

**CITY OF BILOXI
AGENDA ITEM
FACT SHEET**

Item No.:

5F

Council Meeting Date:

August 27, 2019

ITEM TITLE: **RESOLUTION**

INTRODUCED BY: Mayor Andrew "FoFo" Gilich

CONTACT PERSON: E. Michael Leonard, CAO *MM*

SUMMARY EXPLANATION:

Resolution authorizing entry into Crossing Closure Agreement with CSX Transportation, Inc. regarding the closure of CSX railroad crossing at Nixon and Delauney Streets

Resolution

Ordinance _____

Public Hearing _____

Routine Agenda _____

Exhibits for Review

Contract

Minutes _____

Plans/Maps _____

Deed _____

Lease _____

Other (Specify): Exhibit A: Crossing Closure Agreement

Submittal Authorization: Council President _____ Mayor

STAFF RECOMMENDATION: Staff recommends approval

COUNCIL ACTION: Motion By: _____ Second By: _____

Vote: Councilmember Yes No Other
Lawrence _____
Gines _____
Newman _____
Deming _____

Councilmember Yes No Other
Tisdale _____
Glavan _____
Barrett _____

ACTION TAKEN:

rq 082719pcon

Resolution No.

**RESOLUTION AUTHORIZING ENTRY INTO CROSSING CLOSURE AGREEMENT
WITH CSX TRANSPORTATION, INC. REGARDING THE CLOSURE OF CSX
RAILROAD CROSSING AT NIXON AND DELAUNEY STREETS**

WHEREAS, in 2014 study was conducted in order to identify existing CSX Transportation, Inc. ("CSX") railroad crossings in the City of Biloxi (the "City") that could be consolidated with other crossings to improve safety and reduce the potential for accidents;

WHEREAS, the following railroad crossings were recommended for closure: Nixon Street, Holley Street, Iroquois Street, Dorries Street, Querens Avenue, and Delauney Street;

WHEREAS, by Resolution 127-17, the City's governing authorities nominated the aforementioned six (6) railroad crossings within the City for closure in order to improve transportation safety, all contingent on completion of parallel access roads which would allow citizens to use the nearest alternate railroad crossings;

WHEREAS, parallel roadways are now complete which would allow the closure of Nixon Street and Delauney Street;

WHEREAS, the Crossing Closure Agreement, attached hereto as Exhibit "A," defines the responsibilities of the City and CXS for the closure of railroad crossings at Nixon and Delauney Streets, and

WHEREAS, it is the recommendation of E. Michael Leonard, Chief Administrative Officer, and Christy LeBatard, P.E., Director of Engineering, that the City enter the Memorandum of Understanding with CSX.

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 Mayor is, on behalf of the City of Biloxi, authorized to accept, execute, and enter into the Crossing Closure Agreement, attached hereto as Exhibit "A," with CSX Transportation, Inc.

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

CROSSING CLOSURE AGREEMENT

This Crossing Closure Agreement (this "Agreement") is entered into this ____ day of _____, 2019, by and between CSX Transportation, Inc., a Virginia corporation ("CSXT") and City of Biloxi, Mississippi, a body politic of the State of Mississippi (the "City").

RECITALS

WHEREAS, the City has agreed to close the highway-rail at grade crossings on Nixon Street (MP 000-726.5, DOT# 340183H) and Delauney St. (MP 000-726.77, DOT# 340187K) (the "Closures"); and

WHEREAS, CSXT has agreed to provide certain incentives to the City, as specifically set forth in this agreement.

NOW THEREFORE, in consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree and covenant as follows:

1. Crossing Closures. The City hereby consents to the permanent closure of Nixon St. and Delauney St. (the "Closures") no later than November 30, 2019.

2. Allocation of Work.

(a) Crossing Removal. CSXT will perform all work to remove and dispose of the Nixon St. and Delauney St. crossing surfaces from 2' off the end of tie. CSXT will remove the crossbucks and associated signage within the RR right-of-way at the crossing.

(b) Road Closure. City will perform all work to remove and dispose of the Nixon St. and Delauney St. roads up to 2' from the end of tie. City will install and maintain Type III barricades at the edge of CSX ROW along the centerline of the removed Nixon St. and Delauney St. roadways.

3. Entire Agreement. This Agreement embodies the entire understanding of the parties, and may not be waived or modified except in a writing signed by authorized representatives of both parties, and supersedes all prior or contemporaneous written or oral understandings, agreements, or negotiations regarding its subject matter.

4. Waiver. If either party fails to enforce its respective rights under this Agreement, or fails to insist upon the performance of the other party's obligations hereunder, such failure shall not be construed as a permanent waiver of any rights or obligations in this Agreement.

5. Notices. All notices, consents, and approvals required or permitted by this Agreement shall be in writing and shall be deemed delivered upon personal delivery, upon the expiration of three (3) days following mailing by first class U.S. mail, or upon the next business day following mailing by a nationally recognized overnight carrier, to the parties at the addresses set forth below, or at such other addresses as either party may designate by delivery of prior notice to the other party:

If to CSXT: CSX Transportation, Inc.
500 Water Street, J301
Jacksonville, Florida 32202
Attention: Director Project Management – Public Projects

If to the City: City of Biloxi
140 Lameuse Street
Biloxi, MS 39533
Attention: Mayor A.M. Gilich, Jr.

6. Severability. The parties agree that if any part, term or provision of this Agreement is held to be illegal, unenforceable, or in conflict with any applicable federal, state, or local law or regulation, such part, term, or provision shall be severable, with the remainder of the Agreement remaining valid and enforceable.

7. Applicable Law. This Agreement shall be governed by the laws of the State of Tennessee, exclusive of its choice of law rules.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first set forth above.

City of Biloxi, Mississippi

By: _____
A.M. Gilich, Jr.
Mayor

CSX Transportation, Inc.

By: _____
Tony Bellamy
Dir. Project Management Public Projects