

**3.17. Compliance with Laws**

Contractor shall comply with all applicable state and federal laws and regulations and the City Charter and Code of Ordinances.

**3.18. Compliance with Equal Opportunity Ordinance**

Contractor shall comply with the City's Equal Employment Opportunity Ordinance as set out in Exhibit C.

**3.19. Drug Abuse Detection and Deterrence**

**3.19.1.** It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.

**3.19.2.** Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):

- a. a copy of its drug-free workplace policy,

- b. the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit E, together with a written designation of all safety impact positions and,
- c. if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit E.

**3.19.3.** If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit D. Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.

**3.19.4.** Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.

**3.19.5.** Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

**3.20. Requirements for Contracts between the City of Houston and Third Party Contractors using ARRA Grant Funds**

Contractor has reviewed and shall comply with the terms and conditions as set out in:

- i. the Grant Agreement, Federal Award No. DE-EE0000116, between the Comptroller of Public Accounts and the City of Houston (the "Grant Agreement"), attached hereto as Exhibit B-1; and
- ii. the requirements for Contracts between the City of Houston and Third Party Contractors using American Recovery and Reinvestment Act of 2009 Grant Funds, attached hereto as Exhibit B-2.

**3.21. Pay or Play**

The requirements and terms of the City of Houston Pay or Play program, as set out in Executive Order 1-7, are incorporated into this Agreement and attached hereto as Exhibit G. Contractor has reviewed Executive Order No. 1-7 and shall comply with its terms and conditions as they are set out at the time of City Council approval of this Agreement.

## **4. DUTIES OF CITY**

### **4.1. Payment Terms**

Upon acceptance and approval of the Deliverables and the System, the City shall pay and Contractor shall accept the payments set out in Exhibit A-1, subject to allocation of funds as set out below.

### **4.2. Taxes**

The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Contractor's invoices to the City must not contain assessments of any of these taxes. The Director will furnish the City's exemption certificate and federal tax identification number to Contractor if requested.

### **4.3. Method of Payment**

Upon acceptance of Deliverables, the City shall pay Contractor the unit prices specified in Exhibit A for all of Contractor's Services under this Agreement, but such payments may only be made from Allocated Funds, as provided below. The City shall make payments to Contractor at its address for notices within 30 days of receipt of an approved invoice.

### **4.4. Method of Payment – Disputed Payments**

If the City disputes any items in an invoice Contractor submits for any reason, including lack of supporting documentation, the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify Contractor of the dispute and request remedial action. After the dispute is settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

### **4.5. Limit of Appropriation**

**4.5.1.** The City's duty to pay money to Contractor under this Agreement is limited in its entirety by the provisions of this Section.

**4.5.2.** In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$154,962.50 to pay money due under this Agreement (the "Original Allocation") from funds received under the Grant Agreement.

**4.5.3.** The City's obligation for payment under this Agreement, if any, is limited to these funds received under the Grant Agreement (the "Grant Funds"); unless adequate funds are received, the City shall have no obligation to pay Contractor/Subcontractor. Contractor/Subcontractor must look to the Grant Funds only and to no other funds for the City's payment under this Agreement.

**4.5.4.** The parties further acknowledge that the City's ability to expend the Grant Funds, including time limits for expenditure, is limited by the terms of the Grant Agreement.

**4.5.5.** City will notify Contractor within 72 hours of any cancellation of grant funds that pertain to this Agreement. Such notification shall also serve as City's notice of termination of this Agreement and the parties agree that in such event this Agreement shall be terminated and the termination date shall be the termination date of the Grant Agreement, as provided by the Comptroller of Public Accounts to the City. On receiving the notice, Contractor shall, unless the notice directs otherwise, follow the termination procedures as stated in Section 5.3.

**4.5.6. Supplemental Allocation.** The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

**4.5.6.1.** The City makes a Supplemental Allocation by issuing to Contractor a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

#### **NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS**

By the signature below, the City Controller certifies that, upon the request of the responsible director, the supplemental sum set out below has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.

\$ \_\_\_\_\_

**4.5.6.2.** The Original Allocation plus all supplemental allocations are the Allocated Funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay for Services it provides. If Allocated Funds are exhausted, Contractor's only remedy is suspension or termination of its performance under this Agreement, and it has no other remedy in law or in equity against the City and no right to damages of any kind.

#### **4.6. Changes**

1. At any time during the Agreement Term, the Director may issue a Change Order to request an increase or decrease of the Deliverables, scope of services or change plans and specifications, as he or she may find necessary to accomplish the general purposes of this Agreement. If such request is agreed to by Contractor, Contractor shall furnish the Services or Deliverables in the Change Order in accordance with the requirements of this Agreement

plus any special provisions, specifications, or special instructions issued to execute the extra work.

2. The Director will issue the Change Order in substantially the following form:

**CHANGE ORDER**

TO: [Name of Contractor]  
FROM: City of Houston, Texas (the "City")  
DATE: [Date of Notice]  
SUBJECT: Change Order under the Agreement between the City and [Name of Contractor] countersigned by the City Controller on [Date of countersignature of the Agreement]

Subject to all terms and conditions of the Agreement, the City requests that Contractor provide the following:

**[Here describe the additions to or changes to the equipment or services and the Change Order Charges applicable to each.]**

Signed:

[Signature of Director]

3. The Director may issue more than one Change Order, subject to the following limitations:
  - a. Council expressly authorizes the Director to approve a Change Orders up to \$50,000. A Change Order of more than \$50,000 must be approved by the City Council.
  - b. If a Change Order describes items that Contractor is otherwise required to provide under this Agreement, the City is not obligated to pay any additional money to Contractor.
  - c. The Total of all Change Orders issued under this section may not increase the Original Agreement amount by more than 25%.
4. Whenever Contractor receives and accepts a Change Order, Contractor shall furnish all material, equipment, and personnel necessary to perform the work described in the Change Order. Contractor shall complete the work within the time prescribed. If no time for completion is prescribed, Contractor shall complete the work within a reasonable time. If the work described in any Change Order causes an unavoidable delay in any other work Contractor is required to perform under this Agreement, Contractor may request a time extension for the completion of the work. The Director's decision regarding a time extension is final.

5. A product or service provided under a Change Order is subject to inspection, acceptance, or rejection in the same manner as the work described in the Original Agreement, and is subject to the terms and conditions of the Original Agreement as if it had originally been a part of the Agreement.
6. Change Orders are subject to the Allocated Funds provisions of this Agreement.

#### **4.7. Acceptance**

Upon Contractor's notice that installation and diagnostic testing of the System has completed, the City will subject the System and each component to performance trials. The Director and Contractor will design the performance trials to demonstrate conformity with the requirements of this Agreement. The City shall accept the System and the Deliverables and Contractor's contract requirements for delivery and installation as to Final Acceptance are met when (i) the System has been completely delivered and installed in accordance with this Agreement, and (ii) the System and each phase of the Deliverables has successfully completed performance testing. If the System fails to pass performance testing, the City may pursue any of the remedies and rights available to a buyer, including but not limited to remedies and rights under Article 2 of the Texas Business and Commercial Code.

The Director shall notify Contractor in writing as to the City's Acceptance, partial Acceptance, or rejection of the System and the Deliverables and give the date of Acceptance or rejection.

#### **4.8. Access to Site**

Contractor may enter and leave the premises at all reasonable times without charge. Contractor and its employees may use the common areas and roadways of the premises where it is to perform the Services together with all facilities, equipment, improvements, and services provided in connection with the premises for common use. This excludes parking for Contractor's personnel. Contractor shall repair any damage caused by it or its employees as a result of its use of the common areas.

### **5. TERM AND TERMINATION**

#### **5.1. Contract Term**

This Agreement is effective on the Countersignature Date and remains in effect for three years unless sooner terminated under this Agreement (the "Initial Term").

#### **5.2. Renewals**

If the Director, at his or her sole discretion, makes a written request for renewal to Contractor at least 30 days before expiration of the then-current term and if sufficient funds are allocated, then, upon expiration of the Initial Term, this Agreement is renewed for two successive one-year terms upon the same terms and conditions (the "Renewal Term")

#### **5.3. Termination for Convenience by the City**

The Director may terminate this Agreement at any time by giving 30 days written notice to Contractor. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future.

On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all Services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the Services performed through the date of termination or items purchased including any specially manufactured items, whether in production or at Contractor's location, that cannot be cancelled or returned under this Agreement up to the termination date. The City shall then pay the fees to Contractor for Services actually performed, but not already paid for, in the same manner as prescribed in Section 4.1 unless the fees exceed the allocated funds remaining under this Agreement.

TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

#### **5.4. Termination for Cause by City**

If Contractor defaults under this Agreement, the Director may, in accordance with the provisions set forth below, terminate this Agreement. The City's right to terminate this Agreement for Contractor's default is cumulative of all rights and remedies which exist now or in the future. Default by Contractor occurs if:

1. Contractor fails to perform any of its duties under this Agreement;
2. Contractor becomes insolvent;
3. all or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or
4. a receiver or trustee is appointed for Contractor.

If a default occurs, the Director shall deliver a written notice to Contractor describing the default and the termination date, which shall be no less than thirty (30) days from the date of such notice. The Director, at his or her sole option, may extend the termination date to a later date. If the Contractor cures the default to the Director's reasonable satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then the Director may terminate this Agreement on the termination date, at no further obligation of the City.

To effect final termination, the Director must notify Contractor in writing. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately

discontinue all Services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

## **6. MISCELLANEOUS**

### **6.1. Independent Contractor**

Contractor is an independent contractor and shall perform the Services provided for in this Agreement in that capacity. The City has no control or supervisory powers over the manner or method of Contractor's performance under this Agreement. All personnel Contractor uses or provides are its employees or subcontractors and not the City's employees, agents, or subcontractors for any purpose whatsoever. Contractor is solely responsible for the compensation of its personnel, including but not limited to: the withholding of income, social security, and other payroll taxes and all workers' compensation benefits coverage.

### **6.2. Force Majeure**

**6.2.1.** Timely performance by both parties is essential to this Agreement. However, neither party is liable for reasonable delays in performing its obligations under this Agreement to the extent the delay is caused by Force Majeure that directly impacts the City or Contractor. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a party's obligations to complete performance under this Agreement. Force Majeure means: fires, interruption of utility services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or Contractor, riots, strikes, court orders, and the acts of superior governmental or military authority, and which the affected party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Force Majeure does not entitle Contractor to extra Reimbursable Expenses or payment.

**6.2.2.** This relief is not applicable unless the affected party does the following:

**6.2.2.1.** uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and

**6.2.2.2.** provides the other party with prompt written notice of the cause and its anticipated effect.

**6.2.3.** The Director will review claims that a Force Majeure that directly impacts the City or Contractor has occurred and render a written decision within 14 days. The decision of the Director is final.

**6.2.4.** The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance is not a default or breach of this Agreement by the City.

**6.2.5.** If the Force Majeure continues for more than 10 days from the date performance is affected, the Director may terminate this Agreement by giving 7 days'

written notice to Contractor. This termination is not a default or breach of this Agreement. **CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.**

### **6.3. Severability**

If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

### **6.4. Entire Agreement**

This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the Parties regarding this Agreement.

### **6.5. Written Amendment**

Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and Contractor. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

### **6.6. Applicable Laws**

This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction. Venue for any litigation relating to this Agreement is Harris County, Texas.

### **6.7. Captions**

Captions contained in this Agreement are for reference only, and therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

### **6.8. Notices**

All notices required or permitted by this Agreement must be in writing and are deemed delivered on the earlier of the date actually received or the third day following: (1) deposit in a United States Postal Service post office or receptacle; (2) with proper postage (certified mail, return receipt requested); and (3) addressed to the other party at the address set out in the preamble of this Agreement or at such other address as the receiving party designates by proper notice to the sending party.

### **6.9. Non-Waiver**

If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If

either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

An approval by the Director, or by any other employee or agent of the City, of any part of Contractor's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The Director is not authorized to vary the terms of this Agreement.

**6.10. Inspections and Audits**

City representatives may, not more than once per year and upon reasonable advanced notice during normal business hours, perform, or have performed, (1) audits of Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least 4 years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

**6.11. Enforcement**

The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Contractor shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Contractor's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

**6.12. Ambiguities**

If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

**6.13. Survival**

Each party shall remain obligated to the other party under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, the indemnity provisions.

**6.14. Publicity**

Contractor shall make no announcement or release of information concerning this Agreement unless the release has been submitted to and approved, in writing, by the Director.

**6.15. Risk of Loss**

Unless otherwise specified elsewhere in this Agreement, risk of loss or damage for each Deliverable passes from Contractor to the City upon acceptance by the City.

**6.16. Parties In Interest**

This Agreement does not bestow any rights upon any third party, but binds and benefits the City and Contractor only.

**6.17. Successors and Assigns**

This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following paragraph. This Agreement does not create any personal liability on the part of any officer or agent of the City.

**6.18. Business Structure and Assignments**

Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in §9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

Contractor shall not delegate any portion of its performance under this Agreement without the Director's prior written consent.

**6.19. Remedies Cumulative**

Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

**6.20. Contractor Debt**

IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-22 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT CONTRACTOR HAS INCURRED A DEBT, SHE SHALL IMMEDIATELY NOTIFY CONTRACTOR IN WRITING. IF CONTRACTOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFOR. CONTRACTOR SHALL FILE A NEW AFFIDAVIT OF OWNERSHIP, USING THE FORM DESIGNATED BY CITY, BETWEEN FEBRUARY 1 AND MARCH 1 OF EVERY YEAR DURING THE TERM OF THIS AGREEMENT.

## EXHIBIT A

### Scope of Services

1. **Introduction.** This Scope of Services covers the obligations of Contractor for the deployment of the FastFleet System for fifty (50) vehicles managed by the City of Houston. All Services to be invoiced must be completed before expiration of SECO ARRA Grant CS0020, currently scheduled for 4/30/2012.
  
2. **Implementation Process and Project Timeline.** The following is the accelerated implementation plan from post-contracting to ongoing performance monitoring. The City and Contractor agree to work together to enhance this plan to specifically meet the requirements and pace desired and achievable by the City. The plan can be accelerated or extended as needed as long as work is approved by the Finance Director and completed in accordance with SECO ARRA Grant CS0020's requirements (as of the third amendment, the grant will expire on April 30<sup>th</sup>, 2012).
  - 2.1. Table 1 below describes the "Deliverables" to be provided by both the Contractor and the City during each Week of the project implementation and identifies whether a party is an Accountable Party or a Contributing Party (where "A" means "Accountable Party" and "C" means "Contributing Party"). Within each Week, each Deliverable is assigned a Weekly Reference Number.

**Table 1 – Deliverables and Timeline**

Ref#	Key Deliverable Description	City	Contractor
W-1	Week 1		
1.0	Contractor to provide a designated project manager that will implement the Agreement for the City, who will have the authority to resolve problems that may arise	C	A
1.1	City branding guidelines and program name identified and provided to Contractor	A	C
1.2	Contractor to provide FastFleet Data Template for Drivers, Vehicles, Locations, and Departments	C	A
1.3	Vehicle, Driver, Location and Department data compiled and returned to Contractor	A	C
1.4	Contractor shall establish Web URL address and Toll Free support number	C	A
1.5	Contractor shall design Driver RFID Access cards and provide proof to the City	C	A

Ref#	Key Deliverable Description	City	Contractor
1.6	Driver RFID Access cards designs approved by the City	A	C
1.7	Contractor shall order Driver RFID Access cards	C	A
1.8	Contractor shall gather vehicle specifics for installation planning, begin vehicle integration research	C	A
1.9	Contractor shall provide Customer Implementation Questionnaire and data templates to City	C	A
1.10	Contractor shall provide Customer Business Process/Fleet Use Policy review and documentation	C	A
1.11	City shall provide Vehicle Install Schedule (5 – 10 vehicles installed per day)	A	C
W-2	Week 2		
2.0	Contractor shall launch Web site and configuration with program content	C	A
2.1	ITD to “white list” fastfleet.net domain for emails to prevent emails from being filtered out	A	C
2.2	Contractor shall configure vehicles and locations in the system	C	A
2.3	Contractor shall configure, test and ship FastFleet in-vehicle car sharing technology to the City	C	A
2.4	Contractor shall prepare and train City's Customer Service team	C	A
2.5	City to return Customer Implementation Questionnaire	A	C
W-3	Week 3		
3.0	City shall carryout vehicle installation transportation/preparation (Vehicles for each day will need to come out of service the day before installation and shuttled to installation site)	A	C
3.1	Contractor shall carryout vehicle installation and testing (5 – 10 vehicles per day)	C	A
3.2	Contractor shall deliver RFID Access cards to City for City to distribute to drivers	C	A

Ref#	Key Deliverable Description	City	Contractor
3.3	Contractor shall carryout Pre-launch vehicle activation and quality assurance	C	A
3.4	Pre-launch communications to drivers announcing program	A	C
3.5	Customer Business Process/Fleet Use Policy Finalized by City	A	C
W-4	Week 4		
4.0	Contractor shall carryout continued vehicle installation and testing and make any necessary refinements	C	A
4.1	On-site administrator training and driver orientation sessions	C	A
4.2	Launch communications with specific driver instructions	A	C
4.3	Quality assurance phase ends, official program Launch (driver reservations)	C	A
4.4	Contractor shall initiate program monitoring, refinements, and reporting	C	A

**3. Contractor's Post Implementation Responsibilities. Process and Project Timeline.** The following shall be the Contractor's post implementation responsibilities. The City and Contractor agree to work together to enhance this plan to specifically meet the requirements and pace desired and achievable by the City. The plan can be accelerated or extended as needed as long as work is approved by the Finance Director and completed in accordance with SECO ARRA Grant CS0020's requirements (as of the third amendment, the grant will expire on April 30<sup>th</sup>, 2012).

**3.1. Administrative System** – Contractor will provide the City fleet managers with a web-based vehicle sharing administration system.

**3.1.1.** The web-based FastFleet administration system will be fully integrated with the FastFleet reservation system.

**3.1.2.** The administrative interface will provide deep real-time and historical visibility into the performance of the shared fleet.

**3.1.3.** Fleet administrators designated by the City will be granted varying levels of access to and perform tasks with vehicle, location, department, and driver records. These include account management, driver access, reservation management, vehicle management, location management, reporting, and other key administrative and managerial tasks.

**3.2. Technical and Mechanical Support.** The City will have direct access to a Contractor Customer Service Manager for its support needs. Technical support

will be available 9AM to 6PM EST Monday through Friday. Administrators may call for help with any aspect of the administration system, including but not limited to vehicle, driver, location, department, and reservation management, and reporting and data analysis. Should an opportunity for follow-on Web-based training needs be identified, Contractor will sponsor sessions once per month at no additional cost to the City.

Contractor will be responsible for the repair or replacement of hardware in any vehicle where there is damage or inoperability through no fault of the City; provided, however, that City technicians trained by Contractor shall be responsible for doing the actual installation of the repaired or replacement hardware.

**3.3. System Integration.** Upon City's request, Contractor will develop an interface between its system and the City's Fleet Management Information System, providing any necessary data per the schema of the City vendor's platform at no charge. In addition, information generated by City's use of the FastFleet System, such as full usage records, will be configured in the system to be exported in Excel or comma separated value (.csv) files from web links in the administration system.

**3.4. Data Storage.** Data transmitted to and from the FastFleet System and each vehicle control unit (M200) will be stored permanently in a customer specific Oracle database instance. All driver, reservation, and usage data will be stored permanently.

**3.5. Reporting and Tracking.** The system provided by Contractor will include tools to report on information gathered by the FastFleet System. Functionality, data, exports, or reporting will include:

- Departmental usage
- Usage by employee
- Usage by location
- Mileage and miles traveled during and per reservation
- Reservation start and end times
- Actual vehicle use start and end times
- Reservation "Unused time" calculation and report
- Reservation "no-show" reporting
- GPS Vehicle tracking (both real time and historical)
- GPS-based geo-fencing exception reports
- Performance scorecard
- Automated event management system
- Driver account management tools
- Vehicle information including make, model, year, location, VIN, color, license plate, preventative maintenance cycle and more

- 3.6. Phone Based Support.** Contractor shall provide City's drivers with a fully automated toll-free phone system to make reservations (if approved for use by the City). Drivers may call the customer dedicated toll-free number to make, modify, or cancel existing reservations. Should a driver experience problems using the automated system or web they may transfer to a live agent for assistance. If a driver is equipped with a smartphone, the FastFleet system also includes a mobile reservation application accessible via the phone's web browser. Any calls to Contractor will be charged per the pricing section of this response at \$0.99 per minute.
- 3.7. Project Manager:** Contractor to provide a designated project manager that will administer and manage the Agreement with the City, who will have the authority to resolve any problems or invoice disputes.
- 4. General Project Responsibilities.** The City acknowledges that Contractor's completion of work, delivery of Services, and the fees charged are dependent on City's timely and effective completion of City responsibilities (for example: supplying information on branding, vehicles, locations, departments, and drivers) and supplying access to equipment, IT resources and City personnel.
- 5. City's Representations and Warranties.** City represents and warrants to Contractor as follows:
- 5.1.** City will provide Contractor with reliable, accurate and complete information and Contractor will be entitled to rely upon the accuracy and completeness of the information provided by City without any independent investigation or verification thereof by Contractor.
  - 5.2.** City will provide timely decisions and approvals by City's management.
  - 5.3.** All City facilities in which Contractor personnel may be obligated to work shall comply in all respects with all applicable federal, state and local laws, rules and regulations.
  - 5.4.** If required for the performance of the Services at a City facility, City shall provide appropriate work space and other equipment, access to systems and information and support services.
  - 5.5.** If City's personnel will work with Contractor's personnel in connection with the Services, where available, City will assign City personnel having skills commensurate with their role with respect to such Services.

**Exhibit A-1**

**Payment Schedule for Services**

The time and materials based payment to Contractor by the City is tied to the implementation of approved Services within the grant-funded approved timeline. The following describes the payment process and estimated projected payment schedule that will be adhered to throughout the term of this Agreement:

1. Contractor's responsibilities under this Agreement shall be limited to completion of the Services outlined in this Agreement, and obtaining the City's acceptance of all Deliverables set out in Exhibits A and A-1.
2. Contractor will invoice the City on a monthly basis for Deliverables completed according to the schedule below. Payment terms are net thirty (30) days after the date of invoice approved by the Finance Director.
3. Contractor will only invoice the City for work delivered within the allowable timeline of SECO ARRA Grant CS0020. Currently, the grant is scheduled to expire on 4/30/2012. If additional funding sources are identified by the Finance Director, the City may, at its discretion and in accordance with Section 4.5.6 of the Agreement, approve expenditures for Services after the expiration of the grant.
4. The City will only expend project contingency funds exceeding the Total Estimated Cost (Table 1), provided they are allocated and approved by the Finance Director and the granting agency.

**Table 1**, below, shows anticipated fees by Deliverable.

**Table 1: Project Fees**

Make available to City FastFleet Service Bundle with GPS, 50 vehicles (Tier 2 Pricing)	\$2,420.00	50	\$121,000.00
Vehicle Installation	\$175.00	50	\$8,750.00
Additional On-Site Training: 3-Day Administrator Training with Driver Orientation Sessions	\$2,500.00	1	\$2,500.00
Additional On-Site Training: 3-Day Vehicle Installation Technician Training	\$2,500.00	1	\$2,500.00
			<b>\$134,750.00</b>
	<b>15% Contingency Allowable:</b>		<b>\$20,212.50</b>

**FastFleet System Bundle.** The "FastFleet System Bundle" includes 36 months of the FastFleet System for each installed vehicle, one on-site administrator training session with driver orientation session, Web-based administration and reservation systems, mobile web

application, application hosting and data storage services, administrator technical support, GSM/GPRS cellular communications, GPS functionality, and 10 vehicle access cards per vehicle.

The City plans to implement the FastFleet System Bundle in 50 vehicles. Should the City be unable to acquire the FastFleet System Bundle for 50 vehicles by expiration of the grant, then the City shall pay the cost per vehicle according to the relevant pricing Tier outlined below.

Tier	Vehicles	Fee Per Vehicle
1	Up to 49	\$ 2,650.00
2	50-99	\$ 2,420.00
3	100-249	\$ 2,280.00
4	250+	\$ 2,050.00

**Ongoing monthly service fees.** Following initial service period of 36 months ("FastFleet Program Service Period" ), should the City keep installed vehicles active in the shared fleet, the monthly fee per vehicle is as follows. The fee becomes effective and applies to all vehicles once a new tier is reached. For instance, upon the date the 50th vehicle is installed, all vehicles on a monthly plan are then charged at the \$59 Tier 2 rate.

Tier	Vehicles	Per Vehicle Per Month Fee
1	Up to 49	\$ 69
2	50-99	\$ 59
3	100-249	\$ 54
4	250+	\$49

**Vehicle Installation.** \$175 per vehicle. Should the City choose to have its installation technicians trained by Contractor and perform its own installations, there is no charge for installing and adding vehicles to the system.

**Additional/Optional On-Site training.**

1. 3-Day Administrator Training with Driver Orientation Sessions: \$2,500.
2. 3-Day Vehicle Installation Technician Training: \$2,500 per training session

**Additional/replacement vehicle access cards.** \$7 per card

**Driver Support.** Contractor offers live 24 x 7 driver support accessible via dedicated toll-free service at a rate of \$0.99 per minute of agent support time, which is not included in the above rates. Should the City choose to support drivers internally, there is no additional charge and calls can be automatically routed to City support staff from the dedicated and automated toll-free service.

**Contingency.** Where approved by the Finance Director and by the granting agency, Contractor may incur and City may pay additional expenses during the project. However,

each additional expense must be approved by the Finance Director and the granting agency in advance. Any additional expenses shall be deducted from the Agreement's budgeted contingency funds.

**EXHIBIT B-1 - GRANT AGREEMENT**

**EXHIBIT B-2 - Requirements for Contracts between the City of Houston and Third Party Contractors using American Recovery and Reinvestment Act of 2009 ("ARRA") Grant Funds**

1. Contractor will adhere to and comply with the special reporting requirements associated with ARRA grants as required by the granting agency and the City of Houston ("City"). The ARRA is available at : <http://www.gpo.gov/fdsys/pkg/PLAW-111publ5/content-detail.html>
2. The City will adhere to and comply with the special reporting requirements associated with applicable ARRA grants as required by the granting agency and the U.S. Office of Management and Budget.
3. **Compliance with Laws**

Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules, and regulations and with the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the requirements of the ARRA. After receiving a written request from the City, Contractor shall furnish the State with satisfactory proof of its compliance with this section.
4. **Compliance with Comptroller General Requests**
  - A. Contractor will adhere to and comply with requests for any of its records or those of its subcontractors, that directly pertain to, and involve transactions relating to, this contract or subcontract and with any requests for interviews of any officer or employee of Contractor or any subcontractors to the Comptroller General. This will not limit or restrict existing authority of the Comptroller General.
  - B. The City will adhere to and comply with requests for any interviews or records that directly pertain to, and involve transactions relating to, this contract and any interviews of any officer or employee of any State or local government agency administering this contract. This will not limit or restrict existing authority of the Comptroller General.
5. **Compliance with Inspector General Reviews**
  - A. Contractor will adhere to and comply with any requests from any inspector general of a Federal department or executive agency's reviewing of any concerns raised by the public about specific investments using funds made available by the ARRA.
  - B. The City will adhere to and comply with any requests from any inspector general of a Federal department or executive agency's reviewing of any concerns raised by the public about specific investments using funds made available by the ARRA.
6. **Compliance with Office of Inspector General**
  - A. Contractor will adhere to and comply with requests from any representative of an appropriate inspector general to conduct interviews or examine any records of the Contractor any of its subcontractors that pertain to, and involve transactions relating to this contract or subcontract.
  - B. The City will adhere to and comply with requests from any representative of an appropriate inspector general to conduct interviews or examine any records that pertain to, and involve transactions relating to this contract.
7. **Compliance with protection of Whistleblowers**
  - A. Contractor will adhere to and comply with all federal, state, local laws, statutes, ordinances, rules, and regulations and with the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting protection of the State, Local Government or Contractor

Whistleblowers. Employers must post notice of the rights and remedies available. Poster available at: <http://www.recovery.gov/sites/default/files/Whistleblower+Poster.pdf>

- B. The City will adhere to and comply with all federal, state, local laws, statutes, ordinance, rules, and regulations and with the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the protection of State, Local Government or Contractor Whistleblowers. Employers must post notice of the rights and remedies available. Poster available at:

<http://www.recovery.gov/sites/default/files/Whistleblower+Poster.pdf>

**8. Compliance with Buy American**

- A. Contractor will adhere to and comply with the Buy American requirements of the ARRA.

- B. The City will adhere to and comply with the Buy American requirements of the ARRA.

**9. Compliance with the Davis-Bacon Act**

- A. Contractor will adhere to and comply with the wage rates requirements of the ARRA. Notwithstanding any other provision of law in a manner consistent with other provisions of the ARRA, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and section 3145 of title 40, United States Code. For City Construction Contracts, these rates are found at <http://choice.cityofhouston.net/aad/index.html>.

- B. The City will adhere to and comply with the wage rates requirements of the ARRA. Notwithstanding any other provision of law in a manner consistent with other provisions of the ARRA, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and section 3145 of title 40, United States Code. For City Construction Contracts, these rates are found at <http://choice.cityofhouston.net/aad/index.html>.

**10. Compliance with the Hire American Workers**

- A. Contractor will adhere to and comply with section 1611 of the ARRA.

- B. The City will adhere to and comply with section 1611 of the ARRA.

## **EXHIBIT C - EQUAL EMPLOYMENT OPPORTUNITY**

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.
2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.
3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.
5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.
6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.
7. The contractor shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.

**EXHIBIT D**

**DRUG POLICY COMPLIANCE DECLARATION**  
**[NOT APPLICABLE – NO SAFETY IMPACT POSITIONS]**

I, \_\_\_\_\_ as an owner or officer of  
(Name) (Print/Type) (Title)

\_\_\_\_\_  
(Name of Company) (Contractor)

have personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from \_\_\_\_\_ to \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Initials A written Drug Free Workplace Policy has been implemented and employees notified. The policy meets the criteria established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Policy).

\_\_\_\_\_  
Initials Written drug testing procedures have been implemented in conformity with the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31. Employees have been notified of such procedures.

\_\_\_\_\_  
Initials Collection/testing has been conducted in compliance with federal Health and Human Services (HHS) guidelines.

\_\_\_\_\_  
Initials Appropriate safety impact positions have been designated for employee positions performing on the City of Houston contract. The number of employees in safety impact positions during this reporting period is \_\_\_\_\_.

\_\_\_\_\_  
Initials From \_\_\_\_\_ to \_\_\_\_\_ the following test has occurred:  
(Start date) (End date)

	<b>Random</b>	<b>Reasonable Suspicion</b>	<b>Post-Accident</b>	<b>Total</b>
<b>Number Employees Tested</b>				
<b>Number Employees Positive</b>				
<b>Percent Employees Positive</b>				

\_\_\_\_\_  
Initials Any employee who tested positive was immediately removed from the City worksite consistent with the Mayor's Policy and Executive Order No. 1-31.

\_\_\_\_\_  
Initials I affirm that falsification or failure to submit this declaration timely in accordance with established guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this declaration are within my personal knowledge and are true and correct.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**EXHIBIT E**  
**DRUG POLICY COMPLIANCE AGREEMENT**

**EXHIBIT F**  
**CONTRACTOR'S CERTIFICATION OF NO SAFETY IMPACT POSITIONS IN**  
**PERFORMANCE OF A CITY CONTRACT**

I, \_\_\_\_\_  
(Name - Print/Type) (Title)

as an owner or officer of Zipcar, Inc. (Contractor) have authority to bind the Contractor with respect to its bid, and I hereby certify that Contractor has no employee safety impact positions as defined in §5.18 of Executive Order No. 1-31 that will be involved in performing this City Contract. Contractor agrees and covenants that it shall immediately notify the City's Director of Personnel if any safety impact positions are established to provide services in performing this City Contract.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**CONTRACTOR'S CERTIFICATION OF NON-APPLICATION OF CITY OF**  
**HOUSTON DRUG DETECTION AND DETERRENCE PROCEDURES FOR**  
**CONTRACTORS**  
**[Not applicable]**

I, \_\_\_\_\_  
(Name - Print/Type) (Title)

as an owner or officer of \_\_\_\_\_ (Contractor) have authority to bind the Contractor with respect to its bid, and I hereby certify that Contractor has fewer than fifteen (15) employees during any 20-week period during a calendar year and also certify that Contractor has no employee safety impact positions as defined in §5.18 of Executive Order No. 1-31 that will be involved in performing this City Contract. Safety impact position means a Contractor's employment position involving job duties that if performed with inattentiveness, errors in judgment, or diminished coordination, dexterity, or composure may result in mistakes that could present a real and/or imminent threat to the personal health or safety of the employee, co-workers, and/or the public.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**EXHIBIT G**

**FORM POP2  
CERTIFICATION OF AGREEMENT TO COMPLY WITH  
PAY OF PLAY PROGRAM**

Available at <http://www.houstontx.gov/aacc/payorplay/pop2.pdf>



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
04/20/2012

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).

<b>PRODUCER</b> MARSH USA, INC. 99 HIGH STREET BOSTON, MA 02110 Attn: boston.certrequest@marsh.com Fax 212-948-4377		<b>CONTACT NAME:</b> <b>PHONE (A/C, No, Ext):</b> <b>FAX (A/C, No):</b> <b>E-MAIL:</b> <b>ADDRESS:</b>	
079217-GL-2ML-11-12		<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURED</b> ZIPCAR, INC. 25 FIRST STREET, 4TH FLOOR CAMBRIDGE, MA 02141		<b>INSURER A:</b> Liberty Mutual Insurance Company <b>INSURER B:</b> Liberty Mutual Fire Ins Co <b>INSURER C:</b> N/A <b>INSURER D:</b> First Liberty Insurance Corp. <b>INSURER E:</b> <b>INSURER F:</b>	<b>NAIC #</b> 23043 23035 N/A

**COVERAGES**      **CERTIFICATE NUMBER:** NYC-006355354-09      **REVISION NUMBER:** 11

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	ADD'L SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS		
A	GENERAL LIABILITY	X	TB1-611-256249-161	10/01/2011	10/01/2012	EACH OCCURRENCE	\$ 1,000,000	
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY					DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 500,000	
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR					MED EXP (Any one person)	\$ 10,000	
	GEN'L AGGREGATE LIMIT APPLIES PER:						PERSONAL & ADV INJURY	\$ 1,000,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC					GENERAL AGGREGATE	\$ 2,000,000	
						PRODUCTS - COM/PROP AGG	\$ 2,000,000	
B	AUTOMOBILE LIABILITY	X	AS2-611-256249-171	10/01/2011	10/01/2012	COMBINED SINGLE LIMIT (Ea accident)	\$ 300,000	
	<input checked="" type="checkbox"/> ANY AUTO					BODILY INJURY (Per person)	\$	
	<input type="checkbox"/> ALL OWNED AUTOS					BODILY INJURY (Per accident)	\$	
	<input type="checkbox"/> HIRED AUTOS					PROPERTY DAMAGE (Per accident)	\$	
	<input type="checkbox"/> SCHEDULED AUTOS						\$	
	<input type="checkbox"/> NON-OWNED AUTOS						\$	
	UMBRELLA LIAB					EACH OCCURRENCE	\$	
	<input type="checkbox"/> OCCUR					AGGREGATE	\$	
	EXCESS LIAB						\$	
	<input type="checkbox"/> CLAIMS-MADE						\$	
	DED						\$	
	RETENTION \$						\$	
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY		WC6-611-256249-241	10/01/2011	10/01/2012	<input checked="" type="checkbox"/> WC STATUTORY LIMITS		
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/> Y <input checked="" type="checkbox"/> N				OTHER		
	If yes, describe under DESCRIPTION OF OPERATIONS below	N/A				E.L. EACH ACCIDENT	\$ 1,000,000	
						E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000	
						E.L. DISEASE - POLICY LIMIT	\$ 1,000,000	
B	EXCESS AUTO	X	AA1-611-256249-251	10/01/2011	10/01/2012	\$700,000 EXCESS OF	300,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
CITY OF HOUSTON IS INCLUDED AS ADDITIONAL INSURED WHERE REQUIRED BY WRITTEN CONTRACT.

**CERTIFICATE HOLDER****CANCELLATION**

CITY OF HOUSTON 901 BAGBY ST. HOUSTON, TX 77002	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 of Marsh USA Inc. Sarah A. Stevenson <i>Sarah A. Stevenson</i>
---	--

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)
City of Houston 901 Bagby St Houston, TX 77002
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

**Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- A. In the performance of your ongoing operations; or
- B. In connection with your premises owned by or rented to you.

This endorsement is executed by the LIBERTY MUTUAL INSURANCE COMPANY

Premium \$

Effective Date 04/05/2012 Expiration Date 10/01/2012

For attachment to Policy No. TB1-611-256249-161

Audit Basis

Issued To Zipcar Inc.; Zipcar; and Zipcar New York, Inc.  
and as per Named Insured Endorsement

Countersigned by

  
-----  
Authorized Representative

Issued  
dc 4/6/2012

Sales Office and No.  
Bedford - 0116

End. Serial No.

Endorsement number 1 for policy number TB2-691-544176-091

Named Insured Zipcar Inc.; Zipcar; and Zipcar New York, Inc. and as per Named Insured Endorsement

This endorsement is effective 04/05/2012 and will terminate with the policy. It is issued by the company designated in the Declaration. All other provisions of the policy remain unchanged.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

### **Change Endorsement**

CG 20 26 07 04, Additional Insured – Designated Person or Organization, Endorsement is added to policy

See attached

# WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

## SCHEDULE

<b>Name Of Person Or Organization:</b> Any person or organization with whom you have agreed in writing to waive any right of recovery prior to a loss
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us of Section IV – Conditions:**

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

This endorsement is executed by the LIBERTY MUTUAL INSURANCE COMPANY

Premium \$

Effective Date

Expiration Date

For attachment to Policy No.

TB1-611-256249-161

Audit Basis

Issued To

Countersigned by



Authorized Representative

Issued

Sales Office and No.

End. Serial No.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **DESIGNATED INSURED**

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
GARAGE COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM  
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" under the Who Is An Insured Provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

### **SCHEDULE**

**Name of Person(s) or Organization(s):**

City of Houston  
901 Bagby St.  
Houston, TX 77002

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to the endorsement.)

Each person or organization shown in the Schedule is an "insured" for Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured Provision contained in **Section II** of the Coverage Form.

Policy No: AS2-611-256249-171  
Effective Date: 10/01/2011  
Expiration Date: 10/01/2012  
Sales Office: 0116

Issued By: Liberty Mutual Fire Insurance Co.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

## WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

Business Auto Coverage Form  
Garage Coverage Form  
Truckers Coverage Form  
Motor Carrier Coverage Form

### SCHEDULE

**Premium:**

**Name of Person or Organization:**

Any person or organization for whom you perform work under a written contract if the contract requires you to obtain this agreement from us, but only if the contract is executed prior to the injury or damage occurring.

The TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US condition is amended by the addition of the following:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your operations of a covered auto done under contract with that person or organization. This waiver applies only to the person or organization shown in the Schedule above.

Policy No: AS2-611-256249-171  
Effective Date: 10/01/2011  
Expiration Date: 10/01/2012  
Sales Office: 0116

Issued By:  
Liberty Mutual Fire Insurance Co.

## WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Not applicable in New Hampshire

### Schedule

Where required by contract or written agreement

See state specific endorsement for California

This endorsement is executed by the The First Liberty Insurance Corporation 27359

Premium \$

Effective Date

Expiration Date

For attachment to Policy No. WC6-611-256249-241



Zipcar, Inc. and as per Named Insured Endorsement  
25 First Street, 4th Floor  
Cambridge, MA 02141

Liberty Mutual is the marketing name for the property and casualty insurance operations of Liberty Mutual Group Inc. Products may be written in the following stock insurance company subsidiaries of Liberty Mutual Group Inc.:

- Liberty Mutual Insurance Company
- Liberty Mutual Fire Insurance Company
- Liberty Insurance Corporation
- LM Insurance Corporation
- The First Liberty Insurance Corporation
- Liberty Insurance Company of America
- Liberty Surplus Insurance Corporation
- Liberty County Mutual Insurance Company
- Wausau Business Insurance Company
- Wausau General Insurance Company
- Wausau Underwriters Insurance Company
- Employers Insurance Company of Wausau

Not all products and coverages are available in all companies or jurisdictions.

Endorsement number 4

for policy number AS2-611-256249-171

Named Insured Zipcar, Inc. and as per Named Insured Endorsement

This endorsement is effective 10/01/2011 and will terminate with the policy. It is issued by the company designated in the Declaration. All other provisions of the policy remain unchanged.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**Change Endorsement**

**PREMIUM ADJUSTMENT**

It is agreed that the policy is amended to include the enclosed Endorsement.

# FORMS INVENTORY

POLICY NUMBER **AS2-611-256249-171**

COVERAGE FORMS PARTS AND ENDORSEMENTS FORMING A PART OF THIS POLICY AT INCEPTION:

Listed below are possible coverage forms and the states in which they apply.

CA 00 01 01 87 PR

CA 00 01 10 01 CT

CA 00 01 03 06 AK,AL,AR,AZ,CA,CO,DE,DC,FL,GA,HI,ID,IL,IN,IA,KS,KY,LA,MA,  
ME,MD,MI,MN,MS,MO,MT,NE,NV,NH,NJ,NM,NC,NY,ND,OH,OK,  
OR,PA,RI,SC,SD,TN,TX,UT,VA,VT,VI,WA,WV,WI,WY

Form Number	Form Description	Applicable to Coverage Form
IC9999 10-11	Change Endorsement	
WA0056 03-05	Forms Inventory	
CA 20 48 02 99	Designated Insured	