SAVE THE DELLS COMMENTS ON THE DEVELOPMENT AGREEMENT BETWEEN ARIZONA ECO DEVELOPMENT AND THE CITY OF PRESCOTT

June 18, 2021

Contact: Amber Fields, Chair, Save the Dells, amber.fields8@gmail.com

CONTENTS

SAVE THE DELLS COMMENTS ON AED DEVELOPMENT AGREEMENT

I. CONVEYANCE OF GRANITE DELLS NATURAL OPEN SPACE

CONCERN: Development Agreement allows AED to back out of donating the 473.7 acres of Granite Dells public Natural Open Space in the South Annexation after the annexation has been approved and entitlements have been granted to AED.

RATIONALE: For four years, and in countless meetings with the City of Prescott, Save the Dells has unwaveringly emphasized that any Annexation agreement that does not include the complete and permanent protection of the Granite Dells Natural Open Space will be brought to referendum or otherwise challenged. As written, the Development Agreement does not satisfy our concerns for permanent protection of the 473.7 acres identified in Exhibit T, and thus we cannot support the Agreement or the Annexation. An inability to address the concern in a timely fashion will subject the City, AED, and Save the Dells to another setback to achieving the win-win-win deal that we have tirelessly advocated for and that was illustrated in the May 2020 Letter of Intent.

The core problem we have identified is the connection between the City's purchase of 116 +/- acres adjacent the airport (the "W") and the conveyance of fee-simple ownership of the 473.7 acres of Natural Open Space (NOS) parcels identified in Exhibit T. As written, the Agreement tethers the conveyance of the 473.7 acres to the successful purchase of the "W." The Agreement states:

> "*Conveyance of this land [two (2) parcels of land totaling approximately four hundred seventy-five (475 +/-) acres on the South Parcel for use as permanent public open space] shall occur simultaneously with and shall be contingent upon conveyance of the land set forth in Paragraph 4.3 hereof.*" See Agreement at Paragraph 4.4.

Paragraph 4.3 states the following regarding the agreement for the City's purchase of the "W":

> "*Conveyance of this land* [the "W"] *shall occur within one hundred twenty days (120) following the date of expiration for challenge by reconsideration or referendum of the Annexation Ordinance or the Equivalency Zoning Ordinance (or if reconsidered or referred the failure thereof).*" See Agreement at Paragraph 4.3.

Based on these paragraphs, the Agreement appears at face value to bind AED to sell and thus bind the City to purchase the "W," and therefore the conveyance of the 473.7 acres of Granite Dells Natural Open Space would occur simultaneously with the conveyance of the "W." However, the Agreement at Paragraph 1.2(b) allows for amending the Master Development Plan, which could include changing the amount or location of Natural Open Space (e.g., by way of changes to zoning), consequently putting at risk the conveyance of the Natural Open Space to the City. Furthermore, the Agreement could be amended by agreement of the City and AED with no public involvement at all.

Consider this hypothetical example. Imagine that the City and AED cannot agree to a deal for the sale/purchase of the "W" within 120 days. If no agreement can be reached that satisfies AED, AED has the option to request a change in the Master Development Plan that could possibly

include elimination of the Granite Dells Natural Open Space, or any other open space, for that matter. Because the timeline of these transactions falls far after the end of a referendum period, the public is denied the right to challenge any such amendment. In fact, any such amendment could be processed administratively without any public involvement or awareness. In the case that the City might seek to then terminate the Agreement due to a refusal to convey the 473.7 aces of South Annexation Natural Open Space, AED retains their vested development rights, water allocation, zoning, and other entitlements bestowed by the Agreement. See Agreement at Paragraph 1.9 and 5.7(c). In short, the Agreement provides a way for AED to avoid conveying the open space while keeping their vested benefits. While convoluted, it is possible, and legal, the way the Agreement is written.

The conveyance of the 473.7 acres of Natural Open Space in the South Annexation is being held hostage by an uncertain arrangement to purchase an unrelated 116 acres in the North Annexation. This arrangement has never been made public until the release of the Agreement and jeopardizes the entire deal. In concerningly similar fashion, the conveyance of the 270 acres of Natural Open Space in the North Annexation is tied to the City's successful purchase of 133 neighboring acres from AED within two years. This too is a previously unreleased part of the deal. Both of these purchase/sale requirements make void any claim that the development meets open space requirements, as neither of these purchase/sale agreements is guaranteed to come to fruition. A number of unknown delays, complications, and other uncertainties threaten the closing of the two land purchases/sales. As of our Friday June 4 meeting with Mayor Mengarelli and City Manager Lamar, the City does not even know where the money would come from to acquire these two properties. So, both priority open space conveyances in this Agreement are held hostage by the very uncertain successful purchasing of properties from AED. This is completely unacceptable. It's more than reasonable to require that conveyance of both the 270-acre and 473.7-acre Natural Open Space areas should occur at the time the project is vested and not tied to uncertain future property purchases.

RECOMMENDATIONS:

PROPOSED SOLUTION 1: Section I (Annexation and Development Plans), 1.1(e) currently reads as follows:

"*The City also expressly acknowledges that it is the intent of the Parties to this Agreement that the annexation of the Property into the City be effective only after the passage of any referendum periods regarding this Agreement and the Zoning and provided this Agreement and such approvals have been lawfully placed in effect*." See Agreement at I.1.1(e).

We recommend modifying that Paragraph to read as follows:

"*The City also expressly acknowledges that it is the intent of the Parties to this Agreement that the annexation of the Property into the City be effective only after (1) the passage of any referendum periods regarding this Agreement and the zoning designations, (2) the 473.7 acres of public Natural Open Space as depicted in Exhibit T and the 270 acres of Natural Open Space depicted in Exhibit Q have been transferred to the City, and (3) this Agreement and such approvals have been lawfully placed in effect*"

This recommendation would satisfy our concern by tying the effective date of the annexation to the conveyance of the 473.7 acres of Natural Open Space in the Granite Dells. This clause would incentivize AED and the City to successfully close the deal on the "W" in a timely manner.

PROPOSED SOLUTION 2: We recommend that Paragraph 2.19 (Water Resource Allocation) specify that water provision to AED is contingent on the conveyance of the 473.7 acres (Exhibit T) and 270 acres (Exhibit Q) to the City. The Agreement currently provides a convenient precedent for such a requirement at Paragraph 2.19(a) where "*the City's provision of water to Parcels K and L … shall be limited to the use of the real property as a resort* …" In this case, the City and AED already preliminarily agree that water allocation be contingent upon meeting a zoning requirement. Therefore, it is logical to make water allocation to the entire development be contingent upon the conveyance of the Natural Open Space depicted in Exhibits T and Q. AED has existing wells to serve livestock production, and the Agreement would authorize new temporary wells for the sake of construction purposes; thus, any delay in vesting water allocation to the development for the purpose of ensuring successful conveyance of open space would not impair AED's ability to access water for any near-term construction or ranching purposes.

PROPOSED SOLUTION 3: Delete the contingency language in Paragraph 4.4 for the conveyance of the "475 +/- acres on the South Parcel and modify Paragraph 4.3 to provide for the transfer "W" by "friendly" eminent domain. Proposed change for Paragraph 4.4 is to delete the following sentence:

"Conveyance of this land shall occur simultaneously with and shall be contingent upon conveyance of the land set forth in Paragraph 4.3 hereof."

The proposed change to Paragraph 4.3 is to replace the following language:

"Conveyance of this land shall occur within one hundred twenty days (120) following the date of expiration for challenge by reconsideration or referendum of the Annexation Ordinance or the Equivalency Zoning Ordinance (or if reconsidered or referred the failure thereof)."

with this language:

"Conveyance of this land shall be by friendly condemnation and/or eminent domain action commenced concurrently with the City's approval of this Agreement."

II. PEAVINE TRAIL CROSSING

CONCERN: Development Agreement allows construction of an at-grade crossing of the Peavine Trail to access Parcels K and L.

RATIONALE: The City has received a massive amount of public comment on the AED Annexation, much of which expressed concern over the Peavine National Recreation Trail. Save the Dells and the public have asked for a guarantee of a grade-separated crossing of the Peavine Trail where AED intends to build a road to access their purported "eco" resort. As currently written, the Agreement allows AED to build an at-grade crossing of the Peavine Trail for the resort entrance (See Section I. Annexation and Development Plans, Paragraph 1.10 The South Parcel Resort). While the City claims to want a grade-separated crossing, the language and conditions laid out in the Agreement do not guarantee a grade-separated trail crossing. This fails to address a significant public concern and as such is completely unacceptable.

The time limit to build the "grand" grade-separated trail crossing is July 1st, 2023, only two short years away. If by that date City or the Community Facilities District (CFD) are not able to fund the grade-separated trail crossing, an at-grade crossing will be built by AED. However, the CFD, *if approved by City Council*, is not likely to have been established in such short order, especially considering that Jason Gisi has publicly said that he does not expect AED to build the neighborhood that would be the source of the CFD funding for perhaps five years or more. *Unless the City commits in this Development Agreement the funds to build the grade-separated trail crossing, AED will be allowed to build the crossing at-grade.*

If approved, the Agreement as written will commit the City to millions of dollars' worth of expenditures within the next 1-2 years. If the City commits to funding the grade-separated Peavine Trail crossing in the Agreement, the City will need to have funding available.
If the City can afford to commit to buying AED's 133-acre and 116-acre parcels, the crossing of Granite Creek, and the tens of millions of dollars in other facilities and utilities promised to AED, the City can budget a grade-separated crossing into its plan.

RECOMMENDATION:

The City should either require AED to build their own grade-separated "grand entrance" to the resort or budget this expenditure into the City's budget and commit to the expense in the DA. This must be specified clearly in the Agreement. As written, the Agreement will permit an at-grade crossing, which will likely be the result unless a grade-separated crossing is unequivocally required.

III. TRANSFER OF 375 ACRE-FEET SURFACE WATER RIGHTS

CONCERNS: Development Agreement allows AED's Sever and Transfer obligation to "time out" if City water service-related approvals are delayed. Additionally, it allows for the City to divert the 375 acre-feet to additional development.

RATIONALE: Section 2.20 (g) provides that the developer shall Sever and Transfer to the City 375 acre-feet per year (afy) of Granite Creek surface water rights currently held by the developer. This is estimated to account for approximately 2 feet of the depth of Watson Lake. This process specifies that after the IGA for water/sewer service to S33 is completed and the rights-of-way and easements needed to provide water/sewer have been secured, the Developer is responsible to "seek necessary approvals and file required documents" with ADWR with no further cost.

Problem 1: The City is thereafter responsible for seeking final approval by ADWR. If not approved within three years, the developer is relieved of the requirement to transfer the water rights. This provision is unacceptable and potentially gives the developer an incentive to delay or sabotage the Sever and Transfer process. Up to an additional year is allowed to secure the easements, so the total time limit for completing the Sever and Transfer process is potentially extended for up to 4 years, which is excessive. Additionally, the City is responsible for ADWR processes for which it has little control; therefore, any delays at ADWR will risk the time running out for the transfer of the water to the City.

Problem 2: The DA states that 375 af surface water may be incorporated into the City's Assured Water Supply portfolio, which contradicts previous statements to the public by the City and the City attorney that the water is to stay in the lakes for recreation.

RECOMMENDATIONS:

PROPOSED SOLUTION 1: Consider having the developer lease exclusive rights to the 375 afy to the city at $1 per year for an indefinite period. The lease would begin upon approval of the zoning, annexation, and Development Agreement. The lease could be terminated only when both the Sever and Transfer is successfully completed and the other provisions in the DA are finalized, including the land transfers, or if the DA is not approved. This solution provides that, in the event the Sever and Transfer is not approved by ADWR in a timely manner, possibly through no fault of either party, the City retains full control of the water rights.

PROPOSED SOLUTION 2: The City should commit to retaining the 375 afy in the lakes for recreation and remove the possibility of diverting the water to additional development. The DA should be changed to be consistent with public comments by specifying that the water remains in the lakes for recreation and is not intended to support additional development by adding it to the City's water portfolio.

IV. VESTED DEVELOPER RIGHTS

CONCERN: Development Agreement allows AED to retain all vested rights in the event that the agreement is terminated or *challenged* by a call for reconsideration or referendum.

RATIONALE: Paragraph 1.9 (pp. 11-12) of the proposed COP-AED development agreement provides AED's vested rights under the agreement survive termination of the agreement pursuant to section 5.7(c), which describes the effect of a reconsideration or referendum challenge to the AED annexation. The city is granting AED vested rights, and those vested rights survive termination of the agreement by reconsideration or referendum. That is, this section vests AED's development rights if the citizens of Prescott exercise their reserved rights under the Arizona Constitution and under the Prescott City Charter to challenge the council's annexation decision with a ballot referendum.

There are additional problems with paragraph 1.9. For example, why is the city agreeing that AED's purchase of the Property was in reliance upon the city's assurances set forth in this development agreement?

RECOMMENDATION:

Replace Paragraph 1.9 with this:

"**1.9 Vested Right.** The City agrees that, for the term of this Agreement, Developer shall have a vested right to develop the Property in accordance with this Agreement."

V. ADDITIONAL PROPERTY

CONCERN: Development Agreement allows AED to extend rights and provisions of the agreement to future properties, absent disclosure of development plans or a public process.

RATIONALE: Paragraph 1.6 (pp. 10-11) provides for the potential amendment of the Development Agreement to incorporate "Additional Property" that may be annexed and incorporated into the Development Agreement. Exhibit J identifies those properties as Section 32 and "Fann Extra." Simply put, all the rights and provisions of the DA would apply and benefit these properties, if they are acquired by the Developer.

This paragraph provides significant benefits to the Developer without any notion of development plans for those parcels. Granting future rights is not wise public and planning policy, even with the clause, "if in the City's discretion." There is a myriad of issues associated with the water allocation, future land use, open space, "increasing the total number of residential units on the Property," and infrastructure. It also sets an unnecessary precedence for other adjacent parcels, such as State Lands not currently within the provisions of the Development Agreement. It binds future City Councils from the exercise of their legislative authority.

RECOMMENDATIONS:

PROPOSED SOLUTION 1: Paragraph 1.6 (Additional Property) currently reads as follows:

"1.6 Additional Property. The City hereby agrees to consider, and, if in the City's discretion, it is determined by the City to be in the best interest of the City, amend this Agreement from time to time at the request of the Developer to incorporate into this Agreement the whole property or any portion of additional properties adjacent to or proximate to the Property ("Additional Property") if and when Developer owns or acquires such Additional Property into its municipal boundaries. Such Additional Property which may, in the future, be incorporated into this Agreement shall be limited to the real property, or any part thereof, described on Exhibit J attached hereto. City and the Developer agree that if Developer elects to incorporate Additional Property or portions thereof: (1) thereafter, such Additional Property shall be included in the Property and shall be subject to and shall benefit from all provisions of this agreement applicable thereto and any reference herein to the Property shall include such Additional Property, which may increase the total number of residential units on the Property; (2) the City and Developer shall cooperate in order for the Additional Property to receive the necessary land use approvals, including, but not limited to, any necessary amendment to an MDP or this Agreement; and (3) the plans and land use designations approved for any Additional Property shall thereafter apply to the Property and the applicable Additional Property."

We recommend modifying that Paragraph to read as follows:

"1.6 Additional Property. The City hereby agrees to consider, and, if in the City's discretion, it is determined by the City to be in the best interest of the City, amend this Agreement from time to time at the request of the Developer to incorporate into this Agreement the whole property or any portion of additional properties adjacent to or proximate to the Property ("Additional Property") if and when Developer owns or acquires such Additional Property into its municipal boundaries. Such Additional Property, which may, in the future, be incorporated into this Agreement, shall be specifically limited to the real property or any part thereof, described on Exhibit J attached hereto. City and the Developer agree that if Developer elects to incorporate Additional Property or portions thereof (1) The Developer shall submit for the City's approval a request to amend the Agreement, with a detailed Master Plan. Only with such approval will such Additional Property be included in the Property; (2) Such inclusion does not grant any automatic rights to water allocation, increasing residential units (albeit the City will give consideration to a reallocation of density within the Property), meeting open space requirements for these additional parcels, or any obligation of the City to provide for any infrastructure cost.

PROPOSED SOLUTION 2: We propose that Paragraph 1.6 be deleted in its entirety. There will likely be unique circumstances, conditions, and restrictions related to the "Additional Property" that are incapable of being fully known at this time and for which the provisions of the current development agreement will be inadequate. There are provisions for a separate development agreement for the "Additional Property" or for amending the Development Agreement in the future should the City deem that advisable at that time.

VI. SPC ZONING REQUIREMENTS

CONCERN: Agreement does not satisfy the Land Development Code's (LDC) requirements for Specially Planned Community (SPC) Zoning.

RATIONALE: AED has not yet submitted a Master Development Plan (MDP) for the proposed resort in Areas K and L that confirms to the requirements set forth in the LDC. In order to accommodate the resort, Areas K and L will be rezoned to an SPC district and as such must follow the Land Development Code for that zoning. We are concerned that AED has yet to submit the SPC master plan required by the Land Development Code (see below — **LDC 4.13.3: A. Master Plan Requirement**), which denies the public and the City opportunity to review the plan prior to approval.

The City's Land Development Code requires that *"in establishing* a SPC district, (emphasis added)" the City requires a master plan be received at the time of rezoning.
City staff previously characterized this required master plan as a "submaster plan" that the Council can defer until AED is ready and the Council would consider later; yet *that is not what the code provides*. The code clearly requires a detailed master plan at the time of the establishment of a SPC district, *not at some later time when development is about to occur*.

At the June 15 study session, Jason Gisi stated that he will "follow policies that exist," yet he has not submitted the required SPC master plan. We recognize that AED has provided a simple map (DA Exhibit E) that shows parcels K and L as the location of the resort. But this map does not satisfy the requirements in the LDC. Furthermore, the SPC map for the resort on the City's website still contains an old map from AED's original resort proposal from several years ago. The SPC Master Plan requirement for AED's proposed resort is an important step that cannot be skipped, as it validates that AED in fact intends to develop the resort and not bait and switch council by luring them with the promise of bed tax revenue and then amending the agreement later to permit construction of residential homes or other disallowed structures.

Why does Save the Dells care about this? Because if the City is to pay for a grade-separated "grand entrance" for a resort, which will significantly affect the trail-user experience on the Peavine Trail, it is in the City's best interest to require AED to conform to the LDC prior to making such a significant investment. As the DA is currently written, the City is agreeing to build the Peavine Trail crossing to access AED's proposed resort by no later than July 1, 2023. But without an SPC Master Plan that ensures detailed planning has gone into the resort, how can we be sure AED will ever even build it? We have yet to see any detail at all about this supposed resort, and yet it apparently is the first thing AED plans to build.

Consider this: What if the City builds the Peavine Trail grade-separated crossing, but then AED asserts that the resort is no longer economically viable based on some future economic analysis (that should be done prior to annexation approval as we and other members of the public have insisted). Then, imagine AED requests a change in zoning to permit them to build houses instead of a resort. In this scenario, the City would have already spent taxpayer money on another "road to nowhere" and would therefore be pressured to permit residential

development instead of the much-heralded resort. There is a history of developers coming back to change zoning regularly; this is not far-fetched. In fact, the DA currently allows for such changes.

The text below is an excerpt from the LDC (at 4.13.3.A):

"A. Master Plan Requirement

1. *In establishing a SPC district in accordance with this Section, the City Council shall require a master plan of the development. Such master plan shall be approved and a Memorandum of Master Plan filed as part of the rezoning ordinance prior to the issuance of any Building Permit or Site Disturbance and Grading Permit in a SPC district. Such required Plan and rezoning ordinance shall set forth the following for each subarea:"*
"a. *Proposed land use plan including the number and type of dwelling units, total floor area for specified nonresidential land uses, significant open space, natural areas or recreation features to be incorporated into the development plan;*
b. *Requirements for ingress and egress to the property, public or private streets or drives, with adequate right-of-way, sidewalks, utilities, drainage, parking space, setbacks, height of building, maximum lot coverage, yards and open spaces, screening walls or fences, landscaping and other development and protective requirements including maintenance considered necessary to create a reasonable transition to and protection of the adjacent property;*
c. *Locations of significant natural features including but not limited to steep slope areas, natural drainageways and floodplains, wetlands, ridges, and unique stands of vegetation and rock outcrops;*
d. *The approximate locations of elements such as a golf course and related facilities, or other recreational facilities and open space, major roads, trails and other dominate features of the Plan; and*
e. *Conceptual plans and/or reports identifying design compatibility and preservation techniques intended for landscaping, natural features, screening, lighting, and other site/building design elements in the SPC Master Plan."*

None of these has been provided by AED; therefore, their application is incomplete and unacceptable. In addition, because the Mater Plan lacks any detail whatsoever, the public has not had, and will apparently never have, any opportunity to comment on this important and consequential aspect of the development.

RECOMMENDATION: AED must comply with the requirements set forth above and provide an SPC Master Plan that describes those elements. Section *I. Annexation and Development Plans, Paragraph* 1.10 *The South Parcel Resort* needs editing and additional language to protect the City and hold AED to their promises. We feel strongly that the City should not invest in building the trail crossing until AED has provided detailed plans for the resort and entrance infrastructure elements described in the LDC, as quoted above. The City should negotiate with AED to remove the July 1, 2023 deadline to build the crossing and replace it with a stipulation that requires AED to satisfy the LDC requirements as part of the rezoning ordinance prior to the City approving or building the trail crossing.

VII. 338 (+/-) ACRES OF NATURAL OPEN SPACE IN NORTH PARCEL

CONCERN: The Agreement includes no explicit language to ensure that the 338 (+/-) acres of land depicted on maps as Natural Open Space in the North Parcel will in fact be protected as such. The parcel is shown on a map but never explicitly discussed.

RATIONALE: To ensure that the 338-acre (+/-) parcel will be used exclusively as Natural Open Space (NOS), it must be written into the Agreement and not simply be displayed on maps as NOS. Open Space is a public benefit exchanged for the numerous benefits of annexation that the developer receives. It is in the City's best interest to provide *explicit written assurance* in the Agreement that those 338 (+/-) acres are to remain as NOS.

RECOMMENDATION: Section 4.1 North Parcel Private and Public Open Space should state, "As a part of this Agreement, Developer agrees to designate 338 (+/-) acres of land as NOS in the North Parcel (depicted in Exhibit R)."

VIII. TIMING OF WATER ENTITLEMENT

CONCERN: AED receives a vested right to 753 acre-feet of water without conveying a single acre of open space to the City.

RATIONALE: The City of Prescott is committing to vesting 753 acre-feet of water entitlements to AED upon approval of the Agreement; however, not a single acre of open space will transfer to the City at that time. Instead, the transfer of open space (including the 473.7 acres in the Dells) is tied to the City's purchase of several parcels of AEDs land near the airport. In Paragraph 2.11 in the Agreement (Water Service), the City commits to reserving 753 acre/feet of water for the Property (including Granite Dells Parkway Parcels and Section 33) upon "official annexation" of the property and by executing of the Water Service Agreement (Exhibit K to the DA) for Section 33 simultaneously with the execution of the DA.

This arrangement is inconsistent with the deal the City has been describing to the public for two years and in effect grants AED vested water rights and allows them to back out of conveying the open space to the City. Since 2019, the city has repeatedly portrayed the deal to be a land (open space) for water trade. Unfortunately, the exchanges of the water and the open space are NOT simultaneous in the Agreement. This is related to our concerns over Vested Rights.

We described this in **Concern I.** of our original draft comments (dated 6/10/2021) to the City and proposed a solution (**Proposed Solution 2**); however, the City's apparent lack of understanding regarding how important this issue is has led us to craft this comment specific to the timing of AED's water entitlement.

RECOMMENDATION:

Change the effective event for reservation of "the potable water from the city" for the properties being annexed from "official annexation" to "close of escrow transferring the ~473.7 acres of

open space from AED to the City." And, condition the execution of the Water Service Agreement for Section 33 on the close of escrow transferring the ~473.7 acres of open space from AED to the City. That is, delete the following sentences:

"Reservation of potable City water for the Property and Granite Dells Parcels shall become effective upon formal annexation of the property. Reservation of potable City water for Section 33 shall become effective upon approval of this Agreement per the Water Service Agreement attached as Exhibit K hereto, which shall be executed simultaneously herewith."

and, replace them with the following:

"Reservation of potable City water for the Property and Granite Dells Parcels shall become effective upon close of escrow transferring the ~473.7 of open space from AED to COP. Reservation of potable City water for Section 33 shall become effective upon close of escrow transferring the ~473.7 of open space from AED to COP per the Water Service Agreement attached as Exhibit K hereto, which shall be executed simultaneously with the close of escrow."

IX. OTHER WATER-RELATED CONCERNS

1) **In Section 2.1 (Water Service),** the Agreement states, "Pursuant to the Applicable Rules, City *estimates* [emphasis added] the total allocation for such purposes does not exceed 753 (+/-) acre feet of water." However, the LOI (Exhibit G) clearly states that "...the total allocation [of water] does not exceed 753 (+/-) acre feet of water." Therefore, we request that the sentence in Section 2.1 be revised to match the LOI, stating "Pursuant to the Applicable Rules, City shall provide water entitlement to AED that does not exceed 753 (+/-) acre feet of water."

2) **Section 2.19 Water Resource Allocation** needs revising as sections (a), (b), and (d) do not list the exact amounts of water granted, but rather the number of EDU's allowed. Section (c) lists the actual af/yr that will be allowed. These sections should match.

3) **Section 4.3 Purchase and Sale of North Parcel Other Property** states that, "The Parties acknowledge that the land set forth in i) above is parcel "W" as set forth in the Letter of Intent for which the allocation of water has been reallocated herein to the Granite Dells Parkway Parcels." This has never been discussed with Save the Dells. We absolutely object to AED receiving water entitlements for lands that they are selling to the City of Prescott. The above sentence in the DA should be removed, and AED should not receive that water, since those lands are no longer a part of their development.

4) **Section 2.19 Water Resource Allocation. (f) EDU.** The water "savings" calculation encourages building of apartments in the South Parcel. Also, the DA states that AED can use this water "savings" from building apartments to "add additional unit density above the otherwise applicable limits" to areas in the North or Section 33 or Additional Property. We recommend stating, "not to exceed 3400 EDU," which is stated elsewhere in the DA.

X. ABSENCE OF KEY PROTECTIVE LEGAL PROVISIONS

CONCERNS: Development Agreement lacks several key and commonly integrated legal provisions, which would provide 1) a length of the term for the agreement and 2) a stipulation that the rule of ambiguities does not apply, strengthening the protection of City and public interests.

RATIONALE: The inclusion of these provisions is industry-standard for agreements like the COP-AED DA. Please see the sample language below from a 2005 Cave Creek Pre-Annexation Agreement that provides two examples of language for the general provisions missing from the COP-AED DA.

This language stipulates a length of the term for the agreement, which we have observed used in previous Prescott DAs and annexations:

"5.7 Term. This Agreement shall be effective on the effective date of the Town Ordinance annexing the Annexation Property (the "Effective Date") and shall automatically terminate ten (10) years after the Effective Date, provided, however, the Town shall not discontinue applicable municipal services to the Property, once commenced, except as permitted by applicable law."

This language stipulates that the rule of ambiguities does not apply:

"5.13 Fair Interpretation. Both Parties have been represented by counsel in the negotiation and drafting of this Agreement, and this Agreement shall be construed according to the fair meaning of its language. The rule of construction that ambiguities shall be resolved against the party who drafted a provision shall not be employed in interpreting this Agreement."

The addition of such provisions and language to the COP-AED DA would significantly increase the protection of the interests of the City and the public. These are common sense stipulations that surely have precedent in past Prescott DAs.

RECOMMENDATIONS: Amend the Development Agreement to include the following provision as written below:

Fair Interpretation: "5.13 Fair Interpretation. Both Parties have been represented by counsel in the negotiation and drafting of this Agreement, and this Agreement shall be construed according to the fair meaning of its language. The rule of construction that ambiguities shall be resolved against the party who drafted a provision shall not be employed in interpreting this Agreement." This amendment would clarify the intended method of interpretation for future readings, as there is no explicit statement of authorship in the current iteration of the DA. In addition to this, amend the Development Agreement to include the following provision as written below:
Effective Date: "5.7 Term. This Agreement shall be effective on the effective date of the Ordinance annexing the Property (the "Effective Date") and shall automatically terminate ten (10) years after the Effective Date, provided, however, the City shall not discontinue applicable municipal services to the Property, once commenced, except as permitted by applicable law."

XI. MASS GRADING

CONCERNS: Development agreement allows for the premature mass grading of parcels, which may sit vacant for significant periods of time before development. Additionally, definitions surrounding approval for mass grading of Parcels K and L require additional definition.

RATIONALE: Section 2.23 provides for mass grading of the Property at the "Developer's sole discretion", except for particular terms relative to Parcels K and L, the resort property. This means that the developer could mass grade the rest of the Property at any time and let it sit awaiting development, causing premature destruction of ecosystems, dust issues, and visual blight. That is certainly what the public has witnessed in Prescott Valley and north Prescott.

Problem 1: The blanket authorization allowing property to languish after grading is not acceptable.

Problem 2: With respect to Parcels K and L, we have concerns with the mass grading of these parcels without further specific review processes and other approval conditions. This site is visually connected to the trail experience and simply cannot be allowed to sit in a bladed condition for an undetermined amount of time. The provision for approval of "initial plans" simply does not go far enough to protect the environment. Moreover, that particular term requires additional and more specific definition. These parcels are within the City Council's "sole purview" in approving the project, as per LDC, Article 9.

Problem 3: The developer has not provided evidence of project financing.

RECOMMENDATIONS:

PROPOSED SOLUTION 1: The City should propose options, including alternatives to mass grading, and more precise approval processes after public comment for the grading projects on various sections of the Property.

PROPOSED SOLUTION 2: We recommend language be inserted into Section 2.23 stating that grading plans for Parcels K and L be reviewed by the P&Z Commission and be approved by City Council prior to issuance of a grading permit for the resort parcels. Given the absence of an SPC Master Plan, Council approval of site and grading plans is reasonable. Site approvals are important but give no guarantee that the site will not lie barren for years, awaiting the production and bidding of construction plans and the securing of financing.

PROPOSED SOLUTION 3: We recommend that the Developer provide evidence of project financing, satisfactory to the City, prior to the final issuance of a grading permit for said parcels, as well as an agreed-upon timeline for project completion.

XII. FULL-SERVICE RESORT

CONCERN: Development Agreement lacks sufficiently explicit language surrounding 1) "similar uses" for Parcels K and L, 2) the nature of grading approvals for these parcels, and 3) timelines and design approvals for a resort "Grand Entrance."

RATIONALE: Section 1.10 provides details of the full-service resort, generally depicting Developer obligations, definitions of what constitutes a full-service resort, a calculation of minimum payments of said use for purposes of bed tax and TPT revenues, calls for an at-grade crossing of the Peavine Trail, and the introduction of the concept of a "grand entrance".

Problem 1: Several types of resort uses are identified as meeting the purpose of a full-service resort. That section concludes with the clause, "or similar uses." This is an unacceptably broad latitude. Who determines what constitutes "similar uses"?

Problem 2: Site grading is addressed under "mass grading" in Section 2.23. It provides for blanket authority at the sole discretion of the Developer to utilize that technique. It also provides that the "Developer agrees not to commence mass grading on Parcels K and L as shown on Exhibit E, for purposes of constructing a resort, until such time as initial plans for the resort have been approved by the City. We believe that this does not go far enough. We want to ensure that those parcels are not graded and then potentially sit there in the midst of this scenic oasis until financing is secured and construction begins.

Problem 3: In this same Section 1.10, if the parties agree to a grade-separated crossing, the DA calls for construction of said crossing to be completed on or before July 1, 2023. It also references a "grand entrance to the resort." The timeline is ambitious and there are no stipulations upon the Developer's performance. There are also no stipulations on design approval of the "grand entrance."

RECOMMENDATIONS:

PROPOSED SOLUTION 1: Provide language that "similar uses" must be approved by the City, in their sole discretion.

PROPOSED SOLUTION 2: We propose the following alternative language: "Any site grading will not commence on the affected Parcels until such time as the Developer provides evidence of project financing, satisfactory to the City."

PROPOSED SOLUTION 3: The following language borrows from Solution 3, above. "The commitment of the City to proceed with said crossing is contingent upon the Developer providing evidence of project financing, satisfactory to the City."
In addition, we would also propose that, similar to the requirement in 2.23 regarding initial plans for the resort, the Development Agreement should also require submittal and approved design and site plans for the "grand entrance" prior to commencement of the grade-separated crossing by the City.

XIII. ADDITIONAL COMMENTS AND CONCERNS

MAPS & EXHIBITS

- Map discrepancies in the "thumb" area of Natural Open Space (NOS) in the upper left of South Parcel maps, choice of map changes total NOS significantly.
    - P. 106 should be noted as the official map as supported by survey details on pp. 43/127. For clarity and reduction of ambiguity, maps on pp. 62 and 73 should be labeled as *"approximate"* and maps on pp. 71 and 92 should be labeled as *"inaccurate (refer to 106, Map to Accompany Legal Description."*)
- Zoning Ordinances & Surveyor Descriptions are needed on maps in addition to the parcel perimeters.
- Exhibit Q: Shows the 270 acres in the North Parcel as a "trade". Please correct that.
- Land sales to the City from AED: This is 114 acres of commercial/industrial previously included in the north annexation. It is not identified on any of the maps except the map on p. 99, which identifies this parcel as "AED Keep 114 +/- acres." This conflicts with the wording in the Agreement.

RECITALS

- All acreages listed in the Agreement should match the surveys. For example, the acreage for the "South Parcel," "North Parcel," and "Section 33" are all listed incorrectly in "RECITAL A." (Recital A, South Annex 865.94, North Annex 1656.38, Section 33 559.15; these do not match the surveys.)
- Recital D (page 2) mentions an amendment to the General Plan. We do not understand why the General Plan would need any amendments. Please explain.

MISCELLANEOUS

- Amend the language of p. 24-25 to indicate no public vehicular access eg. "unless the environmental library is built," as described on p. 28/127.

--- This completes Save the Dells' comments ---