



LOUDON UTILITIES

**P.O. BOX 69
LOUDON, TENNESSEE 37774**

AGENDA

LOUDON UTILITY BOARD WORKSHOP

December 13, 2021

4:30 PM

1. Recognition of Visitors
2. Safety Report
3. Safety Assessment
4. Malibu MOU
5. Update on Active Projects
 - WWTP Sodium Hypochlorite
 - Water Main River Crossing
 - TVPOA Projects
6. Natural Gas Rate
7. Other



LOUDON UTILITIES

P.O. BOX 69

LOUDON, TENNESSEE 37774

To: Chairman Campbell and Board Members

From: Ty Ross

Subject: December Workshop Items

Date: December 10, 2021

The following items appear on the agenda for the December 13, 2021 workshop meeting of the Board of Directors of Loudon Utilities:

1. Recognition of Visitors:
2. Safety Report: There was one (1) reportable injury for the month of November.
3. Safety Assessment: At the request of Director Farmer we engaged a third party, TN Job Training & Safety (JTS), to perform a safety assessment of utility crew operations. JTS will attend our workshop and present its findings. You can read more about the third-party professionals, Tennessee Job Training & Safety, at this link - <https://tnjts.com/our-services/>
4. Malibu MOU: Included in this packet is an agreement with Malibu to memorialize the various responsibilities for the construction of electric service to the planned new factory to be built at the intersection of Natalie Boulevard and Highway 11. In it, Malibu commits to pay the cost of abandonment of a TVA transmission line crossing Malibu property (\$120,974) as well as the cost of construction of new distribution LUB distribution lines to its factory (\$629,200).

5. Update on Active Projects:

We will provide general updates on the status of the following on-going active projects:

- A. WWTP Sodium Hypochlorite – Construction Phase wrapping up. Final tests being scheduled and conducted. Expected completion on schedule for January 2022.
 - B. Water Main River Crossing – Permitting with Army Corps of Engineers received! Project is being resubmitted with Army Corp permit intact for permission to bid which is anticipated in February 2022.
 - C. TVPOA Projects – All contracts executed and notices to proceed issued. New TVPOA water rate \$2.12 per 1,000 gallon in place.
6. Natural Gas Rate: The cost of natural gas delivered to the City Gate decreased for the month of December 2021. Utilizing the formula for natural gas rates, this converts into a rate of \$1.38 per 100 cubic feet for gas billed after January 1, 2022.

MEMORANDUM OF UNDERSTANDING
BETWEEN
LOUDON UTILITY BOARD
AND
MALIBU BOATS, INC.

THIS MEMORANDUM OF UNDERSTANDING (hereinafter referred to as either “Agreement” or “MOU”), made as of the ____ day of December, 2021, (“Effective Date”) by and between the Loudon Utilities Board, a municipal corporation of the State of Tennessee, (hereinafter referred to as “Utility”) with its principal offices located at 2480 Highway 72, Loudon, TN 37774 and Malibu Boats, Inc., a Delaware corporation with its principal offices located at 5075 Kimberly Way, Loudon, TN 37774 (hereinafter referred to as (“Industry”). Industry and the Utility may each be referred to herein as a “Party” and may be referred to collectively as “Parties.”

RECITALS:

WHEREAS, the purchase, production, sale, and distribution of utility services in Loudon, Tennessee is under the jurisdiction, control, and management of Utility; and

WHEREAS, Industry owns production facilities located in Loudon, Tennessee that purchase utility services from Utility; and

WHEREAS, Industry wishes to construct new facilities (the “Project”) that require development of an industrial access road to serve the Project; and

WHEREAS, Industry wishes to construct new facilities that require the abandonment of a TVA easement; and

WHEREAS, Industry will require utility services to serve the Project; and

WHEREAS, Utility desires to enter an Agreement to establish the terms and conditions under which it will be reimbursed for all expenses for the benefit of the Industry; and

WHEREAS, the purpose of this Agreement is to set forth the initial scope of work and responsibilities of the parties; and

NOW, THEREFORE, THAT FOR AND IN CONSIDERATION of the mutual entry into this MOU by the parties hereto, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

SECTION 1. Parties’ Responsibilities.

1.1 In anticipation of the execution of this MOU, the City of Loudon has committed by resolution to the initial estimated payment of \$91,500 to the Tennessee Department of

Transportation (“the Department”) from the Sugarlimb Industrial Park Fund representing City’s share of the Right of Way cost for the industrial access road. (Exhibit 1)

- 1.2 In the event the Department acquires additional Right-of-Way above what is estimated in Section 1.1., then fifty-percent (50%) of the actual cost will be due from Industry. (Exhibit A to Exhibit 1),
- 1.3 In anticipation of the execution of this MOU, Utility has signed the Intent Agreement with the Tennessee Valley Authority (“TVA”) to begin the process of abandonment of the easement. The total estimated cost of this project is \$120,974. (Exhibit 2)
- 1.4 Attached as Exhibit 3 to this MOU, Utility is providing Industry with an aid-to-construction estimate of \$629,200 memorializing the anticipated costs associated with Utility providing service to the Industry. These costs will be adjusted once the project actually commences based on the needs of the Industry.
- 1.5 Industry will reimburse Utility for all funds actually expended to complete the tasks identified in Sections 1.3 & 1.4. Upon execution of this MOU, Industry will provide Utility with a purchase order in the amount of \$750,174 for the projected initial expenses. Actual charges will be billed on a monthly basis with a detailed invoice.
- 1.6 Upon completion of these tasks, the Parties will use their reasonable efforts to cooperate regarding any additional documentation needed to complete the expansion.

SECTION 2. Term and Termination.

This MOU will remain in effect from the Effective Date first above written until December 31, 2023 or upon completion of the projects contemplated by this MOU.

The Parties shall not be held liable for the failure of third parties to deliver the products or services outlined in this MOU, however, the Parties shall utilize all reasonable efforts to deliver the products and services in a timely fashion.

SECTION 3. Notices.

3.1. Any notice, demand, consent, approval, request, or other communication or document to be provided hereunder to a Party hereto shall be (a) given in writing, and (b) deemed to have been given (i) forty-eight (48) hours after being sent by certified or registered mail in the United States mails, postage prepaid, return receipt requested, or (ii) if such Party’s receipt thereof is acknowledged in writing, upon its hand or other delivery (such as e-mail) to such Party.

3.2. If being sent to Utility, the notice shall be sent as follows:

TO: Ty Ross
2480 Highway 72 N
Loudon, TN 37774

Ty.ross@cityofloundontn.org

3.3. If being sent to the Industry, the notice shall be sent as follows:

TO: David Bryant
5075 Kimberly Way
Loudon, TN 37774
davidb@malibuboats.com

3.4. Whether being sent to Utility or to the Industry, either Party may designate from time to time such other point of contact or address in the United States of America as such party provides by written notice to the other.

SECTION 4. General.

4.1. Successors and Assigns. All of the terms, conditions, obligations and provisions contained herein shall inure to the benefit of and be binding upon the parties hereto and their permitted successors and assigns. Neither Party may assign any rights or delegate any duties hereunder without the advance written consent of the other party, which consent shall not unreasonably be withheld or delayed.

4.2. Entire Agreement. This MOU shall represent the complete understanding between the Parties as to the subject matter hereof, and shall supersede all prior written or oral negotiations, representations, warranties, statements or MOUs between the parties. No inducements, representations, understandings or agreements have been made or relied upon, except those specifically set forth in the provisions of this MOU.

4.3. Amendment. This MOU may be amended only by a written instrument, executed by each Party.

4.4. No Waiver by Either Party. Neither Party shall be deemed to have waived the exercise of any right that it holds, hereunder unless such waiver is made expressly and in writing and no delay or omission by either Party in exercising any such right shall be deemed a waiver of its future exercise. No such waiver made in any instance involving the exercise of any such right shall be deemed a waiver in any other instance, or for any other right.

4.5. Severability. No determination by any court, governmental body or otherwise that any provision of this MOU is invalid or unenforceable in any one instance shall affect the validity or enforceability of (a) any other such provisions, or (b) such provision in any other instance. Each such provision shall be valid and enforceable to the fullest extent allowed by law, and shall be construed wherever possible as being consistent with applicable law.

4.6. Force Majeure. Neither Party shall not be liable if the performance of this Agreement, or any obligation hereunder is prevented, restricted or interfered with by reason of: fire, flood, earthquake, act of God; explosion, other casualty or accident; strikes or labor disputes; inability to procure or obtain delivery of parts, supplies or power; war or other violence; any law, order,

proclamation, regulation, ordinance, demand or requirement of any government agency; or any other condition or act whatsoever beyond the reasonable control of either party.

4.7. Indemnification. To the extent permissible, each Party (the “Indemnifying Party”) hereby agrees to defend, indemnify and hold harmless the other party and its shareholders, officers, agents, directors, members and employees, against any claims, debts, setoffs, liens, judgments, demands, causes of action, costs, liabilities and/or expenses (including, without limitation, reasonable attorneys' fees) arising as a result of the gross negligence or willful misconduct of the Indemnifying Party.

4.8. Governing Law, Jurisdiction and Venue. All questions concerning the validity, operation, interpretation, and construction of this Agreement will be governed by and determined in accordance with the laws of the State of Tennessee. The Parties hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the courts of the State of Tennessee and in a court of competent jurisdiction located in Loudon County for any litigation arising out of or relating to this Agreement and the transactions contemplated hereby (and agrees not to commence any litigation relating thereto except in such courts), waives any objection to the laying of venue of any such litigation in Tennessee state court, and agrees not to plead or claim in any Tennessee court that such litigation brought therein has been brought in any inconvenient forum.

4.9. Relationship of the Parties. In all matters pertaining to this Agreement, the Parties shall be acting as independent entities, and no legal entity or relationship of any kind shall be deemed to arise here from either between the Parties themselves or between the parties hereto, or other corporations, individuals, or organizations, and it is specifically agreed and acknowledged that this Agreement does not give effect to a joint venture, partnership, or business organization of any kind.

4.10. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

4.11. Authority to Enter into MOU. The Parties represent and warrant the legal authority to enter into this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

INDUSTRY:

UTILITY:

By: _____

By: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____

GAS RATE COMPUTATIONS

	<i>Base Month (Sept 2003)</i>	<i>Rate Effective 12/1/21</i>	<i>Rate Effective 1/1/22</i>	<i>Rate Effective 2/1/22</i>	<i>Rate Effective 3/1/22</i>	<i>Rate Effective 4/1/22</i>	<i>Rate Effective 5/1/22</i>	<i>Rate Effective 6/1/22</i>
Gas Supply Cost	4.9950	6.1600	5.3700					
Pipeline Charges	0.2755	-0.1717	0.1693					
Supply Management	<u>0.0350</u>	<u>0.0450</u>	<u>0.0450</u>	<u>0.0450</u>	<u>0.0450</u>	<u>0.0450</u>	<u>0.0450</u>	<u>0.0450</u>
Subtotal	5.3055	6.0333	5.5843					
BTU & System Loss (8%)	0.0000	0.4827	0.4467					
Demand Unit Charge	1.2200	2.7370	2.7370	2.7370	2.7370	2.7370	2.7370	2.7370
ETNG Rate Action 8/2020								
Storage Charges	<u>0.0000</u>	<u>0.5900</u>	<u>0.5900</u>	<u>0.5900</u>	<u>0.5900</u>	<u>0.5900</u>	<u>0.5900</u>	<u>0.5900</u>
Cost of Gas	6.5255	9.8430	9.3580					
System Operations	<u>4.4745</u>	<u>4.4745</u>	<u>4.4745</u>	<u>4.4745</u>	<u>4.4745</u>	<u>4.4745</u>	<u>4.4745</u>	<u>4.4745</u>
Cost per MCF	\$11.000	\$14.3175	\$13.8325					
Rate per 100 Cubic Feet	\$1.10	\$1.43	\$1.38					

*NOTE: BTU & System Losses added June 2004 – BTU Factor (7%) System Losses (1%)
Storage Charges added June 2004 and increased May 2008
ETNG Rate Action added August 2020 and removed November 2021*