

**MEETING DATE/TYPE:                      VOTING MEETING                      1-22-19**

**DEPARTMENT:      City Attorney**

**AGENDA ITEM:** Approval of Ordinance No. 2019-1648, approving First Amended Development and Disposition Agreement with WSH Hospitality.

**Approved By:** Michael Lamar, City Manager

**Item Summary**

The City of Prescott (“City”) is the owner of certain real property generally located at 254 and 300 North Montezuma Street, west of the intersection of Sheldon and Montezuma Street (the “Property”). In August, 2018, the City entered into a Development and Disposition Agreement with WSH Hospitality, LLC (“WSH”), for the development of an approximate 95 room hotel on the City property (the “Development Agreement”). Due to the expansion of the project as presented at the January 8 council study session, the City and WSH wish to amend the Development Agreement by entering into a First Amended and Restated Development and Disposition Agreement.

**Background**

The original development and disposition agreement with WSH was approved by City Council on September 11, 2018 (attached). Since that time, significant changes to the project and adjoining lands have occurred. A redline showing the changes between the original agreement and the First Amended Development and Disposition is provided for your convenience.

Prior to the September 11 approval, notice ran two times over two weeks in the Daily Courier as required by City Charter. Prior to this presentation, a second notice also ran three times in the Daily Courier, totaling five published notices. There have been no other offers on the subject property.

Arizona Revised Statutes §9-500.05, allows for the City and WSH Hospitality, LLC, (the “Parties”) to enter into a Development and Disposition Agreement in order to facilitate the development of the Property by providing for, among other things: (1) the permitted uses for the Property and the density and intensity of such uses; (2) the conditions, terms, and requirements for the construction, installation, and financing of infrastructure; and (3) other matters related to the development and operation of the Property. Article VIII, Section 11, the Prescott City Council may lease any land, building or part thereof

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owned by the city by negotiation. All such leases must be approved by ordinance of the city council. Article VIII, Section 12, the City Council may sell such portions of the real property of the city not needed or not likely to be needed within a reasonable future time. Any sale shall be made on such conditions as the council may prescribe to the highest responsible bidder. A.R.S. §9-500.11(A) provides that, in addition to any other powers granted to a city or town, the governing body of a city or town may appropriate and spend public monies for and in connection with economic development activities. In the Arizona Court of Appeals case *Rodgers v. Huckelberry*, 409 P.3d 298, 243 Ariz. 427 (Ct. App. 2018), the court determined that under a statute equivalent to A.R.S. §9-500.11(A), a city is not required to comply with competitive bidding statute in entering into a lease-purchase agreement and that the statute governing cities engaging in expenditures for economic development, which had the purpose of empowering cities to negotiate directly with specific lessees and create deals favorable to those entities, contained no competitive bidding requirement, and a city was generally authorized to lease any land or building it owned or that was under its control; and

The City of Prescott Charter and state law provisions have been followed regarding the development and disposition of the Property.

### **Financial Impact**

In addition to the ground lease payments to the City for land that has never generated income for the City, WSH will contribute directly to the city by assuming costs for improvements that would not otherwise have occurred. The project will create local construction and hospitality industry jobs. The project is also expected to bring substantial sums of construction tax (one-time), TPT and bed tax from not only regular visitor occupancy but also group and conference uses hosted by the Hilton Garden Inn (ongoing).

### **Attachments**

1. Recorded Development Agreement, City Contract No. 2019-088
2. City of Prescott Development and Disposition Agreement - First Amendment - V2 - Redline
3. WSH First Amended and Restated DDA
4. Ordinance No. 2019-1648 for WSH Development Agreement and Lease

**Recommended Action: MOVE** to approve Ordinance No. 2019-1648.