

**CITY OF BILOXI
AGENDA ITEM
FACT SHEET**

Item No.: 4 A

Council Meeting Date: **November 13, 2018**

ITEM TITLE: **RESOLUTION**
INTRODUCED BY: **Mayor Andrew "FoFo" Gilich**
CONTACT PERSON: **E. Michael Leonard, CAO**
 Peter Abide, City Attorney

SUMMARY EXPLANATION:

Resolution approving Memorandum of Understanding between Biloxi Lodging and City of Biloxi, Mississippi for certain development of Point Cadet

Resolution Ordinance _____ Public Hearing _____ Routine Agenda _____

Exhibits for Review

Contract _____ Minutes _____ Plans/Maps _____ Deed _____ Lease _____

Other (Specify): Exhibit "A"- Memorandum of Understanding

Submittal Authorization: Council President _____ Mayor

STAFF RECOMMENDATION: Staff recommends approval

COUNCIL ACTION: Motion By: _____ Second By: _____

<u>Vote:</u>	<u>Councilmember</u>	<u>Yes</u>	<u>No</u>	<u>Other</u>	<u>Councilmember</u>	<u>Yes</u>	<u>No</u>	<u>Other</u>
	Lawrence	___	___	___	Tisdale	___	___	___
	Gines	___	___	___	Glavan	___	___	___
	Newman	___	___	___	Barrett	___	___	___
	Deming	___	___	___				

ACTION TAKEN:

Resolution No.

RESOLUTION APPROVING MEMORANDUM OF UNDERSTANDING
BETWEEN BILOXI LODGING, LLC AND CITY OF BILOXI, MISSISSIPPI
FOR CERTAIN DEVELOPMENT OF POINT CADET

WHEREAS, as an essential part of its strategic plans and goals, the City desires to enhance the growth and sustainability of the City as a major national and international tourism destination, and accordingly the City is seeking ways and means to create greater visitor traffic, especially family entertainment attractions, that will generate revenue to state and local governments by increasing revenue base and infrastructure, creating additional high paying jobs, and creating greater marketability of the City as a tourism destination; and

WHEREAS, to meet the City's strategic plans and goals, the City and Biloxi Lodging, LLC, a Mississippi limited liability company ("Biloxi Lodging"), desire to create a world class, waterfront tourism destination bordering Highway 90 in the area of east Biloxi known as Point Cadet, where businesses and residences were destroyed or greatly damaged and distressed by Hurricane Katrina, through construction of improvements with world class design and a mixture of family attractions and other commercial developments consistent with the City's Waterfront Design Standards and Guidelines and other applicable Land Use Ordinances in order to create a development similar to successful waterfront projects around the world; and

WHEREAS, it is appropriate that the City enter into the Memorandum of Understanding with Biloxi Lodging, LLC, attached hereto as Exhibit "A" (the "MOU") and made a part hereof, in order for Biloxi Lodging and the City to facilitate, as soon as commercially reasonable, the construction of Biloxi Lodging's Project and the City's TIF

District Improvements, which are more fully described in the MOU, because Biloxi Lodging's Project and the City's TIF Improvements will contribute to the restoration of an area blighted and distressed by Hurricane Katrina, promote and foster the development and improvement of the surrounding community and the whole community of Biloxi, and further will promote and foster the civic, social, educational, cultural, moral, and economic welfare of the City of Biloxi and surrounding area, as well as environmental, social, and economic sustainability of the six Mississippi Coast counties and the Biloxi-Gulfport-Pascagoula Statistical Area, for the benefit of the citizens of the City, the Mississippi Coast region, and the State of Mississippi;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILOXI, MISSISSIPPI, THAT:

SECTION ONE: The findings, conclusions, and statements of fact contained in the foregoing preamble are hereby adopted, ratified, and incorporated herein.

SECTION TWO: The City Council for the City of Biloxi hereby approves and agrees to enter the attached MOU (Ex. "A") with Biloxi Lodging, LLC, and hereby authorizes the Mayor and Municipal Clerk to execute and deliver the attached Memorandum of Agreement in substantially the same form as Ex. "A" attached to this resolution and made a part hereof.

SECTION THREE: This resolution shall take effect and be in force from and after adoption.

**MEMORANDUM OF UNDERSTANDING
BETWEEN
BILOXI LODGING, LLC
AND
CITY OF BILOXI, MISSISSIPPI
FOR
CERTAIN DEVELOPMENT OF POINT CADET
November 6, 2018**

I. PARTIES, BACKGROUND AND PURPOSE

a) Biloxi Lodging, LLC, a Mississippi limited liability company ("Developer") and City of Biloxi, Mississippi ("City") and together with Developer referred to herein collectively as the "Parties") are entering into this Memorandum of Understanding ("MOU").

b) Developer owns and/or controls via a long-term lease separate unimproved parcels of real estate within the Biloxi waterfront area from Oak Street to the Biloxi-Ocean Springs Bridge, commonly known as the Point Cadet Area ("Point Cadet Area"). The Project Site includes the following:

- 1) certain property leased by Developer from the State of Mississippi contains approximately 3.8 acres located adjacent to and immediately west of the existing Margaritaville development ("Leased Parcel"); together with,
- 2) certain property owned by Developer which contains approximately 2.5 acres located adjacent to and immediately west of the Leased Parcel (collectively, the "South Parcel"); together with,
- 3) certain property owned by Developer containing approximately 3.0 acres located directly north of the South Parcel across Highway 90 ("North Parcel").

The acreage making up the total site Leased Parcel, South Parcel and North Parcel is approximately 8.3 acres (collectively, the "Project Site"). The Project Site is generally depicted on Exhibit A attached hereto. To the extent any of the Project Site is currently owned or controlled by an affiliate of Developer, it will be conveyed to Developer prior to closing or execution of definitive documents.

c) Developer intends to construct, develop and operate an entertainment venue to be located on the Project Site. The entertainment venue will consist of: (i) one hotel tower on the South Parcel with approximately 360 rooms together with approximately 60,000 square feet of conference/convention space and restaurants/food venues; (ii) one hotel tower on the North Parcel with approximately 160 rooms together with an additional restaurant/food venues; (iii) an amusement park with multiple rides and amenities located on the Leased Parcel; (iv) a multiple level parking deck to be located on the Leased Parcel primarily underneath the amusement park; and (v) a water park to be located on the North Parcel; and related infrastructure improvements (collectively, the "Project"). The estimated total project cost is in excess of \$200,000,000, and the Developer is expected to commence construction

no later than December 31, 2019, subject to force majeure events, which can be extended by mutual agreement.

The purpose of this MOU is to evidence the primary expectations and discussions of the Parties relating to the Project, subject to more definitive, written agreements between the parties as provided in Section III of this MOU.

II. AUTHORITY

Each Party severally, on behalf of itself only, hereby represents to the other Party as follows:

a) Power, Authority and Capacity. Each Party has full power and authority to execute and deliver this MOU. To the limited extent expressly set forth herein, this MOU constitutes the legal, valid and binding obligation of each Party, enforceable against each Party in accordance with its terms.

b) Authorization and No Contravention. The execution and delivery by each Party of this MOU does not violate, conflict with and/or result in any breach, default and/or contravention of any contract or any applicable law and/or order that is binding upon said Party.

III. INDICATION OF INTEREST AND INTENT OF THE PARTIES

a) Sales Tax Tourism Rebate. Developer is requesting the City to support Developer's application to the Mississippi Development Authority ("MDA") for approval under the Mississippi Sales Tax Tourism Rebate Program ("Rebate Program"). The application will relate to the entire Project. The Rebate Program requires a full diversion of the City's share of sales tax revenue to be generated by the Project for a period of up to fifteen (15) years or in an amount of up to 30% of eligible project cost as certified by MDA (whichever is first to occur). The City administration intends to support the Developer's request for approval under the Rebate Program. Developer and the City administration acknowledge the final approval is subject to the discretion of the City Council. Developer has provided a draft resolution supporting the Rebate Program application for consideration by the City (copy attached). Developer shall provide a copy of the draft Rebate Program application to the City administration as soon as reasonably possible and prior to formally submitting it to MDA (subject to redaction of certain proprietary confidential information).

b) Tax Increment Financing ("TIF"). Developer and the City administration are committed to establish a TIF District and TIF Plan for the purpose of issuing TIF bonds in one or more series to fund a portion of the costs associated with designing and constructing additional public improvements within the Point Cadet Area separate from the Project along the following lines (the parties may also consider as an alternative the certificate of participation ("COPs") structure utilizing an unrelated non-profit entity facilitator):

- 1) The TIF District will include
 - i) The entire Project Site,
 - ii) The City-State Owned Property commonly known as the former

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- iii) Covacevich parking area between Margaritaville and Golden Nugget, The City's Point Cadet Marina, and
- iv) At the discretion of the City, may include additional property.

2) The TIF Plan shall provide, among other things:

- i) A pledge by the City of all of the incremental increase from both real and personal property taxes generated by the Project to the City (but not the Biloxi Public School District) as authorized under applicable TIF laws and regulations. The City and Developer will request and use commercially reasonable and good faith efforts to obtain the full participation in the TIF by Harrison County to pledge all of the incremental increase from both real and personal property taxes generated to the County by the Project.
- ii) A pledge by the Developer of a semi-annual Developer Payment for the fifteen (15) year term of the TIF bonds, with the amount of the semi-annual Developer Payment estimated to be approximately \$340,000 per year plus an annual increase of the CPI (All Urban Consumers) not to exceed 5% per year, with the final amount of the Developer Payment to be negotiated between City and Developer in good faith and stated in a mutually acceptable definitive agreement.
- iii) The current intent of Developer and the City is that the TIF bonds will be tax-exempt due to the expected public nature of the TIF Improvements. Both parties acknowledge that this may change with the ultimate structure of the TIF Plan and nature of the TIF Improvements.

3) The TIF Plan will provide for design and construction of improvements by Developer and/or the City consistent with acceptable uses under applicable TIF regulations, including, without limitation:

- i) Improvements to the City's Point Cadet Marina to facilitate larger vessels for tourism attractions like billfish tournaments, deep sea charter boats, and tourism excursion vessels, if funds are not sufficient from state grants the City is applying for to fully fund such improvements;
- ii) A public boardwalk to be constructed along the north edge of the water of the Mississippi Sound where it interfaces with bulkheads and other landside structures from the western border of the South Parcel eastward along the edge of the water (and protruding into the water on piles if necessary) to the Harbor Masters House within the City's Point Cadet Marina,
- iii) Certain improvements and expansion to the existing pier structure located south of the South Parcel as determined by Developer and the City for purposes of a public embarkation platform and pier for public excursion boats, shuttle boats to the Secretary of State's pier on Deer

- Island, and other tourism activities and facilities, provided the Secretary of State will grant the City a no-rent tidelands lease for the platform pier for these purposes on terms acceptable to the City;
- iv) Other general public improvements, including, without limitation, sidewalks, streets, utilities and other permitted infrastructure improvements reasonably associated with the TIF District acceptable to Developer and the City; A parking deck to be constructed on property jointly owned by City and State of Mississippi located immediately east of Margaritaville, west of the Golden Nugget ("City-State Owned Property") ("Parking Deck"), which is adjacent to the City's Point Cadet Marina;
 - v) The improvements described above are collectively, the "TIF Improvements";
- 4) The City and Developer will use commercially reasonable efforts to obtain the approval of the Secretary of State, if needed, for the proposed Parking Deck, on terms acceptable to the City;
 - 5) If the Secretary of State does not agree to grant the City a tidelands lease for purposes of the platform and pier referenced in subparagraph II. (b) 3) iii, above, on terms acceptable to the City; and/or if the Secretary of State does not approve the proposed Parking Deck and related improvements referenced in subparagraph II. (b) 3) iii, above, on terms acceptable to the City, the City and Developer may by written agreement substitute other improvements to the list of "TIF Improvements".
 - 6) It is further understood by Developer and City that the first and second levels of the Parking Deck structure (and the third level, if City and Developer agree to three levels) shall be designed by the City, subject to approval by the Developer in the more definitive agreements contemplated in this MOU, to provide areas on the first, second, and third (if built) floors, including, without limitation, areas bordering the edge of the water and areas bordering Highway 90 for developable pads for the City, in its discretion, to sub-lease for waterfront and Highway 90 frontage restaurants and other retail purposes, with the rent for such sub-lease(s) to be paid to the City, provided the Secretary of State approves these improvements and uses on terms acceptable to City.
 - 7) It is expected that the Parking Deck will be operated by City, with unrestricted and unreserved public parking, except for certain designated spaces reserved by the City for use by persons who obtain tickets for tourism excursion vessels that dock in the City's Point Cadet Marina and further except for the City's development pads referenced herein.
 - 8) City and Developer acknowledge and agree that the TIF Improvements are consistent with and a material part of the City's existing plans for public improvements within the Point Cadet Area. The TIF Improvements are generally depicted on Exhibit B attached hereto, which may be elaborated in more definitive agreements approved by Developer and City. Developer and the City shall work in good faith to mutually agree upon the final plans for each component of the TIF Improvements, subject to compliance with all applicable City ordinances and state laws.

- 9) The City will as soon as practical issue TIF bonds, in one or more series, to either directly fund the cost of the TIF Improvements by the City and/or reimburse Developer for a portion of the TIF Improvements undertaken by the Developer, as applicable, and/or to match state grants for elements of the TIF Improvements. If necessary, the City shall grant a right of entry/easement/authority to construct to Developer for construction of certain of the TIF Improvements on applicable City-owned and City-State owned properties.
- 10) The City shall timely commence and construct the TIF Improvements in a manner to complete design and construction no later than a commercially reasonable date, subject to force majeure events. Developer or an affiliate of Developer may bid on construction of the TIF Improvements.
- 11) Developer shall deliver a draft of the TIF intent resolution and TIF Plan to the City for review and comment by November 30, 2018. Developer and City shall work together in good faith to promptly formalize all necessary definitive agreements relating to the TIF Plan as authorized or required by applicable TIF laws and regulations.
- 12) All costs of issuance of the TIF bonds shall be subject to the prior, written approval of City, including, without limitation, the amounts of fees for bond counsel, issuers counsel, underwriters discount, underwriters counsel (if any), and the amounts of all other costs of issuance. Developer and City will designate a mutually acceptable law firm as bond counsel for the TIF bonds, subject to the City negotiating and agreeing to a reasonable fee for bond counsel, and the agreed fee for bond counsel shall be specified in the initial TIF intent resolution.

c) Developer Additional Information. Developer shall provide the following additional information regarding the Project to the City administration:

- i) updated site layout and conceptual design facades (copy attached as Exhibit C);
- ii) Rebate Program application with certain personal financial information and operating proformas redacted; and
- iii) such other documents that the City may reasonably request.

d) City Additional Information. City shall provide the following additional information regarding the TIF Improvements to Developer:

- i) City sketches and cost estimates for the TIF Improvements (copy attached as Exhibit D); and
- ii) such other documents that Developer may reasonably request

e) Compliance with Applicable Laws. Developer and its contractors and agents under its control shall abide by, conform to, and comply with all permitting requirements and applicable laws and regulations, including, without limitation, the City Land Development Ordinances and the City's Waterfront Design Standards and Guidelines ordinance (available

on the City's website) as they relate to the Project, the TIF Improvements and Developer's design and construction thereof.

f) Confidentiality. The Developer and City hereby, intending to be legally bound, but solely with respect to subsection 1) immediately below, agree to the following:

- 1) Developer shall keep confidential all non-public documents and information in whatever form or medium furnished or otherwise made available by the City pursuant to this MOU. To the extent permitted by law, City shall keep confidential all documents and information in whatever form or medium furnished or otherwise made available by the City or disclosed in connection herewith concerning Developer, the Project and/or this MOU, including, but not limited to, all materials marked as "CONFIDENTIAL" or "PROPRIETARY INFORMATION". If the City receives a request under any open records law that encompasses any confidential information disclosed to the City by Developer, and if the City intends to disclose any such information in response to such request, the City shall notify Developer prior to such disclosure so as to allow Developer the opportunity to take appropriate steps to prevent such disclosure and seek legal protection for its confidential information. As used herein, the term "keep confidential" shall mean that neither City nor Developer shall disclose or publish any confidential documents and information to any person other than its officers, owners, lenders, attorneys, accountants or other persons involved in the Project and TIF Improvements contemplated herein or otherwise to comply with any applicable laws. The terms of this subsection f)1) shall survive termination of this MOU.

IV. NON-BINDING, DURATION, AMENDMENTS OR TERMINATION

a) This MOU is not binding or legally enforceable against any of the Parties unless and until definitive agreements are fully negotiated and executed by all of the Parties, except with respect to subsection f)1) above, regarding confidentiality. This MOU imposes no enforceable obligations upon the City or Developer to enter into definitive agreements, including, without limitation, a development agreement consistent with the TIF Plan, relating to the Project and/or TIF Improvements. The Parties acknowledge that the documents, resolutions and agreements contemplated herein are subject to and conditioned upon prior approval by the Mayor and Biloxi City Council. However, the Parties will utilize this MOU as the framework for exploring expectations and possibilities regarding the potential development of the Project and the TIF Improvements. During negotiations, Developer may request and receive from, time to time, permission for reasonable access to the City-State Owned and City-owned Properties for planning for the development of the Project and TIF Improvements, including access for surveying, environmental review and other such due diligence purposes.

b) This MOU will become effective when signed by all of the Parties to this MOU ("Effective Date"). The MOU will remain in effect for one hundred fifty (150) days from and after the Effective Date.

c) This MOU may be amended or extended at any time through the written mutual consent of all of the Parties.

d) This MOU may be terminated by mutual written consent of all of the Parties.

e) This MOU shall remain in place for the term referenced above; provided, however, if the Owners and Developer are then actively engaged in good faith negotiations, the Parties shall not unreasonably withhold, condition or delay their consent to a thirty (30) day extension of the term.

V. GOVERNING LAW

This MOU shall be governed by and construed in accordance with the laws of the State of Mississippi. To the extent any legally binding provision of this MOU is not enforceable under Mississippi law, such provision shall be modified, deleted or deemed invalid to the extent it is either not authorized by or inconsistent with the laws of the State of Mississippi, including the opinions of the Mississippi Attorney General.

[Signature page immediately follows]

If you are in agreement with the above referenced terms, please execute a copy of this MOU. This MOU may be executed in multiple counterparts, which when considered together, shall constitute one and the same instrument; electronic or pdf signatures shall constitute originals and shall be legal and binding. Upon execution, by the Parties, this MOU shall constitute a legally binding agreement of the parties enforceable in accordance with its terms as expressly set forth herein regarding confidentiality (subsection f1)).

ACCEPTED AND APPROVED FOR:

Biloxi Lodging, LLC

By: _____

Name:

Title:

ACCEPTED AND APPROVED FOR:

City of Biloxi, Mississippi

By: _____

Name: A. M. Gilich, Jr.

Title: Mayor

Effective Date: November 6, 2018

[Signature page to MOU]

Exhibit A

Project Site