

**RESOLUTION NO. 2024-166**

**A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, CONDITIONS, PROVISIONS, AND REQUIREMENTS OF A UTILITY COST SHARE REIMBURSEMENT AGREEMENT BETWEEN ST. JOHNS COUNTY, FLORIDA, AND HDG CYPRESS POINT, LLC REGARDING EXTENSION OF WATER MAIN ALONG CYPRESS POINT DRIVE FROM STATE ROAD 206 TO COLONIAL DRIVE; AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE THE AGREEMENT ON BEHALF OF ST. JOHNS COUNTY.**

**WHEREAS**, HDG Cypress Point, LLC (“Developer”) is the owner and developer of a single-family subdivision in St. Johns County, Florida (“County”) known as Cypress Point Estates (“Development”); and

**WHEREAS**, for water service to the Development, Developer is required to install a water main along Cypress Point Drive from CR 206 to the Development; and

**WHEREAS**, the County has separately determined to enter into utility service agreements with property owners in an existing subdivision adjacent to the Development in order to fund the extension of water service to the existing subdivision; and

**WHEREAS**, while the Developer has already completed approximately 80% of the necessary survey and design of the extension of the water main to the Development, in order for the County to meet its commitments under the utility service agreements with the owners within the adjacent subdivision, the County requires acceleration of the installation of the project earlier than the Developer’s present schedule for installation; and

**WHEREAS**, Developer and County desire to enter into a Utility Cost-Share Agreement, attached hereto as Exhibit A and incorporated herein by reference, to share the construction costs for only that portion of the section of the water main need to provide service to the adjacent subdivision; and

**WHEREAS**, entering into the Utility Cost-Share Agreement is in the best interest of the County and the public.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AS FOLLOWS:**

**Section 1.** The above Recitals are hereby incorporated into the body of this Resolution and are adopted as Findings of Fact.

**Section 2.** The Board of County Commissioners hereby approves the terms, provisions, conditions, and requirements of the Utility Service Agreement between St. Johns County, Florida, and HDG Cypress Point, LLC, and authorizes the County Administrator, or

designee, to execute the agreement on behalf of the County in substantially the same form and format as attached hereto.

**Section 3.** Upon execution by all parties, the Clerk is instructed to file the Utility Cost-Share Agreement in the public records of St. Johns County, Florida.

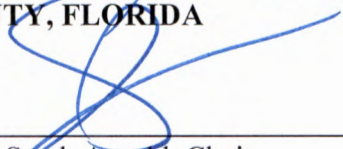
**Section 4.** To the extent that there are scrivener, typographical, or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

**Section 5.** This Resolution shall be effective upon adoption by the Board of County Commissioners.

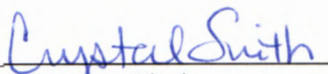
**PASSED AND ADOPTED** by the Board of County Commissioners of St. Johns County, Florida, this 16th day of April, 2024.

**BOARD OF COUNTY  
COMMISSIONERS OF ST. JOHNS  
COUNTY, FLORIDA**

Rendition Date APR 17 2024

By:   
Sarah Arnold, Chair

Attest: Brandon J. Patty,  
Clerk of the Circuit Court & Comptroller

By:   
Deputy Clerk



## UTILITY COST SHARE AGREEMENT

**THIS UTILITY COST SHARE AGREEMENT** (“Agreement”) is entered into by and between **HDG CYPRESS POINT, LLC**, a Florida limited liability company (“Developer”), whose mailing address is 200 Business Park Circle, Ste. 105, St. Augustine, FL 32095 and **ST. JOHNS COUNTY**, a political subdivision of the State of Florida (“County”), whose mailing address is 500 San Sebastian View, St. Augustine, FL 32084.

### RECITALS:

- a) Developer is the owner and developer of, and will construct improvements within, an 87-acre single-family subdivision known as Cypress Point Estates, located with a parcel zoned Open Rural and bearing a Residential-B Future Land Use Designation under the St. Johns County Comprehensive Plan (“Development”), the location for which is more particularly described on the attached and incorporated **Exhibit A** hereto.
- b) For water service to the Development, the Developer is required to install approximately 2,725 linear feet of 10-inch (nominal diameter) water main along Cypress Point Drive, from the existing water main along SR 206 to the intersection of Cypress Point Drive and Colonial Drive (“Cost Share Section”). The Developer is also required to install 1,000 linear feet of 8-inch water main for water service to the Development.
- c) In accordance with Section 5 of the St. Johns County Utility Ordinance, Ordinance No. 2022-37, the County has separately determined that it is in the best interest of the County to enter into utility service agreements with property owners within the Cypress Point II Homeowners Association to fund the extension of water service to the 54 properties within the Cypress Point II subdivision by connecting from the existing water main along SR 206 via the 10-inch main along Cypress Point Drive and then along Colonial Drive within the Cypress Point II subdivision.
- d) While the Developer has already completed approximately 80% of the necessary survey and design of the Cost Share Section, in order for the County to meet its commitments under the utility service agreements with the owners within Cypress Point II, the County requires acceleration of the installation of the Cost Share Section earlier than the Developer’s present schedule for installation.
- e) The County has further determined that the installation of the Cost Share Section provides benefits to the St. Johns County Utility and its customers such that it is in the best interest of the County to share with the Developer the cost of installation of the Cost Share Section by the Developer. The remaining 1,000 linear feet of 8-inch water main required for water service to the Development shall remain the responsibility of the Developer at its own cost and expense.
- f) The Cost Share Section will be constructed by the Developer on an expedited schedule prior to completion of the Development or no later than March 30, 2025. The precise location of the connection point is more graphically depicted on the attached and

incorporated **Exhibit B**. The preliminary construction cost estimate for the Cost Share Section is included on the attached and incorporated **Exhibit C**.

- g) Developer and County desire to enter into this Agreement to share the construction costs for the Cost Share Section, as described in this Agreement and further depicted in **Exhibit B**, which they agree will be mutually beneficial to both parties. Subject to the terms and conditions provided herein, the County's share of such costs shall be equal to half of the construction costs for the Cost Share Section.

**NOW THEREFORE**, in consideration of the mutual covenants of the parties set forth in this instrument and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. **EFFECT OF RECITALS.** The above recitals are true and correct and are incorporated into the body of this Agreement and adopted as findings of fact.
2. **PROJECT SCOPE.** The "Cost Share Project" scope as it relates to this Agreement shall be defined as half of the cost for the Cost Share Section, which will be mutually utilized and are proposed to be installed between the connection points as depicted in **Exhibit B**. The Cost Share Project shall be constructed ahead of the Developer's overall project to connect the Development to the County utility services. Upon completion, the facilities installed under the Cost Share Project shall be dedicated to the County for ownership and maintenance.
3. **PROJECT SCHEDULE.** The Cost Share Section will be constructed by the Developer on an expedited schedule prior to completion of the Development or no later than March 30, 2025.
4. **TERM OF AGREEMENT.** The term of this Agreement shall begin on the date upon which the last party has dated and executed the same ("Effective Date") and shall expire upon acceptance by the County of the Bill of Sale that grants the Cost Share Section to the County.
5. **COST SHARE PROJECT MANAGEMENT.**
  - a. **BIDDING.** It is mutually understood by the parties hereto that Developer and/or their designated representative ("Representative") shall manage and facilitate competitive bidding of the Cost Share Project using the County procurement process as part of the overall Development. The bid form shall clearly itemize the Cost Share Project construction cost separately from other construction items needed for the Development. County participation in the bid process shall be limited to final approval and consent of a general contractor or subcontractor, which such approval and consent shall not be unreasonably withheld.

- b. **CONSTRUCTION CONTRACT AWARD.** Upon receiving competitive bids for the Cost Share Project, the Developer and/or Representative shall award the construction contract to the lowest responsive bidder for the overall Development prior to issuing the contract. The engagement by the Developer and/or Representative of any general contractor or subcontractor for construction of the Cost Share Project (“Contractor”) shall be contingent upon the County’s consent, which consent shall not be unreasonably withheld. The County shall not be a party to said construction contract, however, and no contractual relationship between the County and the Contractor shall exist or be deemed to exist as a result of the County’s consent to the engagement of the Contractor by the Developer and/or Representative.
  
- c. **CONSTRUCTION MANAGEMENT.** The Developer agrees to provide for and facilitate management of the construction of the Cost Share Project. Management of the Cost Share Project shall include, but not be limited to the following:
  - i. Employing a professional engineer to serve as the engineer of record for construction;
  - ii. Ensuring that all necessary permits for project are obtained;
  - iii. Construction contract management (i.e., review and processing all contractor invoices, RFI’s, change orders, etc.);
  - iv. Review and resolution of technical challenges (foreseen or unforeseen) during construction; and
  - v. Facilitating appropriate project close out (i.e. FDEP clearance, County project acceptance, etc.).

The Developer shall provide the designated County Project Manager the following construction contract documents in a timely manner for the County file:

- i. A copy of the executed construction contract between the Developer and the Contractor;
- ii. Copies of any proposed change orders with appropriate documentation (See approval process in Section 6, below);
- iii. Copies of final executed change orders; and
- iv. Copies of processed contractor invoices.

The Developer shall allow the County to review any and all project-related construction records upon request.

- 6. **COST SHARE PROJECT FUNDING.** Upon completion of the Cost Share Project, the County shall reimburse the Developer directly half of the final actual costs of construction and installation of the Cost Share Project, the preliminary construction cost estimate for which is attached in **Exhibit C**. Final payment will be based on Contractor’s Schedule of Values of the final actual costs of completion of the Cost Share Project. Upon receipt of payment, the facilities installed under the Cost Share Project shall be dedicated to County for ownership and maintenance.

7. **CHANGE ORDER APPROVAL PROCESS.** In the event that the Contractor requests a change order claim that would impact the construction cost for the Cost Share Project, the engineer of record shall review and make a recommendation for approval or denial of the claim. The change order claim and the engineer's recommendation shall both be sent to both the Developer and to the County Project Manager. The County Project Manager shall review the change order claim and the engineer's recommendation within three (3) business days of receiving all pertinent information. For change order claims which are less than 20% of the Contract Value for the Cost Share Project, the County Project Manager shall be authorized to approve or reject proportional reimbursement for the claim on behalf of the County. Claims equal to or greater than 20% of the Contract Value for the Cost Share Project shall be reviewed and approved or rejected for proportional reimbursement by the County Administrator, or designee, who shall make every effort to do so in a timely manner. The approval or rejection of any change order claim by either the County Project Manager or the County Administrator shall be in writing, and, in the case of a rejection, shall set forth the reason(s) for rejection.
8. **INDEMNITY.** The Developer shall indemnify, defend and hold the County, its officials, officers, employees, contractors, invitees and agents harmless from all claims (including tort-based, contractual, injunctive and/or equitable), losses (including personal and/or real), liability, damages, injuries, death, costs (including attorneys' fees), suits, and administrative actions arising out of, or in connection with, the construction of the Cost Share Project. Nothing contained in this Agreement is intended to nor shall be construed to operate as a waiver on the part of the County of the limitations of liability set forth in Section 768.28, Florida Statute, as amended, or other applicable statute, or of the County's sovereign immunity. This provision shall survive the expiration or termination of this Agreement.
9. **NO GUARANTEE OF SERVICE OR RESERVATION OF CAPACITY.** The Developer and the County understand, acknowledge, and agree that the purpose of this Agreement is to set forth their respective participation in the Cost Share Project, and that nothing in this Agreement shall be construed as either a guarantee of utility service or a reservation of utility capacity for the Development by the County.
10. **RELATIONSHIP OF THE PARTIES.** Developer is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent, official, or servant of the County. This Agreement does not and shall not be construed as or constitute an agency, partnership, joint venture or other fiduciary or confidential relationship between the County and the Developer.
11. **NO THIRD-PARTY BENEFICIARIES.** Both the Developer and the County expressly agree that nothing in this Agreement shall be construed to confer or infer third-party beneficiary status or interest to any other person or entity, including not limited to the officers, directors, members, shareholder, and owners of the Developer. Nothing in this Agreement shall be construed to create any contractual relationship between Developer and the Contractor.

12. **AMENDMENTS TO THIS AGREEMENT.** Both the Developer and the County acknowledge that this Agreement, including the exhibits attached hereto, constitutes the complete agreement and understanding of the parties relating to the subject matter of this Agreement and supersedes all previous discussions, understandings, and agreements. Any change, amendment, modification or revision of this Agreement shall be in writing and shall be executed by duly authorized representatives of both the Developer and the County.
13. **PROCEDURE FOR ACHIEVING ASSIGNMENT.** In light of the scope and rationale for this Agreement, neither the Developer nor the County shall assign, transfer, convey, or sell any of the rights noted in this Agreement, or associated with this Agreement, without the prior express written approval of the other party, which shall not unreasonably be withheld. The covenants, terms, conditions, provisions, and requirements of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
14. **GOVERNING LAW AND VENUE.** This Agreement shall be construed according to the law of the State of Florida without regard to choice or conflict of law provisions. Venue for any administrative and/or legal action arising under this Agreement shall be exclusively in state court in St. Johns County, Florida.
15. **SEVERABILITY.** If any word, phrase, sentence, part, subsection, section, or other portion of this Agreement, or any application thereof, to any person, or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, subsection, other portion, or the proscribed application thereof, shall be severable, and the remaining portions of this Agreement, and all applications thereof, not having been declared void, unconstitutional, or invalid shall remain in full force and effect.
16. **PERMITS, LICENSES, AND APPROVALS.** To the extent required by all applicable local, state, and federal laws, rules, or regulations, the Developer has or will, at its sole costs and expense, secure and maintain all permits, license, and approvals necessary for construction of the Cost Share Project.
17. **PUBLIC RECORDS.** In accordance with Chapter 119, Florida Statutes, any written documents that are submitted to the County will become the property of the County and will not be returned. All information contained within such documents shall be available for public inspection, except as otherwise provided under Chapter 119, Florida Statutes, or other Applicable Laws. If the Developer claims that any documents provided to the County are exempt from Florida's public records laws, the Developer must identify specifically any information that the Developer considers confidential, proprietary, or trade secret, and the Developer must specifically cite the applicable law creating such exemption. In the event that the County is served with a subpoena or order of a court or agency seeking disclosure of a document identified by the Developer as exempt from disclosure, the County shall notify the Developer and provide the Developer with an opportunity to seek an appropriate protective order or other relief. The County may disclose any document in accordance with a lawful court or agency order, in the event that the Developer fails to

obtain a protective order or other appropriate relief barring the disclosure of the Developer's documents.

The parties acknowledge and agree that the provisions below are required to be included in this Contract pursuant to Section 119.0701(2), Florida Statutes. The inclusion of this statement and the provisions below shall not be construed to imply that the Developer has been delegated any governmental decision-making authority, governmental responsibility, or governmental function, or that the Developer is acting on behalf of the County as provided under Section 119.011(2), Florida Statutes, or that the statements or provisions are otherwise applicable to the Developer. As stated below, the Developer may contact the County's custodian of public records with questions regarding the application of the public records law; however, the Developer is advised to seek independent legal counsel as to its legal obligations. The County cannot provide the Developer with advice regarding its legal rights or obligations. The County shall provide the Developer with written notice if the name or contact information for the public records custodian changes.

The Developer shall comply with any applicable provisions of the Public Records Law. Pursuant to Section 119.0701, Florida Statutes, the Developer shall:

- a. Keep and maintain public records required by the County to perform the services provided hereunder.
- b. Upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law for the duration of the term of this Agreement and following completion of this Agreement if the Developer does not transfer the records to the County.
- d. Upon completion of this Agreement, transfer, at no cost, to the County all public records in the possession of the Developer or keep and maintain public records required by the County to perform the service. If the Developer transfers all public records to the County upon completion of the Agreement, the Developer shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Developer keeps and maintains public records upon completion of the Agreement, the Developer shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the information technology systems of the County.

If the Developer fails to comply with the requirements in this Section, the County may enforce these provisions in accordance with the terms of this Agreement. If the Contractor



fails to provide the public records to the County within a reasonable time, it may be subject to penalties under Section 119.10, Florida Statutes.

**IF THE DEVELOPER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DEVELOPER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, THE DEVELOPER SHOULD CONTACT THE COUNTY'S CUSTODIAN OF PUBLIC RECORDS BY TELEPHONE AT (904) 209-0805, OR E-MAIL AT PUBLICRECORDS@SJCFL.US, OR MAIL AT ST. JOHNS COUNTY ATTORNEY, ATTN: PUBLIC RECORDS CUSTODIAN, 500 SAN SEBASTIAN VIEW, ST. AUGUSTINE, FL 32084.**

18. **CONSTRUCTION.** This Agreement is the result of the negotiations among and between the County and the Developer such that all parties have contributed materially and substantially to its preparation. The parties have agreed to the text of this Agreement, and none of its provisions shall be construed against either party on the ground that such party is the author of the Agreement or any part thereof.
19. **NOTICES.** Any notice to be given by a party hereto upon another party hereto in connection with this Agreement must be in writing and shall be sent to such other party at its delivery address for notice set forth below (i) by regular U.S. mail, private delivery service or recognized overnight courier, or (ii) by email transmission, addressed to the parties as follows:

If to Developer:

HDG Cypress Point, LLC  
Chris Shee  
200 Business Park Circle, Suite 105  
St. Augustine, FL 32095  
904-838-7153

If to County:

St. Johns County Utility Department  
Attn: Chief Engineer for Development Services  
1205 SR 16  
St. Augustine, FL 32084  
904-209-2700

20. **AUTHORITY TO EXECUTE.** Each party covenants to the other party/parties that it has the lawful authority to enter into this Agreement and has authorized the execution of this Agreement by the party's authorized representative.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date set forth above.

Signed, sealed and delivered  
in the presence of:

BOARD OF COUNTY COMMISSIONERS  
OF ST. JOHNS COUNTY, FLORIDA

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

ATTEST: Brandon J. Patty, Clerk of the Circuit  
Court & Comptroller

By: \_\_\_\_\_  
Deputy Clerk

STATE OF FLORIDA  
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this day \_\_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_, by the County Administrator of St. Johns County, a political subdivision of the State of Florida, on behalf of the County, who  is personally known to me or  has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date set forth above.

Signed, sealed and delivered  
in the presence of:

HDG Cypress Point, LLC

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this day \_\_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_, on behalf HDG Cypress Point, LLC, who  is personally known to me or  has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

EXHIBIT "A"

[DEVELOPMENT MAP]

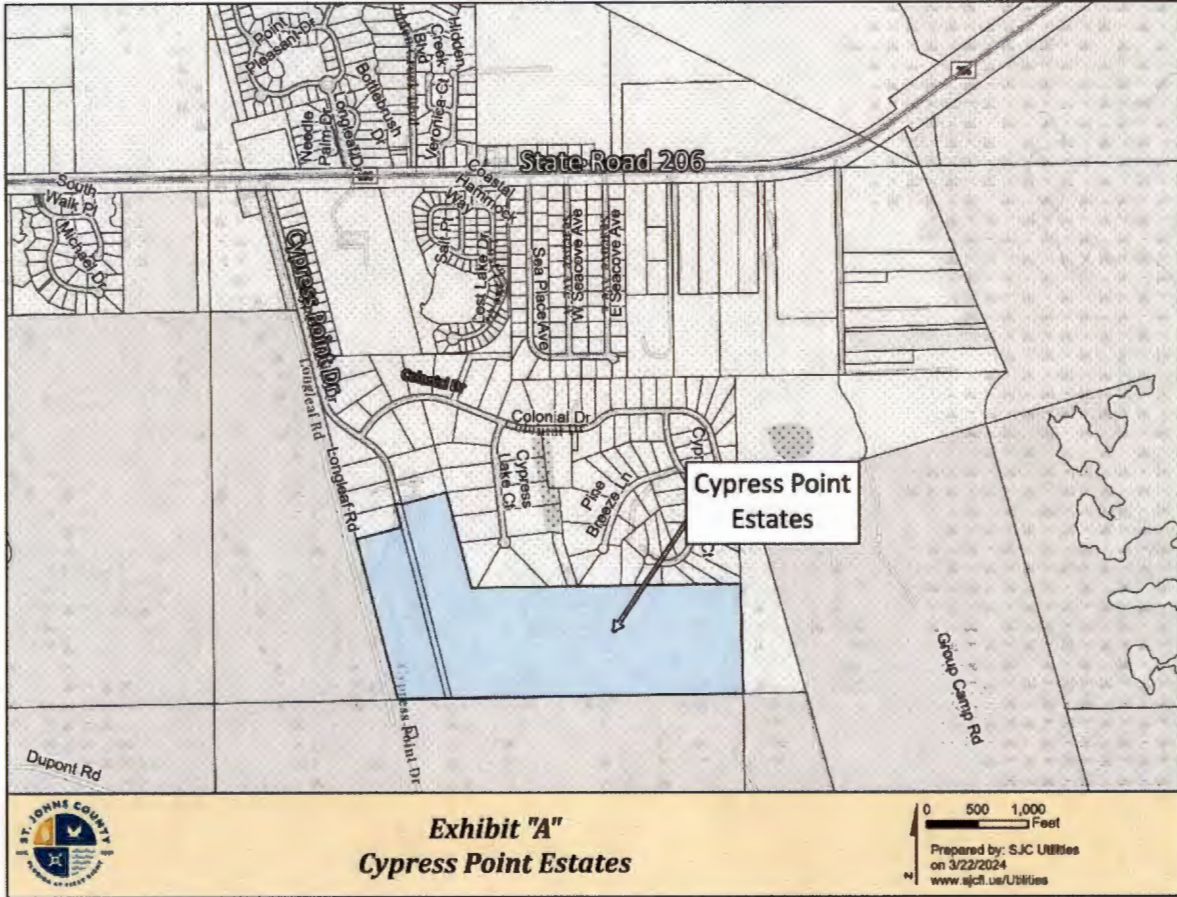


EXHIBIT "B"

[COST SHARE SECTION MAP]

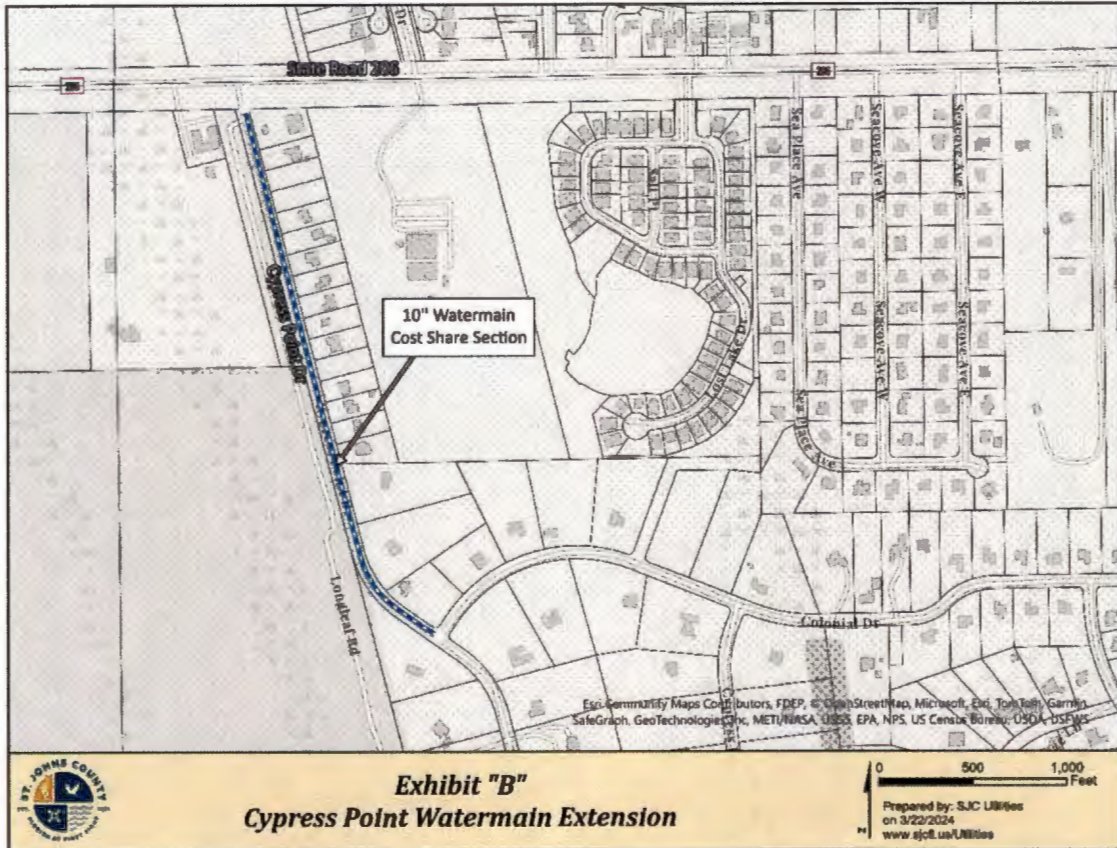


EXHIBIT "C"

[WATERMAIN PRELIMINARY CONSTRUCTION COST ESTIMATE]

Item	Description	Quant.	Unit	Material/ Sub		Installation		Total Cost
				Unit Cost	Total	Unit Cost	Total	
<b>I.</b>	<b>General Requirements</b>							
	P & P Bonds	1	LS			\$8,000	\$8,000	\$8,000
	Mobilization/ Demobilization	1	LS			\$5,750	\$5,750	\$5,750
	MOT	1	LS			\$10,000	\$10,000	\$10,000
	General Conditions	1	LS			\$10,000	\$10,000	\$10,000
	Design	1	LS			\$20,000	\$20,000	\$20,000
	Survey	1	LS			\$20,000	\$20,000	\$20,000
	<b>Sub Total I (General Requirements)</b>							<b>\$73,750</b>
<b>II.</b>	<b>Site Construction</b>							
	Sod	1,000	SY	\$5	\$ 5,180	\$ 1.15	\$ 1,150.0	\$6,330
	Density Testing	1	LS	\$1,380				\$1,380
	Layout	1	LS	\$1,500				\$1,500
	Asbuilts	1	LS	\$2,500	-	-	-	\$2,500
	<b>Sub Total II (Site Construction)</b>							<b>\$11,710</b>
<b>III.</b>	<b>Watermain</b>							
	10" PVC DR-18 C900 blue	2,215	LF	\$75	\$166,125	\$75	\$166,125	\$332,250
	12" DR-11 DIPS HDPE blue Stripe	510	LF	\$40	\$20,400	\$90	\$45,900	\$66,300
	12" DR-11 MJ Adapters	12	EA	\$475	\$5,700	\$431	\$5,175	\$10,875
	8-gauge blue drill wire	1,020	LF	\$1	\$928	\$0.87	\$887	\$1,816
	8" Gate Valve	1	EA	\$1,500	\$1,500	\$1,000	\$1,000	\$2,500
	10" Gate Valve	3	EA	\$2,000	\$6,000	\$1,000	\$3,000	\$9,000
	6 " Fire Hydrant	4	EA	\$4,000	\$16,000	\$2,000	\$8,000	\$24,000
	Pressure Test Main	2,725	LF	\$0.50	\$1,363	\$3	\$6,813	\$8,175
	10" x 10" MJ Tee	2	EA	\$1,800	\$3,600	\$1,200	\$2,400	\$6,000
	<b>Sub Total III (Watermain)</b>							<b>\$460,916</b>
	<b>Total</b>							<b>\$546,376</b>

Developer's Portion (50%)\* = \$273,188

County's Portion (50%)\* = \$273,188

\*Note: the final payment will be based off of Contractor's Schedule of Values