RESOLUTION NO. R2016.108

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA AUTHORIZING THE EXECUTION AND DELIVERY OF AN EQUIPMENT LEASE-PURCHASE AGREEMENT AND SEPARATE LEASE SCHEDULE AS REQUIRED WITH RESPECT TO THE ACQUISITION, PURCHASE, FINANCING AND LEASING OF CERTAIN EQUIPMENT FOR THE PUBLIC BENEFIT; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION.

WHEREAS, the City of Tempe, Arizona (the "*City*" or *"Lessee"*), an Arizona municipal corporation, is authorized by the laws of the State of Arizona to purchase, receive, hold, lease and convey personal property necessary or proper to carry out the purposes of the Lessee and to enter into contracts with respect thereto; and

WHEREAS, the City desires to purchase, receive, hold and lease new golf course maintenance equipment including, without limitation, mowers, utility vehicle, and tractor for two (2) City-operated golf courses (the "*Equipment*"); and

WHEREAS, after a competitive procurement process, the City of Tucson entered into a National Intergovernmental Purchasing Alliance (IPA) contract No. 120535 (the "Tucson Contract"), and the State of Arizona entered into contract No. ADPSO13-035800 (the "State Contract"), for grounds keeping, golf and sports field maintenance equipment

WHEREAS, in order to obtain tax-exempt lease-purchase financing services for the purchase, receipt and lease of the Equipment, the City is permitted, pursuant to Section 26A-24 of the City Code, to purchase the Equipment under the Tucson Contract and State Contract and the Tucson Contract and State Contract permits its cooperative use by other public entities including the City.

WHEREAS, the City proposes to enter into an Equipment Lease-Purchase Agreement (the *"Agreement"*) in a total principal amount not to exceed $385,000 at an interest rate of not to exceed 2.00% with Clayton Holdings, LLC (the *"Lessor"*) and separate Lease Schedule as provided in such Agreement, the forms of which have been presented to the governing body of the Lessee at this meeting; and

WHEREAS, the Mayor and City Council of the City deems it for the benefit of the City and for the efficient and effective administration thereof to enter into the Agreement and the separate Lease Schedule as provided in the Agreement for the purchase, receipt and leasing of the Equipment therein described on the terms and conditions therein provided;

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF TEMPE, ARIZONA AS FOLLOWS:

Section 1. Approval of Documents. The form, terms and provisions of the Agreement and the separate Lease Schedule as provided in the Agreement are hereby approved in substantially the form presented at this meeting, with such insertions, omissions and changes as shall be approved by the City Manager or Deputy City Manager/Chief Financial Officer of the City or other members of the City Council executing the same, the execution of such documents being conclusive evidence of such approval; and the City Manager, the Deputy City Manager/Chief Financial Officer and the City Clerk are hereby authorized and directed to execute and deliver the Agreement and the Lease Schedule, any related Exhibits attached thereto, and any other agreements, certificates, instruments and receipts to complete the transactions contemplated by such agreements.

Section 2. Other Actions Authorized. The officers and employees of the City shall take all action necessary or reasonably required by the parties to the Agreement and the Lease Schedule to carry out, give effect to and consummate the transactions contemplated thereby (including the execution and delivery of the Acceptance Certificate contemplated in the Agreement and any tax certificate and agreement, each with respect to the Lease Schedule, as provided in the Agreement) and to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Agreement and the Lease Schedule.

Section 3. No General Liability. The obligation of the City to make payments under the Agreement and the Lease Schedule shall not constitute a general obligation or debt of the City, the State of Arizona or any political subdivision thereof for which the City, the State of Arizona or any political subdivision thereof is obligated to levy or pledge any form of *ad valorem* tax nor does the obligation to make payments under the Agreement and the Lease Schedule constitute a general obligation or debt of the City, the State of Arizona or any political subdivision thereof within the meaning of the Constitution of the State of Arizona, statutes thereof or otherwise. The Agreement and the Lease Schedule and the obligation to make payments thereunder is subject to the annual approval, budgeting and appropriation by the City Council as evidenced by the annual budgets of the City throughout the stated term of the Agreement and the Lease Schedule.

Section 4. Tax Covenants. The City covenants to neither take nor fail to take any action which action or failure to act is within its power and authority and would result in the interest portion of any payments under the Agreement and the Lease Schedule to be or to become subject to federal income taxes.

The City agrees that it will comply with such requirements as in the opinion of Gust Rosenfeld P.L.C. ("*Special Counsel*") are necessary to prevent interest on the interest portion of any payments under the Agreement and the Lease Schedule from becoming subject to inclusion in gross income for federal income tax purposes. Such requirements may include but are not limited to making further specific covenants; making truthful certifications and representations and giving necessary assurances; complying with all representations, covenants and assurances contained in agreements to be prepared by Special Counsel; to pay to the United States of America any required amounts representing rebates of arbitrage profits relating to the investment of the moneys relating to the Agreement and the Lease Schedule; filing forms, statements and supporting documents as may be required under the federal tax

laws; limiting the term of and yield on investments made with moneys relating to the Agreement and the Lease Schedule; and limiting the use of the moneys of the Agreement and the Lease Schedule and Equipment financed thereby.

Section 5. Appointment of Authorized City Representatives. The City Manager and the Deputy City Manager/Chief Financial Officer of the City are each hereby designated to act as authorized representatives of the City for purposes of the Agreement and the Lease Schedule until such time as the governing body of the City shall designate any other or different authorized representative for purposes of the Agreement and the Lease Schedule.

Section 6. Severability. If any section, paragraph, subdivision, sentence, clause or phrase of this resolution is for any reason held to be illegal, invalid or unenforceable, such decision will not affect the validity of the remaining portions of this resolution. The Mayor and City Council hereby declare that the City would have adopted this resolution and each and every other section, paragraph, subdivision, sentence, clause or phrase hereof irrespective of the fact that any one or more sections, paragraphs, subdivisions, sentences, clauses or phrases of this resolution may be held illegal, invalid or unenforceable.

Section 7. Repealer. All bylaws, orders and resolutions or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance or part thereof.

Section 8. Resolution a Contract. This resolution shall constitute a contract between the City and the Lessor and shall not be repealed or amended in any manner which would impair, impede or lessen the rights of the Lessor.

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PASSED AND ADOPTED by the City Council of the City of Tempe, Arizona, this 27th day of October, 2016.

_____
Mark W. Mitchell, Mayor

ATTEST:

_____
Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

_____
Timothy Stratton, Special Counsel

CERTIFICATE OF CLERK

I, Brigitta Kuiper, the duly appointed and acting Clerk of the City of Tempe, Arizona, do hereby certify that the above and foregoing Resolution No. _____ was duly passed by the City Council of the City of Tempe, Arizona, at a regular meeting held on October 27, 2016, and the vote was ____ aye's and ___ nay's and that the Mayor and ___ Council Members were present thereat.

_____
Brigitta M. Kuiper, City Clerk