

RESOLUTION NO. 2021-142

**A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, CONDITIONS, PROVISIONS, AND REQUIREMENTS OF A MEMORANDUM OF UNDERSTANDING REGARDING MAINTENANCE OF TRAFFIC ALONG COUNTY ROAD 210 BETWEEN TWIN CREEKS DEVELOPMENT ASSOCIATES, LLC AND ST. JOHNS COUNTY; AMENDING THE FISCAL YEAR 2021 TRANSPORTATION TRUST FUND BUDGET TO RECEIVE UNANTICIPATED REVENUE, AND AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE THE MEMORANDUM OF UNDERSTANDING ON BEHALF OF THE COUNTY.**

**RECITALS**

**WHEREAS**, Twin Creeks Development Associates, Inc. ("TCDA") is the successor developer of approximately 2,405 acres located in St. Johns County, Florida (the "Twin Creeks Property"), which is subject to that certain Twin Creeks Development of Regional Impact ("DRI") Development Order approved by the St. Johns County Commission as Resolution No. 2005-208 and as most recently amended and restated by Resolution No. 2018-423 (collectively, the "Twin Creeks DRI DO"); and

**WHEREAS**, the Twin Creeks DRI DO granted TCDA, as successor developer of the Twin Creeks DRI, certain development rights for the Twin Creeks Property in exchange for the construction of certain improvements related to mitigation of public facility impacts from such development, including traffic impacts, including certain improvements to County Road 210 ("CR 210"); and

**WHEREAS**, the Twin Creeks DRI DO requires TCDA to provide traffic signals at certain intersections along CR 210; and

**WHEREAS**, with the exception of signalization, the improvements to CR 210 have been substantially completed, pending final as-built approval and acceptance by the County; and

**WHEREAS**, TCDA has agreed to order the mast arms and related equipment for the required signalization, which will take several months to obtain and install; and

**WHEREAS**, TCDA has requested that the County, as owner of the CR 210 right-of-way that runs through the Twin Creeks Property and in the interest of public safety, plan, design, implement and contract for the provision of maintenance of traffic along CR 210 west of Alternate County Road 210 within the Twin Creeks Property until such time as the required signalization is installed and in operation; and

**WHEREAS**, in exchange for the County providing the MOT, TCDA has agreed to reimburse the County for all expenses related to the MOT until the Required Signals are installed

by TCDA and in operation and to indemnify and hold the County harmless, to the maximum extent permitted by law, from any third-party claims arising from, or in connection with the MOT; and

**WHEREAS**, the County, when preparing its budget for Fiscal Year 2021, did not anticipate receiving revenue from TCDA; and

**WHEREAS**, recognizing and appropriating \$110,000 to the Transportation Trust Fund will allow payment of expenses; and

**WHEREAS**, TCDA and the County desire to memorialize their agreement regarding the timing in which TCDA will install the Required Signals and reimburse the County for the MOT in a Memorandum of Understanding, attached hereto as Exhibit A and incorporated herein by reference; and

**WHEREAS**, entering into the Memorandum of Understanding serves the interest of the County and resolves uncertainties in the best interest of the public and for a public purpose.

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

**Section 1.** The above recitals are true and correct and are adopted as findings of fact and incorporated into the body of this Resolution.

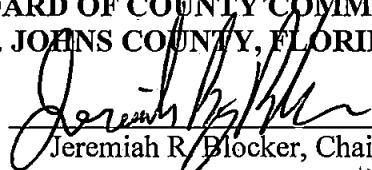
**Section 2.** The Board of County Commissioners hereby approves the terms, conditions, provisions, and requirements of the Memorandum of Understanding between Twin Creeks Development Associates, LLC and St. Johns County, and authorizes the County Administrator, or designee, to execute the Agreement on behalf of the County in substantially the same form and format as attached.

**Section 3.** The Board of County Commissioners recognizes and appropriates unanticipated revenue and authorizes its expenditure in the amount of \$110,000 into the Transportation Trust Fund.

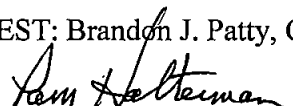
**Section 4.** To the extent that there are typographical and/or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

**PASSED AND ADOPTED** by the Board of County Commissioners of St. Johns County, Florida, this 10 day of April, 2021.

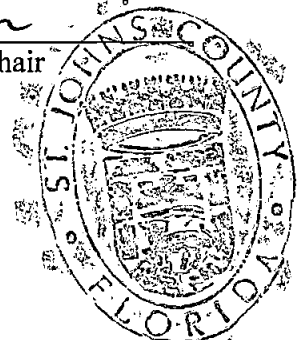
**BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA**

By:   
Jeremiah R. Blocker, Chair

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

By:   
Deputy Clerk

RENDITION DATE 4/8/21



**MEMORANDUM OF UNDERSTANDING**

(Twin Creeks– Maintenance of Traffic)

**THIS MEMORANDUM OF UNDERSTANDING (“MOU”)** is made by and between **TWIN CREEKS DEVELOPMENT ASSOCIATES, LLC**, a Florida limited liability company (“**TCDA**”), and **ST. JOHNS COUNTY**, a political subdivision of the State of Florida (“**County**”), with TCDA and the County sometimes referred to herein collectively as the “**Parties.**”

**WITNESSETH:**

**WHEREAS**, TCDA is the successor developer of approximately 2,405 acres located in St. Johns County, Florida (the “**Twin Creeks Property**”), which is subject to that certain Twin Creeks Development of Regional Impact (“**DRI**”) Development Order approved by the St. Johns County Commission as Resolution No. 2005-208 and as most recently amended and restated by Resolution No. 2018-423 (collectively, the “**Twin Creeks DRI DO**”).

**WHEREAS**, the Twin Creeks DRI DO granted TCDA, as successor developer of the Twin Creeks DRI, certain development rights for the Twin Creeks Property in exchange for the construction of certain improvements related to mitigation of public facility impacts from such development, including traffic impacts.

**WHEREAS**, Special Condition 25(a) of the Twin Creeks DRI DO obligates TCDA to reconstruct County Road 210 (“**CR 210**”) from two lanes to six lanes between C.E. Wilson Road and the 90-degree curve at the western terminus of the U.S. 1 overpass (the “**CR 210 Improvements**”).

**WHEREAS**, Special Condition 25(a)(iii) of the Twin Creeks DRI DO requires TCDA to provide traffic signals at certain intersections along County Road 210 (“**CR 210**”), if and when warranted.

**WHEREAS**, the construction plans for the CR 210 Improvements, submitted by TCDA and approved by the County pursuant to those certain Roadway Construction Permits 2015-02 and 2017-04, as modified, (collectively the “**Permit**”) include six-lane signalization plans of certain intersections of CR 210 within the Twin Creeks Property, including the intersections with

Beachwalk Boulevard (west entrance), Beachwalk Shore Drive/Beacon Lake Parkway, and Beachwalk Boulevard (east entrance)/Beacon Lake Parkway (collectively, the "Intersections").

**WHEREAS**, with the exception of signalization at the Intersections, the CR 210 Improvements have been substantially completed pursuant to the Permit, but are pending final as-built approval and acceptance by the County.

**WHEREAS**, St. Johns County had determined that signalization is warranted at each of the Intersections (the "Required Signals").

**WHEREAS**, TCDA has agreed to order the mast arms and related equipment for the Required Signals, which will take several months to obtain and install.

**WHEREAS**, though the CR 210 Improvements are still pending final as-built approval and have not been accepted by the County, the County, as owner of the CR 210 right-of-way that runs through the Twin Creeks Property, and in the interest of public safety, has agreed to plan, design, implement and contract for the provision of maintenance of traffic ("MOT") along CR 210 west of Alternate County Road 210 within the Twin Creeks Property until such time as the Required Signals are installed and in operation.

**WHEREAS**, in exchange for the County providing the MOT, TCDA has agreed to reimburse the County for all expenses related to the MOT until the Required Signals are installed by TCDA and in operation and to indemnify and hold the County harmless, to the maximum extent permitted by law, from any third-party claims arising from, or in connection with the MOT.

**WHEREAS**, TCDA and the County desire to memorialize in this MOU the timing in which TCDA will install the Required Signals and reimburse the County for the MOT, on the terms provided herein.

**NOW, THEREFORE**, in consideration of the mutual terms, covenants and conditions contained in this MOU, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

1. **Findings of Fact**. The foregoing statements are true and correct and incorporated herein by reference as Findings of Fact.

2. **Purpose.** The Purpose of this MOU is to clarify the timing of installation of the Required Signal and to provide for continuous MOT until such installation is complete.

3. **Installation of Required Signals.** TCDA shall order the signal mast arms for the Required Signals from the manufacturer no later than February 15, 2021. Thereafter, TCDA shall use diligent, good faith and commercially reasonable efforts to finalize all pre-construction work related to installation of the traffic signal foundations before the mast arms arrive from the manufacturer. TCDA shall coordinate with the County regarding the anticipated timing of the installation of the Required Signals pending delivery of mast arms; provided, however, that TCDA shall cause its contractor to commence construction and diligently pursue completion of the installation of the Required Signals upon receipt of the mast arms. Installation of the Required Signalization shall be completed no later than December 31, 2021.

4. **Maintenance of Traffic.** It is acknowledged and agreed by the Parties that the County shall design, engineer, permit, operate and implement the required MOT to be provided on CR 210 within the Twin Creeks Property, and that such MOT shall include reduced speed limit designations and warning lights posted on CR 210 within the Twin Creeks Property. Notwithstanding the foregoing, the County may employ or contract a third party to manage and operate the MOT in accordance with this MOU and industry standards. The County (or the third party, if applicable) shall provide the MOT from the Effective Date of this MOU until TCDA has installed the traffic signal foundation and mast arms and the Required Signals have been approved and accepted by the County and are in operation (the "MOT Period"). During the MOT Period, TCDA shall reimburse the County for the actual costs incurred to operate and implement the MOT. Such reimbursement shall be paid by TCDA to the County no later than thirty (30) days after TCDA's receipt of invoices and paid receipts substantiating and confirming such costs incurred by the County. The County shall have sole and exclusive control, and shall be solely responsible for the plan, design, implementation and operation of the MOT. The County and TCDA agree to cooperate in providing notice to owners located within the general vicinity of the Twin Creeks Property regarding the MOT.

5. **Indemnification.** TCDA shall indemnify, hold harmless and defend the County; its elected officials, officers, agents, employees, contractors and attorneys, and their respective heirs,

successors, assigns and representatives (collectively, the "Releasees"), from any third-party claims arising from, or in connection with the MOT including, without limitation, any claims, liabilities and expenses relating to accidents, injuries, loss or damage of or to any person or property arising from the MOT, to the maximum extent allowed by law. This indemnification includes payment of reasonable expenses as incurred by any Releasee with respect to defense of any claims for which Releasee has been released hereunder, including, without limitation, court costs and reasonable attorney's fees. This indemnification shall survive the expiration or termination of this Agreement. Nothing contained in this section 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 Statutes, or of the County's sovereign immunity, or to create or establish any liability or duty of care on the part of the County not otherwise provided by law, including but not limited to liability for discretionary, planning governmental functions, conduct or activities.

6. **Availability of Funds.** The Parties understand and acknowledge that the County's obligations under this Agreement are subject to the availability of lawfully appropriated funds. While the County will make all reasonable efforts in order to provide funds needed for the County's performance under this Agreement, the County makes no express commitment to provide such funds in any given County fiscal year. Moreover, it is expressly noted that the Developer cannot demand that the County provide any such funds in any given County fiscal year. The parties further understand and acknowledge that, pursuant to section 129.07, Florida Statutes, funds expended by the County under this Agreement shall not exceed the amount appropriated in the County's budget for that purpose.

7. **Relationship to Development Orders.** Nothing in this MOU shall be deemed to constitute an amendment or modification to the DRI DO. All terms, conditions, provisions, requirements, and commitments in the DRI DO shall remain in full force and effect.

8. **Governing Law and Venue.** This MOU is to be governed by and interpreted in accordance with the laws of the State of Florida without regard to choice of law. Venue for any action or administrative proceedings arising out of or pertaining to this MOU shall be in St. Johns County, Florida.

9. **Joint Preparation.** Preparation of this MOU has been a joint effort of the Parties, with each party having had the opportunity to consult with counsel and advisers of their own choosing, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other.

10. **Relationship of the Parties.** The Parties agree that this MOU does not and shall not be construed as or constitute an agency, partnership, joint venture, or other fiduciary or confidential relationship between TCDA and the County.

11. **No Third-Party Beneficiaries.** Both the County and TCDA explicitly agree that nothing in this MOU shall be construed to create any third party beneficiary status to any person or entity.

12. **Entire Agreement.** This MOU constitutes the entire agreement among the parties and supersedes any prior understanding or agreement among them respecting the subject matter hereof. There are no representations, arrangements, understandings or agreements, oral or written, among the parties hereto relating to the subject matter of this MOU except those fully expressed herein and each party agrees that it has not relied on and is not entitled to rely on any statements, promises or representations other than those set forth herein in entering into this MOU. This MOU may not be modified or amended except by the mutual written agreement of the parties.

13. **Captions or Paragraph Headings.** Captions and paragraphs headings contained in this MOU are for convenience and reference only, and in no way define, describe, extend or limit the scope of intent of this MOU, nor the intent of any provision hereof.

14. **Counterparts.** This MOU may be executed in several counterparts, each constituting a duplicate original, but all such counterparts constituting one and the same MOU.

15. **Access to Records.** The access to, disclosure, non-disclosure, or exemption of records, data, documents, and/or materials, associated with this MOU shall be subject to the applicable provisions of the Florida Public Records Law (Chapter 119, Florida Statutes) and other applicable State or Federal law. Access to such public records may not be blocked, thwarted, and/or hindered by placing the public records in the possession of a third party, or an unaffiliated party.

16. **Authority to Execute.** Each party to this MOU covenants to the other party that it has the lawful authority to enter into this MOU and that it has authorized the execution of this MOU by the representative noted below:

17. **Effective Date.** This MOU shall become effective the date it is executed by all Parties (the "Effective Date").

18. **Notices.** Any notices or reports required by this MOU shall be sent to the following:

For the County: County Administrator  
St. Johns County  
500 San Sebastian View  
St. Augustine, Florida 32084

With a copy to: County Attorney  
St. Johns County  
500 San Sebastian View  
St. Augustine, Florida 32084

For Twin Creeks: Twin Creeks Development Associates, LLC  
Attn: John T. Kinsey  
100 East Linton Blvd. Suite 211B  
Delray Beach, Florida 33483

With a copy to: Ellen Avery-Smith, Esq.  
Rogers Towers, P.A.  
100 Whetstone Place, Suite 200  
St. Augustine, Florida 32084

[Signatures on Following Pages]



IN WITNESS WHEREOF, the Parties hereto, through their duly authorized representatives, have executed this MOU on the day(s) and year set forth below.

**ST. JOHNS COUNTY, FLORIDA**

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

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**TWIN CREEKS DEVELOPMENT  
ASSOCIATES, LLC, a Florida limited  
liability company**

By: *John T. Kinsey*

John T. Kinsey, its Manager

Date: 3-22-21