

TRUE-UP AGREEMENT FOR ROAD IMPACT FEE CREDITS

THIS TRUE-UP AGREEMENT FOR ROAD IMPACT FEE CREDITS (“Agreement”) is entered into on this ____ day of June 2023, between the CITY OF PORT ST. LUCIE, a municipal corporation (“City”) and ACR ACQUISITION, LLC, Florida limited liability company (hereinafter, the “Credit Owner”).

WHEREAS, the City and the Credit Owner are parties to that certain SW Annexation Agreement – 4th Amendment, dated November 16, 2009, and recorded in the Public Records of St. Lucie County, Florida, at Book 3146, Page 1432 (“City Road Credit Agreement”);

WHEREAS, on September 13, 2021, the City adopted Ordinance No. 21-75 adding Article II to Chapter 159 (Impact Fees) of the City’s Code of Ordinances which is known as “Port St. Lucie Mobility Fee Ordinance” (the “Original Mobility Ordinance”) which became effective as of October 1, 2021;

WHEREAS, by adoption of the Original Mobility Ordinance, the City replaced its transportation concurrency and road impact fee system with a mobility fee system consistent with the requirement of Section 163.3180(5)(i), Florida Statutes;

WHEREAS, on September 26, 2022, the City amended the Original Mobility Ordinance by adoption of Ordinance 22-87, as may be amended (the “Amended Mobility Fee Ordinance”) which became effective as of October 1, 2022;

WHEREAS, the City has agreed to honor existing City road impact fee credit agreements and allow development activity and, consistent with the requirements of Section 163.3180(5), Florida Statutes and the Amended Mobility Fee Ordinance, by allowing any existing City road impact fee credits to be used to fully offset the mobility fees due under the amended Mobility Fee Ordinance based upon the 2013 City road impact fee schedule;

WHEREAS, the City Council has provided a timeframe for development entities with City road impact fee credits to enter into a true-up agreement with the City, to establish the amount of outstanding City road impact fee credits that will be credited against the new mobility fees; and

WHEREAS, unless otherwise defined herein, all capitalized terms shall be given the meanings ascribed in the Amended Mobility Fee Ordinance.

NOW THEREFORE, in consideration of the mutual covenants herein contained, and for Ten and no/100ths (\$10.00) Dollars and other good and valuable consideration between the parties, the receipt and sufficiency of which are hereby acknowledged by the parties, and subject to the terms and conditions hereof, the parties agree as follows:

1. INCORPORATION OF RECITALS. The recitals stated above are true and correct and, by this reference, are incorporated by reference into this Agreement.

2. TRUE-UP PROVISIONS.

- a) The amount of credit initially granted to Credit Owner via the City Road Credit Agreement was \$6,419,226.27 (“Initial Credit Balance”), as evidenced by that certain letter from the City Finance Director dated October 23, 2012 and attached hereto as **Exhibit “A”**.

- b) As of March 31, 2023, and as evidenced by the documentation attached as **Exhibit “B”**, Credit Owner has used \$0.00 of the Initial Credit Balance.
- c) As of March 31, 2023, and as evidenced by the documentation attached as **Exhibit “B”**, Credit Owner asserts it has an outstanding credit balance of City road impact fee credits in the amount of \$6,419,226.27 (“2023 Credit Balance”).
- d) City has reviewed **Exhibit “B”** and concurs with Credit Owner that the 2023 Credit Balance is true and correct.
- e) The Credit Owner is responsible for seeking to utilize the 2023 Credit Balance at the time of building permit application. If the Credit Owner fails to do so the Credit Owner will be charged at the current mobility fee rate. As provided by the Amended Mobility Fee Ordinance, Credit Owner shall have the right to utilize credits from the 2023 Credit Balance to fully offset the mobility fees due under the Amended Mobility Fee Ordinance based upon the City’s 2013 road impact fee schedule (attached as **Exhibit “C”**) until the Credit Owner’s 2023 Credit Balance is exhausted. Once the Credit Owner’s 2023 Credit Balance is exhausted, the Credit Owner will be liable for mobility fees pursuant to the Amended Mobility Fee Ordinance.
- f) If an assignee of the Credit Owner attempts to use any part of the Credit Owner’s 2023 Credit Balance, City will require sufficient evidence that the assignment of credit to the assignee met all requirements for such assignment pursuant to the underlying City Road Credit Agreement, prior to deducting the credits from the 2023 Credit Balance and applying the credit as set forth herein to the assignee’s mobility fee obligation.

3. REFUNDS.

- a) Refund Request for Permits Issued Before Execution of Agreement:
 - i. By approval of this Agreement, the City agrees to refund to Credit Owner (or assignees meeting the requirements set forth in section 2(f), as applicable) the portion of mobility fees paid to the City above and beyond the amounts reflected in the City’s 2013 road impact fee schedule if those parties attempted to utilize a credit and the mobility fee was not offset as set forth in section 2 of this Agreement. All such refund requests must be requested within 365 days of the Effective Date of this Agreement.
 - ii. All other bases for refund will be determined as set forth in section 3(b), except that all refund requests must be requested within 365 days of the Effective Date of this Agreement.
- b) Refund Requests for Permits Issued After Execution of Agreement: If after the Credit Owner or an assignee meeting the requirements set forth in section 2(f), seeks to utilize credit, it is determined, at the City’s sole discretion, that the fee has been calculated and paid based on error or misrepresentation, it will be recalculated, and the difference refunded to or requested from the original applicant. All such refunds or requests must be requested within 365 days of the initial payment.
- c) Sections 3(a) and 3(b) are not intended to limit or preclude the City from exercising all other rights or remedies in law or equity regarding errors or misrepresentations in conjunction with the payment of mobility fees or use of impact fee credits.

4. EFFECT ON CITY ROAD CREDIT AGREEMENT. This Agreement is intended to verify and confirm the outstanding balance of road impact fees credits remaining under the City Road Credit Agreement for the sole purpose of establishing the 2023 Credit Balance. This Agreement is not intended to, and does not, amend or modify the terms and provisions of the City Road Credit Agreement. For example, this Agreement is not intended to determine the applicable mobility fee zones in which the 2023 Credit Balance may be utilized or whether the credits assigned outside of the area described in the City Road Impact Credit Agreement are entitled to vesting at the 2013 road impact fee schedule rate. These types of determinations shall be made separately by the City in accordance with the Amended Mobility Fee Ordinance and applicable Florida law. The City Road Credit Agreement shall remain in full force and effect as originally set forth therein, unless amended by the parties.

5. AMENDMENT. This Agreement may be amended only by a written instrument signed by both parties. If any party fails to enforce their respective rights under this Agreement or fails to insist upon the performance of the other party's obligations hereunder, such failure shall not be construed as a permanent waiver of any rights as stated in this Agreement.

6. NOTICES. All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing and shall be (as elected by the person giving such notice) hand-delivered by prepaid express overnight courier or messenger service, telecommunicated, or mailed (airmail if international) by registered or certified (postage prepaid), return receipt requested, to the following addresses:

City: City of Port St. Lucie
121 SW Port St. Lucie Boulevard, Building A
Port St. Lucie, Florida 34984
Attention: City Manager

With a copy to: City of Port St. Lucie
121 SW Port St. Lucie Boulevard, Building A
Port St. Lucie, Florida 34984
Attention: City Attorney

Credit Owner:

With a copy to:

Except as otherwise provided in this Agreement, any notice shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 PM (at the place of delivery) or on a non-business day shall be deemed received the next business day. If any time for giving notice contained in this Agreement would otherwise expire on a non-business day, the notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and legal holidays recognized by the United States government shall not be regarded as business days. Any party or other person to whom notices are to be sent or copied may notify the other parties and addressees of any changes in name or address to which notices shall be sent by providing the same on five (5) days written notice to the parties and addressees set forth herein.

7. SEVERABILITY. The parties agree that if any part, term or provision of this Agreement is held to be illegal or in conflict with any law of the State of Florida or with any federal law or regulation, such provision shall be severable, with all other provisions remaining valid and enforceable.

8. CONTROLLING LAW. This Agreement shall be construed under the laws of the State of Florida.

9. AUTHORITY. The execution of this Agreement has been duly authorized by the appropriate body or official of all parties hereto, each party has complied with all the requirements of law, and each party has full power and authority to comply with the terms and provisions of this Agreement.

10. ASSIGNMENT. This Agreement may not be assigned without the written consent of the City. The City shall not unreasonably withhold its consent to such assignment.

11. COUNTERPARTS AND EXECUTION. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original; however, all such counterparts together shall constitute, but one and the same instrument. Signature and acknowledgment pages, if any, may be executed by facsimile, which shall be good as an original, and may be detached from the counterparts and attached to a single copy of this document to physically form one document.

12. RECORDING OF AGREEMENT. A memo referring to this Agreement and reflecting the 2023 Credit Balance shall be recorded in the Public Records of St. Lucie County, Florida at the expense of the Credit Owner within thirty (30) days of execution, and a copy of the recorded document shall be provided to the City via Dana Pirulli, Impact/Mobility Fee Specialist, at dpirulli@cityofpsl.com, within ten (10) days after recording. The memo shall be in substantially the same form as the memo attached as **Exhibit "D"**.

13. NO THIRD-PARTY BENEFICIARY. None of the provisions of this Agreement shall be for the benefit of or enforceable by any third party. This Agreement has been entered into for the sole benefit and protection of the City and Credit Owner and is not intended to confer upon any other person or entity any rights or remedies hereunder. This Agreement shall not provide any third-party with any right, remedy, claim, liability, reimbursement, or other cause of action.

14. REMEDIES; WAIVER OF CONSEQUENTIAL DAMAGES. In the enforcement of their rights under this Agreement, the Credit Owner agrees that specific performance or writ of mandamus shall be its sole and exclusive remedies in such enforcement of its rights under this Agreement and that it shall not seek or obtain a money judgment, or other right or remedy, including but not limited to any special, indirect, consequential, incidental, or punitive damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement.

15. INTERPRETATION; VENUE; JURY WAIVER. All interpretations shall be governed by the laws of the State of Florida. In the event it is necessary for any Party to initiate legal action regarding this Agreement, venue shall be in the Nineteenth Judicial Circuit, in and for St. Lucie County, Florida, for claims under state law, and in the Southern District of Florida for claims justiciable in federal court. **TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, ALL PARTIES HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.** This clause shall survive the expiration or termination of this Agreement.

16. EXHIBITS. The following exhibits are attached to this Agreement and incorporated herein by this reference:

EXHIBIT "A" – Letter from the City Finance Director dated October 23, 2012

EXHIBIT “B” – Letter from Building Department

EXHIBIT “C” – 2013 Road Impact Fee Schedule

EXHIBIT “D” – True Up Memo

SIGNATURE PAGES TO FOLLOW

IN WITNESS WHEREOF, the parties hereto execute this True-Up Agreement and further agree that it shall take effect as of the Effective Date first above written.

WITNESSES

CITY OF PORT ST. LUCIE,
a Florida municipal corporation

Signature

Print Name: _____

By: _____

Shannon M. Martin, Mayor

Signature

Print Name: _____

STATE OF FLORIDA)

COUNTY OF ST. LUCIE)

The foregoing instrument was acknowledged before me by means of [X] physical presence or [] online notarization, this __ day of June 2023, by Shannon M. Martin as Mayor of the City of Port St. Lucie, and on behalf of the City of Port St. Lucie who is [X] personally known to me, or who has [] produced the following identification _____.

Signature of Notary Public

Print Name: _____

Notary Public, State of _____

My Commission expires _____

NOTARY SEAL/STAMP

SIGNATURES CONTINUE ON FOLLOWING PAGE

ACR ACQUISITION, LLC,
a Florida limited liability company

Signature
Print Name: _____

By: _____
Its:

Signature
Print Name: _____

STATE OF FLORIDA)
COUNTY OF ST. LUCIE)

The foregoing instrument was acknowledged before me by means of [X] physical presence or [] online notarization, this __ day of January 2023, by _____ as _____ of the ACR ACQUISITION, LLC, and on behalf of ACR ACQUISITION, LLC, who is [X] personally known to me, or who has [] produced the following identification _____.

NOTARY SEAL/STAMP

Signature of Notary Public
Print Name: _____
Notary Public, State of _____
My Commission expires _____

EXHIBIT "A"

Letter from the City Finance Director dated October 23, 2012

[See attached one (1) page]



"A City for All Ages"

CITY OF PORT ST. LUCIE



FINANCE DEPARTMENT

October 23, 2012

Ramzi Akel
Wilson Groves
7593 Boyton Beach Blvd., Suite 220
Boyton Beach, Florida 33437

Dear Mr. Akel:

Per Section 9 of the SW Annexation Agreement – 4th Amendment (November 16, 2009) between the City and ACR Acquisition LLC (Wilson Groves), the City reimbursed Wilson Groves \$5,000,000, which was half of the \$10,000,000 Wilson Groves had previously paid to the City for the future construction of Interchange #2. Section 9 also provides road impact fee credits to Wilson Groves in the amount of \$5,000,000 plus all interest earned on the \$10,000,000 paid by it to the City through the date on which Wilson Groves received its \$5,000,000 reimbursement from the City.

The amount of interest earned that is to be included in the road impact fee credit is \$1,419,226.27. This brings Wilson Groves' total road impact fee credit to \$6,419,226.27. Please do not hesitate to contact me if you should have any questions.

Sincerely,

Edwin M. Fry, Jr.
Finance Director / City Treasurer

cc: Greg Oravec, City Manager
Roger Orr, City Attorney
Daniel Holbrook, Planning & Zoning
Charlie Proulx, Finance
Roxanne Chesser, Engineering
Joel Dramis, Building Department

EXHIBIT "B"

Letter from Building Department



"It Starts with a Good Foundation"

City of Port St. Lucie
BUILDING DEPARTMENT
Administration Division



Joel A. Dramis, Building Code Administrator

June 8, 2023

RE: True-up Agreement for Road Impact Fee Credits

To whom it may concern,

After a thorough search, it has been determined that no permits have been pulled and/or received for the undeveloped and unaddressed Wilson Groves Development (property) located at the below noted legal description.

**LEGAL DESCRIPTION OF WILSON GROVE DRI PROPERTY:
ACR Properties Acquisition, LLC Property**

The Alan Wilson Grove Plat, according to the plat thereof, as recorded in plat book 12, page 50, of the public records of St. Lucie County, Florida, less the west 5.00 feet thereof.

Together with:

The East one-half Sections 30 and 31, Township 37 South, Range 339 East, less the East 200.00 feet thereof.

Said lands situated in St. Lucie County, Florida. Containing 106,773,334 square feet or 2451.179 acres, more or less, subject to easements, restrictions, reservations, covenants and rights-of-way of record.

FPL Property

The East 200.00 feet of sections 30 and 31, Township 37 South, Range 39 East, St. Lucie County, Florida. Said lands situated in St. Lucie County, Florida, containing 2,071,967 square feet, or 47.566 acres, more or less, subject to easements, restrictions, reservations, covenants and rights-if-way rights-of-way of record.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joel A. Dramis".

Joel A. Dramis, Building Code Administrator
City of Port St. Lucie
Building Department

Exhibit "C"

2013 Road Impact Fee Schedule

City of Port St. Lucie Road Impact Fee Schedule

TABLE 159.108.4

For any development with a City road impact fee credit established per an agreement between the Applicant and the City, the following road impact fee schedule shall be utilized to assess development activity, and draw down the road impact fee credit amount.

Use	Unit of Measure	Amount	Equivalent use
Single Residential	Per Dwelling	\$1,169	Single-Family, Active Adult, Mobile Residence
2+ Units per Structure	Per Dwelling	\$919	Multi-Family
Commercial	Per Sq. Ft.	\$1.945	Retail: Local, Multi-Tenant, Free-Standing,
Research & Dev Center	Per Sq. Ft.	\$0.619	Office
Office	Per Sq. Ft.	\$0.842	Office, Free-Standing Medical Office
Nursing Home	Per Sq. Ft.	\$0.580	Long Term Care
Hospital	Per Sq. Ft.	\$1.009	Office, Free-Standing Medical Office
Day Care	Per Sq. Ft.	\$0.640	Private Education
University/College	Per Sq. Ft.	\$0.520	Office
Secondary School	Per Sq. Ft.	\$0.708	Private Education
Elementary School	Per Sq. Ft.	\$0.777	Private Education
Lodging	Per Room	\$429.00	Overnight Lodging
Assisted Living	Per Sq. Ft.	\$0.406	Long Term Care

Exhibit "D"

True Up Memo

This instrument was prepared by
City Attorney's Office
121 S.W. Port St. Lucie Boulevard
Port St. Lucie, FL 34984



(Space above this line reserved for recording office use only)

TRUE-UP AGREEMENT MEMO
(City Road Credits)

This True-Up Agreement Memo (“Memo”) is being filed of record by the City of Port St. Lucie, a Florida not-for-profit corporation (“City”), with the consent of ACR ACQUISITION, LLC, a Florida limited liability company (“Credit Owner”).

KNOWN ALL MEN BY THESE PRESENTS:

WHEREAS, Credit Owner entered into an agreement with the City, which provided Credit Owner with City Road Impact Fee Credits (“Road Credits”), on November 16, 2009, and recorded in the Public Records of St. Lucie County, Florida, at Book 3146, Page 1432; and

WHEREAS, the City and Credit Owner entered into a True-Up Agreement for Road Impact Fee Credits on _____, 2023 (“True-Up Agreement”); and

WHEREAS, the True-Up Agreement memorializes the amount of remaining Road Credits held by Credit Owner as of March 31, 2023; and

WHEREAS, the Credit Owner holds a Road Credits Balance of \$6,419, 226.27 as of March 31, 2023, subject to the terms of the True-Up Agreement; and

WHEREAS, the intent of this Memo is to provide notice of the True-Up Agreement and March 31, 2023 Credit Balance to interested parties; and

WHEREAS, the True-Up Agreement is on file with the Clerk of the City of Port St. Lucie and available for inspection upon request.

NOW, THEREFORE, for and in consideration of the sum of \$10.00, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the City of Port St. Lucie hereby covenants and agrees as follows:

1. The recitals set forth above are incorporated herein by reference and made a part hereof as if set forth herein verbatim.

WITNESSES

CITY OF PORT ST. LUCIE,
a Florida municipal corporation

Signature
Print Name: _____

By: _____
Shannon M. Martin, Mayor

Signature
Print Name: _____

STATE OF FLORIDA)
COUNTY OF ST. LUCIE)

The foregoing instrument was acknowledged before me by means of [X] physical presence or [] online notarization, this __ day of January 2023, by Shannon M. Martin as Mayor of the City of Port St. Lucie, and on behalf of the City of Port St. Lucie who is [X] personally known to me, or who has [] produced the following identification _____.

NOTARY SEAL/STAMP

Signature of Notary Public
Print Name: _____
Notary Public, State of _____
My Commission expires _____

ACR ACQUISITION, LLC,
a Florida limited liability company

Signature
Print Name: _____

By: _____
Its: _____

Signature
Print Name: _____

STATE OF FLORIDA)
COUNTY OF ST. LUCIE)

The foregoing instrument was acknowledged before me by means of [X] physical presence or [] online notarization, this __ day of January 2023, by _____ as _____ of the ACR ACQUISITION, LLC, and on behalf of ACR ACQUISITION, LLC, who is [X] personally known to me, or who has [] produced the following identification _____.

NOTARY SEAL/STAMP

Signature of Notary Public
Print Name: _____
Notary Public, State of _____
My Commission expires _____