



The City of Liberty City Council

Special Called Meeting

~ Agenda ~

1829 Sam Houston
Liberty, TX 77575
www.cityofliberty.org

Dianne Tidwell
City Secretary
(936) 336-3684

Monday, October 19, 2009

12:00 PM

City Council Chambers

The City Council of Liberty, Texas reserves the right to meet in closed session on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551 of the Texas Government Code.

I. CALL TO ORDER

Attendee Name	Present	Absent	Late	Arrival
Mayor Carl Pickett	..	..	..	
Councilperson Dennis Beasley	..	..	..	
Councilperson Diane Huddleston	..	..	..	
Mayor Pro-Tem Mike McCarty	..	..	..	
Councilperson Al Simonson	..	..	..	
Councilperson Louie Potetz	..	..	..	
Councilperson Frank Jordan	..	..	..	

II. ACKNOWLEDGEMENT OF GUESTS AND VISITORS / PUBLIC COMMENT

III. REGULAR AGENDA

A. Regular Session

1. Council Action 2009-96

Consider and Approve the Granting of an Easement for Access to Boomerang Tube, LLC Property.

- Boomerang Easement Oct 2009 (PDF)

IV. COUNCIL MEAL

V. ADJOURNMENT

Motion To: Adjourn

CERTIFICATION

I certify that the attached Notice of Meeting was posted on the bulletin board and in the Message Centers located on the east and west sides of the City Hall Administration Building, located at 1829 Sam Houston on the 15th day of October, 2009 at 3:00 p.m. This notice will remain so posted continuously for at least 72 hours preceding the scheduled time of said meeting in accordance with Chapter 551 of the Texas Government Code.

Dianne Tidwell, City Secretary

Notice given to The Vindicator, Liberty Gazette, and KSHN Radio.

NOTICE

In compliance with the Americans with Disabilities Act, the City of Liberty will provide reasonable accommodation for persons attending and/or participating in this Council Meeting. To better serve you, requests must be made at least 24 hours prior to the meeting. Contact the City at (936) 336-3684 or by Fax at (936) 336-9846. The building is wheelchair accessible, with parking available, on the west side of the building.

I certify that the attached Notice and Agenda of items to be considered by the City Council was removed by me from the bulletin board at the City Hall on _____ day of _____, 2009.

**The City of Liberty**

City Council
1829 Sam Houston
Liberty, TX 77575

Meeting: 10/19/09 12:00 PM

Department: Administration
Category: Easements

COUNCIL ACTION 2009-96

DOC ID: 1468

Consider and Approve the Granting of an Easement for Access to Boomerang Tube, LLC Property.

AMENDMENT TO RIGHT-OF-WAY DEED AND EASEMENT AGREEMENT

STATE OF TEXAS §

NOW ALL MEN BY THESE PRESENTS:

COUNTY OF LIBERTY §

THIS AMENDMENT TO RIGHT-OF-WAY DEED AND EASEMENT AGREEMENT (this "Amendment") is made and entered into this ____ day of _____, 2009, by and between THE CITY OF LIBERTY, TEXAS, a Texas municipal corporation, as Grantor, and BOOMERANG TUBE, LLC, as Grantee, and amends the Original Agreement defined hereinbelow.

WITNESSETH:

WHEREAS, Grantee is the owner of approximately 119.32 acres of real property and all improvements thereon, located in Liberty County, Texas, said real property being described in Exhibit A attached hereto and made a part hereof (the "Grantee Property"); and

WHEREAS, Grantor is the owner of certain real property to the north of the Grantee Property, being a residue of a called 22.48 acres (first tract) as described in the instrument recorded at Volume 612, Page 304, Deed Records of Liberty County, Texas (the "Grantor Property"); and

WHEREAS, Grantor conveyed an easement for access over and through the Grantor Property, between the Grantee Property, and FM 3361, a public road under the jurisdiction of Liberty County, Texas (the "Road"), benefiting the Grantee Property, as set forth in that certain Right-of-Way Deed made by Grantor in favor of National Steel Corporation, executed July 12, 1978, recorded at Volume 831, Page 152, of the aforesaid Deed Records (the "Original Agreement"); and

WHEREAS, a driveway extending from the Grantee Property to the Road was built to the east of the original easement area described in the Original Agreement (the "Original Area"), and the parties have agreed to amend the Original Easement to replace the legal description of the Original Area, with the legal description set forth in Exhibit B to this Amendment (the "New Area") also sometimes referred to as the "Easement Property";

NOW, THEREFORE, for and in consideration of the premises, the mutual promises and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee agree as follows:

1. The New Area replaces in its entirety the Original Area, and accordingly Exhibit B to this Amendment replaces in its entirety the legal description for the Original Area in the Original Agreement. Grantor grants, bargains, sells and conveys unto Grantee, an easement and right of way on, over, under and through the New Area for pedestrian and heavy and light truck, car and

other vehicular ingress and egress between the Grantee Property and the Road for the Grantee's use of the Grantee Property as a manufacturing facility. The easement does not include the right to lay water, wastewater, electrical, cable, or any other surface or subsurface utility lines to the extent the New Area expands the Original Area.

2. Grantor binds Grantor and Grantor's successors and assigns to warrant and forever defend all and singular the property interests herein conveyed to Grantee and Grantee's successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to conveyance and warranty, by, through, or under Grantor, but not otherwise.

3. This instrument conveys to Grantee easement interests in the surface estate only of the Easement Property. Grantor hereby reserves to Grantor, and Grantor's legal representatives, successors and assigns, all mineral interests, whether metallic or nonmetallic, whether similar or dissimilar, whether known or unknown, currently owned by Grantor in, on, and under and that may be produced and saved from the Easement Property or acreage pooled or unitized therewith, and the full and exclusive executive rights to execute leases in connection therewith; provided, however, that no mining or other extraction or use of such mineral interests shall diminish, affect or interfere with Grantee's easement rights hereunder.

4. Grantor, as owner of Grantor's Property, reserves the right to convey to others the right to use all or part of the Easement Property in conjunction with Grantee, as long as such further conveyances are subject to the terms of this agreement and the other users agree to bear a proportionate part (by total number of easement holders) of the costs of improving and maintaining the Easement Property improvements.

5. Grantor, as owner of Grantor's Property, and for the benefit of any subsequent grantees of Grantor, reserves the right to continue to use and enjoy the surface of the Easement Property for all purposes that do not interfere with or interrupt the use or enjoyment of the easement by Grantee for the easement purposes stated herein.

6. This conveyance is made by Grantor and accepted by Grantee subject to any and all existing easements, covenants, rights-of-way, conditions, restrictions, outstanding mineral interests and royalty interests, if any, relating to the Easement Property, to the extent, and only to the extent, that the same may still be in force and effect, and either shown of record in the office of the County Clerk of the County in which any part of the Property is located, or that may be apparent on the Property.

7. BY ITS ACCEPTANCE OF THIS EASEMENT CONVEYANCE, AND AS A MATERIAL PART OF THE CONSIDERATION, GRANTEE FURTHER EXPRESSLY ACKNOWLEDGES AND AGREES THAT (i) ANY INFORMATION PROVIDED TO GRANTEE PERTAINING TO THE EASEMENT PROPERTY BY GRANTOR HAS NOT BEEN INDEPENDENTLY INVESTIGATED OR VERIFIED BY GRANTOR, (ii) GRANTOR IS NOT MAKING, AND HAS NOT MADE, ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION; AND (iii) GRANTOR IS NOT, AND SHALL NOT BE, LIABLE OR

BOUND IN ANY MANNER WHATSOEVER BY ANY WRITTEN OR VERBAL STATEMENT, REPRESENTATION, REPORT, SURVEY OR INFORMATION FURNISHED TO GRANTEE, OR MADE, BY ANY PARTY WITH RESPECT TO THE EASEMENT PROPERTY OR THE EASEMENT INTERESTS HEREBY CONVEYED. GRANTEE SPECIFICALLY AGREES THAT HAVING BEEN GIVEN THE OPPORTUNITY TO CONDUCT SUCH TESTS, STUDIES AND INVESTIGATIONS AS GRANTEE DEEMS NECESSARY AND APPROPRIATE, GRANTEE IS RELYING SOLELY UPON GRANTEE'S OWN INVESTIGATION OF THE EASEMENT PROPERTY AND NOT ON ANY INFORMATION PROVIDED BY GRANTOR. GRANTEE FURTHER AGREES THAT GRANTEE HAS PURCHASED AND ACCEPTED THE EASEMENT INTERESTS IN THE EASEMENT PROPERTY IN ITS CURRENT, "AS IS," WITH ALL FAULTS CONDITION, AND TO HAVE ASSUMED THE RISK OF ANY MATTER OR CONDITION WHICH IS LATENT OR PATENT OR THAT COULD HAVE BEEN REVEALED BY ITS INVESTIGATIONS. GRANTOR HAS NOT MADE (AND GRANTOR HEREBY EXPRESSLY DISCLAIMS, AND GRANTOR IS CONVEYING THE EASEMENT HEREIN GRANTED WITHOUT) ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WHATSOEVER AS TO THE VALUE, CONDITION, NATURE, CHARACTER, SUITABILITY, HABITABILITY OR FITNESS OF THE EASEMENT PROPERTY, THE INCOME TO BE DERIVED THEREFROM, THE PRESENCE OR ABSENCE OF ANY HAZARDOUS MATERIAL OR OTHER ENVIRONMENTAL CONDITION OR COMPLIANCE OF THE LAND WITH, OR VIOLATION OF, ANY LAW, STATUTE, ORDINANCE, RULE OR REGULATION, AND ANY OF SUCH REPRESENTATIONS AND WARRANTIES, AND ANY CLAIMS OR CAUSES OF ACTION AGAINST GRANTOR BASED IN WHOLE OR IN PART ON ANY VIOLATION OF, OR ARISING WITH RESPECT TO, ANY FEDERAL, STATE OR LOCAL STATUTE, ORDINANCE, RULE OR REGULATION ARE HEREBY EXPRESSLY WAIVED AND RELEASED BY GRANTEE.

9. The Easement rights of use granted herein are nonexclusive.

10. Grantee has the right to construct, install, maintain, replace, and remove an all-weather-surface road within the Easement Property and to construct culverts, bridges, drainage ditches, water lines and sewer facilities, and similar or related utilities and facilities under or across any portion of the Easement Property (collectively, the "Easement Facilities"). Any improvement of, or maintenance of, on the Easement Facilities will be at Grantee's sole expense, and Grantee shall not permit any mechanics or materialmen's lien to be placed upon or remain upon the Easement Property or any portion of Grantor's Property, unless Grantee is contesting the same in good faith by appropriate legal proceedings, and has established adequate reserves for the payment thereof.

11. Grantee shall not permit the Easement Facilities or other improvements in the Easement Property to obstruct the drainage of surface water across the Easement Property in a manner that causes material flooding of any portion of Grantor's Property.

12. Grantee shall operate, maintain, and repair the Easement Facilities from time to time as needed to serve the recited purposes of the easement; all at Grantee's sole expense. Grantee shall maintain the Easement Property in a neat and clean condition. Grantee may make, from

time to time, such improvements to the Easement Facilities as Grantee deems necessary for the conduct of its business, such improvements to be made at Grantee's cost and expense.

14. Notwithstanding the perpetual character of this Easement, if the Easement Facilities are abandoned by Grantee, ceased to be used by Grantee for a period of one year, or are removed from the Easement Property by Grantee without prompt replacement, then in any such event, the easement, rights and privileges granted hereby shall automatically cease, said easement and rights shall terminate, and the Easement Property shall be released of and from this Amendment, and title to the Easement Property shall revert to and re-vest in Grantor or Grantor's successors or assigns, free and clear of the easement, rights and privileges granted hereby as fully and completely as if this easement had not been executed.

15. This Amendment amends the Original Agreement. The terms of the Original Agreement are hereby modified as set forth herein. This Amendment runs with the land and shall be binding on the parties and their respective successors and assigns. This Amendment is governed by the laws of the State of Texas, with venue in Liberty County, Texas, and may not be modified or terminated except by written agreement signed by the then-owners of the Grantor Property and Grantee Property. This Amendment is intended to be performed in accordance with all applicable laws, ordinances, rules and regulations. The County of Liberty, Texas has consented to this instrument as evidenced by its execution of the Consent attached hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to Right-of-Way Deed and Easement Agreement as of the day and year first above written.

CITY OF LIBERTY

BOOMERANG TUBE, L.L.C.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

THE STATE OF TEXAS §

COUNTY OF LIBERTY §

This instrument was acknowledged before me on this the ____ day of _____, 2009, by _____, the _____ of the City of Liberty, Texas, a Texas municipal corporation, in its capacity as the _____ of the City of Liberty, Texas, for and on behalf of the City.

Notary Public, State of Texas

THE STATE OF TEXAS §

COUNTY OF LIBERTY §

This instrument was acknowledged before me on this the ____ day of _____, 2009, by _____, the _____ of BOOMERANG TUBE, L.L.C., a Delaware limited liability company, in its capacity as the _____ of said limited liability company, for and on behalf of said limited liability company.

Notary Public, State of Texas

Attachment: Boomerang Easement Oct 2009 (CA-2009-96 : Easement -Boomerang)