TO ALL INTERESTED PERSONS
Notice is hereby given of a REGULAR SESSION of the CITY COUNCIL of the City of The Colony, Texas to be held at 6:30 PM on TUESDAY, NOVEMBER 19, 2019 at CITY HALL, 6800 MAIN ST., THE COLONY, TX, at which time the following items will be addressed:

1  ROUTINE ANNOUNCEMENTS, RECOGNITIONS AND PROCLAMATIONS
1.1  Call to Order
1.2  Invocation
1.3  Pledge of Allegiance to the United States Flag
1.4  Salute to the Texas Flag
1.5  2019 Arbor Day Proclamation (Council)
1.6  Recognize art students and instructors from The Colony High School for their mural work at Stewart Creek Park (Swain)
1.7  Items of Community Interest
1.8  Receive presentation from Parks and Recreation regarding upcoming events and activities. (Stansell)

2  WORK SESSION
The Work Session is for the purpose of exchanging information regarding public business or policy. No action is taken on Work Session items. Citizen input will not be heard during this portion of the agenda.

2.1  Council to provide direction to staff regarding future agenda items. (Council)

3  CITIZEN INPUT
This portion of the meeting is to allow up to five (5) minutes per speaker with a maximum of thirty (30) minutes for items not posted on the current agenda. The council may not discuss these items, but may respond with factual data or policy information, or place the item on a future agenda. Those wishing to speak shall submit a Request Form to the City Secretary.

4  CONSENT AGENDA
The Consent Agenda contains items which are routine in nature and will be acted upon in one motion. Items may be removed from this agenda for separate discussion by a Council member.

4.1  Consider approving City Council Regular Session meeting minutes for November 5, 2019. (Stewart)
4.2 Consider approving a resolution authorizing the City Manager to execute the First Amendment to Maintenance Agreement with the Tribute Owners Association, Inc. (Hartline)

4.3 Consider approving a resolution authorizing the City Manager to execute a Construction Services Contract in the amount of $182,248.81 with L.J. Design and Construction for the construction of the Stewart Creek Park Swim Beach Relocation project with funding from the Community Development Corporation. (Morgan)

4.4 Consider approving a resolution authorizing the City Manager to execute a Memorandum of Agreement with the U.S. Army Corps of Engineers for administrative expenses to review and process a request for the proposed The Tribute Marina in Wynnewood Park. (Nelson)

4.5 Consider approving a resolution authorizing the City Manager to execute a Professional Services Agreement with Tribute Partners, LLC, for reimbursement of costs associated with the Memorandum of Agreement with the U.S. Army Corps of Engineers for review of studies related to the proposed Tribute Marina and park development. (Nelson)

4.6 Consider approving a resolution authorizing the Mayor to execute an Encroachment/License Agreement with the Legends Texas Homeowners Association, Inc. of The Colony, Texas for The Legends Subdivision sign located within the South Colony Boulevard Right-of-way [Bear Run Road and South Colony Boulevard]. (Williams)

5 REGULAR AGENDA ITEMS

5.1 Conduct a public hearing, discuss and consider an ordinance regarding the approval of a Gateway Standards Waiver (GSW) to allow the construction of a six-foot (6’) vinyl fence (around the proposed day care facility play area) where only masonry, stone brick exposed aggregate or stucco with masonry columns fences area permitted. The subject site is located at 5701 State Highway 121, Suite 190 located within the Planned Development-16 (PD-16) Zoning District and Gateway Overlay District. (Williams)

6 EXECUTIVE SESSION

6.1 A. Council shall convene into a closed executive session pursuant to Sections 551.071 and 551.087 of the Texas Government Code regarding commercial or financial information the city has received from a business prospect(s), and to deliberate the offer of a financial or other incentive to a business prospect(s), and to receive legal advice regarding the Tribute PD’s 18 and 23.

B. Council shall convene into a closed executive session pursuant to Section 551.074 of the Texas Government Code to deliberate the evaluation, reassignment, duties, discipline, or dismissal of the City Secretary.

7 EXECUTIVE SESSION ACTION

7.1 A. Any action as a result of executive session regarding commercial or financial information the city has received from a business prospect(s) and the offer of a financial or other incentive to a business prospect(s), and the same regarding the Tribute PD’s 18 and 23.
B. Any action as a result of executive session regarding the evaluation, reassignment, duties, discipline, or dismissal of the City Secretary.

EXECUTIVE SESSION NOTICE
Pursuant to the Texas Open Meeting Act, Government Code Chapter 551 one or more of the above items may be considered in executive session closed to the public, including but not limited to consultation with attorney pursuant to Texas Government Code Section 551.071 arising out of the attorney’s ethical duty to advise the city concerning legal issues arising from an agenda item. Any decision held on such matter will be taken or conducted in open session following the conclusion of the executive session.

ADJOURNMENT
Persons with disabilities who plan to attend this meeting who may need auxiliary aids such as interpreters for persons who are deaf or hearing impaired, readers or, large print are requested to contact the City Secretary’s Office, at 972-624-3105 at least two (2) working days prior to the meeting so that appropriate arrangements can be made.

CERTIFICATION
I hereby certify that above notice of meeting was posted outside the front door of City Hall by 5:00 p.m. on the ___ day of __________, 2019.

____________________________________
Tina Stewart, TRMC, City Secretary
CITY COUNCIL Agenda Item Report
Meeting Date: November 19, 2019
Submitted by: Eve Morgan
Submitting Department: Parks & Recreation
Item Type: Proclamation
Agenda Section:

Subject:
2019 Arbor Day Proclamation (Council)

Suggested Action:

Attachments:
Arbor Day Proclamation 2019.doc
WHEREAS, in 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees; and,

WHEREAS, the holiday, called “Arbor Day”, was first observed with the planting of more than a million trees in Nebraska; and,

WHEREAS, Arbor Day is now celebrated nationwide around the world; and,

WHEREAS, trees can reduce the erosion of our precious topsoil by wind and water, lower our heating and cooling costs, moderate the temperature, clean the air, produce oxygen, and provide habitat for wildlife; and,

WHEREAS, trees are a renewable resource giving us paper and wood for our homes, fuel for our fires, and countless other wood products; and,

WHEREAS, trees in our city increase property values, enhance the economic vitality of our business areas, and beautify our community; and,

WHEREAS, trees, wherever they are planted, provide a source of joy and spiritual renewal.

NOW, THEREFORE, I, Joe McCourry, Mayor of The Colony, Texas, do hereby proclaim Tuesday, November 19, 2019 as

ARBOR DAY

in the City of The Colony, and I encourage all citizens and businesses to join me in the celebration thereof and to support efforts to protect our trees and woodlands, by preserving both the natural and urban forest and by planting trees in our communities to promote the well-being of this and all future generations.

SIGNED AND SEALED this 19th day of November, 2019.

Joe McCourry, Mayor

ATTEST:

Tina Stewart, TRMC, City Secretary
CITY COUNCIL Agenda Item Report
Meeting Date: November 19, 2019
Submitted by: David Swain
Submitting Department: Parks & Recreation
Item Type: Recognition
Agenda Section:

Subject:
Recognize art students and instructors from The Colony High School for their mural work at Stewart Creek Park (Swain)

Suggested Action:

Attachments:
Subject:
Receive presentation from Parks and Recreation regarding upcoming events and activities. (Stansell)

Suggested Action:

Attachments:
CITY COUNCIL Agenda Item Report
Meeting Date: November 19, 2019
Submitted by: Mayra Sullivan
Submitting Department: City Secretary
Item Type: Discussion
Agenda Section:

Subject:
Council to provide direction to staff regarding future agenda items. (Council)

Suggested Action:

Attachments:
CITY COUNCIL Agenda Item Report
Meeting Date: November 19, 2019
Submitted by: Mayra Sullivan
Submitting Department: City Secretary
Item Type: Minutes
Agenda Section:

Subject:
Consider approving City Council Regular Session meeting minutes for November 5, 2019. (Stewart)

Suggested Action:

Attachments:
November 5, 2019 DRAFT Minutes.docx
The Regular Session of the City Council of the City of The Colony, Texas, was called to order at 6:31 p.m. on the 5th day of November, 2019, at City Hall, 6800 Main Street, The Colony, Texas, with the following roll call:

Joe McCourry, Mayor Present
Kirk Mikulec, Councilmember Present
Richard Boyer, Councilmember Present
Brian Wade, Mayor Pro Tem Present
David Terre, Deputy Mayor Pro Tem Present
Perry Schrag, Councilmember Present
Joel Marks, Councilmember Present (arrived at 6:55 p.m.)

And with 7 council members present a quorum was established and the following items were addressed:

1.0 ROUTINE ANNOUNCEMENTS, RECOGNITIONS and PROCLAMATIONS

1.1 Call to Order
Mayor McCourry called the meeting to order at 6:31 p.m.

1.2 Invocation
Pastor Steve Solari with Hope Community Fellowship delivered the invocation.

1.3 Pledge of Allegiance to the United States Flag
The Pledge of Allegiance to the United States Flag was recited.

1.4 Salute to the Texas Flag
Salute to the Texas Flag was recited.

1.5 Proclamation: International Fraud Awareness Week.
Mayor McCourry proclaimed November 17 - 23, 2019 as "International Fraud Awareness Week". The proclamation was accepted by Chad Francis, President of the Dallas Chapter Association of Certified Fraud Examiners, and guest of the association.

1.6 Recognize Kevin Braby and Donna Arnold for their contribution during the 2019 Red Bull Soapbox Race.
Councilmember Schrag and Councilmember Wade recognized Kevin Braby and Donna Arnold for their tremendous help with building the city's 2019 Red Bull Soapbox entry "Smoke on the Water". Council presented Mr. Braby and Ms. Arnold with awards for their dedication and commitment.

These items are strictly public service announcements. Expressions of thanks, congratulations or condolences; information regarding holiday schedules; honorary recognition of city officials, employees or other citizens; reminders about upcoming events sponsored by the City or other entity that are scheduled to be attended by a city official or city employee. No action will be taken and no direction will be given regarding these items.
Council provided discussion on this item.

1.7 Announcement acknowledging the City of The Colony Employee of the Quarter. Director of Human Resources, Rodney Wallican, announced Thelisha Tawney, Assistant Human Resources Director, as The Colony's Employee of the Quarter.

1.8 Items of Community Interest

1.8.1 Receive a presentation from the Library regarding current and upcoming programs, events, and service improvements. Assistant Library Director, Kate Margolis, presented the current and upcoming programs, events and service improvements to Council.

1.10 Receive presentation from Parks and Recreation regarding upcoming events and activities. Recreations Manager, David Swain, provided upcoming events and activities to the Council.

2.0 WORK SESSION

2.1 Receive a presentation from Metro Relief regarding the redirection of crisis intervention funding. Director of Community Relations and Programming, Joe Perez, presented the item to Council. Metro Relief representatives Katie Besly and Pamela DeSantiago updated Council on the changes that have taken place.

Council provided discussion on this item and advised staff to move forward with bringing this item back at a later meeting.

2.2 Discuss and provide direction to staff regarding adopting an ordinance regulating pet sale businesses. Director of Community Relations and Programming, Joe Perez, presented the item to Council.

Shannon Greer, Friends of The Colony Animal Services, 4624 Coney Island, spoke concerning regulating pet sale businesses.

Council provided discussion on this item.

2.3 Discuss and provide direction to staff regarding the renewal of a contract for an LPGA consultant and Event Coordinator Liaison.
City Manager, Troy Powell, gave an update regarding the future Independent Employment Agreement with Diane Baxter for services related to the 2020 Volunteers of America LPGA Texas Classic.

Council provided discussion on this item.

2.4 Discuss and provide direction to staff regarding the initiation of the condemnation process for easements required to complete the Austin Ranch Force Main Project. **This item was pulled and combined with Regular Session Item 5.7**

2.5 Council to provide direction to staff regarding future agenda items. Councilmember Marks gave an update on his previous request regarding a possible plastic straw ban throughout the city.

3.0 CITIZEN INPUT
   None

4.0 CONSENT AGENDA

Motion to approve all items from the Consent Agenda with the exception of Agenda Item No. 4.7- Schrag; second by Wade, motion carried with all ayes.

4.1 Consider approving City Council Regular Session meeting minutes for October 2, 2019.

4.2 Consider approving a resolution casting the city’s votes for David Terre to serve on the Denton Central Appraisal District Board of Directors for a two year term beginning January 1, 2020.

RESOLUTION NO. 2019-078

4.3 Consider appointing Dr. Sharon F. Wild as the veterinarian to the Animal Control Board.

4.4 Consider approving a resolution authorizing the City Manager to execute an Interlocal Agreement with Denton County for Library Services.

RESOLUTION NO. 2019-079

4.5 Consider approving a resolution authorizing the City Manager to approve and issue final payments to Pepper Lawson Waterworks for the Wastewater Treatment Plant Expansion - Phase I Project, and issue payment contingent, upon receipt of consent of surety.

RESOLUTION NO. 2019-080
4.6 Consider approving a resolution authorizing the City Manager to execute an agreement with the North Texas Groundwater Conservation District for Water Well Monitoring.

RESOLUTION NO. 2019-081

*** This item was pulled from the agenda for separate consideration ***

4.7 Consider approving a resolution authorizing the City Manager to execute the purchase of two (2) Diamond Coach VIP 2200 12+2 buses from Hudson Bus Sales LLC for the Parks & Recreation Department in the amount of $131,724.00. Councilmember Terre clarified the need and usage of the new busses and thanked the Parks & Recreation Department for their research on the busses.

Council provided discussion on this item.

Motion to approve- Terre; second by Wade, motion carried with all ayes.

RESOLUTION NO. 2019-082

4.8 Consider approving a resolution authorizing the City Manager to execute the Supplemental Agreement No. 1 to Lease No. DACW63-1-09-0584 with the United States Army Corps of Engineers for the Low Density Recreation Wildlife Management Area.

RESOLUTION NO. 2019-083

4.9 Consider approving a resolution authorizing the City Manager to execute a Park Attendant Agreement with Mike and Wanda Beck for management and operations services for Stewart Creek Park.

RESOLUTION NO. 2019-084

4.10 Consider approving a resolution authorizing the City Manager to execute the purchase of Clam Shell products manufactured by Valmont Structures from Wildcat Electric Supply in the amount of $99,923.00.

RESOLUTION NO. 2019-085

4.11 Discuss and consider approving a resolution authorizing the City Manager to issue a purchase order in the amount of $404,800.00 to Holiday Chevrolet for the purchase of four (4) replacement vehicles and four (4) new vehicles for the Police Department.

RESOLUTION NO. 2019-086
4.12 Consider approving a resolution authorizing the City Manager to issue a purchase order to Dodge City of McKinney in the amount of $30,000.00 for the purchase of one (1) new Dodge Charger to replace Unit number 841, for the Police Department.

RESOLUTION NO. 2019-087

4.13 Consider approving a resolution authorizing the City Manager to issue a purchase order in the amount of $32,282.80 to WatchGuard for four (4) Vista/HD WiFi and 4re Systems.

RESOLUTION NO. 2019-088

4.14 Consider approving a resolution authorizing the City Manager to issue a purchase order in the amount of $13,619.64 to GTS Technology Solutions, Inc., for four (4) Dell Latitude 5424 Rugged laptops.

RESOLUTION NO. 2019-089

4.15 Consider approving a resolution authorizing the Mayor to execute an Interlocal Cooperation Agreement with Denton County in the amount of $12,400.00 for fire protection services.

RESOLUTION NO. 2019-090

4.16 Consider approving a resolution authorizing the Mayor to execute an Interlocal Cooperation Agreement with Denton County in the amount of $21,438.00 for ambulance services.

RESOLUTION NO. 2019-091

4.17 Consider approving a resolution authorizing the City Manager to purchase two Physio-Control LIFEPAK 15 cardiac monitor/defibrillators for the fire department in the amount of $67,983.50.

RESOLUTION NO. 2019-092

5.0 REGULAR AGENDA ITEMS

5.1 Conduct a public hearing, discuss and consider an ordinance for a Specific Use Permit (SUP) Amendment, to update the site area and layout for the continued place of worship operations known as “Soul Thirst Church,” located at 4700 Nash Drive, within the Single Family-4 (SF-4) zoning district.

Senior Planner, Isaac Williams, presented the proposed ordinance to Council. The overall site alteration reflects the intent to continue usage of the existing
parking area. Each operator intends to utilize a mutual access aisle to facilitate shared traffic generation. The revised site plan details an updated parking demand reflective of the current usage. The Development Review Committee finds that the SUP amendment meets the applicable requirements of the Zoning Ordinance and therefore recommends approval. On October 22, 2019, the Planning and Zoning Commission voted 7-0 to recommend approval.

The public hearing opened and closed at 7:34 p.m. with no speakers.

Council provided discussion on this item.

Motion to approve- Boyer; second by Mikulec, motion carried with all ayes.

ORDINANCE NO. 2019-2379

5.2 Conduct a public hearing, discuss and consider an ordinance for a Specific Use Permit (SUP) to allow the place of worship operations known as “Life Church,” within an existing building on a developed site located at 4704 Nash Drive, within the Single Family-4 (SF-4) zoning district.

Senior Planner, Isaac Williams, presented the proposed ordinance to Council. Mr. Williams stated the applicant requests approval to establish the operations of the Life Church at 4704 Nash Drive. The operations will primarily occur with an existing structure which previously functioned as an auxiliary building to the Soul Thirst Lutheran Church. The subject site is currently developed with the place of worship [church] use as requested is not anticipated that the existing use will create any unfavorable impacts on nearby uses in the same district and surrounding area. The Development Review Committee finds that the SUP meets all applicable requirements of the Zoning Ordinance and therefore recommends approval. On October 22, 2019, the Planning and Zoning Commission voted 7-0 to recommend approval. On October 22, 2019, the Planning and Zoning Commission voted 7-0 to recommend approval.

The public hearing opened and closed at 7:41 p.m. with no speakers.

Council provided discussion on this item.

Motion to approve- Mikulec; second by Boyer, motion carried with all ayes.

ORDINANCE NO. 2019-2380

5.3 Conduct a public hearing, discuss and consider an ordinance for text amendments to Planned Development -18 (PD-18) and Planned Development-23 (PD-23) District aka Tribute (Ordinance no. 2019-2351), amending Exhibit B “Development Regulations for PD-18 and PD-23” to establish and provide
development standards for Westbury Village Phase 5 within the Tribute Community.

Senior Planner, Isaac Williams, presented the proposed ordinance to Council. The proposed ordinance amends the development regulations for Planned Development-18 (PD-18) and Planned Development-23 (PD-23) by establishing the area and development standards for Westbury Phase 5; however Phase 5 is physically located within the PD-18 of the community. The proposed ordinance also amends the “community map” by updating the subject area previously assigned to Prestwick K-8 Stem Academy to Westbury Phase 5. The Development Review Committee (DRC) recommends approval of the proposed amendment. On October 22, 2019, the Planning and Zoning Commission voted 7-0 to recommend approval.

The public hearing opened at 7:47 p.m. Kathy Cunningham with Matthews-Southwest spoke in support of the proposed ordinance. There being no other speakers the public hearing was closed at 7:51 p.m.

**Motion to approve- Mikulec; second by Wade, motion carried with all ayes.**

**ORDINANCE NO. 2019-2381**

5.4 Conduct a public hearing, discuss, and consider approving a resolution to adopt the 2019 Community Development and Parks Master Plan.

Community Services Director, Pam Nelson, presented the proposed resolution to Council.

Ms. Nelson introduced Hunter Rush with MHS Planning & Design for an overview of the final master plan.

The public hearing was opened at 8:27 p.m. Hector Aleman, 7621 West Shore Drive, spoke in support of the proposed resolution. There being no other speakers the public hearing was closed at 8:34 p.m.

Council provided discussion on this item.

**Motion to approve- Schrag; second by Mikulec, motion carried with all ayes.**

**RESOLUTION NO. 2019-093**

5.5 Conduct a public hearing, discuss and consider approving a resolution authorizing the City Manager to submit an application for the Texas Parks and Wildlife Department (TPWD) Local Park Grant Program for the development of West Shore Park with additional funding provided by the Community Development Corporation.
Community Services Director, Pam Nelson, presented the proposed resolution to Council.

The public hearing was opened at 8:37 p.m. Jessica Aleman, 7621 West Shore Drive, spoke in support of the proposed resolution. There being no other speakers the public hearing was closed at 8:39 p.m.

Council provided discussion on this item.

Motion to approve- Terre; second by Mikulec, motion carried with all ayes.

RESOLUTION NO. 2019-094

5.6 Discuss and consider approving a resolution authorizing the City Manager to execute a Professional Service Contract with MHS Planning and Design LLC for Texas Parks and Wildlife grant submittal for the development of West Shore Park with funding provided by the Community Development Corporation.

Community Services Director, Pam Nelson, presented the proposed resolution to Council.

Council provided discussion on this item.

Motion to approve- Schrag; second by Marks, motion carried with all ayes.

RESOLUTION NO. 2019-095

Executive Session was convened at 8:45 p.m. and Regular Session was reconvened at 9:02 p.m.

5.7 Discuss and consider approving a resolution authorizing the City Manager to execute a developer agreement with 30/The Colony, LTD to secure the necessary easements for the Austin Ranch Force Main Project.

Motion to approve- Wade; second by Marks, motion carried with all ayes.

RESOLUTION NO. 2019-096

5.8 Discussion and action regarding comments made by Texas House Speaker Dennis Bonnen and Representative Dustin Burrows concerning Texas City and County officials. (Council)

The quotes are as follows:

DENNIS BONNEN:- He can. I'm that much closer to passing taxpayer funded lobbying. Let me tell you something: In this office and in the conference room on that end, any mayor, county judge that was dumb ass enough to come meet with me, I told them with great clarity, my goal is for this to be the worst session in the history of the legislature for cities and counties.
DUSTIN BURROWS: I hope the next session's even worse.

DENNIS BONNEN: And I'm all for that. But, so I guess my. Are you comfortable with this?

DUSTIN BURROWS: I've pitched this to the governor, I've started pitching this to some of my colleagues. Why don't we just take the two local pennies that are being used for economic development and put those into driving down property taxes? We don't raise anything, it's already a statewide average, its economic development dollars, we hate cities and counties. I'll take a hard look at them in the interim on a review, to see whether or not they've outlived their usefulness.

Mayor recognized the comments outlined on this item. Council provided discussion and suggested a document to be drafted and sent to the local governor's office, the state's representative and the local media to expressing how the City of The Colony feels and issue recommendations on ways to move forward.

Executive Session was convened at 9:45 p.m.

6.0 EXECUTIVE SESSION

6.1 A. Council shall convene into a closed executive session pursuant to Section 551.071 of the Texas Government Code to seek legal advice from the city attorney regarding pending or contemplated litigation - Appeal of Brazos Electric Power Cooperative, Inc., PUC Docket No. 45175 and City of The Colony, Texas v. Brazos Electric Power Cooperative, Inc. matter, Cause No. 16-06424-16.

****Item was removed from the agenda with no discussion****

B. Council shall convene into a closed executive session pursuant to Section 551.087 of the Texas Government Code regarding commercial or financial information the city has received from a business prospect(s), and to deliberate the offer of a financial or other incentive to a business prospect(s).

****Item was removed from the agenda with no discussion****

C. Council shall convene into a closed executive session pursuant to Section 551.071 of the Texas Government Code to seek legal advice from the city attorney regarding legislation from the 86th Texas Legislative Session.

D. Council shall convene into a closed executive session pursuant to Section 551.074 of the Texas Government Code to deliberate the evaluation, reassignment, duties, discipline, or dismissal of the City Secretary.

Regular Session was reconvened at 12:02 a.m.

7.0 EXECUTIVE SESSION ACTION
7.1

A. Any action as a result of executive session regarding pending or contemplated litigation - Appeal of Brazos Electric Power Cooperative, Inc., PUC Docket No. 45175 and City of The Colony, Texas v. Brazos Electric Power Cooperative, Inc. matter, Cause No. 16-06424-16.

B. Any action as a result of executive session regarding commercial or financial information the city has received from a business prospect(s).

C. Any action as a result of executive session regarding legislation from the 86th Texas Legislative Session.
   
   No Action

D. Any action as a result of executive session regarding the evaluation, reassignment, duties, discipline, or dismissal of the City Secretary.
   
   No Action

ADJOURNMENT
With there being no further business to discuss the meeting was adjourned at 12:02 p.m.

APPROVED:

__________________________
Joe McCourry, Mayor
City of The Colony

ATTEST:

__________________________
Tina Stewart, TRMC
City Secretary
Subject:
Consider approving a resolution authorizing the City Manager to execute the First Amendment to Maintenance Agreement with the Tribute Owners Association, Inc. (Hartline)

Suggested Action:
Consider approval of a resolution authorizing the City Manager to sign the First Amendment to Maintenance Agreement with the Tribute Owners Association, Inc. A copy of the First Amendment to Maintenance Agreement is attached for review.

The city entered into a maintenance agreement with the Tribute HOA on January 6, 2015. This agreement provided for the maintenance of stormwater and drainage facilities located in common areas within the Tribute development and defined specific HOA and city responsibilities regarding the required maintenance activities.

The developer requested that the agreement be updated to include common areas within new subdivisions that have been added to the Tribute development since the original agreement was signed. The original agreement was designed to be easily updated to add new subdivisions as they were completed by revising the overall Common Area Map and adding applicable engineering drawings for the newly completed subdivision’s. Staff has reviewed the First Amendment and recommends approval of the agreement.

Attachments:
Tribute HOA First Amendment.pdf
Res 2019-xxxTribute HOA Maint Agmt.doc
STATE OF TEXAS

COUNTY OF DENTON

FIRST AMENDMENT TO MAINTENANCE AGREEMENT

This First Amendment to Maintenance Agreement (this "Amendment") is entered into by and between The City of The Colony, Texas (the "City") and The Tribute Owners Association Inc. (the "HOA") by and through their duly authorized representatives to be effective on November 19, 2019 (the "Effective Date"). The City and the HOA may be individually referred to as a "Party" and collectively as the "Parties."

RECITALS

A. The Parties previously entered into that certain Maintenance Agreement dated effective as of January 6, 2015, recorded in Document Number 2015-8529 of the Official Public Records of Denton County, Texas (the "Agreement") regarding the maintenance of certain Common Areas (as defined in the Agreement).

B. The Parties mutually desire to amend the Agreement as set forth below and are executing and delivering this Amendment for such purpose.

AGREEMENT

NOW THEREFORE, in consideration of the terms and conditions contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Recitals; Defined Terms. The foregoing recitals are true and correct and are incorporated into this Amendment for all purposes. Any capitalized term used, but not defined, in this Amendment will have the meaning assigned to such term in the Agreement.

2. Common Areas; Storm Drain Plan. Exhibit A of the Agreement describing the Common Areas with stormwater and drainage improvements within the Development is deleted in its entirety and replaced with Exhibit A attached to this Amendment. Additionally, Exhibit C of the Agreement listing the referenced storm drain plan and profile sheets is deleted in its entirety and replaced with Exhibit C attached to this Amendment.

3. Affirmation of Agreement; Effect of Amendment. The Agreement is agreed to be in full force and effect according its terms except as such terms are expressly amended by this Amendment.

4. Execution; Counterparts. This Amendment may be executed in multiple counterparts, each of which when taken together, will constitute one and the same instrument.

[Signature Pages Follow]
EXECUTED as of the dates set forth below to be effective as of the Effective Date.

HOA: THE TRIBUTE OWNERS ASSOCIATION INC.,
a Texas property owners association

By: [Signature]

Name: Kristian Teleki

Title: President

STATE OF TEXAS

COUNTY OF DENTON

This instrument was acknowledged before me, on the 4th day of November, 2019,
by Kristian Teleki, the President of THE TRIBUTE OWNERS ASSOCIATION INC., a Texas property owners association, on behalf of said property owners association.

Notary Public, State of Texas
[seal]

KIM C. NEWLIN
MY COMMISSION EXPIRES
FEBRUARY 16, 2021
NOTARY ID: 131013785
CITY: CITY OF THE COLONY, TEXAS, a Texas home-rule municipality

By: _____________________________
Troy C. Powell, City Manager

ATTEST:

By: _____________________________
Tina Stewart, City Secretary

STATE OF TEXAS §

COUNTY OF DENTON §

This instrument was acknowledged before me, on the ___ day of ____________ , 2019, by Troy C. Powell, City Manager of the City of The Colony, Texas, a Texas home-rule municipality, on behalf of said municipality.

Notary Public, State of Texas
[seal]

When recorded, return to Grantee:
City of The Colony
Attn: City Manager
6800 Main Street
The Colony, TX 75056
Exhibit A
Description of Common Areas with Stormwater and Drainage Improvements within the Development

[Attached hereto]
Exhibit C
List of Referenced Storm Drain Plan & Profile Sheets

[Attached hereto]
## Exhibit C

### List of Referenced Storm Drain Plan & Profile Sheets

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<th>Location</th>
<th>Storm Drain #</th>
<th>Channel</th>
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<td>Aberdeen at Tribute, Phase 3 [January 22, 2014]</td>
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<td>- Sheet 7.2 (Line M1)</td>
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<td>- Sheet 7.3 (Lines M8 &amp; M9)</td>
<td>2</td>
<td>D</td>
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<td>Balmerino at Tribute, Phase 2 [December 12, 2011]</td>
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<td>C</td>
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<td>- Sheet 15 (Lines A-1, A-2 &amp; A2-A)</td>
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<td>The Gardens at Tribute, Phase 1 [September 7, 2006]</td>
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<td>- Sheet ST-5 (Line B)</td>
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<td>- Sheet ST-6 (Line C)</td>
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<td>- Sheet ST-3 (Line A)</td>
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<td>- Sheet ST-4 (Lines B, B1 &amp; B2)</td>
<td>8</td>
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<tr>
<td>- Sheet ST-5 (Line C)</td>
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<td>- Sheet ST-6 (Lines C1 &amp; C2)</td>
<td>10</td>
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<tr>
<td>The Glen at Tribute, Phase 2 [September 18, 2014]</td>
<td>11</td>
<td>B</td>
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<tr>
<td>- Sheet 22 (Lines A &amp; A1)</td>
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<td>Lochs at Tribute, Phase 1 [September 7, 2006]</td>
<td>12</td>
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<td>- Sheet ST-3 &amp; ST-4 (Line A)</td>
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<td>- Sheet ST-8 &amp; ST-9 (Line E)</td>
<td>13</td>
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<tr>
<td>- Sheet ST-10 (Line F)</td>
<td>14</td>
<td>B</td>
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<tr>
<td>- Sheet ST-11 (Line G)</td>
<td>15</td>
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<td>Lochs at Tribute, Phase 2 [March 4, 2014]</td>
<td>16</td>
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<td>- Sheet 15 (Lines J1 &amp; K1)</td>
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<td>Lochs at Tribute, Phase 3 [March 31, 2014]</td>
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<td>- Sheet 21 (Line D &amp; Lat D-2)</td>
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<td>Stonehaven at Tribute, Phase 1 [February 14, 2014]</td>
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<td>- Sheet 30 (Line C &amp; Lat C-2)</td>
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<td>- Sheet 31 (Line D, Lat D-1, Lat D-2, Line D1 &amp; Lat D1-2)</td>
<td>19</td>
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<tr>
<td>The Gardens at Tribute, Phase 2 [September 30, 2015]</td>
<td>20</td>
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<td>- Sheet 12 (Line A &amp; Lat A-2)</td>
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<td>- Sheet 13 (Line B)</td>
<td>21</td>
<td>A</td>
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Tullamore Meadows at the Tribute, Phase 2B [April 14, 2016]
- Sheet 38 (Line A) 22  D
- Sheet 41 (Line Q) 23  D
- Sheet 42 (Line S) 24  D
- Sheet 43 (Pond Drain) 25  D
CITY OF THE COLONY, TEXAS

RESOLUTION NO. 2019-______


WHEREAS, the City and the Tribute Homeowners Association desire to enter into a Maintenance Agreement for maintenance of stormwater and drainage facilities located in common areas within the development whereby the City authorizes the Tribute Homeowners Association to maintain said properties and to permit the City access, as needed, as outlined in the Agreement, incorporated herein and attached hereto as Exhibit “A”; and

WHEREAS, by entering into this Agreement, the Tribute Homeowners Association is solely responsible for the maintenance portions of the properties.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF THE COLONY, TEXAS:

Section 1. That the City Council of the City of The Colony, Texas hereby approves the Maintenance Agreement between the City of The Colony and the Tribute Homeowners Association, authorizing the maintenance of said properties.

Section 2. That a copy of the Agreement is incorporated herein and attached hereto as Exhibit “A”.

Section 3. That the city manager is authorized to execute the Maintenance Agreement on behalf of the city.

Section 4. That this resolution shall take effect immediately from and after its passage.
PASSED AND APPROVED by the City Council of the City of The Colony, Texas, this 19th day of November 2019.

______________________________
Joe McCourry, Mayor
City of The Colony, Texas

ATTEST:

______________________________
Tina Stewart, TRMC, City Secretary

APPROVED AS TO FORM:

______________________________
Jeff Moore, City Attorney
CITY COUNCIL Agenda Item Report
Meeting Date: November 19, 2019
Submitted by: Eve Morgan
Submitting Department: Parks & Recreation
Item Type: Resolution
Agenda Section:

Subject:
Consider approving a resolution authorizing the City Manager to execute a Construction Services Contract in the amount of $182,248.81 with L.J. Design and Construction for the construction of the Stewart Creek Park Swim Beach Relocation project with funding from the Community Development Corporation. (Morgan)

Suggested Action:
The Community Development Corporation and Staff recommend approval of the construction services contract with L.J. Design and Construction in the amount of $182,248.81 with funds from the Community Development Corporation

Attachments:
BID RESULTS AS READ.pdf
Beach Relocation outline.pdf
Financial Summary.pdf
Letter of Recommendation.pdf
BID #50-20-01_SCP BEACH RELOCATION
BID OPENING RESULTS AS READ
FRIDAY, 2:00 P.M. OCTOBER 25, 2019

<table>
<thead>
<tr>
<th>Company</th>
<th>Amount</th>
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<tr>
<td>L.J. Design &amp; Construction</td>
<td>$ 182,248.81</td>
</tr>
<tr>
<td>North Rock Construction</td>
<td>$ 213,091.59</td>
</tr>
<tr>
<td>RLM Earth CO</td>
<td>$ 247,740.00</td>
</tr>
<tr>
<td>IWC Texas, LLC</td>
<td>$ 299,377.20</td>
</tr>
<tr>
<td>Cole Construction, Inc.</td>
<td>$ 353,484.00</td>
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</table>
TITLE
Discuss and consider approving a resolution authorizing the City Manager to execute a construction services contract with L.J. Design and Construction for the construction of the Stewart Creek Park Beach Relocation Project with funding from the Community Development Corporation.

PURPOSE
The current beach area at Stewart Creek Park is located on the far west shore of the park. The area is open and exposed to prevailing winds which cause the wave action to displace the sand on the beach, leaving the soil exposed to erosion. The new beach area is located in a small, protected cove on the south side of the park, across from Pier 121. This location is in the no wake zone and is more protected from the prevailing winds. Plans have been submitted and approved by the Corps for the relocation project.

Five bids were received for this project. L.J. Design and Construction was the low bid of $182,248.81.

RECOMMENDATION
The Community Development Corporation and staff recommend approval of the construction services contract with L.J. Design and Construction in the amount of $182,248.81 with funds from the Community Development Corporation.
Financial Summary:

Are budgeted funds available? ☒ Yes ☐ No  Amount budgeted/available:  $181,200.00

Fund(s) (Name and number):  Lake Park Fund - 720-696-6610  Project #029-SBR0109

Cost of recommended bid/contract award: $182,248.81

Additional Lake Park Funds in the amount of $1,048.81 are available for this project.

Total estimated project cost:
$  182,248.81  Total Construction Costs  Already authorized?  ☐ Yes ☒ No
$  182,248.81  Total Estimated Costs

Future Cost (if any): $ N/A  Revenue Generated: $ N/A
Dear Eve:

On October 25th, 2019 the City of The Colony received five bid proposals for the Stewart Creek Park Beach Relocation. The following bid results as read on Friday, 2:00 PM October 25th, 2019 are listed below:

- L.J. Design & Construction $182,248.81
- North Rock Construction $213,091.59
- RLM Earth CO $247,740.00
- IWC Texas, LLC $299,377.20
- Cole Construction, Inc. $353,484.00

MHS Planning & Design has reviewed the bid proposals and recommend L.J. Design & Construction them based off their competitive pricing, past project history, and references.

References contacted:

- Chris Dyser (Community Development Department Director) with the City of Balch Springs
  - Complimented L.J Design & Construction on their professionalism and completion of all requirements and are eager to work again with them in the future.

- Greg Firebaugh (President of Dean Construction)
  - Stated L.J. Design & Construction were great to work with and complimented their quality of work and finish out.
• Kevin Mitchell (Parks and Recreation Director) with the City of Grapevine
  o Approves L.J. Design & Construction and recommended their work based off quality and completion of all requirements.

• Bob Blankenship (Park Project Manager) with the city of Mesquite References
  o Recommends L.J. Design & Construction for there quality of work, communication and experience.
  o Stated that L.J. Design and Construction did a great job and would like to work with them again.

All references contacted were positive for L.J. Design and Construction in regards to experience, communication, quality of work, flexibility and finish out. If you have any questions or need anything additional, please do not hesitate to contact me.

Sincerely,

William Spencer
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF THE COLONY, TEXAS, authorizing the City Manager to execute a construction services contract with L.J. Design and Construction for the Stewart Creek Park Swim Beach Relocation Project; and providing an effective date.

WHEREAS, the City of The Colony, Texas (the “City”), desires to obtain the services of L.J. Design and Construction for the Stewart Creek Park Swim Beach Relocation Project; and

WHEREAS, the City has determined that it is in the best interest of the City to enter into the Construction Services Contract with L.J. Design and Construction; and

WHEREAS, with said Construction Services Contract the City is agreeing to pay the sum of $182,248.81 for such work.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF THE COLONY, TEXAS, THAT:

Section 1. The Construction Services Contract, a copy of which is attached hereto as Exhibit A, and is incorporated herein for all purposes, having been reviewed by the City Council of the City of The Colony, Texas, and found to be acceptable and in the best interest of the City and its citizens, be, and the same is hereby, in all things approved.

Section 2. The City Manager is hereby authorized to execute said Construction Services Contract on behalf of the City of The Colony, Texas.

Section 3. This Resolution shall take effect immediately from and after its adoption and it is so resolved.

PASSED AND APPROVED by the City Council of the City of The Colony, Texas, this 19th day of November, 2019.

ATTEST: Joe McCourry, Mayor
City of The Colony, Texas

Tina Stewart, TRMC, City Secretary
APPROVED AS TO FORM:

____________________________________
Jeff Moore, City Attorney
CITY COUNCIL Agenda Item Report
Meeting Date: November 19, 2019
Submitted by: Pam Nelson
Submitting Department: Parks & Recreation
Item Type: Resolution
Agenda Section:

Subject:
Consider approving a resolution authorizing the City Manager to execute a Memorandum of Agreement with the U.S. Army Corps of Engineers for administrative expenses to review and process a request for the proposed The Tribute Marina in Wynnewood Park. (Nelson)

Suggested Action:
The Tribute Partners, LP is our current sublessee for Wynnewood Park, and has proposed a marina and supporting park amenities on an undeveloped 11 acre site at the northwest corner of Wynnewood Park, adjacent to The Tribute golf course. The marina would consist of a total of approximately 800 slips, and would be built in two phases of 400 slips per phase. The Corps requires a Supplemental Environmental Assessment (SEA) for the project and an Economic Feasibility Study (EFS) for the marina as part of their review and approval process. This MOA requires the City to cover the costs associated with the Corps’ review of necessary documents for the marina to be approved. The cost for these services has been estimated at $81,310, which must be paid to the Corps in advance of their review. They will draw on this amount throughout the process to cover their costs. Any unused proceeds will be returned to the City. The Tribute Partners will reimburse the City for all fees included in the MOA through a Professional Services Agreement, which is included for your consideration on the next agenda item. Tribute Partners will also be providing at their sole cost the SEA and EFS studies and documents required for the marina and park development approval.

Attachments:
Corps MOA -Tribute Marina 2019.pdf

Res 2019-xxx The Tribute Marina MOA.doc
MEMORANDUM OF AGREEMENT
BETWEEN
THE CITY OF THE COLONY
AND
THE DEPARTMENT OF THE ARMY

SUBJECT: MOA for administrative expenses to review and process a request for proposed development of the Tribute Marina, Lewisville Lake

ARTICLE I - PURPOSE AND AUTHORITY

A. This Memorandum of Agreement (MOA) is entered into by and between the U.S. Department of the Army (DA) and the city of The Colony (CTC) for the purpose of establishing a mutual framework governing the respective responsibilities of the parties for the provision of DA goods and services to review and process a request for proposed development at Lewisville Lake in Denton County, Texas. This MOA is entered into pursuant to Engineer Regulation 1130-2-550.

B. The CTC provides recreation services at Lewisville Lake. Tribute Marina is a sublessee under CTC. The proposed development request at Lewisville Lake would be an action carried out by Tribute Marina to construct, develop, and operate within Wynnwood Park with the purpose of providing additional facilities and services for the public use and enjoyment of the outdoors. The proposed development request would include utilities, a marina complex, fuel dock, nature center, plaza space, stage with picnic areas, and more. Approval of the proposed development request would constitute a federal action by DA and therefore would require DA to prepare National Environmental Policy Act (NEPA) documentation for that action. The CTC and the sublessee are preparing an Environmental Assessment (EA) that the DA intends to use to fulfill its NEPA requirements for the proposed development request.

ARTICLE II - SCOPE

A. Goods and services which the DA shall provide under this MOA include DA review and comment on NEPA documentation prepared by CTC; DA coordination with appropriate resource agencies; DA use of the EA; DA preparation of a Finding of No Significant Impact or other DA NEPA decision documents; DA review of development applications or other real estate documents; site visits; attendance at meetings; and such other related goods or services as may be agreed upon in the future. These goods and services meet the definition of administrative expenses which an applicant is required to pay for pursuant to the Engineer Regulation 1130-2-550. See Attachment A Scope of Work (Enclosure 1).

B. Nothing in this MOA shall be construed to require the CTC to use the DA or to require the DA to provide any goods or services to the CTC, except as may be set forth in this MOA and Attachment A Scope of Work. This MOA and Attachment A Scope of Work represent the extent of this agreement between the DA and CTC, and no separate Support Agreements (SA(s)) are necessary at this time.

ARTICLE III – ROLES AND RESPONSIBILITIES OF THE PARTIES

A. In order to provide for consistent and effective communication between the DA and the CTC, each party shall appoint a Principal Representative to serve as its central point of contact on matters relating to this MOA.

B. The DA shall provide goods or services under this MOA and Attachment A Scope of Work. The CTC shall provide funding for these goods and services and provide documents under this MOA and
SUBJECT: MOA for administrative expenses to review and process a request for proposed
development of the Tribute Marina, Lewisville Lake

Attachment A Scope of Work. Upon signature by each parties' representative, this MOA shall constitute a valid order under 31 U.S.C § 6505 (Intergovernmental Cooperation Act).

C. Responsibilities of the Department of the Army

1. The DA shall provide the CTC with goods or services in accordance with the purpose, terms, and conditions of this MOA and Attachment A Scope of Work.

2. The DA shall use its best efforts to provide goods or services either by contract or by in-house effort.

3. The DA shall provide detailed periodic progress, financial, and other reports to the CTC as agreed to in this MOA and Attachment A Scope of Work. Financial reports shall include information on all funds received, obligated, and expended and on forecast obligations and expenditures.

4. The DA shall inform the CTC of all contracts entered into under this MOA and Attachment A Scope of Work.

D. Responsibilities of the City of The Colony

1. The CTC shall certify, prior to the execution of this MOA, that this MOA complies with the requirements of OMB Circular A-97 [for orders under 31 U.S.C. § 6505].

2. The CTC shall pay all costs associated with the DA's provisions of goods or services under this MOA and shall certify, at the time of signature of this MOA, the availability of funds necessary to accomplish this MOA.

3. The CTC shall ensure that only authorized CTC contracting officers sign this MOA.

4. The CTC shall obtain from the DA all necessary real estate interests and access to all work sites and support facilities, and shall perform all coordination with and obtain any permits from state and local agencies, as necessary during the execution of this MOA.

5. The CTC shall provide, including but not limited to, NEPA documents, real estate documents, applications, and other documents, as described in the Attachment A Scope of Work.

ARTICLE IV – FUNDING AND RESPONSIBILITY FOR COSTS

A. The CTC shall pay all costs associated with the DA's provision of goods or services under this MOA and Attachment A Scope of Work. The CTC shall provide the necessary funds in sufficient time to ensure that they are available in advance of any obligation by the DA. Established Federal Government accounting procedures shall be used.

B. If the DA forecasts its actual costs under this MOA to exceed the amount of funds available under this MOA, it shall promptly notify the CTC of the amount of additional funds necessary to complete the work. The CTC shall either provide the additional funds to the DA, require that the scope of work be limited to that which can be paid for by the then available funds, or direct termination of the work under this MOA.

C. Within 90 days of completing the work under this MOA, the DA shall conduct an accounting to determine the actual costs of the work. Within 30 days of completion of this accounting, the DA shall return to the CTC any funds advanced in excess of the actual costs as then known, or the CTC shall
SUBJECT: MOA for administrative expenses to review and process a request for proposed development of the Tribute Marina, Lewisville Lake

provide any additional funds necessary to cover the actual costs as then known. Such an accounting shall in no way limit the CTC's duty in accordance with paragraph A of this Article to pay for any costs, such as contract claims or other liability, which may become known after the final accounting.

D. If liability of any kind is imposed on the United States relating to the DA's provision of goods or services under this MOA, the DA will accept accountability for its actions, but the CTC shall remain responsible as the program proponent for providing such funds as are necessary to discharge the liability, and all related costs. This obligation extends to all funds legally available to discharge this liability, including funds that may be made legally available through transfer, reprogramming or other means. Should the CTC have insufficient funds legally available, including funds that may be made legally available through transfer, reprogramming or other means, they remain responsible for seeking additional funds.

E. Notwithstanding the above, this MOA does not confer any liability upon the CTC for claims payable by the DA under the Federal Torts Claims Act. Provided further that nothing in this MOA is intended or will be construed to create any rights or remedies for any third party and no third party is intended to be a beneficiary of this MOA.

F. The estimated costs required for this effort, as described in the Attachment A Scope of Work, total $81,310.00. The CTC shall pay all costs associated with DA provision of goods or services under this MOA. Funds must be on deposit with the Treasury in advance of DA Commands' incurring of obligations for the work. Funds will be placed in an advance account and will be withdrawn as work is performed.

Checks should be made payable to: F&A Officer, USAED Fort Worth
Checks should be mailed to:
USAED Fort Worth
ATTN: CESWF-RE-P Maria Perez
819 Taylor St, Rm 2A03
Fort Worth, TX 76102-0300

ARTICLE V - APPLICABLE LAWS

This MOA and all documents and actions pursuant to it shall be governed by the applicable statutes, regulations, directives, and procedures of the United States. Unless otherwise required by law, all contract work undertaken by the DA shall be governed by DA policies and procedures.

ARTICLE VI - CONTRACT CLAIMS AND DISPUTES

A. All claims and disputes by contractors arising under or relating to contracts awarded by the DA shall be resolved in accordance with Federal law and the terms of the individual contract. The DA shall have dispute resolution authority for these claims. Any contracting officer's final decision may be appealed by the contractor pursuant to the Contract Disputes Act of 1978 (41 U.S.C. § 601-613). The Armed Services Board of Contract Appeals (ASBCA) or its successor is designated as the appropriate board of contract appeals. In lieu of appealing to the ASBCA or its successor, the contractor may bring an action directly to the United States Court of Federal Claims.

B. The DA shall be responsible for handling all litigation involving disputes and appeals, and for coordinating with the Department of Justice as appropriate. The DA shall notify the CTC of any such litigation and afford the CTC an opportunity to review and comment on the litigation proceedings and any resulting settlement negotiations.
SUBJECT: MOA for administrative expenses to review and process a request for proposed development of the Tribute Marina, Lewisville Lake

ARTICLE VII - PUBLIC INFORMATION

Justification and explanation of the CTC’s programs before other agencies, departments, and offices shall be the responsibility of the CTC. The DA may provide, upon request, any assistance necessary to support the CTC’s justification or explanations of the CTC’s programs conducted under this MOA. In general, the CTC is responsible for all public information. The DA may make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and administration process. The CTC or the DA shall make its best efforts to give the other party advance notice before making any public statement regarding work contemplated, undertaken, or completed pursuant to this MOA.

ARTICLE VIII - AMENDMENT, MODIFICATION AND TERMINATION

A. This MOA may be modified or amended only by written, mutual agreement of the parties. Either party may terminate this MOA by providing written notice to the other party. The termination shall be effective upon the sixtieth calendar day following notice, unless a later date is set forth. In the event of termination, the CTC shall continue to be responsible for all costs incurred by the DA under this MOA and for the costs of closing out or transferring any on-going contracts.

B. If the DA incurs costs due to the CTC’s failure to give the requisite notice of its intent to terminate the MOA, the CTC shall pay all costs incurred by the DA as a result of the delay in notification, provided such costs are directly attributable to the failure to give notice.

C. This MOA shall be terminated upon issuance of the real estate easement instrument(s).

ARTICLE IX - DISPUTE RESOLUTION

If the DA and CTC are unable to agree about interpreting or applying a material aspect of this MOA, the parties agree to seek in good faith to resolve the issues through negotiation or other forms of nonbinding alternative disputes resolution mutually acceptable to the parties, including amendment of this MOA, as necessary, by escalating the dispute within their respective organizations. A joint decision of the signatories or their designees shall be the disposition of the dispute.

ARTICLE X - MISCELLANEOUS

A. Other Relationships or Obligations

This MOA shall not affect any pre-existing or independent relationships or obligations between the CTC and the DA.

B. Survival

The provisions of this MOA which require performance after the expiration or termination of this MOA shall remain in force notwithstanding the expiration or termination of this MOA.

C. Severability

If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.
SUBJECT: MOA for administrative expenses to review and process a request for proposed development of the Tribute Marina, Lewisville Lake

ARTICLE XI - EFFECTIVE DATE

This MOA shall become effective when signed by both the CTC and the DA.

For the DEPARTMENT OF THE ARMY

KENNETH N. REED, PMP
Colonel, EN
Commanding

Kenneth N. Reed, PMP, Colonel, EN Commanding

DATE: 11-20-2019

For the CITY OF THE COLONY

Troy Powell

Troy Powell, City Manager

DATE:__________
ATTACHMENT A
SCOPE OF WORK
FOR
MEMORANDUM OF AGREEMENT
BETWEEN
THE CITY OF THE COLONY
AND
THE DEPARTMENT OF THE ARMY

1. References:


2. Introduction. The city of The Colony (CTC) is the ordering agency under a Memorandum of Agreement (MOA) with the USACE, under the Department of the Army (DA). The purpose of this MOA is for the CTC to pay for DA administrative expenses to review and process a request for proposed development at Lewisville Lake in Denton County, Texas.

3. Proposed development request at Lewisville Lake. The CTC provides recreation services at Lewisville Lake. The Tribute Marina is a sublessee under the CTC. The proposed development request at Lewisville Lake would be an action carried out by Tribute Marina to construct, develop, and operate within Wynnewood Park with the purpose of providing additional facilities and services for the public use and enjoyment of the outdoors. The proposed development request would include utilities, a marina complex, fuel dock, nature center, plaza space, stage with picnic areas, and more. Coordination between the CTC and the DA has been ongoing.

4. DA NEPA Documentation. Approval of the proposed development request would constitute a federal action by DA and therefore would require DA to prepare National Environmental Policy Act (NEPA) documentation for that action. The CTC and the sublessee are preparing an Environmental Assessment (EA) that the DA intends to use to fulfill its NEPA requirements for the proposed development request. In order to use the EA, the DA would coordinate with the CTC, the sublessee, and their consultants to ensure that the EA includes adequate consideration and disclosure of impacts to Lewisville Lake fee and/or flowage easement lands. The DA shall independently evaluate the environmental issues and take responsibility for the scope and content of the EA pursuant to 40 CFR 1506.5. The DA shall use the funds provided by the CTC to carry out this process and ultimately prepare a Finding of No Significant Impact (FONSI), if appropriate. Additional DA expenses associated with the NEPA process are described in paragraph 5 below. This FONSI would be the NEPA decision document which would conclude the NEPA process if the proposed project would not significantly
affect the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969, as amended. If there are significant effects, or extraordinary circumstances which may warrant the preparation of an Environmental Impact Statement, additional funding, and a new or revised MOA and scope of work may be necessary.

5. Administrative expenses. Applicants for proposed development requests are required to pay administrative expenses pursuant to Engineer Regulation 1130-2-550. The anticipated tasks DA would incur (expenses) include:

a. Review and comment of EA documentation prepared by the CTC.

b. Coordination with appropriate resource agencies, as necessary.

c. Use of the CTC EA.

d. Preparation of a FONSI or other DA NEPA decision documents.

e. Review of real estate documents.

f. Site visits.

f. Attendance at meetings.

h. And such other related goods or services as may be agreed upon in the future.

6. Limitations. This MOA is limited to funding DA administrative expenses for the review and processing of a proposed development request including NEPA and real estate expenses. The applicant may have other expenses associated with the proposed development that are not described in this MOA and Attachment A Scope of Work.

a. The applicant would be required to obtain additional necessary permits including, but not limited to, a permit under Section 404 of the Clean Water Act, which requires a separate application with the USACE Fort Worth District Regulatory Division. The applicant is required to contact the USACE Fort Worth District Regulatory Division and follow their application process.

b. The applicant may not commence construction until written approval is granted by DA. During construction, the applicant would be responsible for any mitigation expenses or actions required by the EA and each agencies' decision documents. The applicant would be responsible for compliance with applicable federal, state, and local laws during construction. The applicant would be responsible for protection of natural and cultural resources on DA property.

7. Points of contact. The following persons shall be considered key personnel for the proposed project.
a. Mr. Rob Jordan, Principal Representative and Lewisville Lake Manager. The
USACE Fort Worth District, Operations Division. ADDRESS: U.S. Army Corps of
Engineers, Lewisville Lake Project Office, 1801 North Mill Street, Lewisville, Texas
75057. TELEPHONE: (469) 645-9107. EMAIL: robert.s.jordan@usace.army.mil

b. Mr. Christopher B. Ford, Biologist. The USACE Regional Planning and
Environmental Center. ADDRESS: P.O. Box 17300, Room 3A12 Fort Worth, Texas
76102-0300. TELEPHONE: (409) 766-3079. EMAIL: christopher.b.ford@usace.army.mil

c. Ms. Vicki Akers. The USACE Fort Worth District, Real Estate Division.
ADDRESS: P.O. Box 17300, Room 2A06, Fort Worth, Texas 76102-0300.
TELEPHONE: (817) 886-1114. EMAIL: vicki.lakers@usace.army.mil

d. Ms. Pam Nelson. The CTC Community Services Director. ADDRESS: 5151
North Colony Boulevard, The Colony, Texas 75056. TELEPHONE: (972) 624-3958.
EMAIL: pnelson@thecolonytx.gov

8. Expenses. The costs below are estimated. Any unused funds shall be returned
to the CTC upon completion of the request.

a. Operations Division, expenses: $15,000.00

b. Regional Planning and Environmental Center, expenses: $56,310.00

c. Real Estate Division, expenses: $10,000.00

d. Total expenses: $81,310.00


a. The CTC shall provide funds to cover the DA tasks as described in this scope of
work. The CTC shall provide to the DA the draft EA documents, EA, environmental and
cultural resources studies and reports, invitations to meetings and site visits, regular EA
progress updates, real estate application documents, rights of entry applications, and
other documents as requested by DA.

b. The DA shall provide to the CTC comments and suggestions to the draft EA
documents, and other studies and reports in order that DA property impacts are
adequately considered and disclosed in the EA. The DA shall provide responses to the
real estate application documents provided by the CTC as necessary. The DA shall
utilize the funds provided by the CTC to review and process the development request
and conduct the environmental and NEPA review and approval for impacts to Lewisville
Lake as described in the MOA and this Attachment A Scope of Work. The DA shall be
allowed a 30 calendar day comment period for each request for comments of the CTC
EA and other submittal documents.
CITY OF THE COLONY, TEXAS

RESOLUTION NO.  2019 - ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF THE COLONY, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE A MEMORANDUM OF UNDERSTANDING BY AND BETWEEN THE CITY OF THE COLONY AND U.S. ARMY CORPS OF ENGINEERS (USACE) TO PROCESS A REQUEST FOR CHANGES TO THE PROPOSED TRIBUTE MARINA IN WYNNEWOOD PARK; AND ATTACHING THE APPROVED FORM OF SAID MEMORANDUM OF UNDERSTANDING AS EXHIBIT “A”; AND PROVIDING AN EFFECTIVE DATE

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF THE COLONY, TEXAS:

Section 1. That the City Council of the City of The Colony, Texas hereby approves the Memorandum of Understanding for the purpose of enabling the USACE to process a request submitted by The Tribute Marina in Wynnewood Park to construct, develop, and operate within the Tribute Marina at Lewisville Lake.

Section 2. That a true and correct copy of the Memorandum of Understanding is attached hereto and incorporated herein, as Exhibit “A”.

Section 3. That the City Manager is authorized to enter into Memorandum of Understanding with the USACE on behalf of the city.

Section 4. That this resolution shall take effect immediately from and after its adoption and it is so resolved.

PASSED, APPROVED, AND EFFECTIVE by the City Council of the City of The Colony, Texas, this 19th day of November, 2019.

______________________________
Joe McCourry, Mayor
City of The Colony, Texas

ATTEST:

______________________________
Tina Stewart, TRMC, City Secretary
APPROVED AS TO FORM:

Jeffrey L. Moore, City Attorney
CITY COUNCIL Agenda Item Report
Meeting Date: November 19, 2019
Submitted by: Pam Nelson
Submitting Department: Parks & Recreation
Item Type: Resolution
Agenda Section:

Subject:
Consider approving a resolution authorizing the City Manager to execute a Professional Services Agreement with Tribute Partners, LLC, for reimbursement of costs associated with the Memorandum of Agreement with the U.S. Army Corps of Engineers for review of studies related to the proposed Tribute Marina and park development. (Nelson)

Suggested Action:
This Professional Services Agreement will require Tribute Partners, LP to provide funding to reimburse the City for all costs associated with the MOA the City will be entering into with the U.S. Army Corps of Engineers for review of required environmental and economic studies for the proposed marina and park development at The Tribute. Tribute Partners will pay these funds to the City within 10 days after execution of the agreement.

Attachments:
The Colony - Professional Services Agreement (Escrow Agreement) - Tribute Partners LP - jlm rev clean - 111319.docx
Res 2019-xxx Professional Services-Tribute Partners LLC.docx
PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (hereinafter referred to as the “Agreement”), effective as of the ____ day of ____________, 2019, (hereinafter referred to as the “Effective Date”), is made and entered into by and between the CITY OF THE COLONY, TEXAS, a Texas home-rule municipality (hereinafter referred to as the “City”); and TRIBUTE PARTNERS, L.P., a Texas limited partnership (hereinafter referred to as the “Developer”), herein collectively referred to as (“Party” or “Parties”).

WHEREAS, the City will incur certain administrative expenses with United States Department of the Army concerning a request for a proposed development of the Tribute Marina and Park, located on the Lewisville Lake; and

WHEREAS, the City has previously entered into a sublease with the Developer concerning the Tribute Marina and Park, located on Lewisville Lake; and

WHEREAS, the Developer proposes to have a marina operator construct, develop, and operate within the Tribute Marina and Park for the purpose of providing additional marina facilities and services for the public use and enjoyment of the outdoors. The proposed development request would also include utilities, a marina park complex, with fuel storage, parking, sand volleyball, plaza space, stage with picnic areas developed by the Developer; and

WHEREAS, the City as lessor with the Department of the Army, will enter into a Memorandum of Agreement between the City and the Department of the Army regarding the proposed development of the Tribute Marina and Park, located on Lewisville Lake; and

WHEREAS, said Memorandum of Agreement provides that the City will pay to the Department of the Army an estimated cost of Eighty-One Thousand Three Hundred and Ten and No/100 Dollars ($81,310.00) regarding certain administrative expenses to be performed by the Department of the Army which include the following: review and comment on environmental assessment documentation prepared by the City related to the proposed development of the Tribute Marina and Park; coordination with appropriate resource agencies, as necessary; preparation of a Finding of No Significant Impact or FONSI or other National Environmental Policy Act documentation; review of real estate documents; site visits; attendance at meetings; and such other related goods or services as may be agreed upon by the parties (the “Administrative Expenses”); and

WHEREAS, Developer and City agree these costs are related to the Developer’s development of the proposed development of the Tribute Marina and Park, and the Developer covenants and agrees to reimburse the City for said Administrative Expenses through this Agreement.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:
1. **Payment for Administrative Expenses.** The Developer shall pay to the City **Eighty-One Thousand Three Hundred Ten and No/100 Dollars ($81,310.00)** for said Administrative Expenses related to the proposed development of the Tribute Marina and Park within ten (10) days of the effective date of this Agreement. Further,

   (a) City agrees to hold all of the Developer’s contributions in a separate fund maintained by the City, which may only be used for said Administrative Expenses.

   (b) City will keep accounting of all charges for said Administrative Expenses incurred and any unused contributions shall be returned to the Developer consistent with the terms of this Agreement.

   (c) Developer agrees that in the event the funds for said Administrative Expenses exceed the **Eighty-One Thousand Three Hundred Ten and No/100 Dollars ($81,310.00)** amount, then upon written notice by the City, the Developer shall remit an additional amount as requested by the City concerning Administrative Expenses related to the proposed development of the Tribute Marina and Park within fifteen (15) business days of receiving such notice.

   (d) Developer agrees to provide to the Department of the Army at their sole cost a Supplemental Environmental Assessment and a Financial Feasibility Study for the proposed development of the Tribute Marina and Park.

2. **Termination.** The Parties may terminate this Agreement by giving ten (10) business days prior written notice to the other party. In the event of such termination by the City, Professional shall be entitled to compensation for services satisfactorily completed in accordance with this Agreement prior to the date of such termination. Any excess funds remaining after such payments have been made shall be promptly refunded to the Developer.

3. **Entire Agreement.** This Agreement contains the entire agreement between the Parties with respect to the transactions contemplated herein.

4. **Amendment.** This Agreement may be amended only by the mutual written agreement of the Parties.

5. **Successors and Assigns.** Neither City nor the Developer may assign or transfer their interest in the Agreement without prior written consent of the other Party.

6. **Notice.** Any notice and/or statement required and permitted to be delivered shall be deemed delivered by depositing same in the United States Mail, Certified, with Return Receipt Requested, postage prepaid, addressed to the appropriate party at the following addresses, or at such other addresses provided by the parties in writing:

   If to City:  
   City of The Colony
7. **Interpretation.** Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against either party.

8. **Applicable Law.** This Agreement is made, and shall be construed in accordance with the laws of the State of Texas and venue shall lie in Denton County, Texas.

9. **Severability.** In the event any portion or provision of this Agreement is illegal, invalid, or unenforceable under present or future law, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

10. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

[The Remainder of this Page Intentionally Left Blank]
CITY:

CITY OF THE COLONY, TEXAS,
A Texas home-rule municipality,

By: ____________________________
    Troy C. Powell, City Manager
Date Executed: ____________________

ATTEST:

______________________________
Tina Stewart, City Secretary

APPROVED AS TO FORM:

______________________________
Jeff Moore, City Attorney

DEVELOPER:

TRIBUTE PARTNERS, L.P.,
a Texas limited partnership

By: MSW Wynnwood Holdings, Ltd.,
    A Texas limited partnership
Its: General Partner

By: MSW Wynnwood Holdings GP, LLC,
    A Texas limited liability company
Its: General Partner

By: ____________________________
    Kristian T. Teleki, Senior Vice President
CITY OF THE COLONY, TEXAS

RESOLUTION NO. 2019 - 

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF THE COLONY, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT FOR PROFESSIONAL SERVICES WITH TRIBUTE PARTNERS, LLC, FOR REIMBURSEMENT OF COSTS ASSOCIATED WITH THE MEMORANDUM OF AGREEMENT WITH THE U.S. ARMY CORPS OF ENGINEERS FOR REVIEW OF STUDIES RELATED TO THE PROPOSED TRIBUTE MARINA AND PARK DEVELOPMENT, AND PROVIDING AN IMMEDIATE EFFECTIVE DATE

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF THE COLONY, TEXAS, THAT:

Section 1. The findings set forth above are incorporated into the body of this Resolution as if fully set forth herein.

Section 2. The City Council of the City of The Colony, Texas, has duly reviewed and considered the Professional Services Agreement by and between the City of The Colony, Texas, and the Tribute Partners, LLC, for reimbursement of costs associated with the Memorandum of Agreement with the U.S. Army Corps of Engineers for review of studies related to the proposed Tribute Marina and park development in the amount of $81,310.00.

Section 3. The City Council of the City of The Colony, Texas, does hereby approve and authorizes the City Manager to execute the Agreement for Professional Services by and between the City of The Colony, Texas, and the Tribute Partners, LLC, attached hereto as Exhibit A, and is incorporated herein for all purposes.

Section 4. This Resolution shall take effect immediately from and after its passage.

PASSED AND APPROVED by the City Council of the City of The Colony, Texas this 19th day of November, 2019.

____________________________
Joe McCourry, Mayor
City of The Colony, Texas

ATTEST:

____________________________
Tina Stewart, TRMC, City Secretary
APPROVED AS TO FORM:

_________________________
Jeffrey L. Moore, City Attorney
Exhibit A

Contract for Professional Services
CITY COUNCIL Agenda Item Report
Meeting Date: November 19, 2019
Submitted by: Isaac Williams
Submitting Department: Development Services
Item Type: Ordinance

Subject:
Consider approving a resolution authorizing the Mayor to execute an Encroachment/License Agreement with the Legends Texas Homeowners Association, Inc. of The Colony, Texas for The Legends Subdivision sign located within the South Colony Boulevard Right-of-way [Bear Run Road and South Colony Boulevard].
(Williams)

Suggested Action:

Attachments:
The Colony - Encroachment - License Agreement - The legends (Bear Run and S. Colony) Final.docx
Legends subdivision sign Exhibit A.pdf
Legends subdivision sign Exhibit B.pdf
Legends subdivision sign Exhibit C.pdf
Res 2019-xxx Encroachment-License Agreement - Legends Texas HOA.docx
ENCROACHMENT/LICENSE AGREEMENT

STATE OF TEXAS §

COUNTY OF DENTON §

This ENCROACHMENT / LICENSE AGREEMENT (hereinafter referred to as the “Agreement”) is made by and between LEGENDS TEXAS HOMEOWNERS ASSOCIATION, INC., a Texas non-profit corporation (hereinafter called “Legends Texas”), and the CITY OF THE COLONY, TEXAS, a Texas home-rule municipality (hereinafter called the “City”).

WHEREAS, the City is the owner of the dedicated right-of-way known as South Colony Road, situated in the City of The Colony, Denton County, Texas, being depicted by plat, and depicted in Exhibit A, an addition to the City of The Colony, Denton County, Texas (hereinafter referred to as the “Property”); and

WHEREAS, Legends Texas desires to construct a monument sign and area lights (hereinafter referred to as the “Improvements”) within the Property as depicted on Exhibit B and C, attached hereto and made a part hereof for all purposes, which such Improvements will encroach into the Property (hereinafter referred to as the “Encroachment”) and has requested the City to allow such Encroachments; and

WHEREAS, the pertinent departments within the City have reviewed Legends Texas request and recommend approval thereof, subject to Legends Texas’ agreement to be solely responsible for the construction, installation, and maintenance of the Improvements.

NOW, THEREFORE, for and in consideration of the foregoing premises and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, City and Legends Texas covenant and agree as follows:

Section 1. Incorporation of Premises. The findings set forth above are incorporated into the body of this Agreement as if fully set forth herein.

Section 2. Effective Date. This Agreement shall be effective as of the date of execution of this Agreement by the last of the Parties to do so (hereinafter referred to as the “Effective Date”).

Section 3. Grant of License for Improvements. The City, being the present owner of the Property, for and in consideration of the foregoing, which is expressly made a part of this Agreement, and in consideration of approval of its request, is hereby gives authorization and grants to Legends a license to construct, and install, subject to the limitation herein, the Improvements within the easements and/or right-of-way as depicted in Exhibits B and C of this Agreement. Legends Texas shall be solely responsible for the construction, maintenance, and installation of the Improvements as set forth herein. The Legends Texas, its successors and assigns must maintain said Improvements in good repair and shall ensure that the Improvements do not lean more than five percent (5%) from vertical. Legends Texas shall also repair any damage to City infrastructure, irrigation and or landscaping that may be damaged during the installation or maintenance of the Improvements.
The City agrees to give Legends Texas written notice when and if it determines it necessary to construct any additional facilities or verbal notice if the repair of the existing facilities within the rights-of-way is an emergency. Upon receipt of such notification, Legends Texas shall be responsible, as Legends Texas’s sole cost and expense, to remove the Improvements from the Property or easement. The City shall not have any responsibility for damage or removal to any Improvements or any portion thereof, which remains on the Property or easement after such notification. Upon completion of any such work by the City, Legends Texas, at its sole cost and expense, may replace said improvements in the rights-of-way, unless the improved roadway surface is widened at which time this Agreement will terminate.

Section 4. **Insurance.** The City shall not be responsible for any damages to the Improvements occurring from the failure of the City’s facilities beyond the reasonable control of the City. Legends Texas shall maintain adequate liability insurance with the City as a named beneficiary to insure reconstruction or repair of such Encroachment in the event of damage or disrepair. Any damages to Improvements must be repaired within thirty (30) days.

Section 5. **Indemnity Clause.** LEGENDS TEXAS, ITS SUCCESSORS AND ASSIGNS DO HEREBY RELEASE, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES, AND THIRD PARTY REPRESENTATIVES (COLLECTIVELY REFERRED TO AS “CITY”) FROM ANY AND ALL CLAIMS, DAMAGES, CAUSES OF ACTION OF ANY KIND WHATSOEVER, STATUTORY OR OTHERWISE, PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE AND LAWSUITS AND JUDGMENTS, INCLUDING COURT COST, EXPENSES, AND ATTORNEY’S FEES, AND ALL OTHER EXPENSES ARISING DIRECTLY OR INDIRECTLY FROM THE LEGENDS TEXAS’S PERFORMANCE OF THIS AGREEMENT.

Section 6. **Removal of Improvements.** If the City determines based upon acceptable engineering standards the Improvements pose a hazard to the public or may interfere or impede traffic safety in anyway, the Improvements must be removed, at sole cost of the Legends Texas, its successor and assigns.

Section 7. **Event of Default.** In the event Legends Texas is in default of any of its obligations hereunder, before pursuing any remedy for such default, the City shall notify the other party, specifying the alleged default, and allow the Legends Texas, its successors and assigns thirty (30) days (“Default Period”) within which to cure such default. Upon expiration of the Default Period, if the default is not cured, City reserves the right to terminate this Agreement, and the Improvements must be removed, at sole cost of the Legends Texas, its successors and assigns.

Section 8. **Miscellaneous Provisions.** The following miscellaneous provisions are a part of this Agreement:

(a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this
Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

(b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Denton County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Denton County, Texas.

(c) **Assignment.** This Agreement may not be assigned without the express written consent of the other party.

(d) **Attorney’s Fees.** In the event any person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and attorney’s fees (including its reasonable costs and attorney’s fees on any appeal).

(e) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. City warrants and represents that the individual executing this Agreement on behalf of City has full authority to execute this Agreement and bind City to the same. Legends Texas warrants and represents that the individual executing this Agreement on Legends Texas’s behalf has full authority to execute this Agreement and bind it to the same.

(f) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.

(g) **File in Deed Records.** This Agreement shall be filed in the deed records of Denton County, Texas.

(h) **Severability.** The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation have the force and effect of the law, the remaining portions of the Agreement shall be enforced as if the invalid provision had never been included.

[The Remainder of this Page Intentionally Left Blank]
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of ______ day of ________________, 2019.

LEGENDS TEXAS:

LEGENDS TEXAS HOMEOWNERS ASSOCIATION, INC.,
a Texas non-profit corporation

By: ______________________________________
   Name:______________________________
   Title:______________________________

STATE OF TEXAS §

COUNTY OF ______ §

This instrument was acknowledged before me on _____________, 2019, by ________________________, the ______________________ of Legends Texas Homeowners Association, Inc., a Texas non-profit corporation, on behalf of said non-profit corporation.

________________________________________
Signature of Notary Public
CITY:

THE CITY OF THE COLONY, TEXAS
A Texas home-rule municipality

By: ________________________________
    Joe McCourry, Mayor

ATTEST:

_______________________________
Tina Stewart, City Secretary

STATE OF TEXAS §
§
§

COUNTY OF DENTON §

This instrument was acknowledged before me on _____________, 2019, by Joe McCourry, Mayor of the City of The Colony, Texas, a Texas home-rule municipality, on behalf of said Texas home-rule municipality.

_______________________________
Signature of Notary Public
Exhibit A

Depiction of the Property
Exhibit B

Depiction of Improvements
Exhibit C

Depiction of Encroachment
You are leaving

THE LEGENDS

A place we are proud to call home

Customer: The Legends
Job: Monument
Revision: 7th Proof
Contact: XXX
MN: 1057
SR: MR
Sign Base
134” Long x 26” wide

Bear Run Road

South Colony Boulevard

North

6’

78’6”

42” to the curb each side

30’ Back from curb

218”

33’8”

23’9”
CITY OF THE COLONY, TEXAS

RESOLUTION NO. 2019-______

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF THE COLONY, TEXAS, AUTHORIZING THE MAYOR TO EXECUTE AN ENCROACHMENT/LICENSE AGREEMENT WITH LEGENDS TEXAS HOMEOWNERS ASSOCIATION, INC., A TEXAS NON-PROFIT CORPORATION, FOR THE LEGENDS SUBDIVISION SIGN LOCATED WITHIN THE SOUTH COLONY BOULEVARD RIGHT-OF-WAY [BEAR RUN ROAD AND SOUTH COLONY BOULEVARD]; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF THE COLONY, TEXAS, THAT:

Section 1. The findings set forth above are incorporated into the body of this Resolution as if fully set forth herein.

Section 2. The City Council of the City of The Colony, Texas, has duly reviewed and considered the Encroachment-License Agreement with Legends Texas Homeowners Association, Inc., a Texas non-profit corporation, a copy of which is attached hereto as Exhibit A, and is incorporated herein for all purposes.

Section 3. The City Council of the City of The Colony, Texas, does hereby approve and authorizes the Mayor to execute the Encroachment-License Agreement with Legends Texas Homeowners Association, Inc., a Texas non-profit corporation, a copy of which is attached hereto as Exhibit A, and is incorporated herein for all purposes.

Section 4. This Resolution shall take effect immediately from and after its passage.

PASSED, APPROVED AND EFFECTIVE THIS 19th DAY OF NOVEMBER, 2019.

_____________________________
Joe McCourry, Mayor
City of The Colony, Texas

ATTEST:

_____________________________
Tina Stewart, TRMC, City Secretary

APPROVED AS TO FORM:

_____________________________
Jeffrey L. Moore, City Attorney
Exhibit A

Encroachment/License Agreement
Subject:
Conduct a public hearing, discuss and consider an ordinance regarding the approval of a Gateway Standards Waiver (GSW) to allow the construction of a six-foot (6') vinyl fence (around the proposed day care facility play area) where only masonry, stone brick exposed aggregate or stucco with masonry columns fences area permitted. The subject site is located at 5701 State Highway 121, Suite 190 located within the Planned Development-16 (PD-16) Zoning District and Gateway Overlay District. (Williams)

Suggested Action:
This item was noticed for the November 19, 2019 City Council public hearing on November 1, 2019. On November 12, 2019 the Planning and Zoning commission recommended to deny the request, therefore this item cannot be heard and must be removed from consideration.

Attachments:
Subject:
A. Council shall convene into a closed executive session pursuant to Sections 551.071 and 551.087 of the Texas Government Code regarding commercial or financial information the city has received from a business prospect(s), and to deliberate the offer of a financial or other incentive to a business prospect(s), and to receive legal advice regarding the Tribute PD’s 18 and 23.

B. Council shall convene into a closed executive session pursuant to Section 551.074 of the Texas Government Code to deliberate the evaluation, reassignment, duties, discipline, or dismissal of the City Secretary.

Suggested Action:

Attachments:
CITY COUNCIL Agenda Item Report
Meeting Date: November 19, 2019
Submitted by: Mayra Sullivan
Submitting Department: City Secretary
Item Type: Discussion
Agenda Section:

Subject:
A. Any action as a result of executive session regarding commercial or financial information the city has received from a business prospect(s) and the offer of a financial or other incentive to a business prospect(s), and the same regarding the Tribute PD’s 18 and 23.

B. Any action as a result of executive session regarding the evaluation, reassignment, duties, discipline, or dismissal of the City Secretary.

Suggested Action:

Attachments: