



Memorandum

TO: MAYOR & CITY COUNCIL

FROM: GREGORY J. ORAVEC, CITY MANAGER

DATE: DECEMBER 7, 2012

SUBJECT: UNFINISHED BUSINESS/AGREEMENT WITH RACETRAC CONCERNING TRAFFIC CALMING

This memorandum serves to recommend the approval of the enclosed contract, entitled "Assignment and Assumption of Contract", between the City of Port St. Lucie, McMahan Transportation Engineering & Planners and RaceTrac Petroleum, Inc. The Contract relates to the completion of a traffic calming study and the construction of traffic calming measures in association with the development of an automobile fuel service station and a convenience store at 221 SW Port St. Lucie Boulevard. As you are aware, this agreement is being presented to you in accordance with the conditional special exception approvals granted by the City Council on November 26, 2012 via Resolutions 12-R122 and 12-R123.

Please be advised of the following highlights of the Contract and associated points:

- RaceTrac has agreed to contribute a total of \$50,000 to the City of Port St. Lucie to address concerns over RaceTrac's traffic impacts on the surrounding neighborhood.
- RaceTrac will enter into an Agreement with McMahan for a Traffic Calming Study for the neighborhood surrounding the RaceTrac site. The neighborhood is delineated by Exhibit "A" of the Contract, and the Agreement with McMahan is attached as Exhibit "B" of the Contract.
- The Traffic Calming Study Agreement will be assigned to the City for completion.
 - The City has worked well with McMahan in the past. The company has conducted similar work for the City on Westmoreland Boulevard.
- RaceTrac will pay \$10,000 to McMahan for the Traffic Calming study within 30 days from the date the Contract between the City and RaceTrac is signed.
 - The City will contribute to the Traffic Calming Study and be responsible for covering any additional costs over \$10,000.
- Following completion of the study, the City intends to complete traffic calming improvements in the neighborhood, which are likely to include the closure of Chapman Avenue and other traffic calming improvements to Crescent Avenue and elsewhere.
- RaceTrac will contribute \$40,000 to the construction of the traffic calming improvements on Chapman Avenue within 30 days after all City permits are issued to RaceTrac for its project.
 - The City must complete the improvements within 6 months of receiving payment.
 - The City will be responsible for any additional costs on Chapman and for the implementation of other traffic calming improvements in the neighborhood.

It was a pleasure to work with the RaceTrac Team on this matter. I found them to be direct and honest, which made negotiations very straightforward and productive. I believe that their actions and diligence show that they are committed to being good neighbors and contributors to our community. I also believe that the City will be improved by transforming the currently abandoned used car dealership into a thriving retail location and by implementing traffic calming measures in the surrounding residential neighborhood. I anticipate that your conditional approval and the Assignment and Assumption Contract will produce the much sought after win-win and that our bottom line—property values—will go up as a result.

If you have any questions or require additional information, please do not hesitate to contact me.

Thank you.

ASSIGNMENT AND ASSUMPTION OF CONTRACT

THIS ASSIGNMENT AND ASSUMPTION OF CONTRACT (the "Assignment") is made as of this ___ day of _____, 2012, by and between; the **City of Port St. Lucie**, a Florida municipal corporation, 121 SW Port St. Lucie Boulevard, Port St. Lucie, FL 34984, as Assignee or City, **McMahon Associates Inc**, 5500 Village Boulevard, Suite 103, West Palm Beach, FL 33407, as Contractor or Engineer, and **RaceTrac Petroleum, Inc.**, 3225 Cumberland Boulevard, Suite 100, Atlanta, Georgia 30339, as Developer/Assignor.

WITNESSETH

WHEREAS, on or about November 6, 2012, RaceTrac applied for Special Exception Uses before the City's Planning & Zoning Board for an automobile fuel service station and for a convenience store use at 221 S. W. Port St. Lucie Boulevard; and

WHEREAS, on or about November 26, 2012, the City Council considered the request for Special Exception Use and added a condition to the approval which required an agreement concerning traffic calming measures for the adjacent residential neighborhood; and

WHEREAS, RaceTrac has agreed as a condition of approval to fund the traffic study and portions of a traffic calming project on Chapman Street which will alleviate concerns over the service station and convenience store's impact on the adjacent residential neighborhood identified in Exhibit "A"; and

WHEREAS, RaceTrac has agreed to facilitate the traffic study by entering into a Contract for professional services with McMahon Associates Inc. to perform the study, to pay for those services in the amount of Ten Thousand Dollars (\$10,000.00), and to pay for the implementation of any suggested improvements on Chapman Avenue in the amount of Forty Thousand Dollars (\$40,000.00); and

WHEREAS, the City anticipates said improvements may include but not be limited to the closure of Chapman Avenue and making additional improvements to Crescent Avenue; and

WHEREAS, Assignor has entered into a continuing professional services Contract with Engineer having an effective date of _____ (the "Contract"), a copy of which is attached hereto and identified as **Exhibit "B"**; and

WHEREAS, the Contract provides for the performance of a traffic study in connection with the RaceTrac Service Station Project; and

WHEREAS, Assignor desires to assign to City and City desires to assume from Assignor the Contract; and

WHEREAS, City hereby acknowledges and accepts responsibility for costs associated with traffic calming measures in excess of Forty Thousand Dollars (\$40,000.00) which may be recommended as a result of the traffic study; and

WHEREAS, the parties to this Assignment acknowledge and agree that Racetrac has agreed to contribute Ten Thousand Dollars (\$10,000.00) to the cost of the traffic calming study to be performed by McMahon; and

WHEREAS, the parties to this Assignment acknowledge and agree that should the cost of the traffic study exceed the Ten Thousand Dollar (\$10,000.00) contribution from RaceTrac, the City of Port St. Lucie shall be responsible for said additional costs to McMahon; and

WHEREAS, Assignor has agreed to assign its rights under the Contract to Assignee, the City of Port St. Lucie, a Municipal Corporation of the State of Florida, and Assignee has agreed to accept the Assignment; and

WHEREAS, Developer has agreed to contribute Forty Thousand Dollars (\$40,000.00) towards the implementation of any traffic study improvements and/or calming measures on Chapman Street to address the impact to the study area as a result of the Special Exception Use approval and development of the RaceTrac site; and

WHEREAS, Engineer, City and Developer have agreed to consent to this Assignment; and

WHEREAS, the Parties desire to memorialize their mutual understanding pursuant to the terms and conditions herein.

NOW, THEREFORE, for and in consideration of the terms of this Assignment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, Assignor, Assignee and Engineer do hereby agree as follows:

1) **Recitals.** The above recitals are true and correct and are incorporated herein by reference. All exhibits to this agreement are hereby deemed a part hereof.

2) **Monetary Contribution.**

(i) RaceTrac shall make a payment to McMahon in the amount of Ten Thousand Dollars (\$10,000.00) within thirty (30) days from the date this Contract is executed by the City of Port St. Lucie.

(ii) RaceTrac shall contribute a Forty Thousand Dollar (\$40,000.00) payment to the City. This payment will be due within thirty (30) days after all City permits are issued to RaceTrac for its construction.

3) **Traffic Study.** McMahon shall complete the traffic calming study pursuant to the Contract. The traffic calming study will recommend traffic calming measures for Chapman Avenue and Crescent Avenue.

4) **City's Contributions.** The City's Traffic Division has conducted traffic and turning counts within the identified study area. This information will be provided to McMahon. The City's Traffic Division will assist McMahon with gathering of information as required to complete the traffic study and to facilitate the needed improvements. The City will be responsible for all costs of designing and constructing traffic calming measures in the surrounding area (in excess of RaceTrac's \$40,000.00 contribution), which may include improvements to Crescent Avenue based on the traffic study improvements recommended to the City by McMahon.

5) **Use of Monetary Contribution.** The City agrees to use funds provided by RaceTrac only for the improvements to the study area to make improvements as recommended by McMahon. The improvements shall be implemented within six months of receipt of the \$40,000.00 from RaceTrac. If the traffic improvements are not implemented within the said six (6) months the Forty

Thousand Dollars (\$40,000.00) payment to the City will be returned to RaceTrac within thirty (30) days from expiration of the six (6) months and RaceTrac shall have no further obligations hereunder. Upon RaceTrac's payment of said \$40,000, RaceTrac shall have no further obligations with respect to such traffic calming requirements irrespective of the actual cost of satisfying same.

6) **Assignment and Assumption.** Assignor grants, bargains, sells, assigns and transfer to Assignee the Contract, together with all of Assignor's rights, privileges, duties and obligations set forth in them. Assignee accepts this Assignment and thereby assumes and agrees to perform all of the obligations of Assignor under the Contract with the same effect as though Assignee had originally executed the Contract with Engineer from and after the date of this assignment. By this Assignment, Assignor shall have no further obligation to Assignee or to Engineer in regard to the terms of the Contract for the performance of the Contract.

7) **Consent.** Engineer's signature herein shall confirm Engineer's acceptance of the Assignment and Engineer's agreement to be bound hereby. By such consent Engineer releases Assignor of all responsibility, loss, liability or expenses suffered or incurred by Engineer by reason of a default on the part of Assignor of the obligations assumed hereunder.

8) **Notices.** Any notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given if delivered by hand, sent by recognized overnight courier (such as Federal Express) or mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope, to the following address or such other address as a party may designate from time to time in writing:

If to the City: City of Port St. Lucie
121 S. W. Port St. Lucie Boulevard
Port St. Lucie, FL 34984
Attn: City Manager

City of Port St. Lucie
121 S. W. Port St. Lucie Boulevard
Port St. Lucie, FL 34984
Attn: City Attorney

If to Developer: RaceTrac
3225 Cumberland Boulevard, Suite 100
Atlanta, Georgia 30339
Attention: General Counsel

If to Engineer: McMahon Transportation Engineers & Planners
5500 Village Boulevard, Suite 103
West Palm Beach, FL 33407

9) **Governing Law**. This Assignment shall be governed by the laws of the State of Florida and shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns, and shall be enforced only in a court of competent jurisdiction in St. Lucie County, Florida.

10) **Severance**. The invalidity or unenforceability of any portion of this Agreement shall in no way affect the remaining provisions and portions hereof.

11) **Binding Effect**. This Assignment shall bind the successors, heirs and assigns of the parties hereto.

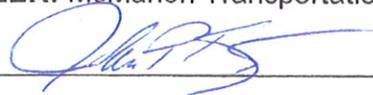
12) **Captions**. The paragraph captions used throughout this Assignment are for the purpose of reference only and are not to be considered in the construction of this Assignment or in the interpretation of the rights or obligations of the parties hereto.

13) **Entire Contract**. It is agreed that this document contains the entire agreement between the parties regarding the Assignment and this Assignment shall not be modified in any respect except by an amendment in writing signed by all parties hereto.

14) **Counterpart Execution**. This document may be executed in several counterparts, each of which shall be fully effective as an original, and all of which together shall constitute one and the same instrument. A facsimile copy of this document and counterpart signatures shall be considered, for all purposes, as an original.

IN WITNESS WHEREOF, the parties have hereunto set their respective hands and seals the day and year first above written.

ENGINEER: McMahon Transportation Engineers & Planners

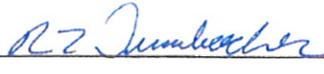
By: 

Printed Name: JOHN P. KIM

Title: SENIOR PROJECT MANAGER

Date: 12-7-2012

ASSIGNOR: RaceTrac Petroleum, Inc

By: 

Printed Name: R. J. DUMBACHER

Title: CFO

Date: 12-7-12

ASSIGNEE: City of Port St. Lucie

By: _____

Printed Name: Gregory J. Oravec, City Manager

Title: _____

Date: _____

APPROVED AS TO FORM:

BY : _____
Pam E. Booker, Senior Assistant City Attorney

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McMAHON ASSOCIATES, INC.
 5500 Village Blvd., Suite 103 | West Palm Beach, FL 33407
 561-840-8650 | f 561-840-8590
www.mcmtrans.com



December 7, 2012

VIA E-MAIL

Mr. Brian Oates, Engineering Project Manager
 RaceTrac Petroleum, Inc.
 3225 Cumberland Boulevard, Suite 100
 Atlanta, GA 30339

PRINCIPALS
 Joseph W. McMahon, P.E.
 Joseph J. DeSantis, P.E., PTOE
 John S. DePalma
 William T. Steffens
 Casey A. Moore, P.E.
 Gary R. McNaughton, P.E., PTOE

ASSOCIATES
 John J. Mitchell, P.E.
 Christopher J. Williams, P.E.
 John F. Yacapsin, P.E.

**RE: Chapman Avenue Traffic Calming Study
 McMahon Project No. N12758.0P**

Dear Brian:

McMahon Associates, Inc. (McMahon) is pleased to provide this proposal for transportation engineering services associated with a traffic calming study for Chapman Avenue within the City of Port St. Lucie. We understand that the City is requesting a traffic calming study to determine the need for traffic calming on and in the vicinity of Chapman Avenue. We also understand that the City will provide traffic data collection if needed. The Scope of Work includes the following tasks:

SCOPE OF WORK

- A. **Methodology Meeting** □ McMahon will meet with City of Port St. Lucie staff to present the methodology for the study. The approved methodology will be finalized and meeting minutes will be prepared.
- B. **Data Analysis** □ Data collected by the City of Port St. Lucie, which may include vehicle speed, volume and intersection turning movement counts, will be reviewed and tabulated.
- C. **Plan Development** □ Field visits will be performed by McMahon to determine existing conditions on and in the vicinity of Chapman Avenue. A conceptual traffic calming plan will be developed based on results of the data analysis and the field conditions. The conceptual plan showing traffic calming treatment types and their approximate locations will be presented to City of Port St. Lucie staff for review. A final conceptual traffic calming plan will be developed with City staff.
- D. **Report** □ McMahon will prepare a traffic calming study report that will include the traffic data, analysis, summary tables, conceptual plans and conclusions/recommendations. The report will be submitted to the City of Port St. Lucie in draft form prior to final submittal. Three (3) copies of the final report signed and sealed by a State of Florida Registered Professional Engineer, will be submittal.

Corporate Headquarters: Fort Washington, Pennsylvania

Serving the East Coast from 11 offices throughout New England, the Mid-Atlantic, and Florida

The services to be performed pursuant to this agreement are strictly limited to those expressly set forth herein.

FEE

The lump sum fee for the above-mentioned services is \$10,000.00. If additional services are required that exceed those identified in this Scope of Work a supplemental agreement will be submitted for review and approval prior to the commencement of any additional tasks. Additional services will commence upon written authorization to proceed by the client.

SCHEDULE

We are prepared to initiate work on the project upon receipt of written authorization to proceed. McMahon will use its best efforts to complete this work in accordance with the client's meeting schedule. The traffic analysis would be completed within three weeks of written authorization to proceed.

TERMINATION

This agreement may be terminated by the authorized representative effective immediately on receipt of written notice. Payment will be due for services rendered through the date written notice is received.

BINDING STATUS

The client and McMahon Associates, Inc. bind themselves, their partners, successors, assigns, heirs, and/or legal representatives to the other party to the Agreement, and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of the proposal.

TERMS

The terms of this Agreement call for execution of this contract in the space provided below. Invoices for services will be submitted monthly and are payable within 30 days of issuance. All invoices not paid within 30 days are subject to a 1.5% monthly interest charge, and all projects with overdue balances exceeding 90 days will be subject to a stoppage of all work. Any changes in the specific Scope of Work described above will result in an adjustment of the conditions and fees.

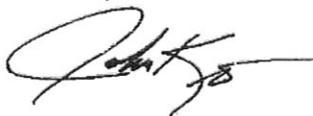
This agreement (and Exhibits, if any,) hereto sets forth the entire understanding between the parties with respect to the subject matter hereof, supersedes any and all prior understandings whether written or oral with respect to the subject matter hereof and may not be altered, modified, changed, amended or waived in any manner, except in writing signed by all of the parties hereto.

The fee quoted above is valid for a period of 90 days from the date of this proposal. If the terms of this contract, as contained herein, are agreeable to you, please execute it below in the space provided and

return one signed original to me. If you have any questions or require further information, please feel free to contact me.

We greatly appreciate the opportunity to present our proposal on this project and look forward to working with you.

Sincerely,



John P. Kim, P.E., PTOE
Senior Project Manager

JPK/hsv
Attachment

Accepted for RaceTrac Petroleum, Inc.

By: _____
(Signature of Authorized Representative)

(Printed Name of Authorized Representative)

Title: _____

Date: _____

Please provide your Accounts Payable contact information:

Name: _____

Phone Number: _____

E-mail Address: _____

In the space below, please provide any details, including the date invoices are due each month for prompt payment:

