

AGREEMENT BETWEEN CITY OF RAPID CITY AND MILLER AND SONS GOLF CARS CONCERNING LEASE/PURCHASE OF GOLF CARS

THIS AGREEMENT is entered into this 5th day of MARCH, 2013, by and between the City of Rapid City, 300 Sixth Street, Rapid City, South Dakota, 57701, a municipal corporation organized under the laws of the State of South Dakota, hereinafter referred to as "City", and Miller and Sons Golf Cars, 2197 James Ave., Britt, Iowa 50423, hereinafter referred to as "Vendor".

WHEREAS, the City Parks and Recreation Department solicited bids for a five-year lease of a golf cart fleet to be used at Meadowbrook Golf Course ("Equipment"); and

WHEREAS, submitted bids were evaluated in accordance with criteria listed in the advertised request for bids; and

WHEREAS, Vendor's submitted bid was selected in accordance with state bid law;

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, it is hereby agreed as follows:

1. Vendor Obligations. Vendor agrees to provide to City sixty-seven (67) 2013 model E-Z-GO RXV golf cars, ivory in color, with a custom logo, numbers, sun top, split windshields, two sand and seed bottles with brackets, wheel covers, message holders, two keys each, and 13 horsepower Kawasaki engine. Vendor also agrees to provide City with one (1) used Eagle Rider and one (1) utility gas Terrain 250.

Vendor agrees to pay for warranty work on all Equipment and for year-end service (oil and filter changes) on all Equipment until the end of the lease. The parties agree that Putters Golf Cars in Rapid City, SD will perform all warranty and year-end service work.

2. City Obligations. The parties agree that City will enter into a Lease-Purchase Agreement with TCF Equipment Finance in order to make its payments for the value of the Equipment. City agrees to pay the following amounts for the Equipment in accordance with the terms of that Agreement:

Sixty-seven (67) E-Z-GO RXV golf cars – annual cost of \$506 per car
 1 used Eagle Rider – no charge
 1 utility gas Terrain 250 – annual cost of \$918

If City needs additional services or equipment during the term of this Agreement, such as for tournament cars or additional parts, the parties agree that City may purchase or rent such equipment from Putters Golf Cars in Rapid City, SD.

3. Balloon Payment. The parties agree that the TCF Equipment Finance Lease-Purchase Agreement will include a balloon payment in the amount of \$1750 per golf car and for \$1750 for the Terrain 250, due at the end of the term of the Lease-Purchase Agreement.

The parties agree that Vendor will pay the entire balloon payment due at the Lease-Purchase Agreement between City and TCF Equipment Finance, in 2017. The parties agree that this balloon payment is expected to equal \$119,000. Once Vendor makes full payment of the balloon payment due in 2017 to TCF Equipment Finance or its assignee, the parties agree that Vendor will take ownership of the Equipment.

4. Delivery of Equipment. Vendor agrees to deliver Equipment to Meadowbrook Golf Course on or before March 1 of each year, and to pick them up on December 15 of each year. Vendor agrees that it will pay any and all costs of such Equipment delivery. In the event that TCF Equipment Finance charges City for any costs, charges, expenses and obligations regarding the importation, shipment, delivery, possession, lease, tax treatment, return, storage and/or transfer of any item of Equipment, the parties agree that Vendor will reimburse City for any and all such charges.

5. Warranties. The parties agree that this Agreement incorporates the terms and conditions found in the document *Limited Warranty Terms and Conditions – RXV and TXT Fleet Vehicles (Model Year 2013)*, attached and hereby incorporated in full into this Agreement. The parties agree that, if City wishes to make a warranty claim regarding some or all of the Equipment, City may bring such warranty claim(s) against E-Q-Go or against Vendor.

6. Indemnification. Vendor agrees to indemnify, defend and hold harmless City against all liability, loss, damage, costs, and expenses including, but not limited to, costs of defense and reasonable attorney's fees, which City may hereafter suffer itself or pay to another party by reason of any claim, action, or right of action, at law or in equity, arising out of willful misconduct, error, omission or negligent act of Vendor and resulting in injury (including death) to any person or damage to any property to the extent such are caused by or are alleged to be caused by Vendor or its employees.

7. Relationship. This Agreement does not create an employment relationship between the City of Rapid City and Miller & Sons or its agents or employees. Nothing contained in this Agreement is intended to create a partnership or joint venture between Miller & Sons and the City of Rapid City. No agent of Miller & Sons shall be the agent of the City, and Miller & Sons covenants that it will not take any action in the name of, or by holding itself out as the agent of, the City of Rapid City.

10. Time. Time is of the essence of this Agreement.

11. Waiver. The failure by one party to require performance of any provision herein shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

