

ORDINANCE NO. O-026-2017

AN ORDINANCE OF THE LAFAYETTE-CITY PARISH COUNCIL AUTHORIZING THE EXECUTION OF A COOPERATIVE ENDEAVOR AGREEMENT BY AND AMONG THE LAFAYETTE CITY-PARISH CONSOLIDATED GOVERNMENT, LAFAYETTE I-10 CORRIDOR DISTRICT AT MILE MARKER 103 AND RACETRAC PETROLEUM, INC., RELATING TO THE COLLECTION, USE AND EXPENDITURE OF A ONE (1.00%) PERCENT SALES AND USE TAX BEING LEVIED IN SAID DISTRICT TO PROVIDE PARTIAL REIMBURSEMENT TO RACETRAC PETROLEUM, INC. WITH RESPECT TO CERTAIN INFRASTRUCTURE IMPROVEMENTS AND THE DEVELOPMENT OF COMMERCIAL FACILITIES IN SAID DISTRICT, AND PROVIDING FOR OTHER MATTERS IN CONNECTION THEREWITH

BE IT ORDAINED by the Lafayette City-Parish Council, that:

WHEREAS, Part II, Chapter 27, Title 33 of the Louisiana Revised Statutes of 1950, as amended (La. R.S. 33:9038.31, *et seq.*) (the "Act") authorizes municipalities, parishes and certain other local governmental subdivisions to create economic development districts to carry out the purposes of the Act, which economic development districts are political subdivisions of the State of Louisiana and possess such power and authority and have such duties as provided by the Act and other law; and

WHEREAS, pursuant to the Act, the Lafayette City-Parish Consolidated Government (the "City-Parish"), acting through the Lafayette City-Parish Council as its governing authority, adopted Ordinance No. O-129-2006 on July 5, 2005, creating the "Lafayette I-10 Corridor District at Mile Marker 103" (the "District"), in accordance with La. R.S. 33:9038.32, from which District local and State sales tax increments have been determined and used to fund the "Fund 226 TIF Sales Tax Trust Fund – Mile Marker 103"; and

WHEREAS, La. R.S. 33:9038.39 further permits such economic development districts to levy sales and use taxes for authorized purposes and in accordance therewith the District, acting through the Lafayette City-Parish Council, as its governing authority, adopted an Ordinance No. O-190-2006 on September 5, 2006, as amended and restated by Ordinance No. O-272-2007, and as further amended by Ordinance No. O-083-2015 and Ordinance No. O-280-2015, levying a sales and use tax of one (1.00%) percent in the District (the "EDD Tax"); and

WHEREAS, Article VI, Section 20 of the Louisiana Constitution of 1974 provides that a political subdivision may exercise and perform any authorized power and function, including financing, jointly or in cooperation with one or more political subdivisions, either within or without the state, or with the United States or its agencies; and

WHEREAS, Article VII, Section 14(C) of the Louisiana Constitution of 1974 provides that the state and its political subdivisions or political corporations may engage in cooperative

endeavors with each other, with the United States or its agencies, or with any public or private association, corporation, or individual; and

WHEREAS, Sub-Part A, Part VII, Chapter 2 of Title 33 of the Louisiana Revised Statutes of 1950, as amended (La. R.S. 33:1321, *et seq.*) (the "The Local Services Law"), provides that political subdivisions may engage jointly in the construction, acquisition or improvement of any public project or improvement, the promotion and maintenance of any undertaking or the exercise of any power, provided at least one of the participants is authorized under a provision of general or special law to perform such activity or exercise such power as may be necessary for completion of the undertaking; and

WHEREAS, under The Local Services Law such arrangements may provide for the joint use of funds, facilities, personnel or property or any combination thereof necessary to accomplish the purposes of the agreement, and such agreements may include but are not limited to activities concerning the construction or acquisition or improvement, and operation, repair and maintenance of public projects or improvements; and

WHEREAS, Chapter 27 of Title 33 of the Louisiana Revised Statutes of 1950, as amended (La. R.S. 33:9020, *et seq.*) (the "Cooperative Economic Development Law"), provides that local governmental subdivisions (including municipalities) may cooperate or engage in cooperative endeavors providing for cooperative financing of economic development projects with other local governmental subdivisions or with any other private or public entity or person, for the purpose of aiding in cooperative development, all as defined in the Cooperative Economic Development Law; and

WHEREAS, the City-Parish and the District wish to enter into a cooperative endeavor agreement with RaceTrac Petroleum, Inc., a Georgia Corporation, or an affiliated entity (the "Company") providing for the partial reimbursement from the net revenues of the EDD Tax of certain public infrastructure improvements consisting generally of the public infrastructure improvements listed on Exhibit A-1 hereto, as well as certain private infrastructure improvements listed on Exhibit A-2 hereto relating to the development of commercial facilities in the District, said improvements to be located on an approximately 10.519-acre site owned by the Company in the southeast quadrant of the intersection of I-10 and Louisiana Avenue (the "Project"); and

WHEREAS, the District is a significant source of revenues for the City-Parish, both in terms of property taxes and sales taxes, and the continued viability of the District and its ability to attract retail and commercial tenants and customers is important both to the financial health of the

City-Parish because of the taxes generated therein, as well as to the quality of life for residents of the City-Parish and surrounding areas that contribute to the tax base of the City-Parish.

NOW, THEREFORE, BE IT FURTHER ORDAINED by the Lafayette City-Parish Council in its capacity as governing authority of both the City-Parish and the District, that:

SECTION 1: All of the aforescribed "Whereas" clauses are adopted as part of this ordinance.

SECTION 2: Approval of CEA. The Lafayette Mayor-President is hereby authorized, empowered, and directed to execute, for and on behalf of both the City-Parish and the District a Cooperative Endeavor Agreement by and among the City-Parish, the District and the Company (the "CEA"), the CEA to be substantially in the form and to contain substantially the terms and provisions set forth in the CEA attached hereto as Exhibit B, with such changes as may be approved by said officer upon the advice of counsel, provided that no such change may increase the financial obligation of the District beyond that currently stated in the attached Exhibits A-1, A-2 and B.

SECTION 3: No Gratuitous Transfer of Public Funds. By entering into the CEA it is not the intent of the City-Parish or the District to enter into a gratuitous transfer of public funds because the City-Parish and the District expect that they will each receive something of value in return for the performance of their obligations under the CEA, including but not limited to:

- (a) in the case of the City-Parish, the elimination of vacant property, the construction of infrastructure to improve access and traffic flow in the area of the Project, the promotion of economic development in the City-Parish, the creation of jobs, enhancement of the property tax and sales tax base of the City-Parish, including specifically the collection of additional taxes that would not be generated in the absence of the development of the Project, as well as the creation of additional local retail shopping alternatives for visitors and residents of the City-Parish, and the generation of revenues for infrastructure and other necessary capital expenditures in and for the City-Parish;
- (b) in the case of the District, the elimination of vacant property, the construction of infrastructure to improve access and traffic flow in the area of the Project, the promotion of economic development in the District, the creation of jobs, the enhancement of the property tax and sales tax base of the District, the creation of additional local retail shopping alternatives for visitors and residents of the City-

Parish, and the generation of revenues for infrastructure and other necessary capital expenditures in and for the District; and

additionally, the City-Parish, the District and the Company will have reciprocal obligations relating to the satisfaction of the additional requirements set forth in the CEA with respect to the allocation, expenditure and use of the revenues of the EDD tax as further described in the CEA.

SECTION 4: Ratification of Term of EDD Tax. The continued levy of the EDD Tax levied by Ordinance No. O-190-2006, as amended and restated by Ordinance No. O-272-2007, and as further amended by Ordinance No. O-083-2015 and Ordinance No. O-280-2015, is hereby further ratified and confirmed, said tax levy to continue until such time as this the Lafayette City-Parish Council, acting as governing authority of the District, elects to terminate the EDD Tax, provided that no such termination shall occur for so long as there remains outstanding and/or unpaid any debt or other contractual obligation secured by or payable from the EDD Tax, including bonds, notes or other evidence of indebtedness, or other written obligations of the District such as cooperative endeavor agreements or similar agreements relating to the cooperative use of the EDD Tax for economic development or other lawful purposes.

SECTION 5: Further Authority of Mayor-President. The Lafayette Mayor-President is further authorized to take any and all action on behalf of the City-Parish and the District as he deems fit, upon the advice of counsel, to accomplish the intent of this ordinance. He is further authorized to seek approval of any public bodies, to the extent necessary or desirable, and to execute contracts, cooperative endeavor agreements and/or all other documents deemed necessary or desirable to accomplish the purpose and intent of this ordinance.

SECTION 6: Severability. If any provision of item of this ordinance or the application thereof is held invalid, such invalidity shall not affect other provisions, items or applications of this ordinance which can be given effect without the invalid provisions, items or applications and to this end the provisions of this ordinance are hereby declared severable.

SECTION 7: Repealer. All ordinances or resolutions or parts thereof in conflict herewith are hereby repealed.

SECTION 8: Publication; Effective Date. This ordinance shall be published one (1) time in the official journal of the City-Parish, and shall become effective upon signature of the Lafayette Mayor-President, the elapse of ten (10) days after receipt by the Lafayette Mayor-President without signature or veto, or upon override of a veto, whichever occurs first.

* * * * *

COOPERATIVE ENDEAVOR AGREEMENT

dated MARCH 28, 2017

by and among

Lafayette City-Parish Consolidated Government,
Lafayette I-10 Corridor District at Mile Marker 103

and

RaceTrac Petroleum, Inc.

relating to the levy, collection, use and application of
sales tax increments collected in
Lafayette I-10 Corridor District at Mile Marker 103

TABLE OF CONTENTS

* * * * *

ARTICLE I

DEFINITIONS

SECTION 1.01. Definitions.....3
SECTION 1.02. Use of Defined Terms.....7

ARTICLE II

REPRESENTATIONS OF THE CITY-PARISH AND THE DISTRICT

SECTION 2.01. Authority of the City-Parish and District.....7
SECTION 2.02. Collections; Trust Fund Balance.....7
SECTION 2.03. Accuracy of Base Collections.....7
SECTION 2.04. Pledge and Reimbursement Undertaking.....7
SECTION 2.05. Scope of the Project7
SECTION 2.06. Public Hearing8
SECTION 2.07. No Suits.....8
SECTION 2.08. Agreement Not Intended to be Indebtedness8
SECTION 2.09. Non-Appropriation Clause.....8
SECTION 2.10. Term of this Agreement8

ARTICLE III

COOPERATIVE ENDEAVOR OBLIGATIONS

SECTION 3.01. Payment of Cost of the Project8
SECTION 3.02. Relating to Article VII, Section 14 of the Louisiana Constitution9
SECTION 3.03. Collection Process.....11
SECTION 3.04. Calculations.....11
SECTION 3.05. Priority of Reimbursement Undertaking.....11
SECTION 3.06. Use of Trust Fund Moneys11
SECTION 3.07. Additional Indebtedness or Contractual Obligations.....11
SECTION 3.08. Scope and Specifications of Project.....12
SECTION 3.09. Disputes Regarding Reimbursement Undertaking.....12

ARTICLE IV

REIMBURSEMENT OF COSTS

SECTION 4.01. Construction and Installation of the Project.....12
SECTION 4.02. Project Inspections; General Contractor; Required Contractual Provisions;
Third-Party Beneficiary14
SECTION 4.03. Reimbursement Undertaking15
SECTION 4.04. Limited Source of Payment of Reimbursement Undertaking.....16

SECTION 4.05.	No Repeal of EDD Tax.....	16
SECTION 4.06.	Assignment	16

ARTICLE V

MISCELLANEOUS

SECTION 5.01.	Liberal Construction	17
SECTION 5.02.	Notices	17
SECTION 5.03.	Further Assurances.....	17
SECTION 5.04.	Venue	17
SECTION 5.05.	Severability	17
SECTION 5.06.	No Personal Liability	18
SECTION 5.07.	Captions	18
SECTION 5.08.	Counterparts.....	18
SECTION 5.09.	Governing Law	18
SECTION 5.10.	Payment of Fees of Counsel to the City-Parish & District	18
SECTION 5.11.	Non-shareholder Contributions to Capital	18
SECTION 5.12.	Amendment and/or Modification.....	19

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- EXHIBIT A - Map of District
- EXHIBIT B-1 - Description of the Public Infrastructure Improvements and Public Infrastructure Cost
- EXHIBIT B-2 - Description of the Private Infrastructure Improvements and Private Infrastructure Cost
- EXHIBIT C - Survey of RaceTrac Property
- EXHIBIT D - Survey of the RaceTrac Market Property
- EXHIBIT E - Form of Project Engineer Certification

COOPERATIVE ENDEAVOR AGREEMENT

THIS COOPERATIVE ENDEAVOR AGREEMENT (the "Agreement"), which shall be dated MARCH 28, 2017 (the "Effective Date"), is by and among:

LAFAYETTE CITY-PARISH CONSOLIDATED GOVERNMENT (the "City-Parish"), a political subdivision of the State of Louisiana, represented and appearing herein through Joel Robideaux, Mayor-President, duly authorized hereunto by virtue of Ordinance No. O-026-2017 adopted by the Lafayette City-Parish Council on FEB. 21, 2017, whose mailing address is P.O. Box 4017-C, Lafayette, Louisiana 70502;

LAFAYETTE I-10 CORRIDOR DISTRICT AT MILE MARKER 103 (the "District"), a political subdivision of the State of Louisiana, represented and appearing herein through Joel Robideaux, duly authorized hereunto by virtue of Ordinance No. O-026-2017 adopted by the Lafayette City-Parish Council in its capacity as governing authority of the District on FEB. 21, 2017, whose mailing address is P.O. Box 4017-C, Lafayette, Louisiana 70502;

WHO DECLARED that they are each a political subdivision of the State of Louisiana and desire to avail themselves of the provisions of Article VI, Section 20 and Article VII, Section 14(C) of the Louisiana Constitution of 1974, The Local Services Law (Sub-Part A, Part VII, Chapter 2 of Title 33 of the Louisiana Revised Statutes of 1950, as amended), the Cooperative Economic Development Law (Chapter 27 of Title 33 of the Louisiana Revised Statutes of 1950, as amended), and Part II, Chapter 27 of Title 33 of the Louisiana Revised Statutes of 1950, as amended (La. R.S. 33:9038.31, *et seq.*), by entering into this Agreement for the objects and purposes and under the conditions, covenants and stipulations hereinafter set forth, with

RACETRAC PETROLEUM, INC. (the "Company"), a Georgia Corporation duly authorized to do business in the State of Louisiana, appearing herein through Billy Milam, its PRESIDENT, duly authorized hereunto by virtue of _____, whose mailing address is 3224 Cumberland Blvd, Suite 100, Atlanta, GA 30339.

WITNESSETH

WHEREAS, Part II, Chapter 27, Title 33 of the Louisiana Revised Statutes of 1950, as amended (La. R.S. 33:9038.31, *et seq.*) (the "Act") authorizes municipalities, parishes and certain other local governmental subdivisions to create economic development districts to carry out the purposes of the Act, which economic development districts are political subdivisions of the State of Louisiana and possess such power and authority and have such duties as provided by the Act and other law; and

WHEREAS, pursuant to the Act, the City-Parish, acting through the Lafayette City-Parish Council, adopted Ordinance No. O-129-2006 on July 5, 2005, creating the District, in accordance with La. R.S. 33:9038.32, with boundaries as set forth on Exhibit A hereto, from which District local and State sales tax increments have been determined and used to fund economic development projects, as defined in the Act; and

WHEREAS, La. R.S. 33:9038.39 further permits such economic development districts to levy sales and use taxes at a rate up to two percent (2.00%) for authorized purposes and in accordance therewith the District, acting through the Lafayette City-Parish Council as its governing authority, adopted Ordinance No. O-190-2006 on September 5, 2006, as amended and restated by Ordinance No. O-272-2007, and as further amended by Ordinance No. O-083-2015 and Ordinance No. O-280-2015, levying a sales tax of one percent (1.00%) in the District (the "EDD Tax"); designating the full amount of the EDD Tax as the tax increments in the District from which local tax increments will be determined and used to finance economic development projects in the District in accordance with and as authorized by Part II, Chapter 27, Title 33 of the Louisiana Revised Statutes of 1950, as amended; and

WHEREAS, the proceeds of the EDD Tax (after paying the reasonable and necessary costs and expenses of collection and administering the EDD Tax), that are collected in the District, have been dedicated to reimbursement and/or financing the costs of economic development projects, as defined in the Act, particularly in La. R.S. 33: 9038.34(M) and La. R.S. 33:9038.36; and

WHEREAS, Article VI, Section 20 of the Louisiana Constitution of 1974 provides that a political subdivision may exercise and perform any authorized power and function, including financing, jointly or in cooperation with one or more political subdivisions, either within or without the state, or with the United States or its agencies; and

WHEREAS, Article VII, Section 14(C) of the Louisiana Constitution of 1974 provides that the state and its political subdivisions or political corporations may engage in cooperative endeavors with each other, with the United States or its agencies, or with any public or private association, corporation, or individual; and

WHEREAS, Sub-Part A, Part VII, Chapter 2 of Title 33 of the Louisiana Revised Statutes of 1950, as amended (La. R.S. 33:1321, *et seq.*) ("The Local Services Law"), provides that political subdivisions may engage jointly in the construction, acquisition or improvement of any public project or improvement, the promotion and maintenance of any undertaking or the exercise of any power, provided at least one of the participants is authorized under a provision of general or special law to perform such activity or exercise such power as may be necessary for completion of the undertaking; and

WHEREAS, under The Local Services Law such arrangements may provide for the joint use of funds, facilities, personnel or property or any combination thereof necessary to accomplish the purposes of the agreement, and such agreements may include but are not limited to activities concerning the construction or acquisition or improvement, and operation, repair and maintenance of public projects or improvements; and

WHEREAS, Chapter 27 of Title 33 of the Louisiana Revised Statutes of 1950, as amended (La. R.S. 33:9020, *et seq.*) (the "Cooperative Economic Development Law"), provides that local governmental subdivisions (including municipalities) may cooperate or engage in cooperative endeavors providing for cooperative financing of economic development projects with other local governmental subdivisions or with any other private or public entity or person,

for the purpose of aiding in cooperative development, all as defined in the Cooperative Economic Development Law; and

WHEREAS, the Company, through its affiliate, Gingercrest, Inc., proposes to design and construct the public infrastructure improvements identified on Exhibit B-1 (the "Public Infrastructure Improvements") and the private infrastructure improvements identified on Exhibit B-2 (the "Private Infrastructure Improvements") and pay costs of funding or financing the costs of the Public Infrastructure Improvements and the Private Infrastructure Improvements (collectively, the "Project"), on an approximately 10.519-acre tract of land located in the southeast corner of Interstate 10 and Louisiana Avenue, and the City-Parish and District wish to provide financial assistance to the Company for payment of the costs of the Project through the use of incremental sales tax revenues collected within the District; and

WHEREAS, the City-Parish and the District expect that they will receive benefits from the construction and development of the Project in the form of public works and infrastructure improvements, increased employment, increased sales tax and property tax revenues, and the enhancement of retail shopping alternatives in the District to benefit residents of the City-Parish, as further set forth herein;

NOW, THEREFORE, the City-Parish, the District and the Company each agree to perform their respective obligations under this Agreement in accordance with the conditions, covenants and procedures set forth herein and in the exhibits attached hereto and made a part hereof as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01. Definitions. The following terms shall, for purposes of this Agreement, have the following meanings:

"Act" shall mean Part II, Chapter 27, Title 33 of the Louisiana Revised Statutes of 1950, as amended (La. R.S. 33:9038.31, *et seq.*).

"Administrative Charge" shall mean five percent (5.00%) of the revenues of the EDD Tax received by the District from the Collector, which shall be retained by the District to pay the reasonable expenses of the City-Parish and the District related to the administration of this Agreement, which 5.00% shall be cumulative together with similar administrative charges retained by the District in connection with other similar reimbursement arrangements.

"Agreement" shall mean this Cooperative Endeavor Agreement as it may be amended or modified from time to time or at any time in accordance with the terms hereof.

"Annual Local Base" shall mean the aggregate amount of EDD Tax collected by the District during the most recently completed Fiscal Year prior to the creation of the District (i.e. the Fiscal Year ended October 31, 2005), which previously has been determined to be ZERO, pursuant to a certification of the Chief Financial officer of the City-Parish dated August 9, 2006 and published in the official journal of the City-Parish on September 29, 2006.

"Annual Local Increment" shall mean the amount by which the EDD Tax collected during any Fiscal Year exceeds the Annual Local Base, after the deduction of the Administrative Charge (because the Annual Local Base is "zero" the Annual Local Increment consists of 100% of the Net Revenues of the EDD Tax).

"Castille CEA" shall mean that certain Cooperative Endeavor Agreement dated December 23, 2016, by and among the City-Parish, the District and Castille Development Roadway Project LLC, which provides, among other things, for the reimbursement by the District of certain infrastructure costs relating to improvements being made in the District in the northeast intersection of I-10 and Louisiana Avenue.

"City-Parish" shall mean the Lafayette City-Parish Consolidated Government.

"Collector" shall mean the Lafayette Parish School System, Sales Tax Division or such other person or entity that collects sales taxes on behalf of taxing authorities in Lafayette Parish.

"Company" shall mean RaceTrac Petroleum, Inc., a Georgia Corporation and its successors and assigns.

"Cost of the Project" shall collectively mean the Public Infrastructure Cost and the Private Infrastructure Cost.

"Council" shall mean the Lafayette City-Parish Council, in its capacity as governing authority of the City-Parish and the District.

"District" shall mean Lafayette I-10 Corridor District at Mile Marker 103, the boundaries of which are shown on Exhibit A hereto, and any expanded geographical area as the Council shall designate by ordinance in accordance with the Act. Notwithstanding the terms of Section 5.12 hereof, no amendment to this Agreement or to Exhibit A hereto shall be required in the event the City-Parish expands the District's boundaries to encompass adjacent areas.

"Economic Development Project" shall have the meaning assigned thereto in La. R.S. 33:9038.34(M), which provides that the term shall mean and include, without limitation, any and all projects suitable to any industry determined by the City-Parish and the District, to create economic development, including, without limitation, public works and infrastructure and projects to assist the following industries within the meaning of Article VI, Section 21 of the Louisiana Constitution of 1974:

- (a) Industrial, manufacturing, and other related industries.
- (b) Housing and related industries.
- (c) Hotel, motel, conference facilities, and related industries.
- (d) Commercial, retail, and related industries.
- (e) Amusement, places of entertainment, theme parks, and any other tourism-related industry.
- (f) Transportation-related industries.

- (g) Hospital, medical, health, nursery care, nursing care, clinical, ambulance, laboratory, and related industries.
- (h) Any other industry determined by the local governmental subdivision or issuer of revenue bonds, as appropriate, whose assistance will result in economic development.

"EDD Tax" shall mean the one percent (1.00%) sales and use tax levied in and by the District pursuant to Ordinance No. O-190-2006 adopted by the governing authority of the District on September 5, 2006, as amended and restated by Ordinance No. O-272-2007, and as further amended by Ordinance No. O-083-2015, Ordinance No. O-280-2015 and Ordinance No. O-026-2017, which is collected on the sale at retail, the use, the lease or rental, the consumption and storage for use or consumption of tangible personal property and on sales of services in the District, all as defined in the Uniform Local Sales Tax Code (La. R.S. 47:337.1, *et seq.*), as it may be amended from time to time, or any other appropriate provision or provisions of law, as amended.

"Effective Date" means the date defined as such in the appearances section of this Agreement.

"Fiscal Year" means the City-Parish's one-year accounting period as determined by the governing authority of the City-Parish, currently the year ending October 31 of each year.

"Force Majeure" means and shall be limited to: an event which is beyond the reasonable control of the Company and which causes a delay or failure to perform obligations hereunder, including without limitation acts of God, earthquake, fire, explosion, war, civil insurrection, acts of the public enemy, acts of civil or military authority, sabotage, terrorism, floods, lightning, hurricanes, tornadoes, severe snow storms, Indian uprisings, major equipment failure, utility disruption, failure of a major supplier to perform its obligation to the Company not arising out of or involving a failure toward such supplier by the Company, strikes, lockouts or other labor disputes with respect to which the Company has not been determined by the National Labor Relations Board to have engaged in any unfair labor practices, or change in law or the interpretation thereof by responsible authority which shall prohibit any change in the operation of the Project or materially increase the costs of the foregoing beyond those foreseeable on the date hereof, so long as, in any such case (i) such events are beyond the reasonable control of, and should not in the exercise of reasonable caution have been foreseen and avoided or mitigated by, the Company and (ii) the Company is using its best reasonable efforts to remedy the effects thereof.

"Net Revenues of the EDD Tax" shall mean all revenues of the EDD Tax received by the City-Parish and the District from the Collector, after the deduction of the Administrative Charge.

"Private Infrastructure Cost" means the construction costs of the Private Infrastructure Improvements detailed on Exhibit B-2 hereto, as documented to the City-Parish in the manner set forth in Section 4.01(c), in an amount not to exceed \$4,239,041.12, which includes a 15% contingency.

"Private Infrastructure Improvements" shall mean the infrastructure improvements made by the Company on the RaceTrac Property, more particularly described in Exhibit B-2 hereto.

"Public Infrastructure Cost" means the construction costs of the Public Infrastructure Improvements detailed on Exhibit B-1 hereto, as documented to the City-Parish in the manner set forth in Section 4.01(c), in an amount not to exceed \$1,422,122.22, which includes a 15% contingency.

"Public Infrastructure Improvements" shall mean the infrastructure improvements made by the Company in relation to the Project Site, more particularly described in Exhibit B-1 hereto.

"Project" has the meaning set forth in the preambles to this Agreement, consisting of the Private Infrastructure Improvements and the Public Infrastructure Improvements to assist the development of commercial, retail and related industries, as reflected in Exhibit B-1 and B-2 hereto.

"RaceTrac Market" shall mean the fuel station building, fuel dispensers and commercially standard convenience store offerings including, without limitation, fountain beverages, frozen beverages, candies, bakery items and coffees that is being constructed by the Company on the RaceTrac Market Property.

"RaceTrac Market Property" shall mean the approximately 4-acre portion of the RaceTrac Property which is the site for the construction of the RaceTrac Market as depicted on Exhibit D attached hereto, together with all buildings and improvements thereon.

"RaceTrac Property" shall mean the approximately 10.519-acre property described and depicted on Exhibit C attached hereto, together with all buildings and improvements thereon, which includes the RaceTrac Market Property.

"Reimbursement Undertaking" shall mean the agreement of the City-Parish and the District pursuant to this Agreement to reimburse the Company (i) an amount up to the Public Infrastructure Cost and (ii) an amount up to the Private Infrastructure Cost from the Annual Local Increment, as described in Article IV hereof. The scope of the Reimbursement Undertaking does not include reimbursement for work that is not within the agreed-upon scope of the Project. The scope of the Reimbursement Undertaking with respect to the Project does not include an obligation of reimbursement for work that is within the agreed-upon scope of the Project but does not conform to all plans, specifications, and applicable standards for the Project or for corrective or remedial work necessary to cause the Project to conform to all plans, specifications, and applicable standards for the Project.

"State" shall mean the State of Louisiana.

"Term" shall mean the term of this Agreement as set forth in Section 2.10 hereof.

"Termination Date" shall mean a date determined in accordance with Section 2.10 of this Agreement.

"Trust Fund" shall mean "Fund 226 TIF Sales Tax Trust Fund – Mile Marker 103," established by the City-Parish pursuant to La. R.S. 33:9038.34(O), which constitutes a special trust fund of the District for the furtherance of economic development projects into which the revenues of the EDD Tax will be deposited and loaned, granted, donated or pledged in furtherance of economic development projects.

SECTION 1.02. Use of Defined Terms. Terms defined in this Agreement shall have their defined meanings when used herein and in any document, certificate, report or agreement furnished from time to time in connection with this Agreement unless the context otherwise requires.

ARTICLE II

REPRESENTATIONS OF THE CITY-PARISH AND THE DISTRICT

SECTION 2.01. Authority of the City-Parish and District. The City-Parish and the District have all requisite power pursuant to the Act, Article VI, Section 20 and Article VII, Section 14(C) of the Louisiana Constitution of 1974, the Local Services Law and the Cooperative Economic Development Law to enter into this Agreement and perform their obligations hereunder, and there are no contracts or obligations in conflict herewith.

SECTION 2.02. Collections; Trust Fund Balance. The District and the City-Parish both hereby represent that the current internal collection process of the City-Parish are adequate for the purpose of collecting, classifying, reconciling, calculating and remitting the EDD Tax.

SECTION 2.03. Accuracy of Base Collections. The City-Parish and the District hereby covenant and represent that the Annual Local Base as stated herein is accurate in all material respects.

SECTION 2.04. Pledge and Reimbursement Undertaking. The City-Parish and the District hereby acknowledge that the Annual Local Increment is dedicated herein for the purposes stated herein, and that any deviation by the City-Parish and the District from the terms of this Agreement could result in a substantial impairment of the City-Parish's and District's ability to perform its obligations hereunder, or to fulfill the Reimbursement Undertaking to the Company when due and payable. The City-Parish and the District agree not to take any action or to fail to take any action expressly or fairly implied hereunder which could reasonably be considered to jeopardize its ability to fulfill the Reimbursement Undertaking.

SECTION 2.05. Scope of the Project. The Project will require the City-Parish, the District, and the Company to incur significant public infrastructure and other development costs that are within the scope of the definition of "Economic Development Project," as defined in R.S. 33:9038.34(M) of the Act and as are described in Exhibits B-1 and B-2 hereto. The Reimbursement Undertaking under this Agreement, however, will not exceed the reimbursement of an amount up to the properly documented Public Infrastructure Costs and Private Infrastructure Costs.

SECTION 2.06. Public Hearing. The City-Parish has previously (i) conducted a public hearing on the creation of the District, (ii) created and designated the District and (iii) on behalf of the City-Parish and the District, authorized the Mayor-President to execute this Agreement.

SECTION 2.07. No Suits. Except as may be otherwise disclosed in writing, to the best of the knowledge of the District and the City-Parish, there is no action, suit, investigation or proceeding pending, or threatened, against the District or the City-Parish, before any court, arbitrator, or administrative or governmental body, or insurance of operations of the District or the City-Parish or which might adversely affect the ability of the District or the City-Parish to comply with their respective obligations hereunder or in connection with the transactions contemplated hereby, relative to this Agreement and the Reimbursement Undertaking.

SECTION 2.08. Agreement Not Intended to be Indebtedness. Although the City-Parish, the District, or the Industrial Development Board of the Parish of Lafayette, Louisiana, Inc., have the authority in the future to issue bonds or other indebtedness relating to the Project, it is not currently expected that any such debt will be incurred, however the essence of the undertakings of the City-Parish and the District hereunder is for the City-Parish, the District and the Company to work cooperatively for the payment of the costs of Economic Development Projects, as described and defined in the Act, and specifically for the reimbursement of Costs of the Project. The undertakings of the City-Parish and the District described herein do not represent and are not intended to create any indebtedness on the part of the City-Parish or the District, since such undertakings of the City-Parish and the District do not involve any loan of moneys or assets by or of the City-Parish or the District or *vice versa*, nor the creation of any written obligation for the repayment of borrowed money, or the issuance or incurring of any indebtedness by the City-Parish or the District, but only for the contractual and cooperative use of the revenues of the EDD Tax for the purposes described herein.

SECTION 2.09. Non-Appropriation Clause. The City-Parish and/or the District shall only make payment of any part of the Reimbursement Undertaking as may lawfully be made from funds budgeted and appropriated for that purpose during the then current Fiscal Year. Should the governing authority of the City-Parish and/or the District fail to budget, appropriate or otherwise make available funds to pay the Reimbursement Undertaking then this Agreement insofar as it relates to any such payments due in the then current Fiscal Year shall require no further payments in such Fiscal Year.

SECTION 2.10. Term of this Agreement. Subject to Section 2.09, this Agreement shall be effective upon the Effective Date and shall terminate on the earlier of January 1, 2026, or at such time as the Reimbursement Undertaking shall have been fully paid in the manner provided for herein.

ARTICLE III

COOPERATIVE ENDEAVOR OBLIGATIONS

SECTION 3.01. Payment of Cost of the Project. The Cost of the Project shall be paid from the following sources and in the following order of priority:

- (a) Closing costs consisting of legal fees of Adams and Reese LLP, special counsel to the City-Parish and the District, shall be paid by the Company upon the execution of this Agreement as provided in Section 5.10 below, and may be included at the option of the Company as a reimbursable expense as either a Public Infrastructure Cost or a Private Infrastructure Cost.
- (b) Next, an amount up to the Public Infrastructure Cost shall be reimbursed by the City-Parish to the Company from cash moneys on deposit in the Trust Fund, provided that the payment of any such amounts shall not cause the balance in the Trust Fund to be drawn down to an amount less than \$500,000. It is anticipated that construction of the Public Infrastructure Improvements shall be commenced on or about four (4) months after the Effective Date and completed on or about five (5) months from commencement of construction (subject to *Force Majeure*), and the District shall reimburse the Company for the fully documented amount of Public Infrastructure Cost, on a current basis as construction of the Public Infrastructure Improvements progresses, as provided in Section 4.03 below.
- (c) Finally, an amount up to the Private Infrastructure Cost shall be reimbursed by the City-Parish to the Company from cash moneys on deposit in the Trust Fund, commencing as set forth in Section 4.03(c) below, provided that so long as any remaining amounts are yet unpaid by the District under the Castille CEA no reimbursement of any Private Infrastructure Improvements shall cause the balance in the Trust Fund to be drawn down to an amount less than \$500,000. After the termination of the Castille CEA, the \$500,000 minimum balance in the Trust Fund shall no longer be required. It is anticipated that construction of the Private Infrastructure Improvements shall be commenced on or about six (6) months after the Effective Date and completed on or about five (5) months from commencement of construction (subject to *Force Majeure*). Commencing as set forth in Section 4.03(c) below, the District shall reimburse the Company for the fully documented amount of Private Infrastructure Improvements at the rate of the lesser of \$70,000 per calendar month or the remaining amount of Private Infrastructure Improvements not previously reimbursed.

Should either the Public Infrastructure Cost or the Private Infrastructure Cost exceed the amounts described and defined herein, and the Company determines to proceed with the Project despite the additional cost, then the Company shall be solely responsible for such excess costs. The City-Parish, the District and the Company may negotiate in good faith to enter into an amendment to this Agreement providing with respect to the payment of the additional costs needed to complete the Project and making provision for the payment such excess costs from sources other than those described in (a), (b) and (c) above. However, the City-Parish and District shall have no obligations whatsoever with respect to the payment or reimbursement of such excess costs without first entering into such an amendment, and shall be under no obligation to agree to reimburse such excess costs.

SECTION 3.02. Relating to Article VII, Section 14 of the Louisiana Constitution. In entering into this Agreement it is not the intent of the City-Parish, the District or the Company to enter into a gratuitous transfer of public funds because such parties expect that acquisition,

construction and installation of the Project will be an "Economic Development Project" within the meaning of La. R.S. 33:9038.34, and that they will each receive something of value in return for the performance of their obligations hereunder, which is:

- (a) in the case of the City-Parish, the elimination of vacant property, the construction of infrastructure to improve access and traffic flow in the area of the Project, the promotion of economic development in the City-Parish, the creation of jobs, enhancement of the property tax and sales tax base of the City-Parish, including specifically the collection of additional taxes that would not be generated in the absence of the development of the Project, as well as the creation of additional local retail shopping alternatives for visitors and residents of the City-Parish, and the generation of revenues for infrastructure and other necessary capital expenditures in and for the City-Parish;
- (b) in the case of the District, the elimination of vacant property, the construction of infrastructure to improve access and traffic flow in the area of the Project, the promotion of economic development in the District, the creation of jobs, the enhancement of the property tax and sales tax base of the District, the creation of additional local retail shopping alternatives for visitors and residents of the City-Parish, and the generation of revenues for infrastructure and other necessary capital expenditures in and for the District; and
- (c) in the case of the Company, the acquisition, construction and development of the Project and the facilitation of commercial development in the area of the Project.

Additionally, the City-Parish, the District and the Company will have reciprocal obligations relating to the satisfaction of the additional requirements set forth herein with respect to the allocation, expenditure and use of the EDD Tax.

The City-Parish and the District further find and determine that (a) both the City-Parish and the District have the legal authority to enter into this Agreement, and (b) the Project will be an Economic Development Project within the meaning of the Act that creates a public benefit, specifically the elimination of blighted and vacant property, the construction of infrastructure to improve access and traffic flow in the area of the Project, the creation of jobs, the enhancement of the property tax, and sales tax base of the City-Parish, the creation of additional local retail shopping alternatives for residents of the City-Parish, an increase in the generation of revenues for infrastructure and other necessary capital expenditures in and for the City-Parish, proportionate to its cost of the Project.

The City-Parish, the District, and the Company agree and acknowledge that Article VII, Section 14 of the Louisiana Constitution requires that the City-Parish and the District receive equivalent value from Company for the Reimbursement Undertaking, in the form of a Project from Company that is in compliance with all plans, specifications, and applicable standards. To that end, the Company agrees and acknowledges that the Company has the affirmative obligation to deliver and dedicate to the City-Parish and the District a Project that is in compliance with all plans, specifications, and applicable standards.

SECTION 3.03. Collection Process. The EDD Tax shall continue to be collected, accounted for and remitted by the Lafayette Parish School System, Sales Tax Division (or its successor) in the same manner as other sales taxes are collected in the City-Parish, and shall be deposited by the City-Parish on behalf of the District into the Trust Fund immediately upon receipt thereof from the Collector.

SECTION 3.04. Calculations. Collections from the District received in any month as a result of audits shall be treated as current collections for such month for purposes of this Agreement.

SECTION 3.05. Priority of Reimbursement Undertaking. The Reimbursement Undertaking with respect to the Public Infrastructure Improvements shall rank equally with and shall be made concurrently with the up to \$1,500,000 of payments made by the District pursuant to Section 3.01(b) of the Castille CEA.

However, the Reimbursement Undertaking with respect to the Private Infrastructure Improvements shall be subordinate to and subject to the prior payment of any amounts currently due with respect to the "Company Bank Loan" as described and defined as such in the Castille CEA and particularly in Section 3.01(c) thereof.

It is expressly recognized that the provisions of this Section are subject to the provisions of Section 2.09 above.

SECTION 3.06. Use of Trust Fund Moneys Subject to Sections 2.09 and 3.01 above, the City-Parish and the District will budget for and may expend up to 100% of the Net Revenues of the EDD Tax in each Fiscal Year for the purpose of paying the Reimbursement Undertaking. The City-Parish and the District covenant and agree that so long as any amounts remain unpaid under the Castille CEA, there shall at all times be retained a minimum balance of \$500,000 in the Trust Fund, except that the balance may be drawn down to less than \$500,000 in connection with the final payment of any amounts due hereunder or with respect to the final payment being made under the Castille CEA. However, such minimum balance may be used to pay the Reimbursement Undertaking to the extent that current Net Revenues of the EDD Tax are not sufficient to pay such amounts due in the then current Fiscal Year. In the event that the balance in the Trust Fund falls below \$500,000 through the operation of any section of this Agreement, the balance in the Trust Fund will be restored to at least \$500,000 from current revenues of the EDD Tax that are not needed to pay the Reimbursement Undertaking.

SECTION 3.07. Additional Indebtedness or Contractual Obligations. The City-Parish and the District further covenant and agree that neither of them will incur any indebtedness, nor enter into any other cooperative endeavor or contractual arrangements involving the use of the Net Revenues of the EDD Tax or moneys in the Trust Fund so long as any balance on the Company's Bank Loan as defined in the Castille CEA remains outstanding and unpaid unless such indebtedness, cooperative endeavor or contractual arrangements are explicitly made subordinate to the undertakings of the City-Parish and the District in the Castille CEA and this Agreement.

However, with the Company's prior written consent, the City-Parish and/or the District may incur indebtedness or enter into cooperative endeavors or contractual arrangements that are equal in ranking with this Agreement under the terms thereof with respect to the Net Revenues of the EDD Tax, under such terms and conditions as may be approved by the Company.

SECTION 3.08. Scope and Specifications of Project. The parties hereto agree that the scope, specifications and anticipated costs of the Project are set forth in Exhibits B-1 and B-2 hereto. The parties further agree that Exhibits B-1 and B-2 may be later amended and supplemented after execution of this Agreement to insert the specific completed plans, specifications, and schedule for construction of the Project as approved by the parties, which shall become a part of Exhibits B-1 and B-2 for all purposes. Notwithstanding any language to the contrary in Exhibits B-1 and B-2, the parties expressly acknowledge and agree that the Project shall be constructed in strict accordance with the plans and specifications for the Project and all applicable local requirements, codes, and standards/guidelines, including, but not limited to, LCG Roadway Construction Standards and the Unified Development Code (hereinafter sometimes referred to, in globo, as "Applicable Standards").

Even if DOTD or other State department requires any change to the scope, specifications and anticipated costs of the Public Infrastructure Improvements set forth in Exhibits B-1 hereto which exceed the requirements contained in any and all Applicable Standards and causes the Cost of the Public Infrastructure Improvements to increase in costs, then neither the Company, the City-Parish nor the District shall have any obligations whatsoever with respect to the payment or reimbursement of such excess costs without first entering into an amendment accepting such changes and providing for the funding of such increased costs.

SECTION 3.09. Disputes Regarding Reimbursement Undertaking. In the event of any dispute between City-Parish/District and Company as to whether work that is within the agreed-upon scope of the Project does not conform to all plans, specifications, and Applicable Standards for the Project (a "Dispute"), a party claiming a Dispute shall promptly notify the other party in writing of the existence and nature of the Dispute. Within seven (7) days after such notification, the parties, Company's project engineer, and Company's general contractor, as well as their respective designees, shall meet and confer in good faith regarding the Dispute in an effort to resolve the Dispute. In the event that the Dispute is not resolved after seven (7) days of initiating the "meet and confer" period, either party may discontinue the "meet and confer" period, with all parties reserving any and all rights and claims for any and all other remedies that may be available.

ARTICLE IV

REIMBURSEMENT OF COSTS

SECTION 4.01. Construction and Installation of the Project.

(a) The Company has and will use its commercially reasonable efforts to properly construct the Project. Except as provided in Section 3.01(b) above, the Company has or shall construct and install the Project at its own expense in consideration and anticipation of the Reimbursement Undertaking. The design and construction of the Public Infrastructure

Improvements will be coordinated by the City-Parish in compliance with all zoning, construction and public bid laws that would be applicable to a similar publicly-funded public works project, and the Company explicitly agrees to comply with all such zoning, construction and public bid laws and to cooperate with administrative personnel of the City-Parish and the District in all respects necessary to so comply. The Company shall be responsible for constructing the Public Infrastructure Improvements comprising necessary utilities and public works infrastructure in accordance with City-Parish specifications and standards, including, but not limited to, the LCG Roadway Construction Standards or the Unified Development Code, through the City-Parish Department of Utilities and Public Works. All such utilities and public works infrastructure shall not be considered to have been accepted for perpetual maintenance by the City-Parish unless first tested and accepted by the Department of Utilities and/or Public Works of the City-Parish.

In addition to the foregoing, all of the Private Infrastructure Improvements shall be constructed in accordance with the Company's plans and specifications and all required zoning, building codes and permits issued therefor.

(b) The Company reasonably expects that the Project will be completed and placed in service as provided in Section 3.01 above (subject to *Force Majeure*), and that the Reimbursement Obligation of the District shall not exceed the amounts set for the herein even in the event that the actual cost of any portion of the Project exceeds such projected amounts, provided that in any case no more than the above-defined amount of the Public Infrastructure Cost and the Private Infrastructure Cost will be reimbursed pursuant to this Agreement.

(c) Actual costs of the Project paid by the Company, and confirmation that the work for which costs were incurred or paid by the Company is in compliance with all plans, specifications, and applicable standards, shall be documented to the City-Parish by the Company in such form and in sufficient detail to allow the City-Parish or its duly appointed representatives to make an independent determination as to the actual costs incurred or paid by the Company with respect to the Project, and confirmation that the work for which costs were incurred or paid by the Company is in compliance with all applicable plans, specifications, and applicable standards. Any such documentation to the City-Parish shall be accompanied by a certification of Company's project engineer, in substantially the form attached hereto as Exhibit E, that the actual costs of the Project described in such documentation are true and accurate and are all with respect to the Project, and confirmation that the work for which costs were incurred or paid by the Company is in compliance with all plans, specifications, and applicable standards. Once such documentation and actual costs have been approved by the City-Parish, there shall be no need or obligation of the Company to provide additional requisitions or requests for reimbursement of the amounts so approved, and reimbursement of the approved costs shall continue in the manner set forth below until a cumulative amount equal to the Reimbursement Undertaking shall have been paid to the Company in the manner provided in Section 4.03 below.

(d) After completion of the Public Infrastructure Improvements, including completion of all punch list items within the scope of the Public Infrastructure Improvements as reflected in Exhibit B-1 (inclusive of those punch list items submitted by the City-Parish and/or the District), and acceptance of the Public Infrastructure Improvements by City-Parish, consistent with all provisions in the Unified Development Code, the Company shall transfer, and the City-Parish shall accept, ownership and obligations of perpetual maintenance of the Public Infrastructure

Improvements to the City-Parish in such usual and customary form (without any future or continuing obligation of Company after such transfer) as may be required by or approved by counsel to the City-Parish consistent with the final plat approval of Company's development.

SECTION 4.02. Project Inspections; General Contractor; Required Contractual Provisions; Third-Party Beneficiary. Neither the City-Parish nor the District shall have a duty to visit, inspect, and/or test the Project however the City-Parish, through any of its departments, shall have the authority to inspect and test the Project and to require inspection or testing of the Project in accordance with the provisions of the plans, specifications, and applicable standards for the Project, to determine, in general, if the Project is being constructed in a manner indicating that the work, when fully completed, will be in accordance with such plans, specifications, and applicable standards. The Company (and the general contractor in its agreement with the Company) acknowledges and confirms that no inspections or failure to make inspections by the City-Parish or the District shall relieve the Company or its general contractor for any liability with respect to the Project for defects that were either overlooked during construction or that arose later or became known to the City-Parish during construction or after completion of the Project. The Company (and the general contractor in its agreement with the Company) further agrees that neither the City-Parish nor the District shall be liable for any inspection or testing of the Project, or for any failure to inspect or test the Project, and the Company (and the general contractor in its agreement with the Company) waives any and all claims and defenses against the City-Parish and the District that may arise out of, or be claimed to arise out of, any alleged inspection or testing of the Project by the City-Parish or the District and/or any failure of the City-Parish or District to inspect or test the Project. With respect to the Public Infrastructure Improvements only, the Company covenants and agrees that it shall cooperate with the City-Parish to compel the general contractor for the Public Infrastructure Improvements and all subcontractors to comply with the plans and specifications approved for the Public Infrastructure Improvements, all applicable standards, and with all zoning, construction and public bid laws that would be applicable if the Project were being constructed by a political subdivision of the State, and to cooperate fully with the City-Parish and its Department of Public Works and Utilities Department to ensure that the Public Infrastructure Improvements comply with the plans and specifications as well as all zoning, construction and public bid laws that would be applicable if the Project were being constructed by a political subdivision of the State. The contract between Company and its general contractor shall include provisions for liquidated damages in the event that the Public Infrastructure Improvements are not completed and accepted within the schedule specified in Exhibit B-1 and shall require a payment and performance bond from the general contractor to secure the prompt and proper performance of the work necessary to construct the Public Infrastructure Improvements. The amount of the payment and performance bond shall be for full construction cost of the Public Infrastructure Improvements. The City-Parish and the District shall be stipulated beneficiaries of the payment and performance bond entitled to enforce the bonds independently of Company as may become necessary.

By operation of this provision, the City-Parish and the District are hereby made third-party beneficiaries of the Company's rights under the contract between Company and its general contractor, with respect to the obligations contained in this Section, and, to the extent necessary therefor, shall be entitled to enforce the pertinent provisions of that contract in accordance with its terms.

The Company covenants and agrees to include the provisions of this Section 4.02, and any other contractual provisions necessary to provide for the implementation of the provisions of this Section, in its contract with the general contractor for the Project.

SECTION 4.03. Reimbursement Undertaking. The District shall reimburse the Company for up to Public Infrastructure Cost as described in Section 3.01(b) above, as documented and approved in accordance with Section 4.01(c), and shall reimburse the Company for up to Private Infrastructure Cost, as documented and approved in accordance with Section 4.01(c), as follows:

(a) The City-Parish, on behalf of the District, shall budget for each Fiscal Year, beginning with the Fiscal Year ending October 31, 2017, the anticipated revenues and expenditures of the EDD Tax for such Fiscal Year, including expenditures under this Agreement and the Castille CEA. The City-Parish shall retain the Administrative Charge from the revenues of the EDD Tax.

(b) Subject to the conditions described in Sections 2.09 and 3.05 above, included in such budget shall be an amount, which shall not exceed the amounts described in Section 3.01(b), that the City-Parish, on behalf of the District, will pay to the Company as reimbursement for the cost of the Public Infrastructure Improvements and the Private Infrastructure Improvements documented in accordance with Section 4.01(c); however in no event shall the City-Parish or the District be required to make any reimbursement payment to the Company during any period in excess of the foregoing amounts.

(c) All reimbursement payments with respect to the Public Infrastructure Improvements, as documented and approved in accordance with Section 4.01(c), shall be paid by the District to the Company, upon written request and within sixty (60) days of receipt of such request and documentation. Reimbursement payments with respect to the Private Infrastructure Improvements, as documented and approved in accordance with Section 4.01(c), shall be made by the City-Parish, on behalf of the District, to the Company, on a monthly basis in arrears, on or about the first calendar day of each month, commencing the second calendar month after commencement of the first retail commercial operations of the Project that generate sales tax revenues for the District.

Subject to Section 3.05 above and taking into account any payments made pursuant to the Castille CEA, in no event shall reimbursement payments under this Agreement exceed the lesser of the following:

- (i) One hundred percent (100%) of actual Net Revenues of the EDD Tax received by the City-Parish and the District during such period plus any retained balance in the Trust Fund as provided in Section 3.06 above; or
- (ii) The amount to be reimbursed on account of Costs of the Project.

(d) The City-Parish and the District shall have no further payment obligations hereunder after such time that the full amount of the Reimbursement Undertaking shall have been paid to the Company under this Section. After such amounts have been paid to the

Company, the City-Parish and the District shall retain 100% of the EDD Tax for authorized purposes.

(e) In the future, the Company may request that the City-Parish and the District reimburse it for the cost of one or more other Economic Development Projects within the District or reasonably proximate to the District. However, in such event, the Company shall submit to the City-Parish a written request for reimbursements for such future project(s), together with proposed amendment(s) to this Agreement containing a description of such future project(s) and the proposed terms of reimbursement. IN SUCH CASE, IT IS EXPRESSLY AGREED AND ACKNOWLEDGED BY THE PARTIES TO THIS AGREEMENT THAT THE CITY-PARISH AND THE DISTRICT ARE UNDER NO OBLIGATION TO APPROVE SUCH REQUEST, TO FINANCE OR REIMBURSE THE COMPANY FOR THE COSTS OF ANY SUCH FUTURE PROJECT(S), OR TO FINANCE OR REIMBURSE THE COMPANY UNDER THE SAME TERMS AS ARE AGREED TO HEREIN WITH RESPECT TO THE PROJECT. ANY FUTURE REQUESTS WILL BE CONSIDERED *DE NOVO* ON THEIR OWN FACTS, INCLUDING WHETHER TO PROVIDE ANY REIMBURSEMENT AND, IN THE EVENT OF ANY REIMBURSEMENT, THE STRUCTURE OF SUCH REIMBURSEMENT

SECTION 4.04. Limited Source of Payment of Reimbursement Undertaking. The Company hereby recognizes, acknowledges and agrees that the source of payment of the Reimbursement Undertaking described in Section 4.03 is strictly limited to the Net Revenues of the EDD Tax plus any retained balance in the Trust Fund as provided in Sections 2.02 and 3.06 above, that such payments are subject to appropriation as provided in Section 2.09 above and that such payments may be subject to prior payment of amounts payable under the Castille CEA as provided by Section 3.05 above. THE COMPANY SHALL HAVE NO RECOURSE AGAINST THE CITY-PARISH OR THE DISTRICT TO MAKE REIMBURSEMENT PAYMENTS TO THE COMPANY FROM ANY OTHER SOURCES WHATSOEVER.

SECTION 4.05. No Repeal of EDD Tax. For so long as the Reimbursement Undertaking is unsatisfied, or until the Termination Date, whichever occurs first, the City-Parish and the District pledge not to reduce or repeal the EDD Tax or take any other action or fail to take any action that would impair the Reimbursement Undertaking set forth herein, subject to Section 2.09 above.

SECTION 4.06. Assignment. The Reimbursement Obligation described in Articles III and IV of this Agreement is an appurtenant benefit running with title to the RaceTrac Market Property described in Exhibit C, and ownership of the Reimbursement Obligation may not be separated from ownership of the RaceTrac Market Property without the prior written consent of the City-Parish and the District. Notwithstanding the foregoing, the rights of the Company under this Agreement (including the rights to the Reimbursement Obligation) may be assigned by the Company, without the consent of the City-Parish or the District, to any entity of which the Company (or its successor) has a majority ownership or controlling interest or which is under common control with the Company, provided that ownership of the RaceTrac Market Property is conveyed to such entity contemporaneously with such assignment. Otherwise, the rights of the Company under this Agreement may not be sold, assigned, assumed or transferred in any manner to or by any other person or entity, without the prior written consent of the City-Parish and the District, and in such case the sale, assignment, assumption or transfer by the Company shall be in

writing and shall contain a specific provision that the successor assumes all of the obligations of the Company under this Agreement arising on or after the effective date of such transfer

ARTICLE V

MISCELLANEOUS

SECTION 5.01. Liberal Construction. This Agreement shall be construed liberally to secure the beneficial intents and purposes hereof.

SECTION 5.02. Notices. All reports, statements or notices required or advisable to be given hereunder shall be deemed to be given if sent to the parties hereto at the addresses shown in the appearances to this Agreement.

Any notice required or permitted to be given under or in connection with this Agreement shall be in writing and shall be either hand-delivered or mailed, postage prepaid by first-class mail, registered or certified, return receipt requested, or by private, commercial carrier, express mail, such as Federal Express, or sent by email, fax or other similar form of rapid transmission confirmed by written confirmation mailed (postage prepaid by first-class mail, registered or certified, return receipt requested or private, commercial carrier, express mail, such as Federal Express) at substantially the same time as such rapid transmission, or personally delivered to an officer of the receiving party. All such communications shall be mailed, sent or delivered to the address or numbers set forth above, or as to each party at such other addresses or numbers as shall be designated by such party in a written notice to the other party.

SECTION 5.03. Further Assurances. From time to time hereafter, the Company, the City-Parish, and the District shall execute and deliver such additional instruments, certificates or documents, and take all such actions as each party hereto may reasonably request for the purpose of fulfilling their obligations hereunder. Without limiting the foregoing, within fifteen (15) days following the request from any party hereto, each other party shall deliver to the requesting party, an estoppel certificate stating, to the best of such parties' knowledge or belief: (i) whether or not this Agreement is in full force and effect and the extent to which this Agreement has been supplemented, modified or amended; (ii) whether or not there are any defaults or breaches under this Agreement or conditions that, with the passage of time, the giving of notice, or both, would constitute a default or breach under this Agreement (and, if applicable, the nature of such defaults, breaches or conditions); (iii) whether the conditions and agreements under this Agreement have been satisfied or performed as of the date of such estoppel certificate (and, if applicable, the nature of any failures); and (iv) the amounts of paid and unpaid reimbursements for the term of the Agreement or for particular years thereof. Any such statement or certificate may be conclusively relied upon by the party requesting the estoppel certificate.

SECTION 5.04. Venue. Any suit brought by any party hereto arising out of or by reason of this Agreement, or otherwise, shall be brought, if against the District, the City-Parish or the Company, in the 15th Judicial District Court, Lafayette Parish, Louisiana.

SECTION 5.05. Severability. To the fullest extent possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law,

but if any provisions of this Agreement shall be prohibited or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement.

SECTION 5.06. No Personal Liability. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any official, trustee, officer, agent or employee of the City-Parish or the District, in his or her individual capacity, and neither the officers thereof nor any official executing this Agreement shall be liable personally with respect hereto or be subject to any personal liability or accountability by reason of the execution and delivery of this Agreement. No partner, member, shareholder, officer, director, trustee, beneficiary, employee, or agent of the Company (disclosed or undisclosed) shall have any personal liability to the City-Parish, the District or the City-Parish Finance Department or any of their respective successors in interest with respect to the subject matter of this Agreement.

SECTION 5.07. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or extent of any of the provisions of this Agreement.

SECTION 5.08. Counterparts. This Agreement may be executed in several counterparts, each which shall be an original and all of which when taken together shall be deemed one and the same Agreement.

SECTION 5.09. Governing Law. This Agreement shall be constructed in accordance with and governed by the laws of the State of Louisiana.

SECTION 5.10. Payment of Fees of Counsel to the City-Parish & District. Simultaneously or prior to delivering its counterpart signature pages to this Agreement, the Company shall remit to Adams and Reese LLP ("Counsel"), the full amount of Counsel's legal fees in the amount of \$32,500, plus reimbursement of actual out-of-pocket expenses not to exceed \$1,500, in discharge of all remaining fees due and payable to Counsel, as special counsel to the City-Parish and the District, in connection with the consultation, negotiation, guidance and preparation of documentation necessary to reach agreement hereunder with respect to the undertakings of the parties hereto, and in connection with the oversight and facilitation of this agreement, which fees and expenses may be reimburseable as a Public Infrastructure Cost or Private Infrastructure Cost, at the option of the Company. The payment of the amounts described herein to Counsel (together with any amounts paid on or before the effective date of this Agreement), shall discharge all obligations of the Company to pay any and all fees due and payable to Counsel in connection with the approval and execution of this Agreement. The Company acknowledges that Adams and Reese LLP has acted solely as counsel to the City-Parish and the District, and that Counsel has not represented, acted or negotiated for or on behalf of, or in any way represented the interests of the Company in the foregoing matters.

SECTION 5.11. Non-shareholder Contributions to Capital. The City-Parish hereby designates the reimbursements from the EDD Tax paid to the Company pursuant hereto, and each portion thereof, as non-shareholder contributions to capital of the Company pursuant to Section 118 of the Internal Revenue Code of 1986 (and successor provisions thereto) and intends

such payments to be a reimbursement for costs incurred by the Company in connection with the Project.

SECTION 5.12. Amendment and/or Modification. Neither this Agreement nor any term, provision or exhibit hereof may be changed, waived, discharged, amended or modified orally, or in any manner other than by an instrument in writing signed by all of the parties hereto.

[SIGNATURE PAGES FOLLOW]

THIS COOPERATIVE ENDEAVOR AGREEMENT IS THEREFORE DONE AND PASSED in multiple counterparts as of the date aforesaid, in the presence of the undersigned competent witnesses, who hereunto sign their names with the City-Parish, the District and the Company.

LAFAYETTE CITY-PARISH
CONSOLIDATED GOVERNMENT

By: [Signature]
Mayor-President

(SEAL)

WITNESSES:

Harmette H. Ortega
~~Harmette H. Ortega~~
Amel C. Fisher
Amel C. Fisher

LAFAYETTE I-10 CORRIDOR DISTRICT AT
MILE MARKER 103

By: [Signature]
Mayor-President,
Lafayette City-Parish Government

(SEAL)

WITNESSES:

[Signature]
BRIAN THORNTON

RACETRAC PETROLEUM, INC,

WITNESSES:

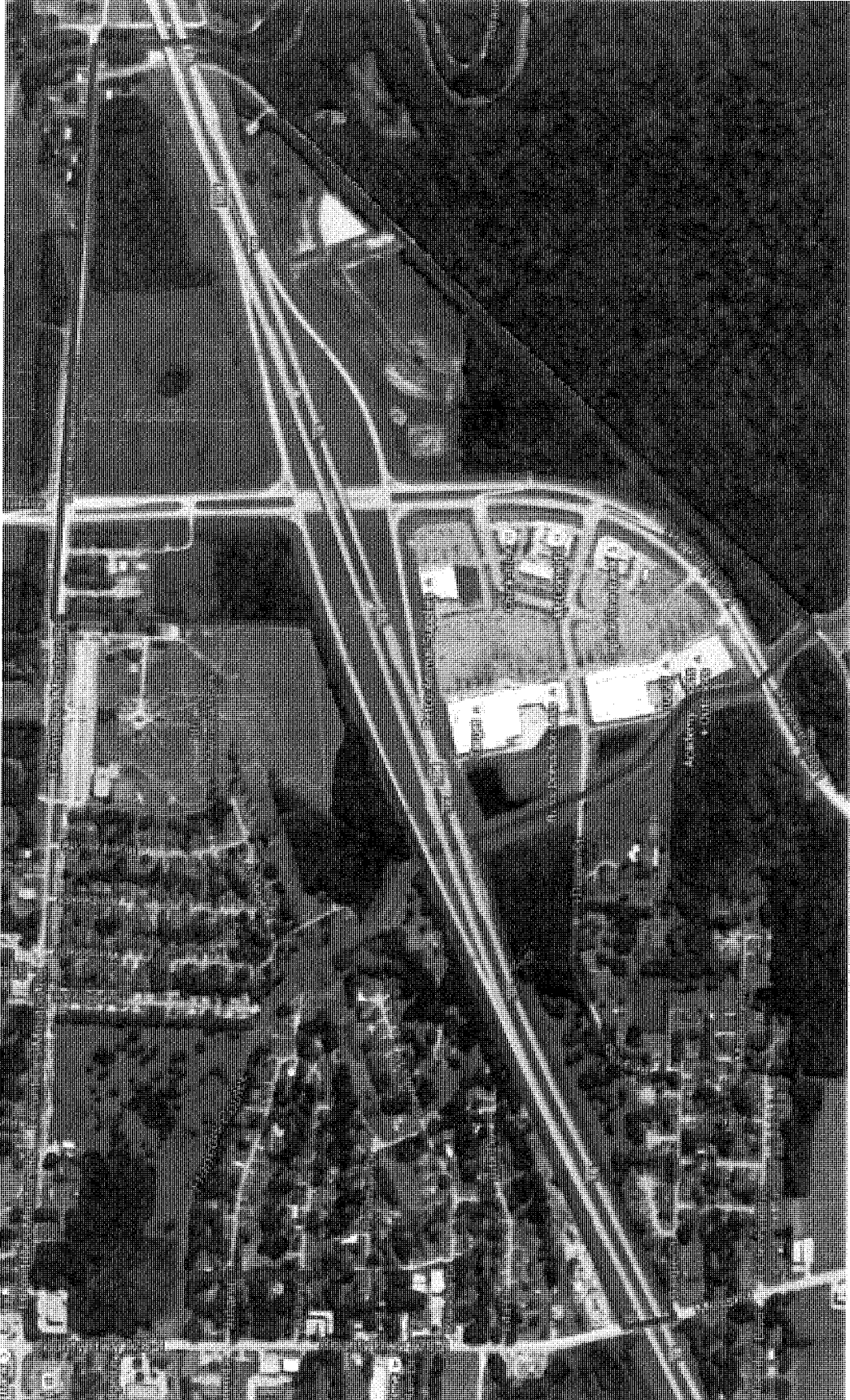
[Signature]
TRAVIS HENEGAR

By: [Signature]
Name: *Billy Milan*
Title: *President, RaceTrac Petroleum, Inc.*



EXHIBIT A
to Cooperative Endeavor Agreement

LAFAYETTE I-10 CORRIDOR DISTRICT AT MILE MARKER 103



Ex. A-1 - revised
proposed
amendment

EXHIBIT A-1
to CEA Ordinance

PUBLIC INFRASTRUCTURE IMPROVEMENTS
TOTTALLING APPROXIMATELY \$1,422,122.22

1. North turn lane on Louisiana Ave. - Includes a south bound left turn lane constructed in the median of Louisiana Avenue to service the northern (shared) access drive. Improvements consist of (but not limited to) curb and median removal, new concrete curb & gutter, new concrete pavement, light pole relocation, traffic striping and signage.
2. South Turn Lane on Louisiana Ave. - Includes a south bound left turn lane constructed in the median of Louisiana Avenue at the signalized intersection of Ardoin Memorial Drive. Improvements consist of (but not limited to) curb and median removal, adjustments to the existing subsurface drainage system, new concrete curb & gutter, new concrete pavement, and traffic striping and signage.
3. Louisiana Ave. shared access driveway - Includes the construction of a 33' wide concrete driveway with curb and gutter at the northern end of the property to service the RaceTrac, future adjacent development, and adjacent (north) landowner's property. Improvements consist of (but not limited to) removal of existing curb and sidewalk, fill material to achieve proposed elevations, a raised concrete median to restrict left turn movements, drainage culvert and end treatment, accessible ramps and striping, and traffic striping and signage.
4. Ardoin Memorial Dr. Extension - Includes the construction of a 38' wide concrete road within a 75' wide right-of-way to be dedicated for public ownership and maintenance. The road will be an extension of the existing Ardoin Memorial Drive to the east of Louisiana Avenue and tie into Shadow Bluff Drive. Improvements will consist (but not limited to) of tree/vegetation clearing, fill material to achieve elevations, removal of curb and sidewalk, new concrete pavement and concrete sidewalks, curb & gutter, drainage culverts (2) with end treatment, subsurface drainage system, accessible ramps, and traffic striping and signage.
5. Sidewalk along Shadow Bluff - Includes the construction of a 5' wide concrete sidewalk along Shadow Bluff drive along the RaceTrac property frontage, providing a pedestrian route to Ardoin Memorial Drive Extension. Improvements consist of (but not limited to) tree/vegetation clearing, fill material to achieve elevations, concrete sidewalk, and accessible ramps.
6. Sanitary Sewer Extension Across Louisiana Ave. - Includes the installation of an 8" gravity sanitary sewer line, starting on the west side of Louisiana Avenue, and extending to the east side of Louisiana Avenue right-of-way and terminating at the RaceTrac property. Sewer line will be dedicated for public ownership and maintenance and will serve the RaceTrac, adjacent future development, and surround landowner's properties. Improvements consist of (but not limited to) 8" PVC sewer pipe, Jack and Bore of Louisiana Avenue, and Sewer Manhole.
7. Off-site Grading/Drainage Improvements - Includes off-site drainage improvements to the property to the south of the RaceTrac development, to adequately convey storm water to its outfall (Francois Coulee). Improvements include (but not limited to) tree/vegetation removal and re-shaping of the existing roadside ditches along Shadow Bluff Dr.
8. Design & Permitting Consultant Fees - Includes Consultant Fees to provide design/permitting/construction documents for the improvements #1-8 listed above.
9. Construction Administration/Construction Observation - Includes Construction Administration and/or Construction Observation services for the improvements that will be dedicated to the public for ownership and maintenance. These services will be provided in accordance with Lafayette Consolidated Government and LA Department of Transportation rules and regulations

Ex. A-2 - revised
proposed
amendment

0-026-2017

EXHIBIT A-2
to CEA Ordinance

**PRIVATE INFRASTRUCTURE IMPROVEMENTS
TOTTALLING APPROXIMATELY \$4,239,041.12**

RACETRAC MARKET PROPERTY

Includes: Demolition/Tree Clearing, Erosion Control, Earthwork, Pavement/Parking Lot Improvements, Drainage/Stormwater Management, Water, Sanitary Sewer, Electrical/Communications, Landscape and Irrigation, Miscellaneous Site Improvements, Wetlands Mitigation, Design and Permitting Consultant Fees, Construction, Administration/Construction Observation and Permit Fees, and Contractor Overhead and Profit Excluding Soft Costs, Permits and Fees.

COMMERCIAL SITE

Includes: Demolition/Tree Clearing, Erosion Control, Earthwork, Consulting/Mitigation Fees, Contractor Overhead and Profit Excluding Soft Costs, Permits and Fees.

SHARED FRONTAGE DRIVE

Includes construction of a 30' wide concrete drive, parallel to Louisiana Avenue, to service the RaceTrac, future adjacent development, and adjacent (north) landowner's property, and providing access to Ardoin Memorial Drive and Louisiana Avenue. Improvements will consist (but not limited to) of tree/vegetation clearing, fill material to achieve elevations, curb & gutter, and traffic signage and striping.

EXHIBIT B-1
to Cooperative Endeavor Agreement

PUBLIC INFRASTRUCTURE IMPROVEMENTS
TOTALLING APPROXIMATELY \$1,422,122.22

1. North turn lane on Louisiana Ave. - Includes a south bound left turn lane constructed in the median of Louisiana Avenue to service the northern (shared) access drive. Improvements consist of (but not limited to) curb and median removal, new concrete curb & gutter, new concrete pavement, light pole relocation, traffic striping and signage.
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EXHIBIT B-2
to Cooperative Endeavor Agreement

PRIVATE INFRASTRUCTURE IMPROVEMENTS
TOTALLING APPROXIMATELY \$4,239,041.12

RACETRAC MARKET PROPERTY

Includes: Demolition/Tree Clearing, Erosion Control, Earthwork, Pavement/Parking Lot Improvements, Drainage/Stormwater Management, Water, Sanitary Sewer, Electrical/Communications, Landscape and Irrigation, Miscellaneous Site Improvements, Wetlands Mitigation, Design and Permitting Consultant Fees, Construction, Administration/Construction Observation and Permit Fees, and Contractor Overhead and Profit Excluding Soft Costs, Permits and Fees.

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EXHIBIT C
to Cooperative Endeavor Agreement

RACETRAC PROPERTY

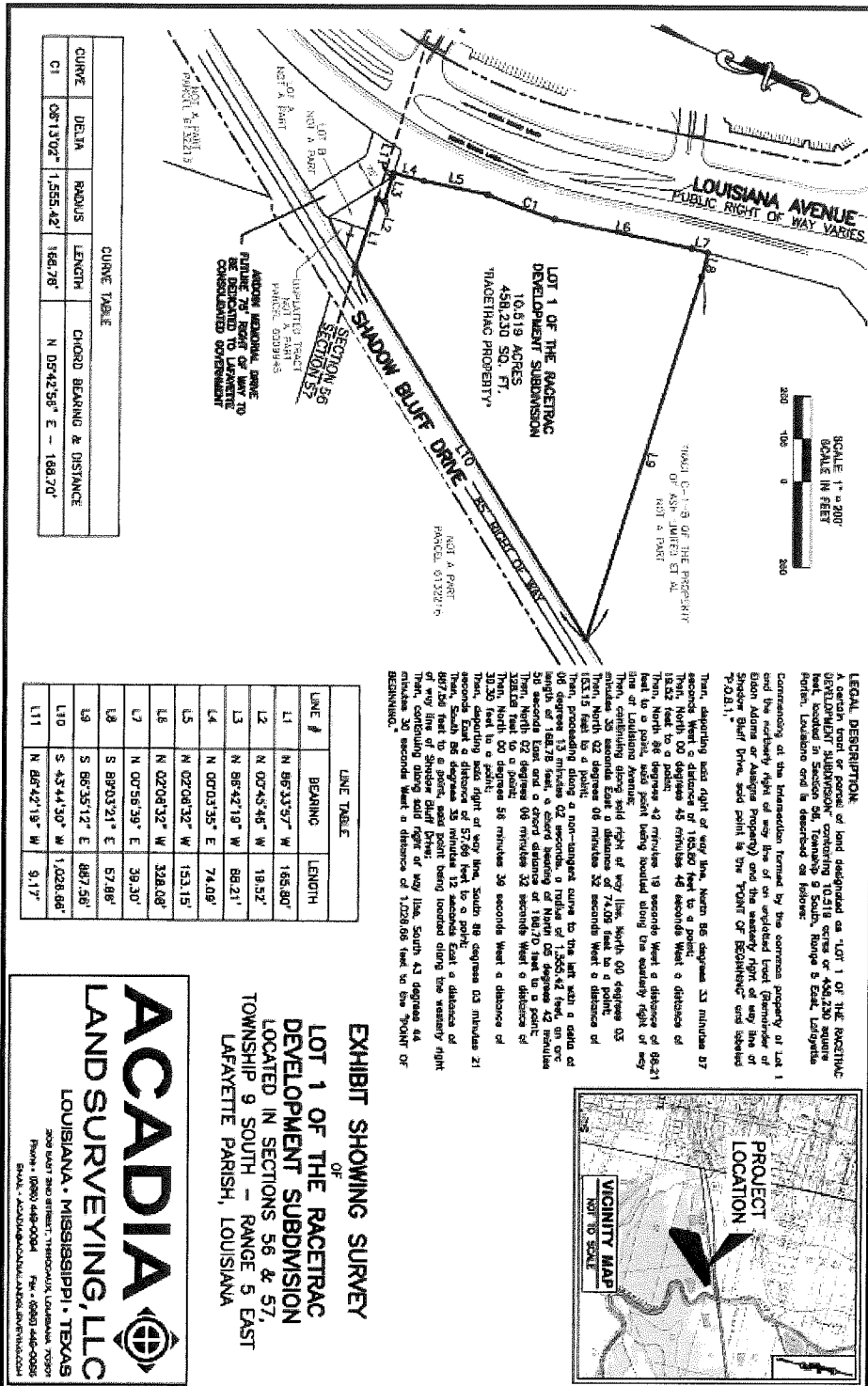


EXHIBIT E
to Cooperative Endeavor Agreement

**CERTIFICATION OF
ENGINEER OF RECORD
REGARDING REQUEST FOR REIMBURSEMENT**

DATE: _____

PROJECT NAME: I-10@MM103 EDD/Racetrac Project CEA

REQUEST NO.: _____

PERIOD TO: _____

I, the undersigned Engineer of Record (the "Engineer") for the above referenced Project, in accordance with the provisions of that certain Cooperative Endeavor Agreement, dated _____, 2017, by and among Lafayette City-Parish Consolidated Government (the "City-Parish"), Lafayette I-10 Corridor District at Mile Marker 103 (the "District") and RaceTrac Petroleum, Inc. (the "Company"), hereby certify that:

- a. the work covered by this REQUEST FOR REIMBURSEMENT (the "Work") was performed on the above referenced Project and the actual costs for said Work contained herein are true and accurate;
- b. the Work has progressed and been completed as indicated herein and in the supporting documentation, attached hereto;
- c. the quality of the Work is in accordance with the plans, specifications and applicable standards for the above referenced Project; and
- d. all amounts have been paid by Company for Work for which previous REQUESTS FOR REIMBURSEMENT were issued and payments received from the City-Parish and/or the District.

AMOUNT CERTIFIED: \$ _____

Based on this Certification, the undersigned Engineer, on behalf of the Company, hereby request reimbursement from the District in the amount certified hereinabove.

ENGINEER OF RECORD: _____

Signature: _____

Printed Name: _____

Date: _____


STATE OF LOUISIANA

PARISH OF LAFAYETTE

I, the undersigned Clerk of the Lafayette City-Parish Council do hereby certify that the foregoing Ordinance No. O-026-2017 (4) pages constitute a true and correct copy of an ordinance adopted by the Lafayette City-Parish Council on February 21, 2017, authorizing the execution of a Cooperative Endeavor Agreement by and among the Lafayette City-Parish Consolidated Government, Lafayette I-10 Corridor District at Mile Marker 103 and RaceTrac Petroleum, Inc., relating to the collection, use and expenditure of a one percent (1.00%) sales and use tax being levied in said district to provide partial reimbursement to RaceTrac Petroleum, Inc. with respect to certain infrastructure improvements and the development of commercial facilities in said district, and providing for other matters in connection therewith.

IN FAITH WHEREOF, witness my official signature and the impress of the official seal of said City-Parish Council on this, the 22nd day of February, 2017.

(SEAL)


Veronica L. Williams, Clerk
Lafayette City-Parish Council



Internal Memorandum

TO: Lowell Duhon, Chief Administrative Officer

COPY: Joel Robideaux, City-Parish Mayor-President
Paul Escott, City-Parish Attorney

FROM: Michael D. Hebert, Assistant City-Parish Attorney

SUBJECT: Ordinance Authorizing the Execution of CEA for the RaceTrac Project

DATE: January 27, 2017

Lowell, with authorization from Mr. Escott, I attach the following, and request placement of same on the agenda for introduction at the February 7, 2017 Council meeting:

- (a) An Ordinance of the Lafayette City-Parish Council Authorizing the Execution of a Cooperative Endeavor Agreement by and Among the Lafayette City-Parish Consolidated Government. Lafayette I-10 Corridor District at Mile Marker 103 and RaceTrac Petroleum, Inc., Relating to the Collection, Use and Expenditure of a One Percent (1.00%) Sales and Use Tax Being Levied in said District to Provide Partial Reimbursement to RaceTrac Petroleum, Inc. with Respect to Certain Infrastructure Improvements and the Development of Commercial Facilities in said District, and Providing for other Matters in Connection Therewith;
- (b) Cooperative Endeavor Agreement;
- (c) Agenda Item Submittal Form.

Should you have any questions, please contact our office.

A handwritten signature in black ink, appearing to read "MDH", is written over a horizontal line.

Michael D. Hebert
Assistant City-Parish Attorney

MDH/smh
Enclosures

LAFAYETTE CITY-PARISH COUNCIL MEETING

AGENDA ITEM SUBMITTAL FORM

- 1) **JUSTIFICATION FOR REQUEST:** Ordinance of the Lafayette City-Parish Council Authorizing the Execution of a Cooperative Endeavor Agreement by and among the Lafayette City-Parish Consolidated Government, Lafayette I-10 Corridor District at Mile Marker 103 and RaceTrac Petroleum, Inc., Relating to the Collection, Use and Expenditure of a One Percent (1.00%) Sales and Use Tax Being Levied in said District to Provide Partial Reimbursement to RaceTrac Petroleum, Inc. with Respect to Certain Infrastructure Improvements and the Development of Commercial Facilities in said District, and Providing for other Matters in Connection Therewith
- 2) **ACTION REQUESTED:** Adoption of Ordinance
- 3) **REQUESTED ACTION OF COUNCIL:**
 - A) **INTRODUCTION:** February 7, 2017
 - B) **FINAL ADOPTION:** February 21, 2017
- 4) **DOCUMENTATION INCLUDED WITH THIS REQUEST:**
 - A) Memo
 - B) Ordinance
 - C) Cooperative Endeavor Agreement
- 5) **FISCAL IMPACT:**

_____ Fiscal Impact (Explain)

No Fiscal Impact

APPROVED FOR AGENDA:



CHIEF ADMINISTRATIVE OFFICER

LAFAYETTE CITY-PARISH COUNCIL MEETING

AGENDA ITEM SUBMITTAL FORM

1) **JUSTIFICATION FOR REQUEST:** An Ordinance of the Lafayette City-Parish Council authoring the execution of a Cooperative Endeavor Agreement by and among the Lafayette City-Parish Consolidated Government, Lafayette I-10 Corridor District at Mile Marker 103 and RaceTrac Petroleum, Inc., relating to the collection, use and expenditure of a one percent (1.00%) Sales and Use tax being levied in said district to provide partial reimbursement to RaceTrac Petroleum, Inc. with respect to certain infrastructure improvements and the development of commercial facilities in said district, and providing for other matters in connection therewith.

2) **ACTION REQUESTED:** Adoption of Ordinance

3) **REQUESTED ACTION OF COUNCIL:**

A) INTRODUCTION: February 7, 2017

B) FINAL ADOPTION: February 21, 2017

4) **DOCUMENTATION INCLUDED WITH THIS REQUEST:**

A) Memo

B) Ordinance

C) Exhibit A-1; Public Infrastructure Improvements

D) Exhibit A-2; Private infrastructure Improvements

E) Exhibit B; Cooperative Endeavor Agreement

5) **FISCAL IMPACT:**

_____ Fiscal Impact (Explain)

X No Fiscal Impact

RECOMMENDED BY:

/s/ Mike Hebert
MIKE HEBERT
ASSISTANT CITY-PARISH ATTORNEY

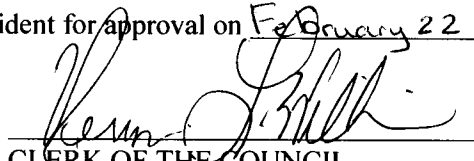
APPROVED FOR AGENDA:

/s/ Lowell Duhon
LOWELL DUHON
CHIEF ADMINISTRATIVE OFFICER

DISPOSITION OF ORDINANCE NO. O-026-2017

1. This ordinance was introduced: February 7, 2017
YEAS: Naquin, Castille, Lewis,
Boudreaux, Bellard, Conque,
Cook, Hebert, Theriot
NAYS: None
ABSENT: None
ABSTAIN: None
AMENDMENT: 02/21/2017 – update Exhibits A-1, A-2 and B.
- Final disposition by Council:
February 21, 2017
YEAS: Naquin, Castille, Lewis,
Boudreaux, Bellard, Conque,
Cook, Hebert, Theriot
NAYS: None
ABSENT: None
ABSTAIN: None

2. Notice of Public Hearing: This ordinance was published by Title and Notice of Public Hearing was published in the Advertiser on February 10, 2017.

3. This ordinance was presented to the Mayor-President for approval on February 22, 2017, at 10:30 o'clock a.m.
- 
CLERK OF THE COUNCIL

4. Disposition by Mayor-President:

I hereby:

- A. Approve this ordinance, the 23rd day of February, 2017, at 4:30 o'clock p.m.
- B. Veto this ordinance, the _____ day of _____, 2017, at _____ o'clock ____m., veto message is attached.
- C. Line item veto certain items this _____ day of _____, 2017, at _____ o'clock ____m., veto message is attached.


MAYOR-PRESIDENT

5. Returned to Council Office ~~with~~ without veto message on February 24, 2017, at 9:58 o'clock a.m.

6. Reconsideration by Council (if vetoed):

On _____, 2017, the Council did/refused to adopt this ordinance after the Mayor-President's veto.

7. Returned to the Council Office without signature of Mayor-President (*unsigned*) on _____, 2017, at _____ o'clock ____m.

If not signed or vetoed by the Mayor-President, and ten days have elapsed since this ordinance was presented to him for action, same has been automatically approved.


ASST. CLERK OF THE COUNCIL

8. Full publication of this ordinance was made in the Advertiser on February 24, 2017.