

When Recorded, Return to:

CITY CLERK
City of Prescott
201 South Cortez Street
Prescott, Arizona 86303

**KILE STREET WATER MAIN
DEVELOPMENT AGREEMENT**

DATED _____, 2019

**BETWEEN THE CITY OF PRESCOTT
AND
WESTRIDGE PRESERVE, LLC**

**KILE STREET WATER MAIN
DEVELOPMENT AGREEMENT
CITY OF PRESCOTT NO. _____**

DATE. The date of this Development Agreement (“Agreement”) is _____, 2019.

PARTIES. The parties to this Agreement are:

City of Prescott, an Arizona municipal corporation
201 South Cortez Street
Prescott, Arizona 86301
 (“City”)

Westridge Preserve, LLC
5769 Columbine Road
Prescott, AZ 86305
 (“Owner”)

City and Owner may be collectively termed “Parties” or individually “Party.”

BACKGROUND. The following is the background to this Agreement:

- (a) Owner owns certain real property located in the City of Prescott, Yavapai County, Arizona, described on Exhibit “A” (“Property”).
- (b) The City and Owner acknowledge the occurrence of mutual consideration in entering into this Agreement.
- (c) Owner shall submit for approval, as necessary, the following documents pertaining to the Owner Property: Construction Plans and reports, which documents collectively constitute a Project Plan (“Project Plan”) pursuant to the City of Prescott General Engineering Standards (GES).
- (d) City and Owner enter into this Agreement pursuant to A.R.S. § 9-500.05 to approve the Project Plan and in order to facilitate development of surrounding Properties by providing for, among other things: (i) conditions, terms, restrictions and requirements for the construction and installation of public services/ infrastructure improvements;
- (e) Among other things, development of the Property in accordance with this Agreement, the GES and the Project Plan will result in the design, engineering, construction, acquisition, installation, and/or provision of public services/infrastructure improvements that will support development.

AGREEMENT. For good and valuable consideration, including the benefits to City and Owner as described above, City and Owner agree as is more specifically set forth in this Agreement.

1. INFRASTRUCTURE.

1.1 Off-Site Infrastructure Improvements.

- A. Owner's Construction and Contribution of Off-Site Public Improvements. Except as otherwise determined or provided herein, Owner shall have responsibility for constructing or contributing to the cost of construction of the off-site water infrastructure necessary to solely satisfy the needs of the Project Plan at any given phase. The Owner shall have no further responsibility for construction or contributing to the cost of any other off-site infrastructure.

- B. Water System Improvements. Off-site water improvements are required to meet water system looping and redundancy standards for Zone 48. The Owner shall design the off-site water improvements from the connection point to the existing distribution system in Kile Street to the connection point at The Preserve Subdivision and as shown on Exhibit "B".
 - 1. The Owner shall be responsible for the design, construction and providing project record drawings for the installation of the improvements, which includes a 12" diameter water main of Class 350 ductile iron pipe (DIP), two fire hydrants, and appurtenances and also includes, but is not limited to, pavement removal and restoration along the route shown in Exhibit "B".
 - 2. The Owner shall provide an engineer's estimate of probable cost (EEC), for the water main improvements. The amount of the estimate shall be agreed upon, by both City and Owner. The City will reimburse the Owner for 100% of the actual construction and inspection costs of the water main improvements. City reimbursement will be paid by the City within thirty (30) calendar days of receipt of an invoice from Owner following construction and testing by the Owner, and acceptance of the water main by the City.
 - 3. The water main infrastructure improvements described in Section 1.2 shall be completed in its entirety and subject to a two-year warranty period, prior to acceptance of the infrastructure for long-term maintenance by the City.

- 2 **RESTRICTIONS.** Provided that Owner has met the requirements set forth in Section 1 of this Agreement, the City shall not (i) impose a moratorium, (ii) enforce any Laws or Regulations that directly impose material limitations on the rate, timing or sequencing of development on the, or (iii) impose any Laws or Regulations which are for antigrowth purposes or, as applied to the Property, significantly and materially frustrate the density of uses contemplated by the Project Plan for such particular development (collectively "Limitations"). This prohibition shall not apply to the extent that Limitations may be (a) required or mandated by County, state

or federal laws; (b) required or imposed by judicial or regulatory action; or (c) necessary to alleviate or otherwise contain threats to public health or safety. Unless City imposes or enforces Limitations as permitted in this section and subject to all Laws and Regulations, Owner shall be allowed to apply for and receive approvals from City for development on Owner Property that is consistent with this Agreement and the Project Plan.

- 3 NOTICES.** Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly delivered upon personal delivery, as of the second business day after mailing by United States mail, postage prepaid, return receipt requested, or upon the next business day if delivered by Federal Express or similar overnight delivery system, addressed as follows:

IF TO THE CITY:

Community Development Director
City of Prescott
201 South Cortez Street
Prescott, Arizona 86303

WITH A COPY TO:

City Attorney
City of Prescott
221 South Cortez Street
Prescott, Arizona 86303

IF TO OWNER: Westridge Preserve, LLC
1153 Linwood Ave
Prescott, AZ 86305

The address to which any notice, demand or other writing may be given, made or sent to any party may be changed by written notice as above provided.

- 4 DEFAULTS AND REMEDIES.** In the event a default should occur under any of the obligations of the City or Owner as provided in this Agreement, each Party shall be entitled to exercise such rights or remedies as may be available pursuant to the terms of such document, at law or in equity, including without limitation specific performance, except as such document may specifically limit such remedies. Notwithstanding the foregoing, each Party waives any claim such Party may have for incidental or consequential damages arising out of a failure of performance of the other Party under this Agreement.
- 5 ASSIGNMENT.** Owner may not assign its rights under this Agreement without the prior consent of the City, which consent may not be unreasonably withheld. No voluntary or involuntary successor in interest to Owner may acquire any rights under this Agreement except as expressly set forth in this Section.

- 6 **INSTITUTION OF LEGAL ACTIONS; GOVERNING LAW.** Any legal actions instituted pursuant to this Agreement must be filed in the county of Yavapai, State of Arizona. The laws of the State of Arizona will govern the interpretation and enforcement of this Agreement.
- 7 **ACCEPTANCE OF LEGAL PROCESS.** If any legal action is commenced by Owner against the City, service of process on the City will be made by personal service upon the City Clerk of the City of Prescott, or in such other manner as may be provided by law. If any legal action is commenced by the City against Owner, service of process will be made by personal service or in such other manner as may be provided by law, whether made within or without the State of Arizona.
- 8 **RIGHTS AND REMEDIES ARE CUMULATIVE.** Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies will not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by such defaulting party.
- 9 **CONFLICT OF INTERESTS.** No member, official or employee of the City may have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement that is prohibited by law. All parties hereto acknowledge that this Agreement is subject to cancellation pursuant to the provisions of A.R.S. §38-511.
- 10 **WARRANTY AGAINST PAYMENT.** Owner warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, consultants, engineers and attorneys and any licensed real estate broker retained by Owner.
- 11 **NO LIABILITY OF OFFICIALS, PARTNERS AND EMPLOYEES.** No member, official or employee of the City will be personally liable to Owner, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to Owner or successor, or on any obligation under the terms of this Agreement.
- 12 **NO WAIVER.** Except as otherwise expressly provided in this Agreement, any failure or delay by any party in asserting any of its rights or remedies as to any default, will not operate as a waiver of any default, or of any such rights or remedies, or deprive any such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies. Nothing herein shall constitute a waiver of the City's police powers or amount to an unlawful delegation of governmental authority by the City.
- 13 **SEVERABILITY.** If any provision of this Agreement shall be found invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement will not be affected thereby and shall be valid and enforceable to the fullest extent

permitted by law, provided that the fundamental purposes of this Agreement are not defeated by such severability.

- 14 **CAPTIONS.** The captions contained in this Agreement are merely a reference and are not to be used to construe or limit the text.
- 15 **ENTIRE AGREEMENT AND AMENDMENTS.** This Agreement may be executed in counterparts, each of which is deemed to be an original. This Agreement and the below-listed exhibits that are incorporated herein by this reference, constitutes the entire understanding and agreement of the Parties.
Exhibit A- Property
Exhibit B- Project
- 16 **NO AGENCY CREATED.** Nothing contained in this Agreement creates any partnership, joint venture or agency relationship between the City and Owner. No term or provision of this Agreement is intended to be for the benefit of any person, firm, organization or corporation not a party hereto, and no other person, firm, organization or corporation may have any right or cause of action hereunder.
- 17 **GOVERNING STATUTES.** References are made in this Agreement to specific sections of the Arizona Revised Statutes. Any such references mean the statute in effect on the date of the execution of this Agreement and any subsequent renumbering or reordering of those provisions.
- 18 **MODIFICATION AND WAIVER.** No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is or may be sought.
- 19 **OWNER'S AUTHORITY.** Owner warrants and represents that it is a duly organized and validly existing limited liability company formed under the laws of the State of Arizona and authorized to transact business in the State of Arizona. The entry by Owner into the transaction contemplated by this Agreement and the performance by Owner of all of its obligations in connection herewith have been duly and validly authorized by all necessary action(s), are in accordance with applicable law and are not in violation of Owner' Operating Agreement, if any, Articles of Incorporation or Bylaws, as the case may be. This Agreement and all additional documents delivered in connection with this Agreement have been duly and validly executed and delivered by Owner and constitute the legal, valid and binding obligations of Owner.
- 20 **INDEMNITY.** Each of the Parties shall indemnify, protect, defend and hold harmless the other from and against any and all claims, costs, damages and liabilities (including attorneys' fees and costs) arising from any breach by such Party of any of the representations and warranties contained herein.

- 21 **ATTORNEYS' FEES.** The Parties hereto expressly covenant and agree that in the event of litigation arising from this Agreement, neither Party shall be entitled to an award of attorney fees, either pursuant to the Agreement, pursuant to A.R.S. § 12-341.01(A) and (B), or pursuant to any other state or federal statute, court rule, case law or common law.
- 22 **JOINT AND SEVERAL LIABILITY.** If any Party consists of more than one person or entity, the liability of each such person or entity signing this Agreement shall be joint and several.
- 23 **BINDING AGREEMENT.** Subject to any limitation on assignment elsewhere set forth herein, all terms of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective legal representatives, successors and assigns.
- 24 **COVENANTS RUNNING WITH THE LAND.** The conditions and covenants set forth in this Agreement and incorporated herein by the exhibits shall run with the land and the benefits and burdens shall bind and inure to the benefit of the Parties. The Owner and every purchaser, assignee or transferee of an interest in the Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a Party thereto, but only with respect to the Property, or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of the Owner contained in this Agreement, as such duties and obligations pertain to the portion of the Property sold, assigned or transferred to it.
- 25 **WAIVER OF RIGHT TO TRIAL BY JURY.** The Parties hereto expressly covenant and agree that in the event of a dispute arising from this Agreement, each of the Parties hereto waives any right to a trial by jury. In the event of litigation, the Parties hereby agree to submit any such litigation to the Court (bench trial) and that the parties agree that this Agreement shall be deemed to have been created in Yavapai County, Arizona, and to be subject to the jurisdiction of the Yavapai County Superior Court, and that any claims to alternative jurisdiction based on diversity of citizenship, corporate location, etc. are waived by the Parties pursuant to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed this ____ day of _____, 20__.

CITY OF PRESCOTT

GREG L. MENGARELLI, MAYOR

DATE

ATTEST:

APPROVED AS TO FORM:

MAUREEN SCOTT
CITY CLERK

JON PALADINI
CITY ATTORNEY

WESTRIDGE PRESERVE, LLC

By _____

Its _____

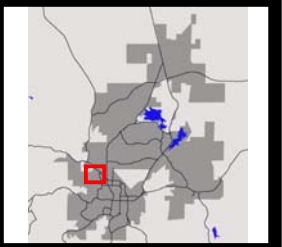
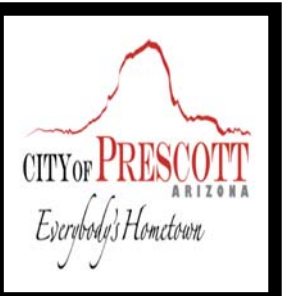
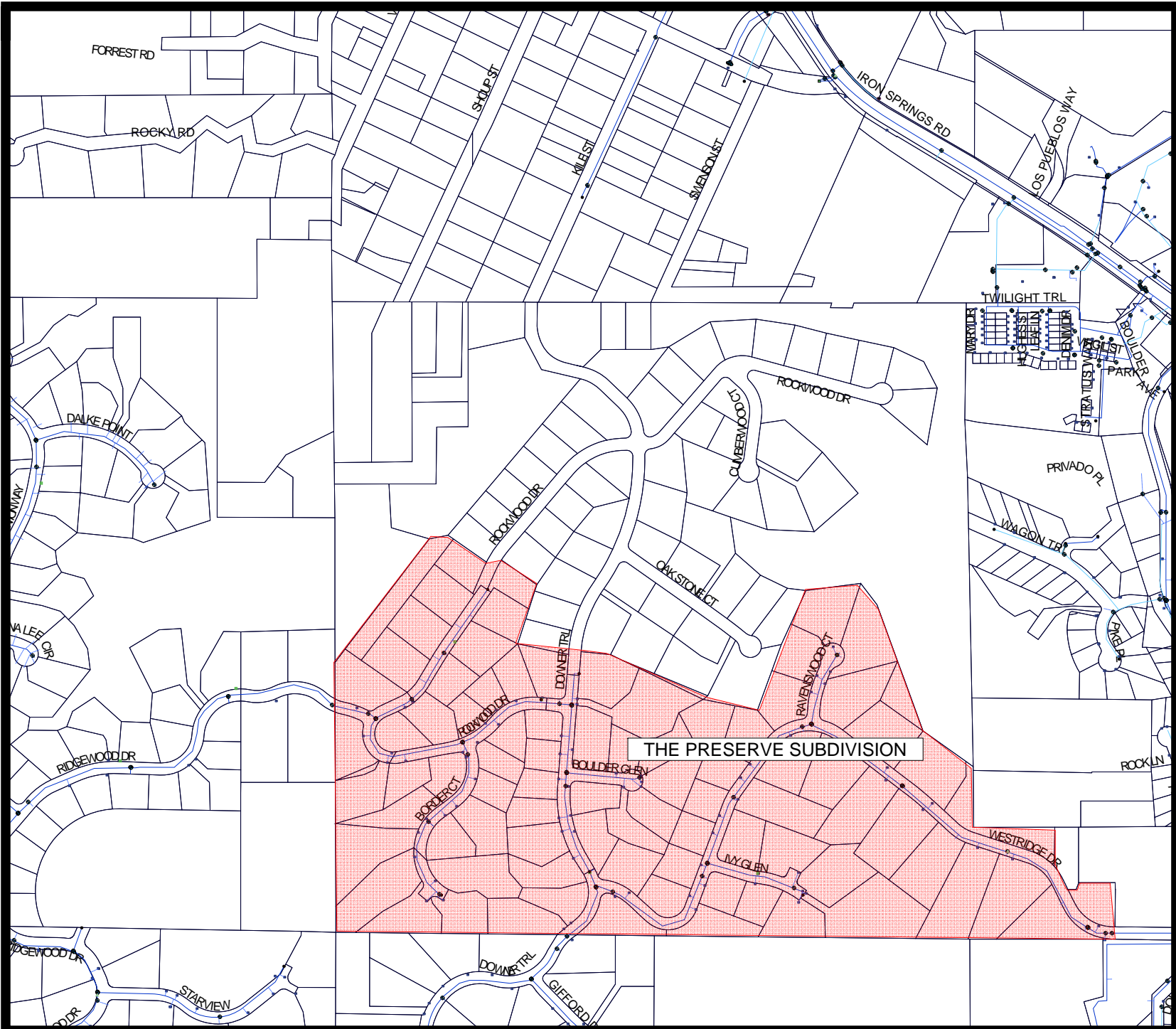
STATE OF ARIZONA)
) ss.
COUNTY OF YAVAPAI)

The foregoing instrument was acknowledge before me this _____ day of _____, 20____, by GREG L. MENGARELLI, Mayor of The City of Prescott, an Arizona municipal corporation, on behalf of the municipal corporation, personally known to me or proven to me on the basis of satisfactory evidence, to be the person whose name is subscribed to within instrument, and acknowledged that he execute it.

[seal]

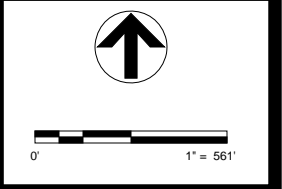
Notary Public

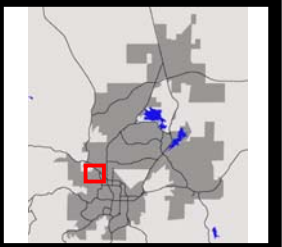
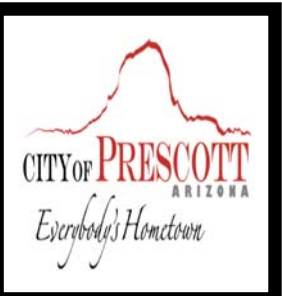
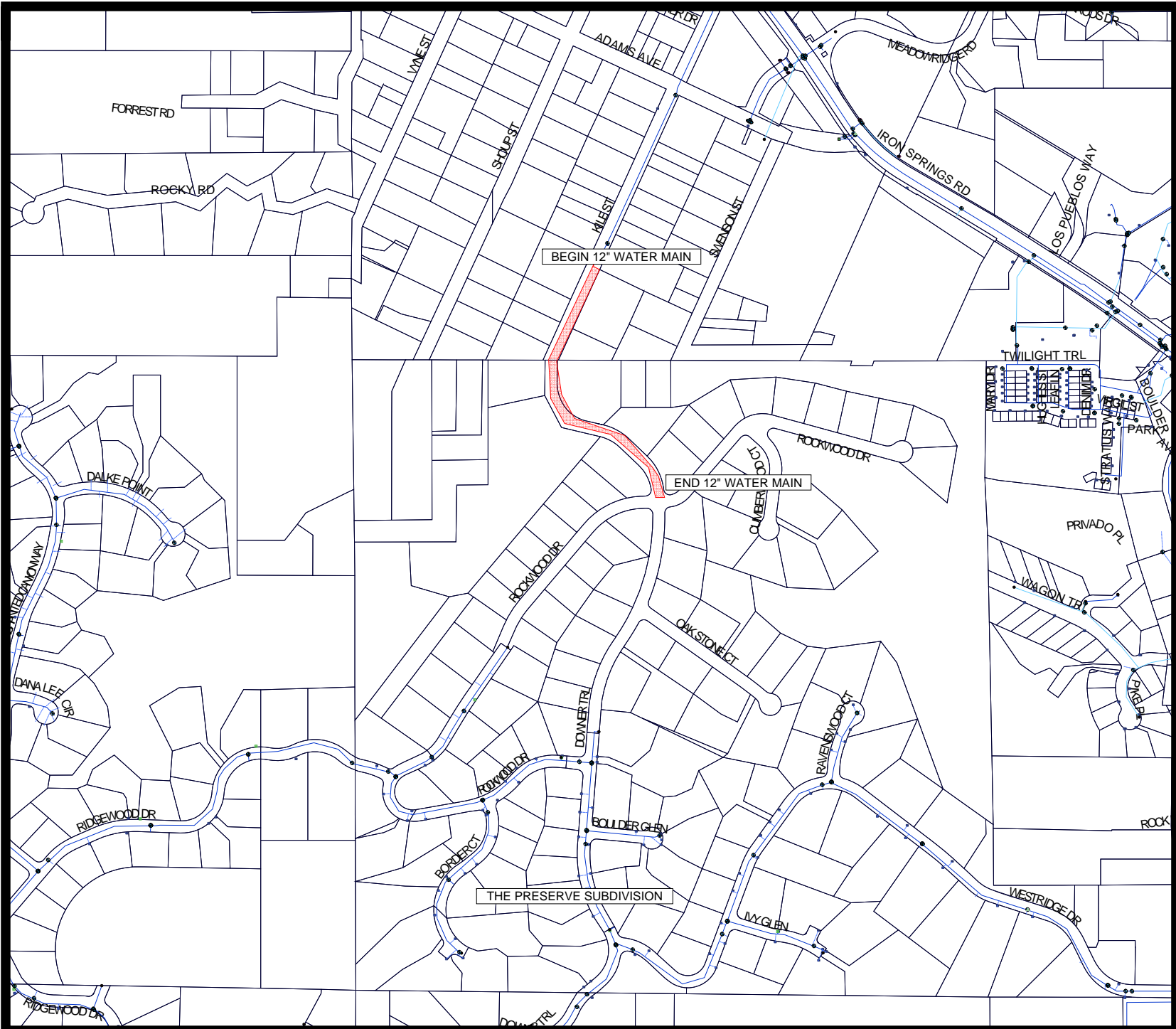
My commission expires : _____



THE PRESERVE SUBDIVISION EXHIBIT A

This map is a product of The City of Prescott





KILE STREET WATER MAIN MAP EXHIBIT B

This map is a product of
The City of Prescott

