

City of Brisbane Staff Report

TO: City Council via City Manager

From: Maria Saguisag-Sid
Principal Analyst

Subject: Pilot Carsharing Program with Zipcar, Inc.

Date: Meeting of November 18, 2013

Purpose: Provide alternative transportation options for the City of Brisbane.

Recommendation: Review and approve 2 year pilot program with Zipcar, Inc. for car sharing services

Background: In July 2013, staff approached the Open Space and Ecology (OSE) Committee with the idea of pursuing a carsharing provider for the City of Brisbane. Staff made this recommendation to address several community issues. First, it would help address the limited public transportation options that the City currently faces and allow residents and workers another transportation option that would provide more flexibility. Second, it would assist in reducing the number of vehicles that residents and workers in Brisbane may need, thereby reducing the parking congestion issues around the city, as well as reduce the production of greenhouse gases. Third, it would help those that are unable to afford the total cost of car ownership with a viable economical option.

At the OSE Committee's request, staff made contact with two local companies in the Bay Area, City Carshare and Zipcar, regarding their services and compared the options each company provided. After reviewing the options, staff made the recommendation to the OSE Committee to pursue a pilot program with Zipcar, as Zipcar was able to offer an initial program which was financially favorable to the City, which the OSE Committee approved to be brought forward to the City Council.

Discussion:

City Carshare proposed a pilot program having the City sponsor a vehicle for a nine (9) month period. City CarShare would provide a vehicle and the City would provide a designated parking space. Sponsorship would involve providing a guaranteed minimum usage of \$1,400 per month. This would mean, for example, if the vehicle usage for the month totaled \$1,000, the City would pay the balance of \$400. If the vehicle usage was \$1,400 or more, then the City would not have any amount due to City Carshare.

Zipcar proposed a two (2) year partner pilot program. To initiate this program, the City would provide two designated parking spaces. Zipcar will provide two vehicles for the pilot program and cover all associated expenses for such vehicles (licenses, registration, maintenance, insurance). There would be no minimum usage costs during this two year program.

Based on these proposals, staff recommends proceeding with the two year pilot program with Zipcar. Staff recommends designating the parking spaces in areas that are highly visible to commuters, one in the police department parking lot on Valley Drive so that employees in the Crocker Park area and users of the commuter shuttles are able to see it, and one in the Park & Ride on Bayshore Boulevard and Tunnel Avenue where the SamTrans and commuter shuttle stops. Most carsharing services work best when they are closer to other modes of public transportation.

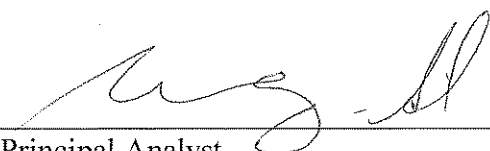
Staff as well as representatives from Zipcar will be available at the meeting to provide more information on how carsharing works. Staff is recommending approving the attached memorandum of understanding so that we can proceed with rolling out the new service with Zipcar.

Fiscal Impact: There is no direct cost to the city's budget during this pilot program. During the initial phase of the program, Zipcar will be providing incentives such as reduced membership fees and driving credit to encourage participation. It should be noted that the hourly carsharing rates do vary based on the type of vehicle used and cost of fuel at the time of use.

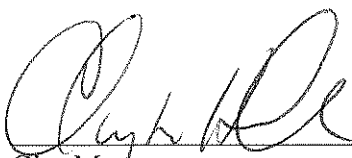
Measure of Success: Is there good utilization of the vehicles during the pilot program.

Attachments:

Partner Benefits: Zipcar and Brisbane
Zipcar, Inc. Memorandum of Understanding



Principal Analyst



City Manager



July 23, 2013

Partner Benefits: Zipcar and Brisbane

To Whom It May Concern,

The following is a list of potential benefits Zipcar would provide the City, its businesses, and residential communities.

- Discounted annual membership (standard membership: \$25 application fee and \$60 annual membership fee)
 - \$25 to sign up and receive \$25 in driving credit
- Discounted memberships to the City and its affiliates
- Affiliate specific landing page
- Discounted hourly daily rates Monday - Friday for businesses
 - Example: <http://www.zipcar.com/business>
- Membership with the Chamber of Commerce
- Active partnerships with local charities and events
- Free membership raffle (select events)
- Reduced city owned fleet by transferring drivers into Zipcars
 - We pay for
 - Gas
 - Insurance
 - Maintenance
- Introduction to EVGO leadership for possible electric vehicle infrastructure installment
 - At no possible cost to the City.

Please let me know if you have questions. I am available for further discussions.

Michael Uribe
General Manager, Zipcar

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU"), is entered into as of _____, 2013 (the "Effective Date"), by and between the City of Brisbane, a California municipal corporation ("City"), and Zipcar, Inc. ("Zipcar"), a Delaware corporation, hereinafter together occasionally referred to as "the parties."

RECITALS

- A. The City is charged with protecting and improving our natural and built environments; providing and maintaining safe City streets for car, bicycle and pedestrian traffic; and supporting efforts to mitigate traffic congestion, decrease emissions and reduce air pollution on City streets.
- B. Zipcar's vision, as the world's leading car-sharing network, is to provide members with 24/7 access to thousands of cars around the globe, and finding sustainable solutions to congestion and pollution.
- C. The parties desire to work collaboratively to permit Zipcar to use reserved parking spaces within the City in connection with Zipcar's car-sharing services to its members as a pilot program ("Pilot Program").
- D. The parties desire that there be minimal interruption to the City's regular traffic and parking operations as a result of the Pilot Program.
- E. The purpose of this MOU is to establish rules and procedures governing the relationship between the City and Zipcar in the pursuit of their common objective.
- F. Zipcar shall operate the Pilot Program in the same manner as Zipcar's current carsharing program, where members can (a) reserve a car-sharing vehicle online at www.zipcar.com; (b) activate their individualized Zipcards for keyless access to a reserved car-sharing vehicle; (c) have gas, maintenance, roadside assistance and insurance included in their membership and usage fees; and (d) return the Zipcar to its reserved spot after using it.

NOW, THEREFORE, in consideration of the foregoing, the parties agree as follows:

- 1. Obligations of Zipcar
 - 1.1 Zipcar shall provide suitable properly maintained vehicles in the spaces reserved for that purpose pursuant to this Agreement.
 - 1.2 Zipcar shall use all commercially reasonable efforts to maintain all car-sharing vehicles that are part of the Pilot Program in safe and sound operating condition.

- 1.3 Zipcar shall, at its sole cost and expense, provide a vehicle license and maintain registration with the California Department of Motor Vehicles for all car-sharing vehicles that are part of the Pilot Program.
- 1.4 Zipcar shall not permit any persons under the age of twenty-one (21) years of age to operate the car-sharing vehicles in the Pilot Program.
- 1.5 Zipcar shall park its car-sharing vehicles only in the two (2) reserved parking spaces approved by the City. Additional reserved parking spaces may be agreed to by the parties.
- 1.6 Zipcar shall ensure that streets and gutters at designated parking locations in the City are kept clean and free of debris and shall not perform car maintenance activities at the parking locations.
- 1.7 Zipcar shall pay any and all parking tickets or other citations issued to its carsharing vehicles, including any towing or storage fees.
- 1.8 Zipcar shall provide fleet support for all car-sharing vehicles and a 24x24 inch sign that reads "Zipcar Lives Here" for each parking space, including cost of installation.
- 1.9 Zipcar shall provide decals and marketing and customer service materials for each car-sharing vehicle in the Pilot Program.
- 1.10 Subject to approval by the City, Zipcar shall provide information about the Pilot Program and install information container baskets for the dissemination of such information.
- 1.11 Zipcar shall provide all of the in-car technology and web-based services necessary to operate the Pilot Program, including upgrades and other services, such as:
 - 1.11.1 Web-based reservations for members and administrators;
 - 1.11.2 A complete on-line help system; and
 - 1.11.3 The administrative website shall be enabled to:
 - 1.11.3.1 Approve members;
 - 1.11.3.2 Provide management of fleet, members, maintenance, rates and locations; and

1.11.3.3 Provide up-to-date reporting capabilities on members, revenue, and vehicle utilization and reports to enable the monitoring of the business in real time.

1.12 Zipcar shall provide all maintenance upgrades to Zipcar's website to include new locations, updated membership contracts, rules and schedules, and other information in accordance with its general membership practices.

1.13 Zipcar shall generate and maintain data on the usage of its car-sharing vehicles and provide the data to the City on a monthly basis. Zipcar shall retain and maintain all records and documents relating to the MOU for five (5) years after the MOU terminates and shall make them available for inspection by the authorized representative of the City.

1.14 Zipcar shall cooperate with the City on customer satisfaction surveys.

1.15 Zipcar shall provide the City with access to back end reporting systems and train City staff on using the systems to review reports.

1.16 Zipcar shall provide marketing collateral and public relations services to promote the Pilot Program, upon approval by the City.

2. Obligations of City

2.1 The City shall designate two (2) highly visible on-street parking spaces in the City for the exclusive use of Zipcar's car-sharing vehicles at no cost to Zipcar for the duration of the Pilot Program, as specified in Section 5 below. Should two (2) on-street locations not be available, both parties will review and mutually agree to designate alternative locations in which to place the car-sharing vehicles, such as surface parking lots that are adjacent to the street and highly visible. The City shall designate and enforce these parking spaces as tow-away zones for all vehicles that are not part of Zipcar's car-sharing program.

2.2 Zipcar and the City will collaborate on surveys for the purpose of assessing the Pilot Program, which shall be administered by Zipcar through its website and data collection program.

2.3 During the Pilot Program Period, the City agrees that Zipcar will be the exclusive car-sharing service promoted by the City and that the City will not enter into any relationship, arrangement, agreement or understanding with any other car-sharing or short term rental service, or permit any other car-sharing or short term rental service to use the parking spaces designated for Zipcar's exclusive use.

3. Publicity

The parties agree to publicly announce the relationship created by this MOU via a press release within ninety (90) days from the Effective Date. The press release shall contain quotes from mutually agreed to representatives of the parties.

4. Ownership and Licenses

Neither party will use the other party's name, logos, trademarks or service marks in any manner without the other party's prior approval.

5. Term

5.1 Effective Date. This MOU is effective as of the Effective Date written above and shall continue for a period of two (2) years ("Pilot Program Period"). In the event that, subsequent to the Pilot Program Period, the City determines to continue a carsharing program under an open competitive bidding process, Zipcar hereby acknowledges and agrees that Zipcar will have no preferred status in such competitive process as a result of the Pilot Program or otherwise.

6. Termination

6.1 Termination for Convenience. Either party may terminate this MOU upon no less than one hundred eighty (180) days' prior written notice of such termination. In the event of such termination, Zipcar shall cease services as of the date of termination. No termination pursuant to this Section 6 shall be deemed a waiver of any claim for damages by the terminating party.

6.2 Termination for Cause. All terms, provisions, and specifications of this MOU are material and binding, and failure to perform any material portion of the work described herein shall be considered a breach of this MOU. Should the MOU be breached in any manner, the non-breaching party may, at its option, terminate the MOU not less than thirty (30) days after written notification is received by the breaching party to remedy the violation within the stated time or within any other time period agreed to by the parties.

7. Indemnification

Zipcar shall indemnify, defend with counsel approved by the City in its reasonable discretion, and hold harmless the City, its officers, officials, employees, volunteers, and agents from and against all third party claims, demands and suits (including without limitation reasonable attorneys' fees, expert fees, litigation costs, and damages awarded by a court of competent jurisdiction or agreed to by Zipcar in settlement) arising out of Zipcar's and Zipcar's employees, volunteers, contractors, subcontractors, service

providers' negligence or willful misconduct in performance of work hereunder but excepting such loss or damage which is caused by the negligence or willful misconduct of the City for which City shall be liable. Should the City in its reasonable discretion find Zipcar's legal counsel unacceptable, following notice to Zipcar and Zipcar's failure to provide alternate counsel reasonably satisfactory to the City, then Zipcar shall replace its counsel with counsel acceptable to the City in its reasonable discretion. Zipcar shall promptly pay any final judgment rendered against the City (and its officers, officials, employees, volunteers, and agents) covered by this indemnity obligation. The indemnification obligations hereunder shall be subject to the City giving Zipcar prompt written notice of the claim, giving Zipcar sole control of the defense and settlement of the claim, and reasonably cooperating with Zipcar in the defense of the claim at the Zipcar's expense; provided that in no event should the City be obligated in any settlement to admit to liability. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the laws of the State of California and shall survive termination of this MOU.

8. Insurance Requirements

8.1 Zipcar, at its own cost and expense, shall procure and maintain, for the duration of the MOU, the following insurance policies:

8.1.1 Workers' Compensation Coverage. Zipcar shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for its employees in accordance with the laws of the State of California. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by the City at least thirty (30) days prior to such change. The insurer shall agree to waive all rights of subrogation against the City, its officers, agents, employees, and volunteers for losses arising from work performed by Zipcar for the City.

8.1.2 General Liability Coverage. Zipcar shall maintain commercial general liability insurance in an amount of not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage. If a commercial general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this MOU or the general aggregate limit shall be at least twice the required occurrence limit.

8.1.3 Automobile Liability Coverage. Zipcar shall maintain automobile liability insurance covering bodily injury and property damage for all activities of Zipcar arising out of or in connection with the work to be performed under

this MOU, including coverage for owned, hired, and non-owned vehicles, in an amount of not less than one million dollars (\$1,000,000) in aggregate coverage. If Zipcar or Zipcar's employees, volunteers, or agents will use personal autos in any way on this project, Zipcar shall obtain evidence of personal auto liability coverage for each such person.

8.2 Endorsements. Each general liability and automobile liability insurance policy shall be issued by insurers possessing a Best's Credit Rating of no less than A (Excellent), FSC VII. Each general liability insurance policy shall be endorsed with the specific language of Section 8.2.1 below.

8.2.1 "The City, its elected or appointed officers, officials, employees, agents, and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of Zipcar, including materials, parts, or equipment furnished in connection with such work or operations."

8.2.2 This policy shall be considered primary insurance with respect to the City, its elected or appointed officers, officials, employees, agents, and volunteers. Any insurance maintained by the City, including any self-insured retention the City may have, shall be considered excess insurance only and shall not contribute with this policy.

8.2.3 This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

8.2.4 Zipcar acknowledges that the insurance coverage and policy limits set forth in this Section constitute the minimum amounts of coverage required. Any insurance proceeds available to the City in excess of the limits and coverage required in this MOU and which is applicable to a given loss, will be available to the City.

8.2.5 The insurer waives all rights of subrogation against the City, its elected or appointed officers, officials, employees, or agents regardless of the applicability of any insurance proceeds, and agrees to require all subcontractors to do likewise.

8.2.6 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents, or volunteers.

8.2.7 Zipcar shall provide the City with at least thirty (30) days prior notice that the insurance provided by this policy has been suspended, voided or reduced in coverage or in limits.

8.2.8 Zipcar agrees to provide immediate notice to City of any claim or loss against Zipcar arising out of the work performed under this MOU. The City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve the City.

8.3 Deductibles and Self-Insured Retentions. Zipcar must declare any deductibles or self-insured retentions to the City. At the City's request, Zipcar shall demonstrate financial capability for payment of such deductibles or self-insured retentions. Any failure by Zipcar to pay the self-insured retention does not preclude the City, as an additional insured, from satisfying the self-insured retention amount in order to trigger insurance coverage.

8.4 Certificates of Insurance. Zipcar shall provide certificates of insurance with original endorsements to the City as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the City on or before commencement of performance of this MOU. Current certification of insurance shall be kept on file with the City at all times during the term of this MOU. Zipcar shall provide the City written evidence of current automobile coverage to comply with the automobile insurance requirement.

8.5 Failure to Procure Insurance. Failure on the part of Zipcar to procure or maintain required insurance shall constitute a material breach of contract under which the City may terminate this MOU pursuant to Section 6 above.

9. Relationship of the Parties

The relationship of the parties to this MOU is solely that of independent contractors. Neither party will have any authority to contract with third parties on behalf of the other party or to expressly or impliedly represent to any third party that it has any such authority.

10. Assignment and Subcontracting

10.1 Assignment. The parties recognize that a substantial inducement to the City for entering into this MOU is the professional reputation, experience, and competence of Zipcar. Assignments or transfers of any or all rights, duties, or obligations of Zipcar under this MOU will be permitted only with the express consent of the City; provided, however, that Zipcar may assign this MOU to its successor in the

event of a merger, acquisition or other consolidation, including without limitation, the sale of all or substantially all of its assets or stock.

10.2 Subcontracting. Zipcar shall not subcontract any portion of the work to be performed under this MOU without the written authorization of the City; provided, however, that the City agrees and acknowledges that Zipcar may use the services of third party service providers to clean and maintain its vehicles. If the City consents to such subcontract, Zipcar shall be fully responsible to the City for all acts or omissions of the subcontractor and of its service providers. Nothing in this MOU shall create any contractual relationship between the City and subcontractor or service provider nor shall it create any obligation on the part of the City to pay or to see to the payment of any monies due to any such subcontractor or service provider other than is otherwise required by law.

11. Compliance with Laws, Codes, Ordinances, and Regulations

11.1 Standard of Care. Zipcar shall use the standard of care in its profession to comply with all applicable federal, state, and local laws, codes, ordinances, and regulations.

11.2 Taxes. Zipcar agrees to pay all required taxes on amounts paid to Zipcar for work performed under this MOU, and to indemnify and hold the City harmless from any and all taxes, assessments, penalties, and interest asserted against the City by reason of the independent contractor relationship created by this MOU. In the event that the City is audited by any Federal or State agency regarding the independent contractor status of Zipcar and the audit in any way fails to sustain the validity of a wholly independent contractor relationship between the City and Zipcar, then Zipcar agrees to reimburse the City for all costs, including accounting and attorneys' fees, arising out of such audit and any appeals relating thereto.

11.3 Workers' Compensation Law. Zipcar shall fully comply with the workers' compensation law regarding Zipcar and Zipcar's employees. Zipcar further agrees to indemnify and hold the City harmless from any failure of Zipcar to comply with applicable workers' compensation laws.

11.4 Licenses. Zipcar represents and warrants to the City that it has all licenses, permits, qualifications, insurance, and approvals of any nature that are legally required of Zipcar to practice its profession. Zipcar represents and warrants to the City that Zipcar shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this MOU any licenses, permits, insurance, and approvals that are legally required of Zipcar to practice its profession. Zipcar shall maintain a City of Brisbane business tax certificate.

12. Force Majeure

Should performance of this MOU be prevented due to fire, flood, explosion, acts of terrorism, war, embargo, government action, civil or military authority, the natural elements, or other similar causes beyond the parties' reasonable control, for a period of thirty (30) consecutive days, then the MOU will immediately terminate without obligation of either party to the other.

13. Binding Effect

This MOU is binding on the parties in accordance with its terms. The parties signing below represent and warrant that they have the legal authority to bind the party for whom they are signing.

14. Governing Law and Venue

This MOU shall be governed by the laws of the State of California. The parties agree that venue shall be proper and shall lie exclusively in the County of San Mateo, State of California.

15. Notices

All notices permitted or required under this MOU shall be in writing, and shall be deemed made when delivered to the applicable party at the following addresses by personal delivery, or 5 days after the date when it was sent by first-class mail with postage prepaid:

If to City:

**City of Brisbane
Attn: City Clerk
50 Park Place
Brisbane, CA 94005**

If to Zipcar:

**Zipcar, Inc.
Attn: General Manager
191 2nd Street
San Francisco, CA 94105**

16. Entire Agreement; Modification

This MOU represents the entire integrated agreement between the parties pertaining to the subject matter hereof and supersedes any and all prior and contemporaneous

negotiations, representations or agreements, written or oral, regarding the matters described herein. Each party to this MOU acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein. Any agreement, statement, or promise not contained in the MOU, and any modification to the MOU, will be effective only if signed by both parties.

17. Construction

The parties have cooperated in negotiating and drafting the terms of this MOU through their respective legal counsel. Accordingly, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this MOU.

18. Severability

In the event that any provision of this MOU is held by a court or other tribunal of competent jurisdiction to be unenforceable, the remaining terms and conditions of this MOU will remain in full force and effect.

19. Waiver

Waiver of a breach or default under this MOU shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this MOU. Payment of any invoice by the City shall not constitute a waiver of the City's right to obtain correction or replacement of any defective or noncompliant work product.

20. Execution

This MOU may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this MOU, it shall not be necessary to produce or account for more than one such counterpart.

21. Authority to Bind

The undersigned represent and warrant that they are authorized to sign on behalf of and bind to the terms of this MOU the party each represents. Each party warrants that the individuals who have signed this MOU have the legal power, right, and authority to make this MOU and to bind each respective party.

22. Limitation on Liability.

To the maximum extent permitted by law, (A) neither party will be liable to the other party for any indirect, incidental, special or consequential damages, including

lost profits, even if such party has been advised of the possibility of such loss and (B) neither party's liability hereunder will exceed \$5,000. Each party acknowledges that the provisions of this Section represent a reasonable allocation of risk. The foregoing limitation of liability is not intended to limit either party's liability for negligence or willful misconduct, including without limitation either party's indemnification obligations in this MOU.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding as of the date and year first written above.

Dated: _____, 2013

CITY OF BRISBANE

By: _____

Clay Holstine
City Manager, City of Brisbane

Dated: _____, 2013

ZIPCAR, INC.

By: _____

[NAME] _____
[TITLE] _____