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

Tuesday, September 20, 2016 **6:00 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	Arrived
Mayor Carl Pickett	☐	☐	☐	
Mayor Pro Tem Diane Huddleston	☐	☐	☐	
Councilperson Dennis Beasley	☐	☐	☐	
Councilperson Louie Potetz	☐	☐	☐	
Councilperson Libby Simonson	☐	☐	☐	
Councilperson David Arnold	☐	☐	☐	
Councilperson Paul Glazener	☐	☐	☐	

II. ACKNOWLEDGEMENT OF GUESTS AND VISITORS / PUBLIC COMMENT

Public Comment is reserved for members of the public who would like to address the City Council regarding agenda and non-agenda items. Please be aware that, under Texas Law, the Council may not deliberate or take any action during Citizen's comments for items not on the agenda. In some situations, City Staff may be able to respond to the public comment with a factual statement or clarification. The City Council may have the item placed on a future agenda for action or refer the item to Management and Staff for study or conclusion.

III. REGULAR AGENDA

A. Regular Session

1. Public Hearing (ID # 3626)

Public Hearing on the proposed annexation of .55 square miles beginning at the intersection of the South Line of the existing City Limits of the City of Liberty and the Trinity River, having coordinates of N: 10004359.04, E: 4042761.36.

2. Council Action (ID # 3627)

Consider approval of an Interlocal Agreement with Liberty County Precincts 1 & 2 for the maintenance of streets, roads, ditches and recreational areas, and take any action deemed necessary.

- Interlocal with County Prec 1 & 2-2016 (DOCX)

3. Council Action (ID # 3628)

Consider approval of an Interlocal Agreement with the Liberty Independent School District for a School Resource Officer.

- Interlocal LISD-SRO 2016 (PDF)

4. Council Action (ID # 3629)

Consider and take action regarding a price adjustment agreement with the Sam Rayburn Municipal Power Agency.

- SRMPA-City Agreement-Boomerang-Price Adj (PDF)

5. Council Action (ID # 3630)

Consider and take action regarding a price adjustment agreement for electricity with Boomerang Tube.

- City-Boomerang-Price Adj (PDF)

IV. ADJOURNMENT

Motion To: Adjourn

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 16th day of September, 2016 at 2:00 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

Dianne Tidwell, City Secretary

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 the _____ day of _____, 2016.

The City of Liberty
City Council
1829 Sam Houston
Liberty, TX 77575

Meeting: 09/20/16 06:00 PM

Department: Administration
Category: Annexation Issues

PUBLIC HEARING (ID # 3626)

DOC ID: 3626

EXPLANATION:
This is the second of two public hearings held on the proposed annexation of this property. The first public hearing was held on Tuesday, September 13, 2016.

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The City of Liberty
City Council
1829 Sam Houston
Liberty, TX 77575

Meeting: 09/20/16 06:00 PM

Department: Administration
Category: Agreements

COUNCIL ACTION (ID # 3627)

DOC ID: 3627

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INTER-LOCAL AGREEMENT
COUNTY OF LIBERTY and CITY OF LIBERTY

THE STATE OF TEXAS §

COUNTY OF LIBERTY §

This agreement is between Liberty County, Precinct 1 and Precinct 2, hereinafter called "County," and the City of Liberty, hereinafter called "City."

WITNESSETH

WHEREAS, the legislative purpose and intent of the Interlocal Cooperation Act, Section 791.001, Texas Government Code, is to improve the efficiency and effectiveness of local government by authorizing the fullest possible range of inter-governmental contracting authority at the local level, including contracts between counties and other political subdivisions and agencies of the state; and

WHEREAS, the County and City are authorized to enter into contracts and agreements for the performance of governmental functions; and

WHEREAS, the City has streets, roads, ditches and recreational areas which require maintenance which at times exceed temporarily the ability of the City to promptly supply; and

WHEREAS, the County has streets, roads, ditches and recreational areas which require maintenance which at times exceed temporarily the ability of the County to promptly supply; and

WHEREAS, the County has manpower, equipment and other resources to maintain streets, roads, ditches and recreational areas; and

WHEREAS, the City has manpower, equipment and other resources to maintain streets, roads, ditches and recreational areas; and

WHEREAS, the parties recognize that cooperation between the governmental agencies will provide better service to the public at reduced expense by avoiding costly duplication of manpower, equipment and other resources;

NOW THEREFORE, the County and City in consideration of the mutual covenants and conditions contained herein and in recognition of the benefits to be gained by citizens of the County and City, promise and agree as follows if their work schedules permit:

1. The County agrees to provide manpower, equipment and other resources to the City for the maintenance of streets, roads, ditches and recreational areas.

2. The City agrees to provide manpower, equipment and other resources to the County for the maintenance of streets, roads, ditches and recreational areas, as well as other governmental functions.

Attachment: Interlocal with County Prec 1 & 2-2016 (3627 : Interlocal-Lib Co. Precincts 1&2)

3. The City agrees to fairly compensate the County, either by comparable time, manpower, equipment and other resources or by monetary or other consideration of equal value from the city's current revenue.

4. The County agrees to fairly compensate the City, either by comparable time, manpower, equipment and other resources or by monetary or other consideration of equal value from the county's current revenue.

5. The Commissioner of Precinct 1 and the Liberty City Manager shall plan, schedule and agree in advance as to the equal value consideration to be provided for all mutual sharing projects before any such projects commence.

6. The Commissioner of Precinct 2 and the Liberty City Manager shall plan, schedule and agree in advance as to the equal value consideration to be provided for all mutual sharing projects before any such projects commence.

7. The County and City understand that agreements for mutual sharing may be limited by budgetary restrictions or the authority provided by their respective governing bodies. Notwithstanding any provisions herein, the inter-local agreement is expressly contingent upon the availability of funding for each item and obligation contained herein for the term of the government and any extension thereto. In the event that no funds, or insufficient funds, are appropriated for the payment due under this contract for the period covered by such budget or appropriation, the contract shall terminate without penalty to County or City.

8. To the fullest extent permissible under Texas law, City of Liberty shall indemnify, defend, and hold harmless Liberty County, their officers, agents, and employees with respect to any claims or demands, actions, damages, costs and other expenses including attorney's fees, court costs or mediation expenses resulting from any errors, omissions, torts or other negligent acts or omissions of City of Liberty, its agents, servants, employees, associates, affiliates or subcontractors. Notwithstanding anything contained in this paragraph or this contract to the contrary, nothing in this contract shall be interpreted or construed as a waiver, relinquishment or abandonment of sovereign immunity granted or available to either or both parties to this contract. Accordingly, this indemnity provision shall apply, but not in such a way as to bypass, override or supercede any sovereign immunity claim by either party to this contract. Furthermore, nothing in this contract shall be deemed as waiver or relinquishment of any Texas constitutional claim pertaining to the application of any indemnity claim under this contract.

9. To the fullest extent permissible under Texas law, Liberty County shall indemnify, defend, and hold harmless the City of Liberty, their officers, agents, and employees with respect to any claims or demands, actions, damages, costs and other expenses including attorney's fees, court costs or mediation expenses resulting from any errors, omissions, torts or other negligent acts or omissions of Liberty County, its agents, servants, employees, associates, affiliates or subcontractors. Notwithstanding anything contained in this paragraph or this contract to the contrary, nothing in this contract shall be interpreted or construed as a waiver, relinquishment or abandonment of sovereign immunity granted or available to either or both parties to this contract. Accordingly, this indemnity provision shall apply, but not in such a way as to bypass, override or supercede any sovereign immunity claim by either party to this contract. Furthermore,

Attachment: Interlocal with County Prec 1 & 2-2016 (3627 : Interlocal-Lib Co. Precincts 1&2)

nothing in this contract shall be deemed as waiver or relinquishment of any Texas constitutional claim pertaining to the application of any indemnity claim under this contract.

10. Neither party shall be deemed an employee or agent of the other party. This Interlocal Agreement does not constitute a joint venture, either expressed or implied. The City will maintain sole discretion and control over the operations for construction and maintenance of the City's streets, roads, ditches and recreational areas. The County will maintain sole discretion and control over the operations for construction and maintenance of the County's streets, roads, ditches and recreational areas.

11. The City agrees to exercise due diligence in the routine maintenance of County equipment under its control and shall accept responsibility for a maximum of $100.00 in expenses per use for minor repairs that may be necessary as a result of the City's use of County equipment.

12. The County agrees to exercise due diligence in the routine maintenance of City equipment under its control and shall accept responsibility for a maximum of $100.00 in expenses per use for minor repairs that may be necessary as a result of the County's use of City equipment.

13. **The City understands that before beginning a project under an interlocal contract, the Commissioner Court of Liberty County must give specific written approval for the project as required by Tex. Gov. Code §791.014 which provides:**

791.014 APPROVAL REQUIREMENT FOR COUNTIES.

1. Before beginning a project to construct, improve, or repair a building, road, or other facility under an interlocal contract, the Commissioners Court of a county must give specific written approval for the project.

(b) The approval must:
(1) be given in a document other than the interlocal contract;
(2) describe the type of project to be undertaken; and
(3) identify the project's location.
***see* Tex. Gov. Code, §791.014, et. seq.**

This agreement shall commence on the 1st day of October, 2016 and ends on the 30th day of September, 2017. Either the County or the City may cancel this agreement at any time.

Executed on this the _____ day of _____, 2015, by Jay Knight, County Judge, on behalf of Liberty County, Texas, after approval by Commissioners Court.

Executed on this the _____ day of _____, 2015, by Mike McCarty, Commissioner Precinct 1, on behalf of Liberty County, Texas, after approval by Commissioners Court.

Executed on this the _____ day of _____, 2015 by Greg Arthur, Commissioner Precinct 2, on behalf of Liberty County, Texas, after approval by Commissioners Court.

Attachment: Interlocal with County Prec 1 & 2-2016 (3627 : Interlocal-Lib Co. Precincts 1&2)

Executed on this the 20th day of September, 2016, by the City Manager, on behalf of the City of Liberty, Texas, after approval by City Council.

COUNTY OF LIBERTY

Jay Knight, Liberty County Judge

Mike McCarty, Comm. Precinct 1

Greg Arthur, Comm. Precinct 2

ATTEST:

Paulette Williams, Liberty Co. Clerk

CITY OF LIBERTY

Gary Broz, Liberty City Manager

Dianne Tidwell, City Secretary

Attachment: Interlocal with County Prec 1 & 2-2016 (3627 : Interlocal-Lib Co. Precincts 1&2)

The City of Liberty
City Council
1829 Sam Houston
Liberty, TX 77575

Meeting: 09/20/16 06:00 PM

Department: Administration
Category: Agreements

COUNCIL ACTION (ID # 3628)

DOC ID: 3628

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INTERLOCAL AGREEMENT FOR SCHOOL RESOURCE OFFICER

This agreement ("Agreement") is made and entered into between the **City of Liberty**, a home rule municipal corporation of the State of Texas ("City"), acting by and through **Gary Broz**, its duly authorized City Manager, and the **Liberty Independent School District**, a political subdivision of the State of Texas located in Liberty County and a legally constituted Independent School District ("District"), acting by and through **Cody Abshier**, its duly authorized Superintendent.

RECITALS

This Agreement is made under the authority granted to the City and the District pursuant to the Texas Government Code, Chapter 791, known as the INTERLOCAL COOPERATION ACT.

WHEREAS, the citizens of Liberty and City's City Council have determined that the security of students is paramount; and

WHEREAS, District wishes to secure a School Resource Officer through which City provides school security to the Liberty ISD using a City police officer assigned to the District;

WHEREAS, in accordance with the Act, The City and the District recognize that any payments for the performance of governmental functions or services are from available current revenues.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements herein expressed, the parties agree as follows:

AGREEMENT

1.

City, through the City Manager and in conjunction with District personnel, shall assign a police officer to work at specific schools within the District to provide school security. The assigned officer shall work directly with the District's school superintendent and principals. The assigned officer's responsibilities at the District shall be limited to those duties related to law enforcement activities. The assigned officer shall have the District's Security as his or her primary duty, and will not be regularly assigned additional police duties by the City's police department during the school year. City reserves the right, however, to reassign the officer temporarily in the event of an emergency or when other circumstances require an enhanced police presence elsewhere in the City and school is not in session. City shall coordinate assignment and duty hours with the District to include a 40 hour work week. Some of the scheduled hours may be assignment at events after school hours as requested by the District. If necessary to

Attachment: Interlocal LISD-SRO 2016 (3628 : School Resource Officer)

handle unplanned absences at schools, an officer other than the School Resource Officer may be assigned temporarily to provide coverage for the School District.

2.

City shall provide all law enforcement training and certification, vehicles and police equipment, benefits, and insurance (including liability coverage) provided to all City's police officers. District shall provide any equipment necessary to allow the assigned officers to communicate with District staff.

3.

The Liberty Police Department shall develop and maintain emergency response plans for every school within its jurisdiction. These plans shall be kept confidential within the Liberty Police Department for security purposes. Meetings shall be held with authorized representatives of District to provide relevant information and excerpts from the plan necessary for implementation. City's Chief of Police shall designate an officer to be responsible for maintenance and dissemination of these plans.

4.

District covenants and agrees to fully cooperate with the City of Liberty in the implementation of the placement of the School Resource Officer. However, during the school year, the weekly schedule as to covered campuses, hours, and attendance at events, shall be developed primarily to meet the needs of the District.

5.

District shall pay to City $60,000.00 ("Contract Amount") for City's provision of a School Resource Officer. It is understood and agreed that District shall remit funds to the City in a timely manner following receipt of an official invoice. Invoices shall be provided on a monthly basis.

The City and District agree that this interlocal agreement shall automatically renew each year. The City and the District may agree to amend the contract price or terms at any time. In the event of contract termination, the school resource officer will not return to work at the District.

6.

The term of this Agreement is for a period beginning on August 1, 2016, and ending on July 31, 2017. This agreement shall be automatically renewed each year. However, either Party to the agreement may decide to not re-new the agreement for a new term.

Attachment: Interlocal LISD-SRO 2016 (3628 : School Resource Officer)

7.

This Agreement may be terminated by either party for any reason upon giving sixty (60) days written notice of termination to the other party.

8.

District covenants and agrees to fully cooperate with City in monitoring the effectiveness of the services and work to be performed under this Agreement. City shall have access, at all reasonable hours, to offices and records of the District, its officers, members, agents, employees, and subcontractors for the purpose of such monitoring, with said access being subject to the limitations and requirements under the Texas Public Information Act and the Family Educational Rights and Privacy Act (FERPA).

9.

District shall operate hereunder as an independent contractor and not as an officer, agent, servant or employee of City. District shall be solely responsible for the acts and omissions of its officers, members, agents, servants, and employees. The City, including the assigned School Resource Officer, shall be solely responsible for the acts and omissions of its officers, members, agents, servants, and employees. Neither City nor District shall be responsible under the Doctrine of Respondeat Superior for the acts and omissions of the officers, members, agents, servants, employees, or officers of the other party.

10.

City and District covenant that neither Party nor any of its officers, members, agents, employees, program participants, or subcontractors, while engaged in performing this Agreement shall discriminate against persons because of their age, except on the basis of a bona fide occupational qualification, retirement plan, or statutory requirement.

11.

City and District, in the execution, performance or attempted performance of this Agreement, shall not discriminate against any person or persons because of sex, race, religion, age, disability, color, national origin, or familial status.

12.

The provisions of this Agreement are severable and if for any reason a clause, sentence, paragraph or other part of this Agreement shall be determined to be invalid by a court or federal or state agency, board or commission having jurisdiction over the subject matter thereof, such invalidity shall not affect other provisions which can be given effect without the invalid provision.

Attachment: Interlocal LISD-SRO 2016 (3628 : School Resource Officer)

13.

The failure of City or District to insist upon the performance of any term or provision of this Agreement or to exercise any right herein conferred shall not be construed as a waiver or relinquishment to any extent of City's or District's right to assert or rely upon any such term or right on any future occasion.

14.

Should any action, whether real or asserted, at law or in equity, arise out of the execution, performance, attempted performance or non-performance of this Agreement, venue for said action shall lie in Liberty County, Texas.

15.

The governing bodies of City and District have approved the execution of this Agreement, and the persons signing the Agreement have been duly authorized by the governing bodies of the City and District to sign this Agreement on behalf of the governing bodies.

16.

This written instrument constitutes the entire agreement by the parties hereto concerning the work and services to be performed hereunder, and any prior or contemporaneous, oral or written agreement which purports to vary from the terms hereof shall be void.

17.

Notices to District shall be deemed given when delivered in person to the Superintendent, or the next business day after the mailing of said notice addressed to said District Superintendent by United States mail, certified or registered mail, return receipt requested, and postage paid at 1600 Grand Avenue, Liberty, TX 77575.

Notices to City shall be deemed given when delivered in person to the City Manager, or the next business day after the mailing of said notice addressed to said City Manager by United States mail, certified or registered mail, return receipt requested, and postage paid at 1829 Sam Houston, Liberty, TX 77575.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

Attachment: Interlocal LISD-SRO 2016 (3628 : School Resource Officer)

IN WITNESS WHEREOF, the parties hereto have executed this agreement to multiples in Liberty, Liberty County, Texas, this _____ day of _____, A.D. 2016.

ATTEST:

_____
City Secretary

CITY OF LIBERTY

_____
Gary Broz
City Manager

ATTEST:

_____
Liberty ISD

LIBERTY INDEPENDENT
SCHOOL DISTRICT

_____
Cody Abshier
Superintendent

Attachment: Interlocal LISD-SRO 2016 (3628 : School Resource Officer)

The City of Liberty
City Council
1829 Sam Houston
Liberty, TX 77575

Meeting: 09/20/16 06:00 PM

Department: Administration
Category: Agreements

COUNCIL ACTION (ID # 3629)

DOC ID: 3629

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PRICE ADJUSTMENT AGREEMENT BY AND BETWEEN
CITY OF LIBERTY AND SAM RAYBURN MUNICIPAL POWER AGENCY
FOR BOOMERANG LOAD

THIS PRICE ADJUSTMENT AGREEMENT BY AND BETWEEN CITY OF LIBERTY AND THE SAM RAYBURN MUNICIPAL POWER AGENCY FOR BOOMERANG LOAD (this "Agreement") is entered into as of September _____, 2016 (the "Agreement Execution Date") by and between the Sam Rayburn Municipal Power Agency ("Seller"), and the City of Liberty ("Buyer"). Buyer and Seller are both political subdivisions of the State of Texas and may be individually referred to herein as a "Party" and collectively as the "Parties".

WHEREAS, Buyer and Boomerang Tube, L.L.C. ("Boomerang") are parties to that certain Retail Power Purchase Agreement (the "Boomerang Retail Contract") dated on or about June 22, 2010, pursuant to which Buyer provides Boomerang with all electrical loads up to 35 MW, or upon request of Boomerang such greater amount not to exceed 40 MW, required by Boomerang to operate its steel pipe and tube production facility located at 1100 FM 3361, Liberty, Texas 77575 (the "Boomerang Facility"); and

WHEREAS, Buyer purchases electric energy necessary to satisfy its obligations under the Boomerang Retail Contract from Seller at Seller's Nominated Resource Rate effective June 22, 2012; and

WHEREAS, EWO Marketing, LLC, a Delaware limited liability company ("EWOM"), and Seller are parties to that certain SRMPA Full Requirements Power Supply Agreement for City of Liberty/Boomerang Load dated June 22, 2010 (the "Boomerang Contract"), for Seller to purchase electric energy from EWOM so that Seller may supply Buyer with the electric energy necessary for Buyer to satisfy its obligations under the Boomerang Retail Contract; and

WHEREAS, Buyer and Seller desire to enter into this Agreement to reduce the level of payment required under the Boomerang Contract as provided herein, on the understanding that

Attachment: SRMPA-City Agreement-Boomerang-Price Adj (3629 : SRMPA - Price Adjustment Agreement)

such reduction amount shall be passed on, for the applicable Month, by Buyer to Boomerang under the Boomerang Retail Contract.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by both Parties, the Parties hereby agree as follows:

ARTICLE I - TERM; CONDITION PRECEDENT

1.1 Term. The term of this Agreement (the "Agreement Term") shall commence on the Agreement Execution Date and shall continue in effect until the earlier of (i) the termination of this Agreement in accordance with the terms hereof, and (ii) the end of the Discount Period as provided herein (such date being the "Agreement Termination Date"); provided, however, that such termination shall not affect or excuse (A) the performance of either Party under any provision of this Agreement that by its terms survives any such termination, or (B) the rights and obligations of the Parties that accrue prior to the Agreement Termination Date.

1.2 Condition Precedent. The commencement of the Discount Period is contingent upon the satisfaction of the following condition precedent: EWOM shall have obtained acceptance by the Federal Energy Regulatory Commission ("FERC") of this Agreement. Seller, without the obligation to incur any costs, agrees to assist and cooperate with EWOM in taking or doing all things necessary, proper or advisable in attempting to satisfy such condition precedent. If the condition precedent set forth in this Section has not been satisfied, or waived by EWOM, on or before December 31, 2016, then either party shall have the right to terminate this Agreement upon providing written notice to the other Party, unless such Party's failure to perform its obligations under this Section shall be the reason that such condition shall have not been satisfied. Termination of this Agreement pursuant to this Section shall terminate all rights and obligations of the Parties under this Agreement, without any liability of one Party to the other Party except for any liabilities incurred prior to the effective date of termination and for prior breaches. Seller will promptly notify Buyer in writing upon the satisfaction of the condition

Attachment: SRMPA-City Agreement-Boomerang-Price Adj (3629 : SRMPA - Price Adjustment Agreement)

precedent. The date of the satisfaction of the condition precedent shall be the "Condition Precedent Satisfaction Date."

ARTICLE 2 - DISCOUNT

2.1 Discount Period.

(a) Subject to Section 1.2, the Parties' obligations under this Agreement shall commence at and including 12:00:01 a.m. CPT on the Discount Commencement Date, and continue through and including 11:59:59 p.m. CPT on the Discount Termination Date, such period being the "Discount Period."

(b) The "Discount Commencement Date" shall be the first day of the first (1st) Month immediately following the Month in which the condition precedent set out in Section 1.2 has been satisfied. The "Discount Termination Date" shall be the last day of the twelfth (12th) Month immediately following the Month in which the Month in which the condition precedent set out in Section 1.2 has been satisfied.

2.2 Discount. For each of the twelve (12) Months during the Discount Period, the Cost Based Monthly Capacity Payment for such Month shall be reduced by a "Discount Amount" of $41,666.67, and such Monthly Discount Amount shall be included as a credit in each of the twelve (12) Monthly Invoices issued under the Boomerang Contract for the Discount Period. The sum of the Discount Amounts over the twelve (12) Months in the Discount Period is intended to be $500,000.00. The application of these Discount Amounts is made on the understanding that such Discount Amounts shall be passed on for each applicable Month by Seller to Buyer and then by Buyer to Boomerang under the Boomerang Retail Contract.

Attachment: SRMPA-City Agreement-Boomerang-Price Adj (3629 : SRMPA - Price Adjustment Agreement)

ARTICLE 3 - REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties. Each party, with respect to itself and subject to satisfaction of the condition precedent set out in Section 1.2 herein, hereby represents and warrants to the other Party as follows as of the Agreement Execution Date:

(a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary to perform this Agreement.

(b) It has the requisite organizational power and authority to execute, deliver and perform its obligations under this Agreement, and the execution and delivery of this Agreement and consummation of the transactions contemplated hereby have been duly and validly authorized and approved by all necessary action.

(c) This Agreement is duly and validly executed by such Party and this Agreement constitutes a legal, valid and binding obligation of such Party, enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally, and the application of equitable principles regardless of whether enforcement is sought in a proceeding at law or in equity.

ARTICLE 4 - MISCELLANEOUS

4.1 Notices. All notices, requests, statements or demands shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, registered or certified United States mail (postage prepaid), overnight courier service or facsimile to:

If to Seller: Sam Rayburn Municipal Power Agency
P.O. Box 10047
1517 Trinity St.
Liberty, Texas 77575
936/334-0104
832/747-1047 (fax)

Attachment: SRMPA-City Agreement-Boomerang-Price Adj (3629 : SRMPA - Price Adjustment Agreement)

If to Buyer: City of Liberty
1829 Sam Houston
Liberty, Texas 77575
936/336-3684
936/336-9846 (fax)

Notice by facsimile or hand delivery shall be effective on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective on the next Business Day. Notice by overnight courier or registered or certified United States mail shall be effective on the next Business Day after it was sent. A part may change its address by providing notice of same in accordance herewith.

4.2 Counterparts. This Agreement may be executed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

4.3 Amendment or Modification. This Agreement may not be modified or amended except by an instrument or instruments in writing signed by both Parties.

4.4 No Waiver. Any waiver by any Party of its rights with respect to any provision in this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not be deemed a waiver with respect to any other matter arising in connection with this Agreement and shall not be deemed a waiver with respect to any subsequent matter.

4.5 Severability. Except as otherwise stated herein, any provision or article declared or rendered unlawful by a court of law or regulatory agency or jurisdiction over the Parties, or deemed unlawful because of a statutory change, will not otherwise affect the lawful obligations that arise under this Agreement. In such circumstances, the Parties agree to negotiate in good faith to restore the agreement as near as possible to the original intent and effect.

4.6 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAWS.

Attachment: SRMPA-City Agreement-Boomerang-Price Adj (3629 : SRMPA - Price Adjustment Agreement)

4.7 Venue and Jurisdiction. For the purposes of initiating any legal action or proceeding arising under or relating to this Agreement or for recognition or enforcement of any judgment therefrom each Party expressly agrees to file its complaint exclusively in the State Courts located in Liberty County, Texas. Each Party consents to exclusive jurisdiction and venue in Liberty County, Texas and agrees to waive any objection to these forums (including, but not limited to, any venue or forum non conveniens grounds) and each Party waives the right to transfer venue from the State Courts located in Liberty County. Each of the Parties agree that a final judgment in any such action or proceeding may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable law.

4.8 Further Assurances. The Parties shall execute such additional documents, and shall cause such additional action to be taken as may be required or, in the reasonable judgment of any Party, may be necessary or desirable, to effect or evidence the provisions of this Agreement and the transactions contemplated hereby.

[remainder of this page intentionally left blank]

Attachment: SRMPA-City Agreement-Boomerang-Price Adj (3629 : SRMPA - Price Adjustment Agreement)

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be duly executed on its behalf as of the Agreement Execution Date.

City of Liberty	**Sam Rayburn Municipal Power Agency**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

Attachment: SRMPA-City Agreement-Boomerang-Price Adj (3629 : SRMPA - Price Adjustment Agreement)

The City of Liberty
City Council
1829 Sam Houston
Liberty, TX 77575

Meeting: 09/20/16 06:00 PM

Department: Administration
Category: Agreements

COUNCIL ACTION (ID # 3630)

DOC ID: 3630

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PRICE ADJUSTMENT AGREEMENT BY AND BETWEEN CITY OF LIBERTY AND BOOMERANG TUBE, LLC FOR BOOMERANG LOAD

THIS PRICE ADJUSTMENT AGREEMENT BY AND BETWEEN CITY OF LIBERTY AND BOOMERANG TUBE, LLC FOR BOOMERANG LOAD (this "Agreement") is entered into as of September _____, 2016 (the "Agreement Execution Date") by and between the City of Liberty, Texas ("Seller"), and Boomerang Tube, LLC ("Buyer"). Buyer and Seller may be individually referred to herein as a "Party" and collectively as the "Parties".

WHEREAS, Seller and Buyer are parties to that certain Electric Service Rate Agreement (the "Boomerang Retail Contract") dated on or about August 23, 2010, pursuant to which Seller provides Buyer with all electrical loads up to 35 MW, or upon request of Boomerang such greater amount not to exceed 40 MW, required by Boomerang to operate its steel pipe and tube production facility located at 1100 FM 3361, Liberty, Texas 77575 (the "Boomerang Facility"); and

WHEREAS, Seller purchases electric energy necessary to satisfy its obligations under the Boomerang Retail Contract from the Sam Rayburn Municipal Power Agency ("SRMPA") at SRMPA's Nominated Resource Rate effective June 22, 2012; and

WHEREAS, EWO Marketing, LLC, a Delaware limited liability company ("EWOM"), and SRMPA are parties to that certain SRMPA Full Requirements Power Supply Agreement for City of Liberty/Boomerang Load dated June 22, 2010 (the "Boomerang Contract"), for SRMPA to purchase electric energy from EWOM so that SRMPA may supply Seller with the electric energy necessary for Seller to satisfy its obligations under the Boomerang Retail Contract; and

WHEREAS, Buyer and Seller desire to enter into this Agreement to reduce the level of payment required under the Boomerang Retail Contract as provided herein.

Attachment: City-Boomerang-Price Adj (3630 : Boomerang-Price Adj. Agreement)

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by both Parties, the Parties hereby agree as follows:

ARTICLE I - TERM; CONDITION PRECEDENT

1.1 Term. The term of this Agreement (the "Agreement Term") shall commence on the Agreement Execution Date and shall continue in effect until the earlier of (i) the termination of this Agreement in accordance with the terms hereof, or (ii) the end of the Discount Period as provided herein (such date being the "Agreement Termination Date"); provided, however, that such termination shall not affect or excuse (A) the performance of either Party under any provision of this Agreement that by its terms survives any such termination, or (B) the rights and obligations of the Parties that accrue prior to the Agreement Termination Date.

1.2 Condition Precedent. The commencement of the Discount Period is contingent upon the satisfaction of the following condition precedent: EWOM shall have obtained acceptance by the Federal Energy Regulatory Commission ("FERC") of all necessary agreements for the price adjustment. Seller, without the obligation to incur any costs, agrees to assist and cooperate with SRMPA and EWOM in taking or doing all things necessary, proper or advisable in attempting to satisfy such condition precedent. If the condition precedent set forth in this Section has not been satisfied, or waived by EWOM, on or before December 31, 2016, then either party shall have the right to terminate this Agreement upon providing written notice to the other Party. Termination of this Agreement pursuant to this Section shall terminate all rights and obligations of the Parties under this Agreement, without any liability of one Party to the other Party except for any liabilities incurred prior to the effective date of termination and for prior breaches. Seller will promptly notify Buyer in writing upon the satisfaction of the condition precedent. The date of the satisfaction of the condition precedent shall be the "Condition Precedent Satisfaction Date."

ARTICLE 2 - DISCOUNT

2.1 Discount Period.

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(a) Subject to Section 1.2, the Parties' obligations under this Agreement shall commence at and including 12:00:01 a.m. CPT on the Discount Commencement Date, and continue through and including 11:59:59 p.m. CPT on the Discount Termination Date, such period being the "Discount Period."

(b) The "Discount Commencement Date" shall be the first day of the first (1st) Month immediately following the Month in which the condition precedent set out in Section 1.2 has been satisfied. The "Discount Termination Date" shall be the last day of the twelfth (12th) Month immediately following the Month in which the Month in which the condition precedent set out in Section 1.2 has been satisfied.

2.2 Discount. For each of the twelve (12) Months during the Discount Period, the Cost Based Monthly Capacity Payment for such Month shall be reduced by a "Discount Amount" of $41,666.67, and such Monthly Discount Amount shall be included as a credit in each of the twelve (12) Monthly Invoices issued under the Boomerang Retail Contract for the Discount Period. The sum of the Discount Amounts over the twelve (12) Months in the Discount Period is intended to be $500,000.00. The application of these Discount Amounts is made on the understanding that such Discount Amounts shall be passed on for each applicable Month by SRMPA to Seller and then by Seller to Buyer under this Price Adjustment Agreement.

ARTICLE 3 - REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties. Each party, with respect to itself and subject to satisfaction of the condition precedent set out in Section 1.2 herein, hereby represents and warrants to the other Party as follows as of the Agreement Execution Date:

(a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary to perform this Agreement.

(b) It has the requisite organizational power and authority to execute, deliver and perform its

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obligations under this Agreement, and the execution and delivery of this Agreement and consummation of the transactions contemplated hereby have been duly and validly authorized and approved by all necessary action.

(c) This Agreement is duly and validly executed by such Party and this Agreement constitutes a legal, valid and binding obligation of such Party, enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally, and the application of equitable principles regardless of whether enforcement is sought in a proceeding at law or in equity.

ARTICLE 4 - MISCELLANEOUS

4.1 Notices. All notices, requests, statements or demands shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, registered or certified United States mail (postage prepaid), overnight courier service or facsimile to:

If to Buyer: Boomerang Tube, LLC
1100 FM 3361
Liberty, Texas 77575

If to Buyer: City of Liberty
1829 Sam Houston
Liberty, Texas 77575

Notice by facsimile or hand delivery shall be effective on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective on the next Business Day. Notice by overnight courier or registered or certified United States mail shall be effective on the next Business Day after it was sent. A part may change its address by providing notice of same in accordance herewith.

4.2 Counterparts. This Agreement may be executed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

Attachment: City-Boomerang-Price Adj (3630 : Boomerang-Price Adj. Agreement)

4.3 Amendment or Modification. This Agreement may not be modified or amended except by an instrument or instruments in writing signed by both Parties.

4.4 No Waiver. Any waiver by any Party of its rights with respect to any provision in this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not be deemed a waiver with respect to any other matter arising in connection with this Agreement and shall not be deemed a waiver with respect to any subsequent matter.

4.5 Severability. Except as otherwise stated herein, any provision or article declared or rendered unlawful by a court of law or regulatory agency or jurisdiction over the Parties, or deemed unlawful because of a statutory change, will not otherwise affect the lawful obligations that arise under this Agreement. In such circumstances, the Parties agree to negotiate in good faith to restore the agreement as near as possible to the original intent and effect.

4.6 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAWS.

4.7 Venue and Jurisdiction. For the purposes of initiating any legal action or proceeding arising under or relating to this Agreement or for recognition or enforcement of any judgment therefrom each Party expressly agrees to file its complaint exclusively in the State Courts located in Liberty County, Texas. Each Party consents to exclusive jurisdiction and venue in Liberty County, Texas and agrees to waive any objection to these forums (including, but not limited to, any venue or forum non conveniens grounds) and each Party waives the right to transfer venue from the State Courts located in Liberty County. Each of the Parties agree that a final judgment in any such action or proceeding may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable law.

4.8 Further Assurances. The Parties shall execute such additional documents, and shall cause such additional action to be taken as may be required or, in the reasonable judgment of any Party, may be necessary or desirable, to effect or evidence the provisions of this Agreement and

Attachment: City-Boomerang-Price Adj (3630 : Boomerang-Price Adj. Agreement)

the transactions contemplated hereby.

[remainder of this page intentionally left blank]

Attachment: City-Boomerang-Price Adj (3630 : Boomerang-Price Adj. Agreement)

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be duly executed on its behalf as of the Agreement Execution Date.

City of Liberty	**Boomerang Tube, LLC**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

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