

**CITY OF BILOXI
AGENDA ITEM
FACT SHEET**

Item No.: 5 FF

Council Meeting Date: July 2, 2019

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

SUMMARY EXPLANATION:

Resolution authorizing agreement with RW Development, LLC for Option to build and lease a new public municipal pier and or related purposes

Resolution Ordinance _____ Public Hearing _____ Routine Agenda _____

Exhibits for Review

Contract Minutes _____ Plans/Maps _____ Deed _____ Lease _____

Other (Specify): Exhibit A: Option Agreement to Build and Lease New Municipal Pier

Submittal Authorization: Council President _____ Mayor

STAFF RECOMMENDATION: Staff recommends approval

COUNCIL ACTION: Motion By: _____ Second By: _____

Vote:	<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 AUTHORIZING AGREEMENT WITH RW DEVELOPMENT, LLC FOR
OPTION TO BUILD AND LEASE A NEW PUBLIC MUNICIPAL PIER;
AND FOR RELATED PURPOSES

WHEREAS, under the authority, inter alia, of Mississippi Code of 1972, Sections 59-7-405, 59-15-1, 59-15-3, 49-15-9 , 21-17-1, and 21-17-5, the City of Biloxi (the "City"), as owner of upland property bordering the Public Trust for Tidelands and as a political subdivision and statutorily-designated agent of the State of Mississippi acting as trustee and steward of the Public Trust for Tidelands, has the power and authority in the littoral area of property owned by the City to construct and use improvements for purposes of the Public Trust for Tidelands to promote, foster and enhance public access to the water and tidelands as well as to promote, foster and enhance marine-related public and private development and use of piers, wharfs, docks, and related public and private recreational facilities; and

WHEREAS, the construction and use of a new Public Municipal Pier as contemplated in the attached Option agreement (Ex. "A") serves multiple purposes of the Public Trust for Tidelands by promoting, fostering and enhancing public access to the water and tidelands as well as marine-related public and private development and use of piers, wharfs, docks, and related public and private recreational facilities and economic development; and

WHEREAS, the Mayor and City Council, under the authority of Mississippi Code of 1972, Section 21-17-1(2), find that the leasehold interest of the proposed tenant in the municipally-owned City property described in the legal description of the Option agreement (Ex. "A"), as limited by the terms and conditions of the Option agreement and contemplated Lease Agreement, (i) is no longer needed for municipal purposes or related

purposes and is not to be used in the operation of the municipality; (ii) the lease of such property in the manner otherwise provided by law is not necessary or desirable for the financial welfare of the municipality; (iii) the use of such property for the purpose for which it is to be leased will promote and foster the development and improvement of the community in which it is located and the civic, social, educational, cultural, moral, economic and industrial welfare thereof; and

WHEREAS, the Mayor and City Council, under the authority of Mississippi Code of 1972, Section 57-7-1, hereby find and deem the proposed tenant's leasehold interest in the real property described in the attached Option agreement (Ex. "A"), as limited by the terms and conditions of the Option agreement and contemplated Lease Agreement, to be surplus property not needed for governmental purposes and should be set aside and improved for the commercial and public purposes described in the attached Option agreement (Ex. "A"); and

WHEREAS, adoption of the Option agreement (Ex. "A") serves higher public purposes of the Public Trust for Tidelands, is in the best interest of economic growth and development of the City of Biloxi, and is consistent with the City of Biloxi ordinances and laws of the State of Mississippi applicable to the subject property.

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

SECTION ONE: The findings, statements, and conclusions contained in the preamble of this resolution 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 Option agreement (Ex. "A") with RW Development, LLC, a

Mississippi limited liability company, and hereby authorizes the Mayor and Municipal Clerk to execute and deliver the attached Option agreement (Ex. "A") and further authorizes the Mayor and Municipal Clerk to execute the contemplated Lease Agreement, instruments, and other documents necessary to effectuate the purpose and intent of this resolution, including, without limitation, in the event RW Development, LLC exercises its option to lease, all instruments and closing statements and all other documents necessary to effectuate the lease by RW Development, LLC of the real property (the "Property") described in Exhibit "1" to the attached Option agreement (Ex. "A") and in the more definitive land survey that will be attached to the Lease Agreement.

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

STATE OF MISSISSIPPI
COUNTY OF HARRISON
SECOND JUDICIAL DISTRICT



AGREEMENT WITH RW DEVELOPMENT, LLC
FOR OPTION TO BUILD AND LEASE
NEW MUNICIPAL PIER

This agreement, hereinafter referred to as the "Option", is made and entered into this day between CITY of Biloxi, Mississippi, a Mississippi municipal corporation, hereinafter referred to as "CITY", and RW Development, LLC, a Mississippi limited liability company, hereinafter referred to as "RW", for the purpose of granting an option to RW to build a public municipal pier and related pedestrian access in and on that certain parcel of real property owned by the City as depicted and more fully described on Exhibit "1" attached hereto and make a part of this Option, hereinafter referred to as the "Property", and to lease the Property and the pier improvements (the "Leased Premises") for public and private access, use and enjoyment.

WITNESSETH

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 waterfront recreational opportunities for enjoyment by local residents and tourists to stimulate visitor traffic especially mid-week, generate revenue to state and local governments by increasing revenue base and infrastructure, create additional high paying jobs, and create greater marketability and livability of the CITY as a convention and waterfront resort destination and a great place to live, work and play; and

WHEREAS, to meet the CITY's strategic plans and goals, the CITY and RW desire to create a first-class, multi-use, public municipal pier with connecting pedestrian walkways (hereinafter, the "Project") and will be a new venue for water- related, family recreational opportunities for residents and visitors alike; and

WHEREAS, The CITY and RW desire to create the Project with design and mixture of uses consistent with the CITY's Waterfront Design Standards and Guidelines Ordinance, applicable Land Use Ordinances and laws pertaining to municipal ports and harbors; and

WHEREAS, it is appropriate that this Option be entered to provide for RW and the CITY jointly to conduct preliminary design and planning for the Project and to grant to RW an option to lease the Property and build the Project, at RW'S expense, on the Property, which on its eastern border is contiguous to those certain parcels of upland and littoral rights owned by RW on the east side of Veterans Avenue, because the construction of the Project and joint public-private use of the public municipal pier will promote and foster the public's access to the water and enjoyment of the public recreational purposes of the Public Trust for Tidelands, as well as promoting and fostering marine-related commerce, recreation, boating, fishing, tourism, and other economic development purposes of the Public Trust for Tidelands, all of which are an integral part of RW'S plans for development of its contiguous parcels; and

WHEREAS, the Project and the lease of the Property to RW will 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 Coastal region, and the State of Mississippi; and

WHEREAS, this Option is in the best interest of economic growth and development of the CITY of Biloxi and is consistent with laws and ordinances applicable to the Property; now therefore,

The CITY and RW agree, covenant and promise as follows:

1. RW and CITY adopt by reference and agree to the representations, covenants and promises made in the foregoing recitals, which are made a part this Option.
2. GRANT OF OPTION: For and in consideration of a non-refundable option fee of FIVE THOUSAND DOLLARS (\$5,000.00) ("Option Fee"), cash in hand paid by RW to CITY, and of the covenants and mutual promises contained herein, the receipt and sufficiency of which are hereby acknowledged, the CITY does hereby grant unto RW the irrevocable option to lease, use and possess all of the CITY's right, title and interest in and to the Property and all appurtenances thereunto belonging, subject to the terms and conditions stated in this Option and in the contemplated Lease Agreement, "as is, where is", being more fully described in that certain legal description and aerial sketch (the "Property") collectively attached as Exhibit "1" (two pages) to this Option, which is made a part of this Option.
3. NOTICE OF EXERCISE OF OPTION. RW may exercise its option to lease the Property by notifying CITY in writing of RW'S intent to exercise the Option before the end of the Term, which may be extended as provided herein. The closing date and location shall be stated in the notice and shall be no later than ninety (90) days after CITY's receipt of such written notice. At closing, RW and CITY shall each pay their respective

attorney fees, but RW shall pay all other closing costs. RW shall be entitled to use and possession as tenant of the Property at closing.

4. LEASE AGREEMENT. The terms and conditions stated in this Option shall survive the closing of the exercise of this Option and shall become part of a more definitive lease agreement (the "Lease Agreement") that shall be executed at Closing and shall contain the terms and conditions stated in this Option and other standard, commercially reasonable terms and conditions for a lease of this type, with the final text of the Lease Agreement to be drafted jointly by the parties and approved by both parties within a reasonable time prior to the date of closing stated in the Notice of Exercise of Option, which approval shall not be withheld unreasonably, failing which the terms and conditions of this Option shall be the terms and conditions of the Lease Agreement and the closing shall proceed as noticed.

5. CONSTRUCTION, OPERATION AND MAINTENANCE OF PUBLIC MUNICIPAL PIER.

Within ninety (90) days of the Notice of Exercise of Option, RW shall begin construction of the Project, which shall include construction of (a) a public municipal pier on the Property and (b) improvements and enhancements of public pedestrian walkways, including, in RW's discretion, construction of an overpass crossing in the air rights above the highway, on the Property down to the pier entrance. The design and specifications for the Project shall be subject to prior, written approval by the CITY, which approval may not be withheld unreasonably. RW shall complete the construction of the Project and open the pier for joint public-private use no later than eighteen (18) months after beginning construction. RW shall operate and maintain the Public Municipal Pier and during the Term of the lease shall be responsible, at RW'S expense, for repairs,

maintenance, utilities and insurance pertaining to the Public Municipal Pier, with the CITY named as additional insured. The CITY shall be responsible at its expense for maintaining and repairing the public pedestrian walkways and crossings.

6. USES OF THE PROPERTY. The CITY and RW understand and agree that, in addition to the joint public-private use of the Property for access to the water and marine-related recreation, RW shall have the non-exclusive right to use the Property and its improvements as an integral part of RW'S commercial developments on RW'S parcels contiguous to the Property; provided, however, no gaming shall be allowed on the Public Municipal Pier nor on any vessels docked or berthed at the pier. RW and patrons of its businesses shall enjoy the use of the Municipal Pier jointly with public use according to rules and regulations approved by the CITY and RW, which approval shall not be withheld unreasonably,
7. NO SUB-LEASE OR ASSIGNMENT WITHOUT CITY APPROVAL. RW shall not assign all or any part of its interest in this Option unless written approval for such assignment has first been obtained from the CITY in the CITY'S sole discretion. RW shall not assign or sublet its leasehold interest in the Lease Agreement nor all or any part of the leased premises (the Property), including without limitation docking and berthing slips, unless written approval for such assignment, sub-lease, docking agreement or berthing agreement has first been obtained from the CITY in the CITY'S sole discretion and for appropriate consideration.
8. USE AND INSPECTION OF THE PROPERTY DURING THE OPTION PERIOD. During the term of this Option, RW shall be entitled to enter upon the Property for the purpose of conducting soil tests, engineering studies, environmental assessments and surveys,

and further RW shall be entitled to use the Option as evidence of control of tenant's leasehold interest in the property for purposes of applications to public agencies for permits and approvals of uses and development plans.

9. TERM OF OPTION. The term of this Option to Purchase shall be a period of twelve (12) months from the date of full execution of this Option (the "Option Term"); the Option Term may be extended automatically for an additional twelve (12) months upon written notice to CITY and payment of an additional FIVE THOUSAND DOLLARS (\$5,000.00) Option Fee for the first extended Option Term; and the extended Option Term may be extended automatically for an additional twelve (12) months upon written notice to CITY and payment of an additional FIVE THOUSAND DOLLARS (\$5,000.00) Option Fee for the second extended Option Term.

10. TERM OF LEASE AGREEMENT. The term of the Lease Agreement (the "Lease Term") shall be forty (40) years from the date of execution of the Lease Agreement, with one twenty-five (25) year renewal.

11. NOTICES: Any notice which is required or desired to be given in accordance with the terms of this Option shall be deemed to have been properly given when such notice(s) shall be sent by registered or certified mail, postage prepaid, or by overnight courier with signature of recipient, addressed as follows:

- a. City of Biloxi:
Mayor A. M. Gilich, Jr.
Attn: Peter Abide, City Attorney
140 Lameuse St.
Biloxi, MS 39530
- b. RW Development, LLC
C/O: Michael F. Cavanaugh
131 Rue Magnolia
Biloxi, MS 39530

12.NO BROKERS OR COMMISSIONS. The parties agree that there are no brokers or agents relating to this Option and that no person is due any broker or agent commission.

13.APPLICABLE LAW AND VENUE: This Option shall be governed by, and construed and enforced according to, the laws of the State of Mississippi, with jurisdiction and venue in the Second Judicial District of Harrison County, Mississippi.

14.ENTIRE OPTION: This Option contains the entire Option between the parties and may not be modified, amended or in any way altered orally; this Option and the Lease Agreement may be modified or amended only by an amendment in writing executed by the CITY and RW.

15.BINDING EFFECT: This Option shall be binding upon the parties and their respective heirs, assigns, and successors in interest.

16.MEMO OF RECORDING: Upon the reasonable request of the other party, each party shall join in the execution of a short form memorandum setting forth the basic terms and conditions of the Option to Purchase, and such short form memorandum may be recorded in the office of the Chancery Clerk of the Second Judicial District of Harrison County, Mississippi.

17.NOT JOINT VENTURERS OR PARTNERS: CITY and RW shall not be considered or deemed to be joint venturers or partners, and neither shall have the authority to obligate the other.

_____SIGNATURE PAGE FOLLOWS_____

IN WITNESS WHEREOF, the parties have made and signed this Option in duplicate
in the CITY of BILOXI, State of Mississippi, effective on this the ____ day of _____,
2019.

CITY OF BILOXI, MISSISSIPPI

By: _____
A.M. GILICH, JR. Mayor

MUNICIPAL CLERK

RW Development, LLC

By: _____
Ray Wooldridge

ATTACHMENT: Exhibit "1" (two pp) Legal Description and aerial sketch of the Property

EXHIBIT "1"

A TAX PARCEL MAP DEPICTING THE AREA OF THE SUBJECT PROPERTY, AS MORE FULLY DESCRIBED IN THE WRITTEN LEGAL DESCRIPTION ON THIS PAGE BELOW (THE LEASED PREMISES) IS ATTACHED ON THE FOLLOWING PAGE. THE CITY AND RW AGREE THAT ON OR BEFORE EXERCISING THE OPTION, RW WILL PROVIDE TO THE CITY A SURVEY BY A LICENSED MISSISSIPPI LAND SURVEYOR DEPICTING THE SUBJECT PARCEL OF PROPERTY AND PROVIDING A MORE DETAILED LEGAL DESCRIPTION OF THE PROPERTY, SUBJECT TO THE APPROVAL OF THE CITY, WHICH APPROVAL SHALL NOT UNREASONABLY BE WITHHELD.

THE LEGAL DESCRIPTION OF THE SUBJECT PROPERTY (THE LEASED PREMISES) IS AS FOLLOWS

That certain parcel of land and submerged lands, and the air rights and littoral (riparian) rights appurtenant thereto belonging, situated in the City of Biloxi, Second Judicial District of Harrison County, Mississippi, being part of the land comprising the right of way of Veterans Avenue and located within approximately parallel lines that are Veterans Avenue eastern and western borders and extending those lines southward into the submerged land and waters of the Mississippi Sound to the northern edge of the Biloxi Navigation Channel. This parcel is bordered on the north by a line beginning at a point on the western border of Veterans Avenue ten (10) feet north of the northern edge of the highway easement and extending eastward to a point on the eastern border of Veterans Avenue ten (10) feet north of the northern edge of the highway easement; on the east by the eastern border of Veterans Avenue and its extension to the Biloxi Navigation Channel, on the south by the Biloxi Navigation Channel, and on the west by the western border of Veterans Avenue and its extension to the Biloxi Navigation Channel.



Date: 8/22/2018
 Time: 1:30:33 PM

DISCLAIMER: THIS MAP IS FOR PROPERTY TAX ASSESSMENT PURPOSES ONLY. IT WAS CONSTRUCTED FROM PROPERTY INFORMATION RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS AND IS NOT CONCLUSIVE AS TO LOCATION OF PROPERTY OR LEGAL OWNERSHIP.
 TAL FLURY/TAX ASSESSOR.

1 inch = 94 feet

Hartman County GIS, Hartman Co

