



Agenda
Town of Mooresville
Board of Commissioners
August 13, 2019
6:00 PM - Mooresville Town Hall

1. Call to Order

Pledge of Allegiance

Invocation

2. Regular Agenda

- 2.a Consider approving a budget amendment for the sale of Continuum Communications System. Should the Commissioners vote to approve the sale, such approval will be subject to further approval by a majority vote thereon at a referendum, election expected to be held on November 5, 2019.

[GF - Board of Commissioners Capital Assets Sale 8.13.19.xlsx](#)

- 2.b Public Hearing to consider approval of the sale of Continuum Communications System. On March 18, 2019, the Board approved a Resolution authorizing the Town Manager to explore strategic options, including solicitation of offers for the purchase of Continuum. The Board will now consider approval of the sale to a commercial provider pursuant to an asset purchase agreement. Should the Board vote to approve the sale, such approval will be subject to further approval by a majority vote thereon at a referendum election expected to be held on November 5, 2019.

[#39628797v7_Active_ - Project Norman - Executive Summary of Asset Purchase Agreement FINAL.pdf](#)



Town of Mooresville

REQUEST FOR TOWN BOARD ACTION

To: The Honorable Mayor and Board of Commissioners

From: Finance

Subject: Consider approving a budget amendment for the sale of Continuum Communications System. Should the Commissioners vote to approve the sale, such approval will be subject to further approval by a majority vote thereon at a referendum, election expected to be held on November 5, 2019.

Type: Regular Agenda

Date: August 13, 2019

SUMMARY:

Consider approving a budget amendment for the sale of Continuum Communications System. Should the Commissioners vote to approve the sale, such approval will be subject to further approval by a majority vote thereon at a referendum, election expected to be held on November 5, 2019.

ACTION RECOMMENDED:

ATTACHMENTS:

[GF - Board of Commissioners Capital Assets Sale 8.13.19.xlsx](#)



Town of Mooresville Budget Amendment

Date: August 13, 2019
Department: Board of Commissioners

Purpose: Consider an amendment for the sale of Continuum Communications System. Should the Commissioners vote to approve the sale, such approval will be subject to further approval by a majority vote thereon at a referendum election expected to be held on November 5, 2019.

Revenue:

Fund	Account	Current Budget	Amended Budget	Change to Budget
1001103-3706	Sale of Capital Assets	\$ -	\$ 80,000,000	\$ 80,000,000
	Total	\$ -	\$ 80,000,000	\$ 80,000,000

Expense:

Fund	Account	Current Budget	Amended Budget	Change to Budget
10100000-5145	Other Services	\$ 78,000	\$ 80,078,000	\$ 80,000,000
	Total	\$ 78,000	\$ 80,078,000	\$ 80,000,000

Date approved by Board of Commissioners:
Date posted



Town of Mooresville

REQUEST FOR TOWN BOARD ACTION

To: The Honorable Mayor and Board of Commissioners

From: Legal

Subject: Public Hearing to consider approval of the sale of Continuum Communications System. On March 18, 2019, the Board approved a Resolution authorizing the Town Manager to explore strategic options, including solicitation of offers for the purchase of Continuum. The Board will now consider approval of the sale to a commercial provider pursuant to an asset purchase agreement. Should the Board vote to approve the sale, such approval will be subject to further approval by a majority vote thereon at a referendum election expected to be held on November 5, 2019.

Type: Public Hearing

Date: August 13, 2019

SUMMARY:

Public Hearing to consider approval of the sale of Continuum Communications System. On March 18, 2019, the Board approved a Resolution authorizing the Town Manager to explore strategic options, including solicitation of offers for the purchase of Continuum. The Board will now consider approval of the sale to a commercial provider pursuant to an asset purchase agreement. Should the Board vote to approve the sale, such approval will be subject to further approval by a majority vote thereon at a referendum election expected to be held on November 5, 2019.

ACTION RECOMMENDED:

-Hold the Public Hearing -Consider adopting a Resolution approving the sale of Continuum Communications System and authorizing execution of an Asset Purchase Agreement and any other documents necessary to effectuate a sale of Continuum. - Consider adopting a Resolution calling for a vote to be held on November 5, 2019 regarding the sale of Continuum Communications System and authorizing the Town Manager to request the Elections Board of Iredell County to place the matter on the November 5, 2019 election ballot.

ATTACHMENTS:

[#39628797v7_Active_ - Project Norman - Executive Summary of Asset Purchase Agreement FINAL.pdf](#)

PROPOSED SALE OF CONTINUUM COMMUNICATIONS SYSTEM

Executive Summary of Draft Asset Purchase Agreement*

	Term
Parties	<ul style="list-style-type: none">▪ Purchaser – Party to be named later.▪ Seller Parties -- MI Connection Communications System (DBA Continuum), Town of Mooresville, Town of Davidson.
Transaction	<ul style="list-style-type: none">▪ Seller Parties to sell to Purchaser substantially all assets relating to Continuum.
Purchase Price	<ul style="list-style-type: none">▪ Purchase Price of \$80,000,000 payable in cash, subject to working capital adjustment, escrow amounts, and provisions obligating Seller Parties to indemnify Purchaser for certain losses caused by breaches of representations and warranties and covenants and for excluded liabilities.▪ Working capital adjustment at the expense of Seller Parties if net working capital is less than \$(1,100,000) and for the benefit of Seller Parties if it is more than \$(1,100,000).
Use of Proceeds	<ul style="list-style-type: none">▪ The net proceeds of sale will be used to satisfy the balance due on the installment financings of approximately \$59 million and all other obligations, and the remainder will go to the Towns of Mooresville and Davidson in accordance with their respective interests in Continuum.

* This summary is provided by Seller Parties.

	Term
Representations and Warranty Insurance Policy (“ R&W Policy ”)/Indemnity and Escrow Provisions	<ul style="list-style-type: none"> ▪ Purchaser is obtaining an R&W Policy at its expense. The R&W Policy would be Purchaser’s primary recourse for most breaches of representations and warranties by Seller Parties (if there are any such breaches). <ul style="list-style-type: none"> ○ <i>R&W Policy</i>: \$8 million policy with a deductible of \$800,000 (with Purchaser generally responsible for the first \$400,000, and Seller Parties the second \$400,000). ○ <i>Indemnification and Escrows</i>: Claims by Purchaser are subject to indemnification obligations of Seller Parties and escrows as provided in the agreement.
Employees	<ul style="list-style-type: none"> ▪ Purchaser will offer employment to substantially all of Continuum’s employees. Offers of employment to be contingent upon customary hiring criteria of Purchaser.
Conditions to Closing	<ul style="list-style-type: none"> ▪ Town Voter Approval for Mooresville and Davidson (referendum scheduled for November 5, 2019). ▪ Accuracy of representations and warranties. ▪ Commercial arrangements between Purchaser and the Towns relating to the continued provision of fiber for INet use. ▪ Absence of a Material Adverse Effect on Continuum. ▪ Payoff of installment financings. ▪ Other customary conditions.
Termination Fee	<ul style="list-style-type: none"> ▪ Termination Fee of \$2,000,000 payable by Seller Parties if agreement is terminated and, within 2 years, Continuum enters into another transaction.