

ORDINANCE NO. 2019-1648

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, APPROVING AN AMENDED AND RESTATED DEVELOPMENT AND DISPOSITION AGREEMENT WITH WSH HOSPITALITY, LLC.

RECITALS:

WHEREAS, 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”); and

WHEREAS, 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 aforementioned City property (the “Development Agreement”) and to govern the entitlement and development of the Property in accordance with the City’s General Plan and Zoning Ordinance; and

WHEREAS, the City and mutually desire to amend the Development Agreement by entering into a First Amended and Restated Development and Disposition Agreement; and

WHEREAS, 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; and

WHEREAS, Pursuant to Article VIII, Section 11, the Prescott City Council may lease any land, building or part thereof owned by the city by negotiation. All such leases must be approved by ordinance of the city council; and

WHEREAS, pursuant to 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; and

WHEREAS, any sale shall be made on such conditions as the council may prescribe to the highest responsible bidder; and

WHEREAS, 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; and

WHEREAS, 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

WHEREAS, the City of Prescott Charter and state law provisions have been followed regarding the development and disposition of the Property; and

WHEREAS, the Parties acknowledge that the ultimate development of the Property within the City is a project of such magnitude that each requires assurances from the other; and

WHEREAS, the Parties acknowledge that the development and operation of the Property pursuant to this Agreement will result in significant planning and economic benefits to the City and its residents; and

WHEREAS, it is in the City's best interests to enter into a First Amended and Restated Development and Disposition Agreement with WSH Hospitality, LLC.

ENACTMENTS:

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PRESCOTT AS FOLLOWS:

ENACTMENTS:

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PRESCOTT AS FOLLOWS:

Section 1. THAT, the City Council hereby approves entering into a First Amended Development and Disposition Agreement with WSH Hospitality, LLC, as City Contract No. _____.

PASSED, APPROVED AND ADOPTED by the Mayor and Council of the City of Prescott this ____ day of February, 2019.

GREG L. MENGARELLI, Mayor

ATTEST:

APPROVED AS TO FORM:

MAUREEN SCOTT
City Clerk

JON M. PALADINI
City Attorney

CERTIFICATION OF RECORDING OFFICER

STATE OF ARIZONA)
County of Yavapai) ss.

I, the undersigned Maureen Scott, being the duly appointed, qualified City Clerk of the City of Prescott, Yavapai County, Arizona, certify that the foregoing Ordinance No. 2019-1648 is a true, correct and accurate copy of Ordinance No. 2019-1648, passed and adopted at a Voting Meeting of the Council of the City of Prescott, Yavapai County, Arizona, held on the _____ day of _____ 2019, at which a quorum was present and, by a _____ vote, _____ voted in favor of said ordinance.

Given under my hand and sealed this _____ day of _____, 2019.

Seal

City Clerk