

Staff Summary Report



Council Meeting Date: May 7, 2009

Agenda Item Number: _____

SUBJECT: Request approval of a resolution authorizing an Amendment to the Agreement/Lease with Klak Tempe, LLC, a Delaware limited liability company, for operation and maintenance of the Rio Salado Golf Course to amend the schedule of payments.

DOCUMENT NAME: 20090507cdnr01 INDIAN BEND WASH GOLF COURSE (0703-04)
RESOLUTION NO. 2009.38

COMMENTS: None

PREPARED BY: Nancy Ryan, Rio Salado Project Manager (858-8096)

REVIEWED BY: Chris Salomone, Community Development Manager (350-8294)

LEGAL REVIEW BY: Cynthia McCoy, Assistant City Attorney (350-2187)

FISCAL NOTE: N/A

RECOMMENDATION: Approval of the second addendum as presented.

ADDITIONAL INFO: Rio Salado Golf Course is a 9-hole executive course in the Indian Bend Wash. The City has an Intergovernmental Agreement (IGA) with Flood Control District of Maricopa County for recreational use of the land, and in turn the site is leased by the City of Tempe to Klak Tempe, LLC, a subsidiary of Klak Golf and Kemper Sports.

The privately operated Rio Salado Course provided financial data to show that it has been running in deficits for more than five years and recently requested relief from the escalating minimum rent payments established more than 10 years ago. The payments included a minimum payment that supposed gross income higher than actual. Much like the other city golf courses, golf rounds are decreasing because of the poor economy, increased competition from other golf courses and declining participation in the sport. The percentage rent would be adjusted to 2% of gross revenues from 2009 through 2013 (while the golf course operator pays for water credits in arrears and advance), and then 6% of gross revenues from 2014 through 2024, which is the duration of the contract. With efforts over the past 6 to 9 months, the course condition has been improved, and the management has corrected water use issues with the Arizona Department of Water Resources. All other provisions of the agreement remain intact.

Staff, while reluctant to reduce anticipated revenues seeks to retain recreational activity at the golf course rather than have it become a maintenance responsibility to the City if the use is abandoned.

RESOLUTION NO. 2009.38

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE AN AMENDMENT TO THE EXISTING AGREEMENT/LEASE FOR CONSTRUCTION, DEVELOPMENT, MAINTENANCE AND OPERATION OF A PUBLIC GOLF COURSE BETWEEN THE CITY OF TEMPE AND KLAK TEMPE, LLC, A DELAWARE LIMITED LIABILITY COMPANY.

WHEREAS, Tempe and Klak Tempe, LLC (“Lessee”) are parties to that certain Agreement/Lease for the Construction, Development, Maintenance and Operation of a Public Golf Course in the Indian Bend Wash dated February 11, 1988, as later amended and assigned (c88-30) (the “Agreement”), with respect to Rio Salado Golf Course facilities, as further described in the Agreement; and

WHEREAS, Tempe and Lessee now desire to amend the Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

That the Mayor is authorized to execute an Amendment to the Agreement, a copy of which is on file with the City Clerk’s office and to take such further actions as are necessary to implement its terms.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this _____ day of _____, 2009.

Hugh L. Hallman, Mayor

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

AMENDMENT
to
AGREEMENT/LEASE

This Amendment to Agreement/Lease (this "Amendment") is entered into as of April ____, 2009, with an effective date of January 1, 2009 (the "Amendment Effective Date"), by and between **The City of Tempe**, an Arizona municipal corporation ("Tempe") and **Klak Tempe, LLC**, a Delaware limited liability company ("Lessee").

WHEREAS, Tempe and Lessee (as successor in interest to Michael Morley) are parties to that certain Agreement/Lease for the Construction, Development, Maintenance and Operation of a Public Golf Course in the Indian Bend Wash dated February 11, 1988, as later amended and assigned (c88-30) (the "Agreement"), with respect to the leasing by Lessee of the Rio Salado Golf Course facilities, as further described in the Agreement; and

WHEREAS, Tempe and Lessee desire to amend the Agreement in order to revise the Rent, as more fully described below.

NOW, THEREFORE, in consideration of the above recitals, the mutual covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Recitals. The foregoing recitals are true and correct and incorporated herein by this reference.

2. Rent. As of the Amendment Effective Date, the following shall be added at the end of Section 16 (Rent):

"Notwithstanding the foregoing or anything else contained herein, as of January 1, 2009, the total rent due by Lessee shall be as follows:

- *From January 1, 2009 through December 31, 2013, the rent shall equal two percent (2%) of gross revenues; and*
- *From January 1, 2014 through the expiration of the Agreement, the rent shall equal six percent (6%) of gross revenues.*

The rent shall be calculated monthly and paid on or before the fifteenth (15th) day of the following month."

3. Miscellaneous.

(a) The Agreement as modified herein remains in full force and effect and is hereby ratified by the Tempe and Lessee.

(b) Capitalized terms not defined herein shall have the same meaning as set forth in the Agreement.

(c) In the event of any conflict between any other part of the Agreement and this Amendment, the terms and conditions of this Amendment shall control.

(d) This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same Amendment. Facsimile or scanned and e-mail signature shall be as effective as an original signature.

The parties have executed this Amendment effective as of the date first above written.

City of Tempe

Klak Tempe, LLC

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Title: _____