

**CITY OF BILOXI
AGENDA ITEM
FACT SHEET**

Item No.: 5V

Council Meeting Date: February 23, 2021

ITEM TITLE: RESOLUTION

INTRODUCED BY: Mayor Andrew "FoFo" Gilich

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

SUMMARY EXPLANATION:

Resolution authorizing entry into a Grant of Access and Use Agreement with the Ohr O'Keefe Museum of Art, Inc. for the museum's use of a portion of the Tullis Property

Resolution Ordinance _____ Public Hearing _____ Routine Agenda _____

Exhibits for Review

Contract Minutes _____ Plans/Maps _____ Deed _____ Lease _____

Other (Specify): Exhibit A: Rendering
Exhibit B: Grant of Access and Use Agreement

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 ENTRY INTO A GRANT OF ACCESS AND USE AGREEMENT WITH THE OHR O'KEEFE MUSEUM OF ART, INC. FOR THE MUSEUM'S USE OF A PORTION OF THE TULLIS PROPERTY

WHEREAS, the City of Biloxi (the "City") is the owner of a parcel of real property located at 369 Beach Boulevard, Biloxi, Mississippi, identified as Tax Parcel No. 1410I-04-079.000, and commonly known as the Tullis Property, (the "Tullis Property")

WHEREAS, The Ohr O'Keefe Museum of Art, Inc. (the "Museum") desires the use of a portion of the Tullis Property for the purposes of constructing a labyrinth, as depicted in Exhibit "A," attached hereto;

WHEREAS, City's governing authorities are of the opinion that the property is not currently needed for municipal or related purposes;

WHEREAS, under the terms and conditions of the Grant of Access and Use Agreement (the "Agreement"), attached hereto as Exhibit "B," the Museum will not erect or construct any permanent structure on the Tullis Property and will maintain the portion of the property on which the labyrinth is located;

WHEREAS, the City recognizes the potential economic, marketing and promotional benefits of granting the Museum access and use of the property; and

WHEREAS, it is the recommendation of E. Michael Leonard, Chief Administrative Officer, that the City grant the Museum use of the property and enter the Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND 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 authorized, on behalf of the City of Biloxi, to execute the Grant of Access and Use Agreement, attached hereto as Exhibit "A," with The Ohr O'Keefe Museum of Art, Inc.

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

EXHIBIT
A

The 50' diameter beachfront Labyrinth will be constructed of red clay rammed earth and oyster shells, materials that represent both the legacy of potter George Ohr and the great Mississippi Gulf Coast. Labyrinths, like art, offer quiet moments for self-reflection, stress reduction, and a boost in creativity; something we all need more of during these times. We believe the addition of this labyrinth will be a unique and welcoming experience for the community and visitors to Biloxi.



GRANT OF ACCESS AND USE AGREEMENT

THIS GRANT OF ACCESS AND USE AGREEMENT (this “Agreement”), is made and entered into this ____ day of _____, 2021 by and between the City of Biloxi, a Mississippi municipal corporation (hereinafter, the “City”) and The Ohr O’Keefe Museum of Art, Inc., a Mississippi non-profit corporation (the “Museum”).

WITNESSETH:

WHEREAS, the Museum desires to use and occupy portions of municipal property in the City of Biloxi, namely the vacant lot located at 369 Beach Boulevard, Biloxi, Mississippi and common known as the “Tullis Property,” for the purposes of constructing a labyrinth;

WHEREAS, City’s governing authorities are of the opinion that the property is not currently needed for municipal or related purposes; and

WHEREAS, the City recognizes the potential economic, marketing and promotional benefits of granting the Museum access and use of the property.

NOW, THEREFORE, for and in consideration of the promises and mutual covenants and conditions hereafter stated, the respective parties hereto agree as follows:

1. Grant of Access and Use. The City grants the Museum non-exclusive use of and access to the Tullis Property for the purposes of installing, maintaining and operating a beachfront labyrinth for public enjoyment. Nothing in this Agreement shall be construed as granting the Museum the right to erect, or cause to be erected, any permanent structure on the Tullis Property.

2. Term.

- a. **Initial Term.** The term of this Agreement will begin on the effective date, as first written above, and will remain in full force and effect for a period of one (1) year (the “Initial Term”), subject to earlier termination as provided for below.
- b. **Renewal Terms.** This Agreement will automatically renew, unless otherwise terminated, for successive one (1) year terms. The Museum must not be in default at the time of renewal.

3. Maintenance. In exchange for use of the Tullis Property, the Museum shall assume full responsibility for the maintenance of those portions of the property on which the labyrinth and access pathway to the labyrinth are installed.

4. Compliance with Rules and Regulations. The Museum will comply with all state, federal and local laws, rules, regulations and ordinances. The Museum is responsible for familiarizing itself with said laws, rules, regulations and ordinances.

5. Termination.

- a. By Either Party. Either party shall have the right to terminate this Contract, without penalty or prejudice to any other rights and remedies it may have, by providing the other party thirty (30) days written notice.
- b. Mutual Contract to Terminate. This Contract may be terminated at any time, including during the Initial Term, without penalties or prejudice, by mutual agreement of both parties in writing.

6. Effect of Termination.

- a. The Museum understands, acknowledges and covenants that upon receipt of notification from the City of its intention to terminate this Agreement, the Museum shall be solely responsible for removal of any and all materials installed on the Tullis Property within thirty (30) days of receiving such notice.
- b. Upon expiration or termination of this Agreement, the terms of this Agreement shall survive and will apply with respect to any dispute that may exist between the parties.

7. **Signage.** The Museum agrees to be solely responsible for the placement of professional signage that serves to provide safe and direct ingress and egress and is solely responsible for the removal of said signage within thirty (30) days of the termination of this Agreement.

8. **Promotion.** The Museum is solely responsible for all expenses incurred for the promotion and operation of the labyrinth.

9. **Insurance.** The Museum shall, at its sole cost and expense, obtain and maintain commercial general liability of \$500,000.00 per occurrence. The Museum shall furnish the City satisfactory proof of coverage of the insurance requirements by a reliable company or companies before installing the labyrinth.

10. **Indemnification.** The Museum, its successors and assigns, hereby agree to defend, indemnify and hold harmless the City of Biloxi, its officers, agents, employees and assigns, from any and all claims, actions, proceedings or liability of any nature (collectively referred to as proceeding) brought against the City of Biloxi, its officers, agents, employees and assigns, arising from the labyrinth. This indemnification shall include damages, fees and/or costs awarded against the City of Biloxi, if any, and costs of suit, attorney's fees, and other cost liabilities and expenses incurred in connection with such proceedings whether incurred by the Museum, the City, or the parties initiating or bringing the proceeding; and from any proceeding seeking damages for property damages or personal injuries resulting from the Museum's actions or omissions with respect to the labyrinth. The Museum shall indemnify and hold the City harmless from any and all damages for personal injury, property damage or wrongful death arising out of the labyrinth from any person or entity asserting such claim. In the event of a legal proceeding arising out of the labyrinth, the City retains the right to approve counsel to defend the City, all significant decisions concerning the manner in which the defense is conducted, and any and all settlements,

which approval shall not be unreasonably withheld.

11. Agents and Notices. The Museum and the City designate the following persons to act on their behalf with regard to this Agreement. Unless otherwise provided herein, all notices, requests, claims, waivers, consents, approvals or other communications hereunder shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by delivery by hand, by reputable overnight courier service, by facsimile with proof of transmission (provided, that, a confirmation copy is sent no later than the next business day by postage-paid, returned receipt requested first class mail) or by registered or certified mail (postage prepaid, return receipt requested) to the respective parties at the addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section) listed below:

If to the Museum:

THE OHR O'KEEFE MUSEUM OF ART, INC.
Attn: David Houston, Executive Director
Post Office Box 248
Biloxi, Mississippi 39533

If to the City:

City of Biloxi
Attn: Mayor A. M. Gilich, Jr.
140 Lameuse Street
Biloxi, Mississippi 39530

Section 1. No Joint Venture. Each of the parties hereto warrants and covenants that it will not act at any time as an agent, employee, partner, joint venture, or associate of the other.

Section 2. Assignment. The Museum's rights and obligations under this Agreement shall not be assignable, in whole or in part, without the prior written consent of the City. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon successors and assigns of the parties hereto.

Section 3. Force Majeure. Neither party shall be liable to the other for failure to perform its obligations under this Agreement if prevented from doing so because of an act of God, strikes, fire, flood, explosion, civil disturbance, acts of terrorism, pandemic events, interference by civil or military authority, accident, labor disputes or shortages, or because the continuation of the services at the facility would be in violation of any governmental laws, rules or regulations or would cause or create any material safety, health or environmental concerns or for other causes beyond the reasonable control of the party and not intentionally caused by such party.

Section 4. Governing Law; Rules and Regulations. The laws of the State of Mississippi shall govern the application and interpretation of this Agreement. Jurisdiction and venue for any litigation arising out of this Agreement shall be in the Second Judicial District of Harrison County, Mississippi.

Section 5. Attorneys' Fees in Enforcement. In the event the City is required to enforce this Agreement, or any section thereof, the City shall be entitled to reasonable costs and attorneys' fees.

Section 6. Amendments. This Agreement may not be altered or amended, nor may rights hereunder be waived, except by writing executed by both parties.

Section 7. Entire Agreement. This Agreement constitutes the entire understanding of the parties and supersedes any prior agreements or understandings, written or oral, between the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties by their duly authorized officers have caused these presents to be subscribed on the day and year first above written.

MUSEUM:

CITY:

THE OHR O'KEEFE MUSEUM OF ART,
INC., a Mississippi non-profit corporation

CITY OF BILOXI, MISSISSIPPI, a
Mississippi municipal corporation

By: _____
Name: David Houston
Title: Executive Director

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

ATTESTED BY:

Stacy Thacker, Municipal Clerk