



**LEASE AGREEMENT BETWEEN THE CITY OF
PEMBROKE PINES AND
E-Z-GO, A DIVISION OF TEXTRON, INC.**

THIS IS AN AGREEMENT ("Agreement"), dated the _____ day of _____, 2019 by and between:

THE CITY OF PEMBROKE PINES, a municipal corporation of the State of Florida with a business address of **601 City Center Way, Pembroke Pines, Florida 33025** (hereinafter referred to as the "LESSEE")

and

E-Z-GO, A DIVISION OF TEXTRON, INC., a foreign for-profit corporation as listed with the Florida Division of Corporations, authorized to do business in the State of Florida, and with a business address of **40 Westminister St., Providence, RI 02903** (hereinafter referred to as the "LESSOR"). LESSEE and LESSOR may hereinafter be referred to collectively as the "Parties."

W I T N E S S E T H:

In consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, LESSEE and LESSOR agree as follows:

**ARTICLE 1
PREAMBLE**

In order to establish the background, context and form of reference for this Agreement, and to generally express the objectives and intentions of the respective Parties herein, the following statements, representations, and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow, and may be relied upon by the Parties as essential elements of the mutual considerations upon which this Agreement is based.

1.1 On **May 7, 2019**, the LESSEE advertised its notice to bidders of the LESSEE's desire to hire a firm to **provide golf cart leasing for Pembroke Lakes Golf Course** as more particularly described in **Exhibit "A"** attached hereto and by this reference made a part hereof, for the said bid entitled:

**IFB # RE-19-04
"Golf Cart Leasing for Pembroke Lakes Golf Course"**

1.2 On **June 4, 2019**, the bids were opened at the offices of the City Clerk.



1.3 On _____, _____, 2019, the LESSEE awarded the bid to LESSOR and authorized the proper LESSEE officials to negotiate and enter into an agreement with LESSOR to render the services more particularly described herein below.

1.4 Negotiations pertaining to the services to be performed by the LESSOR were undertaken and this Agreement incorporates the results of such negotiation.

ARTICLE 2

LEASED PROPERTY, SERVICES AND RESPONSIBILITIES

2.1 **LEASED PROPERTY** LESSOR hereby leases to LESSEE subject to the terms and conditions set forth herein below, and LESSEE hereby leases from LESSOR, with the right and privilege of the LESSEE to sublease the following vehicles as more particularly described in **IFB # RE-19-04**:

Seventy-five (75) new four (4) wheel electric E-Z-Go RXV Elite Lithium Ion golf cars, each equipped with one (1) TFM 10EX GPS unit; and, **Five (5)** new four (4) wheel E-Z-Go Hauler 800 EFI gas utility vehicles, hereinafter referred to collectively as the "Vehicles".

2.2 **LESSOR RESPONSIBILITIES** LESSOR hereby agrees to lease the Vehicles to Lessee for use at the **Pembroke Lakes Golf Course located at 10500 Taft Street, Pembroke Pines, FL 33026** ("Property"), in accordance with and as more particularly described in **Exhibit "A"**, attached hereto and by this reference made a part hereof, and LESSOR's response thereto, attached hereto and by this reference made a part hereof as **Exhibit "B"**. LESSOR agrees to perform all services required pursuant to this Agreement, the Sealed Bid Package, Addenda to this Agreement, and Commission award complete with proposal form.

2.2.1 LESSOR shall furnish all services, labor, equipment, and materials necessary and as may be required in the performance of this Agreement, except as otherwise specifically provided for herein, and all work performed under this Agreement shall be done in a professional manner.

2.2.2 LESSOR's Warranty for the Vehicles shall include all costs including parts and labor.

2.2.3 LESSOR shall provide all parts, batteries (minimum 36 holes per charge), service, and labor required as a result of ordinary wear and tear to keep the vehicles in good repair, without cost or obligation to the LESSEE.

2.2.4 No battery expense shall be incurred by LESSEE for the term of this Agreement.

2.2.5 LESSOR agrees to warranty the body of the Vehicles for the life of the Vehicles.

2.2.6 LESSOR agrees to warranty the chassis against corrossions for the life of the Vehicles.



2.2.7 LESSOR hereby represents to LESSEE, with full knowledge that LESSEE is relying upon these representations when entering into this Agreement with LESSOR, that LESSOR has the professional expertise, experience and manpower to perform pursuant to the terms of this Agreement.

2.2.8 LESSOR hereby represents to LESSEE that LESSOR is properly licensed by the applicable federal, state, and local agencies to perform under this Agreement. Furthermore, LESSOR agrees to maintain such licenses during the term of this Agreement. If LESSOR's license is revoked, suspended, or terminated for any reason by any governmental agency, LESSOR shall notify the LESSEE immediately.

2.2.9 LESSOR shall comply with any and all Federal, State, and local laws and regulations now in effect, or hereinafter enacted during the term of this Agreement, which are applicable to LESSOR, its employees, agents or subcontractors, if any, with respect to the work and services described herein. A violation of any federal, state, or local law or regulation may be cause for breach, allowing the LESSEE to terminate this Agreement.

2.2.10 Every four (4) years, LESSOR must replace the Vehicles with new vehicles.

2.3 **LESSEE RESPONSIBILITIES**

2.3.1 LESSEE hereby agrees to perform or cause to be performed the following service to the Vehicles:

2.3.1.1 Keep the Vehicles clean and orderly and adequately stored or garaged.

2.3.1.2 Follow all routine maintenance and minor repair procedures as outlined by LESSOR.

2.3.1.3 Furnish adequate hand tools to the maintenance personnel in order to properly and promptly discharge its responsibilities as herein set forth.

2.3.1.4 Furnish gas and oil and/or an adequate charging facility to electrically charge said Vehicles and maintain the proper mixture of gas and oil, and/or adequate levels of water in batteries in said Vehicles as recommended by LESSOR.

2.3.2 Daily and adequate service attention to the Vehicles is mandatory, and to that end, the LESSEE agrees to assign one of its employees to perform such service upon the understanding that the performance of such daily routines is the primary job of the employee and that any other secondary duties are to be performed only at such times as not to interfere with the employees' maintenance functions as they pertain to the Vehicles. Such employee shall be field trained by LESSOR and shall learn the functions of fleet management and maintenance. Upon condition that said LESSEE fulfills these maintenance and program procedures, the LESSOR hereby guarantees that its Vehicles will be kept in proper running order for the term of this Agreement.



2.3.3. The cost of parts and labor required to repair any and all damages caused by accident, negligence, or improper use of the Vehicles on the part of the LESSEE, or its agents or licensees or by individual operators sub-renting from LESSEE shall be invoiced to LESSEE at the normal prevailing rate charged by LESSOR.

2.3.4 LESSEE agrees to exercise reasonable judgment in selecting sub-lessees to whom such Vehicles may be rented. The Vehicles shall not be rented by LESSEE to any person who LESSEE knows, or reasonably should know, by observation or past action to be incapable or unwilling to exercise reasonable care in the operation of such Vehicles. LESSEE shall be responsible for instruction of users in the operation of the Vehicles.

2.3.5 LESSEE agrees to require proof of a valid motor vehicle operator's license from sub-lessees operating such cars.

2.3.6 LESSEE is self-insured in accordance with Florida law and agrees to remain self- insured or procure insurance with limits of at least \$100,000/200,000 during the term of this Agreement. LESSOR shall be named as a loss payee and additional insured with public liability no less than \$1,000,000 combined single limit.

2.3.7 LESSEE agrees to give written reports to LESSOR of all accidents involving the subject Vehicles and give full cooperation to the insurance carrier.

2.3.8 Any acts of vandalism, property damage, fire, theft, and injuries related to said Vehicles shall be reported, in writing, by LESSEE to LESSOR within seventy-two (72) hours from time of discovery and such list shall include a list of Vehicles by serial number with a brief description of the damage and the name of the police department notified of such damage. LESSEE must notify the local police department within twenty-four (24) hours of discovery of such damage. LESSEE must take all necessary precautions to avoid vandalism, property damage, fire, theft, and injuries related to said Vehicles.

2.3.9 LESSEE agrees that at no time will more than two (2) persons be permitted to operate or ride in such Vehicles and, further, that such Vehicles shall be used only to transport golfers and their equipment while playing golf on LESSEE's Property.

2.3.10 Use of said Vehicles by LESSEE's personnel for the purpose of carrying refreshments, picking up balls from driving ranges, performing duties as rangers or marshals, transportation between residences and golf courses, parades, or any uses of public thoroughfares is strictly prohibited without prior written approval from the LESSOR, and insurance coverage does not apply to these unauthorized uses, nor any use prohibited by paragraph one (1) above, of said Vehicles without such prior written approval.

2.3.11 LESSOR shall be responsible and agrees to collect and remit all sales, use, property or other taxes imposed by state, federal or local authorities arising out of this Agreement.



2.3.12 LESSEE will not alter or modify Vehicles, except with LESSOR's prior written approval. Upon termination of the Agreement, the LESSEE agrees to return said Vehicles to the LESSOR in substantially the same condition as when received by the LESSEE, normal wear and tear excepted. LESSEE will make the Vehicles available for repair by LESSOR during LESSEE's normal business hours.

ARTICLE 3 **TERM AND TERMINATION**

3.1 LESSOR shall lease the subject Vehicles as identified in **Exhibit "A"** attached hereto and made part hereof, to LESSEE for an initial **ninety-six (96) month** period commencing on **the date of delivery of the Vehicles** and ending after a period of **ninety-six (96) months**.

3.2 At the end of **forty-eight (48) months** LESSOR shall replace the entire fleet of Vehicles, and each individual good or item, including all components and all installed accessories and equipment.

3.3 *Post Contractual Obligations:* In the event that the term of this Agreement expires, the LESSOR agrees to continue leasing the Vehicles, at the current rates, on a month to month basis until the LESSEE establishes a new contract for services.

3.4 *Termination for Convenience:* This Agreement may be terminated by LESSEE for convenience, upon **seven (7) calendar days** of written notice by the LESSEE to the LESSOR for such termination in which event LESSOR shall be paid its compensation for services performed to termination date, including services reasonably related to termination. In the event that LESSOR abandons this Agreement or causes it to be terminated, LESSOR shall indemnify LESSEE against loss pertaining to this termination.

3.5 *Default by LESSOR:* In addition to all other remedies available to LESSEE, this Agreement shall be subject to cancellation by LESSEE for cause, should LESSOR neglect or fail to perform or observe any of the terms, provisions, conditions, or requirements herein contained, if such neglect or failure shall continue for a period of thirty (30) days after receipt by LESSOR of written notice of such neglect or failure.

ARTICLE 4 **COMPENSATION AND METHOD OF PAYMENT**

4.1 The LESSEE hereby agrees to compensate LESSOR, without notice or demand, in an amount **NOT TO EXCEED EIGHT HUNDRED AND EIGHTY-EIGHT THOUSAND FOUR HUNDRED AND EIGHT DOLLARS (\$888,408.00)**, payable in monthly payments of **NINE THOUSAND TWO HUNDRED AND FIFTY-FOUR DOLLARS AND TWENTY-FIVE CENTS (\$9,254.25)** during the term of this Agreement for the lease of the Vehicles described herein. Lease payments for any period which is less or more than one (1) month shall be a prorated portion of the monthly lease payment installment based upon a thirty (30) day month.



4.2 All payments shall be governed by the Local Government Prompt Payment Act, as set forth in Part VII, Chapter 218, Florida Statutes.

4.3 **Method of Billing and Payment.**

4.3.1 The LESSEE shall within thirty (30) days, from the date the LESSEE's Recreation and Cultural Arts Director approves the Application for Payment, pay the LESSOR the amount approved by the LESSEE's Recreation and Cultural Arts Director or his/her assignees.

4.3.2 Payment will be made to LESSOR at:

**E-Z-GO, A Textron Company
26007 Network Place
Chicago, IL 60673-1260**

**ARTICLE 5
RESERVED**

**ARTICLE 6
WARRANTY**

6.1 LESSOR warrants that all equipment, materials, and services delivered under this proposal shall conform to the specifications provided in IFB # RE-19-04.

6.2 Exceptions to equipment, materials, and service which does not confirm to specifications shall require the LESSEE's prior express written approval.

6.3 Delivery. The Vehicles, and each individual good or item, including all components and all installed accessories and equipment shall be delivered to Pembroke Lakes Golf Course, assembled, serviced and completely operational. The equipment shall be warranted to be free from defective materials and workmanship, and covered by this specification shall be manufacturer's latest production model, and shall be equipped with all standard equipment in accordance with the manufacturer's latest literature, a copy of which must accompany the LESSOR's bid, along with any and all specifications necessary to verify that the Vehicles meet or exceed the required specifications.

**ARTICLE 7
CHANGES IN SCOPE OF WORK**

7.1 LESSEE or LESSOR may request changes that would increase, decrease, or otherwise modify the Scope of Services, as described in **Exhibit "A,"** to be provided under this Agreement as described in Article 2 of this Agreement. These changes may affect the monthly compensation accordingly. Such changes or additional services must be in accordance with the provisions of the Code of Ordinances of the LESSEE, and must be contained in a written amendment, executed by the Parties hereto, with the same formality, equality and dignity herewith prior to any deviation from the terms of this Agreement, including the initiation of any additional or extra services.



7.2 In no event will the LESSOR be compensated for any service or Vehicle which has not been described either herein or in a separate written agreement executed by the Parties hereto.

ARTICLE 8
RESERVED

ARTICLE 9
INDEMNIFICATION

9.1 The LESSOR shall indemnify and hold harmless the LESSEE, its trustees, elected and appointed officers, agents, servants, assigns and employees, consultants, separate contractors, any of their subcontractors, sub-subcontractors, agents and employees from and against claims, demands, or causes of action whatsoever, and the resulting losses, damages, costs and expenses, including but not limited to attorneys' fees, including paralegal expenses, liabilities, damages, orders, judgments, or decrees, sustained by the LESSEE arising out of or resulting from the LESSOR's performance of the work/services pursuant to this Agreement or the failure of the LESSOR to take out and maintain insurance as required under this Agreement.

9.2 Upon completion of all services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Article shall survive indefinitely.

9.3 LESSEE reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of LESSOR.

9.4 Nothing contained herein is intended nor shall be construed to waive LESSEE's rights and immunities under the common law or Section 768.28, Florida Statutes, as may be amended from time to time.

ARTICLE 10
INSURANCE

10.1 The LESSOR shall indemnify and hold harmless the LESSEE and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the LESSEE or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the LESSOR or its employees, agents, servants, partners, principals or subcontractors. The LESSOR shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the LESSEE, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorneys' fees which may issue thereon. The LESSOR expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the LESSOR shall in no way limit the responsibility to



indemnify, keep and save harmless and defend the LESSEE or its officers, employees, agents and instrumentalities as herein provided.

10.2 LESSOR shall not commence performance under this Agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the Risk Manager of the LESSEE nor shall the LESSOR allow any subcontractor to commence performance on any subcontract until all similar such insurance required of the subcontractor has been obtained and similarly approved.

10.3 Certificates of Insurance, reflecting evidence of the required insurance, shall be filed with the LESSEE's Risk Manager prior to the commencement of this Agreement. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. The insurance company shall be rated no less than "A" as to management, and no less than "Class VI" as to financial strength according to the latest edition of Best's Insurance Guide published by A.M. Best Company.

10.4 Certificates of Insurance shall provide for thirty (30) days' prior written notice to the LESSEE in case of cancellation or material changes in the policy limits or coverage states. If the carrier cannot provide thirty (30) days' notice of cancellation, either the LESSOR or their Insurance Broker must agree to provide notice.

10.5 Insurance shall be in force until all obligations required to be fulfilled under the terms of this Agreement are satisfactorily completed as evidenced by the LESSEE's acceptance of the Vehicles. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, the LESSOR shall furnish, at least forty-five (45) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension thereunder is in effect. The LESSOR shall neither commence nor continue to provide any services pursuant to this Agreement unless all required insurance remains in full force and effect. LESSOR shall be liable to LESSEE for any lapses in service resulting from a gap in insurance coverage.

10.6 REQUIRED INSURANCE

LESSOR shall be required to obtain all applicable insurance coverage, as indicated below, prior to commencing any work pursuant to this Agreement:

Yes No

- ✓ ☐ 10.6.1 Comprehensive General Liability Insurance written on an occurrence basis including, but not limited to: coverage for bodily injury and property damage, personal & advertising injury, products & completed operations, and contractual liability. Coverage must be written on an occurrence basis, with limits of liability no less than:

1. Each Occurrence Limit - \$1,000,000
2. Fire Damage Limit (Damage to rented premises) - \$100,000
3. Personal & Advertising Injury Limit - \$1,000,000
4. General Aggregate Limit - \$2,000,000



5. Products & Completed Operations Aggregate Limit - \$2,000,000

Products & Completed Operations Coverage shall be maintained for the later of three (3) years after the delivery of goods/services or final payment under the Agreement.

The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The LESSEE's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.

Yes No

- ✓ ☐ 10.6.2 Workers' Compensation and Employers' Liability Insurance covering all employees, and/or volunteers of the LESSOR engaged in the performance of the scope of work associated with this Agreement. In the case any work is sublet, the LESSOR shall require the subcontractors similarly to provide Workers' Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by the LESSOR. Coverage for the LESSOR and all subcontractors shall be in accordance with applicable state and/or federal laws that may apply to Workers' Compensation Insurance with limits of liability no less than:

1. Workers' Compensation: Coverage A – Statutory
2. Employers Liability: Coverage B \$500,000 Each Accident
\$500,000 Disease – Policy Limit
\$500,000 Disease – Each Employee

If LESSOR claims to be exempt from this requirement, LESSOR shall provide LESSEE proof of such exemption along with a written request for LESSEE to exempt LESSOR, written on LESSOR letterhead.

Yes No

- ✓ ☐ 10.6.3 Comprehensive Auto Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the performance of work under this Agreement, with a combined single limit of liability for bodily injury and property damage no less than:

1. Any Auto (Symbol 1)
Combined Single Limit (Each Accident) - \$1,000,000
2. Hired Autos (Symbol 8)
Combined Single Limit (Each Accident) - \$1,000,000
3. Non-Owned Autos (Symbol 9)
Combined Single Limit (Each Accident) - \$1,000,000

If work under this Agreement includes transportation of hazardous materials, policy shall include pollution liability coverage equivalent to that provided by the latest version of the ISO pollution liability broadened endorsement for auto and the latest version of the ISO Motor Carrier Act endorsement, equivalents or broader language.



Yes No

☐ ✕

10.6.3.1 If LESSOR requests reduced limits under a Personal Auto Liability Policy and it is agreed to by the LESSEE, coverage shall include Bodily Injury limits of \$100,000 per person/\$300,000 per occurrence and Property Damage limits of \$300,000 per occurrence

Yes No

✓ ☐

10.6.4 Umbrella/Excess Liability Insurance in the amount of \$2,000,000.00 as determined appropriate by the LESSEE depending on the type of job and exposures contemplated. Coverage must be follow form of the General Liability, Auto Liability and Employer's Liability. This coverage shall be maintained for a period of no less than the later of three (3) years after the delivery of goods/services or final payment pursuant to this Agreement.

The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The LESSEE's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.

Yes No

☐ ✕

10.6.5 Professional Liability/Errors & Omissions Insurance with a limit of liability no less than \$1,000,000 per wrongful or negligent act. This coverage shall be maintained for a period of no less than three (3) years after the delivery of goods/services final payment pursuant to this Agreement. Retroactive date, if any, to be no later than the first day of service to the LESSEE.

Yes No

☐ ✕

10.6.6 Environmental/Pollution Liability insurance shall be required with a limit of no less than \$1,000,000 per wrongful act. Coverage shall include: LESSOR's completed operations, sudden, accidental and gradual pollution conditions. This coverage shall be maintained for a period of no less than the later of three (3) years after the delivery of goods/services or final payment pursuant to this Agreement. Retroactive date, if any, to be no later than the first day of service to the LESSEE.

The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The LESSEE's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.

Yes No

☐ ✕

10.6.7 Cyber Liability including Network Security and Privacy Liability with a limit of liability no less than \$1,000,000 per loss. Coverage shall include liability arising from: theft, dissemination and/or use of confidential information stored or transmitted in electronic form, unauthorized access to, use of, or tampering with computer systems, including hacker attacks or inability of an authorized third party to gain access to your services, including denial of service, and the introduction of a computer virus into, or otherwise causing damage to, a customer's or third person's computer, computer system, network, or similar computer-related property and the data, software and programs thereon. If vendor is collecting credit card information, it shall cover all PCI breach expenses.



Coverage is to include the various state monitoring and state required remediation as well as meet the various state notification requirements. This coverage shall be maintained for a period of no less than the later of three (3) years after delivery of goods/services or final payment of the Agreement. Retroactive date, if any, to be no later than the first day of service to the LESSEE.

The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The LESSEE's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.

Yes No

☐ x

10.6.8 Crime Coverage shall include employee dishonesty, forgery or alteration, and computer fraud in an amount of no less than \$1,000,000 per loss. If LESSOR is physically located on LESSEE's premises, a third-party fidelity coverage extension shall apply.

Yes No

☐ x

10.6.9 Garage Liability & Garage-keepers Legal Liability for those that manage parking lots for the LESSEE or service LESSEE vehicles. Coverage must be written on an occurrence basis, with limits of liability no less than \$1,000,000 per Occurrence, including products & completed operations. This coverage shall be maintained for a period of no less than the later of three (3) years after the delivery of goods/services or final payment of this Agreement.

The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The LESSEE's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.

Yes No

☐ x

10.6.10 Liquor Liability for those in the business of selling, serving or furnishing of any alcoholic beverages, whether licensed or not, shall carry a limit of liability of no less than \$1,000,000 per occurrence. Coverage shall be maintained for the later of three (3) years after the delivery of goods/services or final payment under the Agreement.

The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The LESSEE's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.

Yes No

☐ x

10.6.11 Sexual Abuse & Molestation for any agreement involving a vulnerable population. Limits shall be no less than \$1,000,000 per occurrence. This coverage shall be maintained for a period of no less than the later of three (3) years after the delivery of goods/services or final payment of this Agreement. Retroactive date, if any, to be no later than the first day of service to the LESSEE.

The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The LESSEE's additional insured status shall extend to any coverage beyond



the minimum limits of liability found herein.

Yes No

☒ x

10.6.12 Builder's Risk Insurance shall be "All Risk" for one hundred percent (100%) of the completed value of the project that is the subject of this Agreement with a deductible of not more than five percent (5%) for Named Windstorm and \$20,000 per claim for all other perils. The Builder's Risk Insurance shall include interests of the LESSEE, the LESSOR and subcontractors of the project. The LESSOR shall include a separate line item for all costs associated with the Builder's Risk Insurance Coverage for the project. The LESSEE reserves the right at its sole discretion to utilize the LESSOR's Builder's Risk Insurance or for the LESSEE to purchase its own Builder's Risk Insurance for the Project. Prior to the LESSOR purchasing the Builder's Risk insurance for the project, the LESSOR shall allow the LESSEE the opportunity to analyze the LESSOR's coverage and determine who shall purchase the coverage. Should the LESSEE utilize the LESSOR's Builder's Risk Insurance, the LESSOR shall be responsible for all deductibles. If the LESSEE chooses to purchase the Builder's Risk Coverage on the project, the LESSOR shall provide the LESSEE with a change order deduct for all premiums and costs associated with the Builder's Risk insurance in their schedule. Should the LESSEE choose to utilize the LESSEE's Builder's Risk Program, the LESSEE shall be responsible for the Named Windstorm Deductible and the LESSOR shall be responsible for the All Other Perils Deductible.

If and when 100% is not available or reasonable, the LESSEE Risk Manager is to make the determination as to what limits are appropriate for the given project.

Yes No

☒ x

10.6.13 Other Insurance

10.7 REQUIRED ENDORSEMENTS

10.7.1 The City of Pembroke Pines shall be named as an Additional Insured on each of the Liability Policies required herein.

10.7.2 Waiver of all Rights of Subrogation against the LESSEE.

10.7.3 Thirty (30) Day Notice of Cancellation or Non-Renewal to the LESSEE.

10.7.4 LESSOR's policies shall be Primary & Non-Contributory.

10.7.5 All policies shall contain a "severability of interest" or "cross liability" clause without obligation for premium payment of the LESSEE.

10.7.6 The City of Pembroke Pines shall be named as a Loss Payee on all Property and/or Inland Marine Policies as their interest may appear.

10.8 Any and all insurance required of the LESSOR pursuant to this Agreement must also be required by any subcontractor in the same limits and with all requirements as provided herein, including naming the LESSEE as an additional insured, in any work that is subcontracted unless such subcontractor is covered by the protection afforded by the LESSOR and provided proof of such



coverage is provided to LESSEE. The LESSOR and any subcontractors shall maintain such policies during the term of this Agreement.

10.9 The LESSEE reserves the right to require any other additional types of insurance coverage and/or higher limits of liability it deems necessary based on the nature of work being performed under this Agreement.

10.10 The insurance requirements specified in this Agreement are minimum requirements and in no way reduce any liability the LESSOR has assumed in the indemnification/hold harmless section(s) of this Agreement.

ARTICLE 11

NON-DISCRIMINATION & EQUAL OPPORTUNITY EMPLOYMENT

11.1 During the performance of the Agreement, neither the LESSOR nor any subcontractors shall discriminate against any employee or applicant for employment because of race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. LESSOR will take affirmative action to ensure that employees are treated during employment, without regard to their race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. Such actions must include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. LESSOR shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. LESSOR further agrees that it will ensure that subcontractors, if any, will be made aware of and will comply with this nondiscrimination clause.

ARTICLE 12

INDEPENDENT CONTRACTOR

12.1 This Agreement does not create an employee/employer relationship between the Parties. It is the intent of the Parties that the LESSOR is an independent contractor under this Agreement and not the LESSEE's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers' Compensation Act, and the State unemployment insurance law. The LESSOR shall retain sole and absolute discretion in the judgment of the manner and means of carrying out LESSOR's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of LESSOR, which policies of LESSOR shall not conflict with LESSEE, State, H.U.D., or United States policies, rules or regulations relating to the use of LESSOR's funds provided for herein. The LESSOR agrees that it is a separate and independent enterprise from the LESSEE, that it has full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between



the LESSOR and the LESSEE and the LESSEE will not be liable for any obligation incurred by LESSOR, including but not limited to unpaid minimum wages and/or overtime premiums.

ARTICLE 13
RESERVED

ARTICLE 14
AGREEMENT SUBJECT TO FUNDING

14.1 This Agreement shall remain in full force and effect only as long as the expenditures provided for in the Agreement have been appropriated by the City Commission of the City of Pembroke Pines in the annual budget for each fiscal year of this Agreement, and is subject to termination based on lack of funding.

ARTICLE 15
UNCONTROLLABLE FORCES

15.1 Neither LESSEE nor LESSOR shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

15.2 Neither party shall, however, be excused from performance if nonperformance is due to forces, which are preventable, removable, or remediable, and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

ARTICLE 16
GOVERNING LAW AND VENUE

16.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Florida as now and hereafter in force. The venue for any and all actions or claims arising out of or related to this Agreement shall be in Broward County, Florida.

ARTICLE 17
SIGNATORY AUTHORITY

17.1 LESSOR shall provide LESSEE with copies of requisite documentation evidencing that the signator for LESSOR has the authority to enter into this Agreement.



ARTICLE 18

DEFAULT OF CONTRACT & REMEDIES

18.1.1 **Default.** Upon the failure of LESSOR or LESSEE to perform any of the terms and conditions of this Agreement, the party not at fault shall have the right to cancel this Agreement, by giving thirty (30) days' written notice to the party at fault, specifying therein the reason therefore, and if the party at fault has not cured the fault within thirty (30) days, then this Agreement shall be terminated. Upon such default, all payments remaining due the LESSOR at the time of default, less all sums due LESSEE for damages suffered, or expenses incurred by reason of default shall be due and payable to the LESSOR. If LESSEE is the defaulting party for nonpayment and the default is not timely cured, LESSEE agrees to return the Vehicles to LESSOR during the normal business hours of LESSEE.

ARTICLE 19

BANKRUPTCY

19.1 It is agreed that if LESSOR is adjudged bankrupt, either voluntarily or involuntarily, then this Agreement shall terminate effective on the date and at the time the bankruptcy petition is filed.

ARTICLE 20

MERGER; AMENDMENT

20.1 This Agreement constitutes the entire agreement between LESSOR and LESSEE, and all negotiations and oral understandings between the Parties are merged herein. This Agreement can be supplemented or amended only by a written document executed by both LESSOR and LESSEE with the same formality and equal dignity herewith.

ARTICLE 21

DISPUTE RESOLUTION

21.1 **Arbitration.** In addition to any other remedy provided hereunder, LESSEE, at its option, may use arbitration to resolve any controversy or claim arising out of or relating to this Agreement if arbitration is elected by LESSEE. Any controversy or claim arising out of or relating to this Agreement, or breach thereof, may be settled by arbitration in accordance with the rules of the American Arbitration Association and judgment upon the award rendered by the arbitrators may be entered into by any court having jurisdiction thereof. In the event arbitration is elected by LESSEE, such controversy or claim shall be submitted to one arbitrator selected from the National Panel of The American Arbitration Association.

21.2 Operations During Dispute.

21.2.1 In the event that a dispute, if any, arises between LESSEE and LESSOR relating to this Agreement, performance or compensation hereunder, LESSOR shall continue to perform in full compliance with all terms and conditions of this Agreement as interpreted by LESSEE regardless of such dispute.



21.2.2 Reserved.

21.2.3 Notwithstanding the other provisions in this Section, LESSEE reserves the right to terminate the Agreement at any time, whenever the services and/or Vehicles provided by LESSOR fails to meet reasonable standards of the trade after LESSEE gives written notice to the LESSOR of the deficiencies as set forth in the written notice within fourteen calendar (14) days of the receipt by LESSOR of such notice from LESSEE.

ARTICLE 22
PUBLIC RECORDS

22.1 The City of Pembroke Pines is public agency subject to Chapter 119, Florida Statutes. The LESSOR shall comply with Florida's Public Records Law. Specifically, the LESSOR shall:

22.1.1 Keep and maintain public records required by the LESSEE to perform the service;

22.1.2 Upon request from the LESSEE's custodian of public records, provide the LESSEE with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

22.1.3 Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and, following completion of the Agreement, LESSOR shall destroy all copies of such confidential and exempt records remaining in its possession after the LESSOR transfers the records in its possession to the LESSEE; and

22.1.4 Upon completion of the Agreement, LESSOR shall transfer to the LESSEE, at no cost to the LESSEE, all public records in LESSOR's possession. All records stored electronically by the LESSOR must be provided to the LESSEE, upon request from the LESSEE's custodian of public records, in a format that is compatible with the information technology systems of the LESSEE.

22.2 The failure of LESSOR to comply with the provisions set forth in this Article shall constitute a Default and Breach of this Agreement and the LESSEE shall enforce the Default in accordance with the provisions set forth in **Article 18** of this Agreement.

IF THE LESSOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE LESSOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:



CITY CLERK
601 CITY CENTER WAY, 4th FLOOR
PEMBROKE PINES, FL 33025
(954) 450-1050
mgraham@ppines.com

ARTICLE 23
MISCELLANEOUS

23.1 **Ownership of Documents.** Reports, surveys, studies, and other data provided in connection with this Agreement are and shall remain the property of LESSEE, whether or not the services and/or lease for which they are made is completed.

23.2 **Legal Representation.** It is acknowledged that each party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement, and accordingly, the rule that a contract shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both Parties.

23.3 **Records.** LESSOR shall keep such records and accounts and require any and all subcontractors to keep records and accounts as may be necessary in order to record complete and correct entries as to any expenses for which LESSOR expects to be reimbursed. Such books and records will be available at all reasonable times for examination and audit by LESSEE and shall be kept for a period of ten (10) years after the LESSOR's performance required pursuant to this Agreement. Incomplete or incorrect entries in such books and records will be grounds for disallowance by LESSEE of any fees or expenses based upon such entries.

23.4 **Assignments; Amendments.** This Agreement, and any interests herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by LESSOR without the prior written consent of LESSEE. For purposes of this Agreement, any change of ownership of LESSOR shall constitute an assignment which requires LESSEE approval. However, this Agreement shall run to the benefit of LESSEE and its successors and assigns.

It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

23.5 **No Contingent Fees.** LESSOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for LESSOR to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for LESSOR any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, LESSEE shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.



23.6 **Notice.** Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, LESSOR and LESSEE designate the following as the respective places for giving of notice:

LESSEE	Charles F. Dodge, City Manager City of Pembroke Pines 601 City Center Way, 4 th Floor Pembroke Pines, Florida 33025 Telephone No. (954) 450-1040
Copy To:	Samuel S. Goren, City Attorney Goren, Cherof, Doody & Ezrol, P.A. 3099 East Commercial Boulevard, Suite 200 Fort Lauderdale, Florida 33308 Telephone No. (954) 771-4500 Facsimile No. (954) 771-4923
LESSOR	Daniel Bretz, Territory Sales Manager E-Z-GO, DIVISION OF TEXTRON, INC. 1451 Marvin Griffin Rd Augusta, GA 30906 E-mail: dbretz@textron.com Telephone No: 706-840-1713

23.7 **Binding Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

23.8 **Headings.** Headings herein are for the convenience of reference only and shall not be considered in any interpretation of this Agreement.

23.9 **Exhibits.** Each exhibit referred to in this Agreement forms an essential part of this Agreement. The exhibits if not physically attached should be treated as part of this Agreement and are incorporated herein by reference.

23.10 **Severability.** If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.



23.11 **Extent of Agreement.** This Agreement represents the entire and integrated agreement between LESSEE and LESSOR and supersedes all prior negotiations, representations or agreements, either written or oral.

23.12 **Waiver.** Failure of LESSEE to insist upon strict performance of any provision or condition of this Agreement, or to execute any right therein contained, shall not be construed as a waiver or relinquishment for the future of any such provision, condition, or right, but the same shall remain in full force and effect.

23.13 **Attorneys' Fees.** In the event that either party brings suit for enforcement of this Agreement, each party shall bear its own attorney's fees and court costs, except as otherwise provided under the indemnification provisions set forth herein above.

22.14 **Counterparts and Execution.** This Agreement may be executed in multiple originals or counterparts, each of which shall be deemed to be an original and together shall constitute one and the same agreement. Execution and delivery of this Agreement by the Parties shall be legally binding, valid and effective upon delivery of the executed documents to the other party through facsimile transmission, email, or other electronic delivery.

23.15 **Compliance with Statutes.** It shall be the LESSOR's responsibility to be aware of and comply with all statutes, ordinances, rules, orders, regulations and requirements of all local, LESSEE, state, and federal agencies as applicable.

23.16 **Reserved**

23.17 **Scrutinized Companies.** LESSOR, its principals or owners, certify that they are not listed on the Scrutinized Companies that Boycott Israel List, Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or is engaged in business operations with Syria. In accordance with Section 287.135, Florida Statutes, as amended, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with any agency or local governmental entity for goods or services if:

23.17.1 Any amount of, at the time bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel; or

23.17.2 One million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company:

23.17.2.1 Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes; or



23.17.2.2 Is engaged in business operations in Syria.

23.18 **Domestic Partnership.**

23.18.1 LESSOR certifies that it is aware of the requirements of Section 35.39 of the CITY's Code of Ordinances and certifies that (**check only one box below**):

- ☒ LESSOR currently complies with the requirements of Section 35.39 of the CITY's Code of Ordinances; or
- ☐ LESSOR will comply with the conditions of Section 35.39 of the CITY's Code of Ordinances; or
- ☐ LESSOR will not comply with the conditions of Section 35.39 of the CITY's Code of Ordinances; or
- ☐ LESSOR does not comply with the conditions of Section 35.39 of the CITY's Code of Ordinances because of the following allowable exemption (**check only box below**):
 - ☐ LESSOR does not provide benefits to employees' spouses in traditional marriages; or
 - ☐ LESSOR provides an employee the cash equivalent of benefits because LESSOR is unable to provide benefits to employees' Domestic Partners or spouses despite making reasonable efforts to provide them. To meet this exception, LESSOR shall provide a notarized affidavit that it has made reasonable efforts to provide such benefits. The affidavit shall state the efforts taken to provide such benefits and the amount of the cash equivalent. Case equivalent means the amount of money paid to an employee with a Domestic Partner or spouse rather than providing benefits to the employee's Domestic Partner or spouse. The case equivalent is equal to the employer's direct expense of providing benefits to an employee's spouse; or
 - ☐ LESSOR is a religious organization, association, society, or any non-profit charitable or educational institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society; or
 - ☐ LESSOR is a governmental agency.

23.18.2 Except where federal or state law mandates to the contrary, a contractor awarded a contract pursuant to a competitive solicitation shall provide benefits to Domestic Partners and spouses of its employees, irrespective of gender, on the same basis as it provides benefits to employees' spouses in traditional marriages.

23.18.3 LESSOR shall provide the City Manager and his/her designee, access to its records for the purpose of audits and/or investigations to ascertain compliance with the provisions of this Article, and upon request shall provide evidence that the LESSOR is in



compliance with the provisions of this Article upon the renewal of this AGREEMENT or when the City Manager or his/her designee receives a complaint or has reason to believe LESSOR may not be in compliance with the provisions of this Article. Records shall include but not be limited to providing the City Manager and his/her designee with certified copies of LESSOR's records pertaining to its benefits policies and its employment policies and practices.

23.18.4 LESSOR must conspicuously make available to all employees and applicants for employment the following statement:

“During the performance of a contract with the City of Pembroke Pines, Florida, the LESSOR will provide Equal Benefits to its employees with spouses, as defined by Section 35.39 of the City of Pembroke Pines Code of Ordinances, and its employees with Domestic Partners and all Married Couples”.

23.18.5 By executing this Agreement, LESSOR certifies that it agrees to comply with the above and Section 35.39 of the City of Pembroke Pines Code of Ordinances, as may be amended from time to time.

23.19 **Title to Vehicle.** Throughout the term of this Agreement, title to the Vehicles covered herein will remain with the LESSOR, with no ownership rights accruing to the LESSEE.

**THE REMAINDER OF THIS PAGE
HAS BEEN INTENTIONALLY LEFT BLANK**



IN WITNESS OF THE FOREGOING, the Parties have set their hands and seals the day and year first written above.

LESSEE:

CITY OF PEMBROKE PINES, FLORIDA

ATTEST:

MARLENE D. GRAHAM, CITY CLERK By: CHARLES F. DODGE, CITY MANAGER

APPROVED AS TO FORM:

Name: OFFICE OF THE CITY ATTORNEY

LESSOR:

E-Z-GO, A DIVISION OF TEXTRON, INC.

By: Marjellen Williams Name: Marjellen Williams Title: Contracts Administrator

STATE OF Rhode Island) COUNTY OF Providence)

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared Marjellen Williams as Contracts Administrator of E-Z-GO, A DIVISION OF TEXTRON, INC., a company authorized to conduct business in the State of Florida, and acknowledged execution of the foregoing Agreement as the proper official of E-Z-GO, A DIVISION OF TEXTRON, INC. for the use and purposes mentioned in it and affixed the official seal of the corporation, and that the instrument is the act and deed of that corporation.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and County aforesaid on this 6 day of November, 2019.

NOTARY PUBLIC

(Name of Notary Typed, Printed and Stamped) SHARON HAMNER Notary Public, State of Rhode Island My Commission Expires March 26, 2022