

**CITY OF BILOXI
AGENDA ITEM
FACT SHEET**

Item No.: **SEE**

Council Meeting Date: **October 20, 2026**

ITEM TITLE: RESOLUTION

INTRODUCED BY: Mayor Andrew "FoFo" Gilich

CONTACT PERSON: Richard Weaver, Chief Administrative Officer
Peter Abide, City Attorney

SUMMARY EXPLANATION:

Resolution authorizing entry into the 2026 Management Agreement between the City of Biloxi and the Maritime and Seafood Industry Museum of Biloxi, Inc.

Resolution ☒ Ordinance ☐ Public Hearing ☐ Routine Agenda ☐

Exhibits for Review

Contract ☐ Minutes ☐ Plans/Maps ☐ Deed ☐ Lease ☐

Other (Specify): Exhibit "A" (2026 Management Agreement)

Submittal Authorization: Council President ☐ Mayor ☒

STAFF RECOMMENDATION:

COUNCIL ACTION: Motion By: _____ Second By: _____

<u>Vote:</u>	<u>Councilmember</u>	<u>Yes</u>	<u>No</u>	<u>AFR</u>	<u>ABST</u>	<u>Councilmember</u>	<u>Yes</u>	<u>No</u>	<u>AFR</u>	<u>ABST</u>
	Gray	___	___	___	___	Tisdale	___	___	___	___
	Marshall	___	___	___	___	Glavan	___	___	___	___
	Nail	___	___	___	___	Shoemaker	___	___	___	___
	Creel	___	___	___	___					

ACTION TAKEN:

slt/102026scon

Resolution No.

RESOLUTION AUTHORIZING ENTRY INTO THE 2026 MANAGEMENT AGREEMENT
BETWEEN THE CITY OF BILOXI AND THE MARITIME AND SEAFOOD INDUSTRY
MUSEUM OF BILOXI, INC.

WHEREAS, pursuant to Resolution No. 603-22, the City of Biloxi (the “City”) and the Maritime and Seafood Industry Museum of Biloxi, Inc. (the “Museum”) entered into the 2022 Management Agreement (the “2022 Agreement”), dated October 1, 2022, to allocate the duties, responsibilities, and benefits attendant to the management and operation of the structure and property located at 115 East 1st Street in Biloxi, Mississippi, as a museum showcasing the maritime history and heritage of the Mississippi Gulf Coast;

WHEREAS, the First Amendment to the 2022 Management Agreement extended the term of the 2022 Agreement through October 31, 2025;

WHEREAS, under the 2026 Management Agreement , attached hereto as Exhibit “A,” the City will pay the Museum a management fee of Ninety Thousand Dollars (\$90,000.00) per year (\$5,000.00 per month), an advertising fee of Twenty-Four Thousand Dollars (\$24,000.00) per year (\$2,000.00 per month), and by May 1 of each, make an annual contribution of Six Thousand Dollars (\$6,000.00) to the Museum to support the Museum’s Sea & Sail Camp, for a total of Ninety Thousand Dollars (\$90,000.00) per year;

WHEREAS, under the 2026 Agreement, the City will continue to maintain, and pay all costs associated with, contracts for elevator maintenance (including state-mandated inspection and testing), fire monitoring, security monitoring, pest control, and fire system inspections and testing;

WHEREAS, rather than directly paying the costs of repairs at the Museum, under the 2026 Agreement, the City will contribute the sum of Twenty Thousand Dollars (\$20,000.00) to a repair

fund, to be paid on or before November 15 of each year for the term which will be under the control of the Museum;

WHEREAS, the City will bear all costs for water and telephone used in the operation of the Museum, and the Museum will bear all costs for natural gas, internet and other utilities not specified; and

WHEREAS, the City shall bear the cost of electricity up to \$40,000.00 per annual term and on or before January 1, 2027 parties will place the electric meter in the name of the Museum; and

WHEREAS, funding for the City's obligations under the 2026 Agreement is available in the municipal budget for fiscal year ending September 30, 2027.

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 preamble are hereby adopted, ratified, and incorporated herein.

SECTION TWO: The Mayor is, on behalf of the City of Biloxi, authorized to, execute, the 2026 Management Agreement, with the Maritime and Seafood Industry Museum of Biloxi, Inc., in substantially the form as attached hereto as Exhibit "A."

SECTION THREE: Payments to the Maritime and Seafood Industry Museum of Biloxi, Inc., as detailed in the 2026 Management Agreement, attached hereto as Exhibit "A," are hereby authorized and approved.

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



2026 MANAGEMENT AGREEMENT

THIS 2026 MANAGEMENT AGREEMENT (this “Agreement”), is made and entered into this the ____ day of _____, 2026 , by and between the CITY OF BILOXI, a Mississippi municipal corporation (hereinafter referred to as the “City”), THE MARITIME AND SEAFOOD INDUSTRY MUSEUM OF BILOXI, INC., a Mississippi non-profit corporation (hereinafter, the “Museum”) (collectively the “Parties,” and singularly, each a “Party”), and is effective as of the 1st day of November, 2026 .

WITNESSETH:

WHEREAS, the City and Museum entered into a Management Agreement, originally dated August 26, 1988, to allocate the duties, responsibilities, and benefits attendant to the management and operation of the structure and property located at 115 East 1st Street in Biloxi, Mississippi (hereinafter, the “Facilities”), as a museum show casing the maritime history and heritage of the Mississippi Gulf Coast;

WHEREAS, on or about September 13, 2022, the City and the Museum entered the 2022 Management Agreement;

WHEREAS, the First Amendment to the 2022 Management Agreement extend the term of the 2022 through October 31, 2025; and

WHEREAS, the City and the Museum wish to formalize the terms under which the Museum shall manage the Facilities and to allocate the duties, responsibilities, and benefits attendant to the management and operation of the Facilities and the terms under which the Museum will provide advertisement promoting the interests of the City

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby by acknowledged, the parties agree as follows:

ARTICLE 1. TERM

Section 1.1. The term of this Agreement shall commence on November 1, 2026 , and shall be for a period of one (1) year from said date. This Agreement shall automatically renew for two (2) additional one (1) year terms on the anniversary date of this Agreement, unless written notice is given by either party to the other party at least sixty (60) days prior to the end of term, subject to the provisions contained herein.

Section 1.2. Any renewal under Section 1.1 of this Agreement is subject to the allocation of funding by the City’s governing authorities.

ARTICLE 2. COMPENSATION

Section 2.1. Management Fee. In consideration of the Museum's services provided under this Agreement, the City shall pay the Museum a "management fee" of Sixty Thousand Dollars (\$60,000.00) per year, payable in twelve (12) monthly installments of Five Thousand Dollars (\$5,000.00), payable on the first (1st) day of each month until termination of this Agreement.

Section 2.2. Retention of Revenue. In further consideration for this Agreement, the Museum shall be entitled to retain all the Facilities' revenue, including, but not limited to, revenue from admission receipts, membership fees or payments, fundraisers, and special events, museum shop receipts, cafe receipts, revenue from grants awarded to the Museum, and other revenue generated by the operation of the Facilities.

Section 2.3. Advertising Fee. In consideration of its promotion of the City's interests on the sails of the Biloxi Schooners, pursuant to Section 5.1, and on all event advertising, pursuant to Section 5.2, the City shall pay the Museum an "advertising fee" Twenty-Four Thousand Dollars (\$24,000.00) per year, payable in twelve (12) monthly installments of Two Thousand Dollars (\$2,000.00) on the first (1st) day of each month until termination of this Agreement.

Section 2.4. Sea and Sail Summer Camp. In consideration of its promotion of the City's interests on all advertising for the Museum's Sea and Sail Summer Camp, pursuant to Section 5.3, the City shall pay the Museum the annual sum of Six Thousand Dollars (\$6,000.00), due and payable on the first (1st) day of May of each year until termination of this Agreement.

Section 2.5. Additional Consideration. The City shall provide the Museum other good and value consideration, the receipt and sufficiency of which is hereby acknowledged, as detailed herein.

ARTICLE 3. STAFFING

Section 3.1. Museum Personnel. The Museum shall provide a Museum Director and any other personnel, including volunteers, necessary to operate the Facilities. The Museum shall be solely responsible and bear all costs associated with the salaries, benefits and taxes of the director and any other paid personnel employed by the Museum. The Museum shall also provide, at its sole cost, curators and other necessary personnel to operate gallery exhibitions and other programs sponsored by the Museum, as well as personnel necessary to ensure the conservation and preservation of the artifacts.

Section 3.2. Wages and Benefits. The Museum shall (i) pay all wages and other benefits properly payable to the employees hired by the Museum; (ii) maintain adequate payroll records; (iii) remit to the proper authorities all required income and Social Security withholding taxes, employment tax payments, workers' compensation insurance payments, and such other amounts with respect to the wages and other benefits payable to such employees as may be required under applicable laws, together in each case with all medical, disability, and other insurance benefits and other fringe benefits of such personnel of the Museum as may from time to time be deemed necessary or required.

Section 3.3. Health Insurance. The Museum's full-time paid personnel shall be eligible for the City's group health insurance, to be paid *pro rata* to the City by the Museum.

Section 3.4. City Employees. The Museum's paid personnel and employees are in no way to be construed as employees, agents or servants of the City.

Section 3.5. Non-Discrimination. All persons having a contract with the City of Biloxi must adhere to the City's policy concerning non-discrimination on the basis of race, color, religion, sex, age, sexual orientation, gender identity, national origin, veteran or disability status.

ARTICLE 4. OPERATION

Section 4.1. Exhibitions. The Museum shall provide artifacts for display and shall be responsible for exhibitions at the Facilities. The Museum shall have the sole authority to hang, display or exhibit in any manner any pictures, statues, works of art or any other property which it may decide to exhibit in the Facilities.

Section 4.2. Special Events. The Museum may also conduct special events and programs at the Facilities and in connection therewith. The Museum shall advise the City of events, activities, and programs to be held at or in connection with the Facilities on a monthly basis. No such event, activity or program shall violate any municipal, county, state or federal law, statute, regulation or ordinance.

Section 4.3. Climate. The Museum shall make reasonable efforts to maintain a stable climate conducive to the preservation of artifacts at all times in the Facilities.

Section 4.4. Grants. The Museum may apply for grants and donations consistent with the terms and conditions of this Agreement and the purposes for which the Facilities are used, operated, and managed, provided that the acceptance of such grants do not encumber City property or the Facility in any manner and may not create any federal or other interest in the Facility. Any and all proceeds received by the Museum from grants and/or donations shall not be restricted by this Agreement and the Museum is not required to apply or remit to the City any such proceeds received.

Section 4.5. Legal Compliance. The Museum shall abide by all applicable laws, rules, regulations and ordinances of the City, County, the State of Mississippi, the United States, and any other authority, which now exist, or which may hereafter be amended or adopted insofar as said laws, rules, regulations, and ordinances.

ARTICLE 5. ADVERTISING

Section 5.1. Schooners. The Museum will prominently display the logo of the City on both sides of one of the sails of each of the two Schooners that are owned and operated by the Museum, said Schooners being known as the Glenn Swetman and the Mike Sekul. The size and placement of the logo will be mutually agreed upon.

Section 5.2. Events. The Museum will acknowledge at all events sponsored by the Museum and on all printed advertising material distributed by the Museum that the City supports the Museum and the advertising literature will reflect the logo of the City.

Section 5.3. Sea and Sail Summer Camp. All printed material and programs for the Sea and Sail Summer Camp program that is sponsored by the Museum will acknowledge that the City is a sponsor and supporter of the Sea and Sail Camp.

Section 5.4. Accountability. The Museum agrees that all funds received from the City pursuant to this agreement shall be accounted for to the City in the Annual Review , pursuant to Section 11.2.

ARTICLE 6. UTILITIES

Section 6.1. The City shall bear the cost of water and telephone , used in the operation of the Facilities. The City shall bear the cost of electricity (up to \$40,000.00 for the annual term) used in the operation of the facilities. On or before January 1, 2027, parties will place the electric meter in the name of the Museum.

Section 6.2. The Museum shall bear the cost of natural gas and internet used in the operation of the Facilities, as well as any other utilities not specified in Section 6.1 above.

ARTICLE 7. ESTABLISHMENT OF REPAIR FUND

Section 7.1. Establishment. Commencing November 1, 2025, the Maritime and Seafood Industry Museum Repair Fund (the "Repair Fund") shall be established, managed and maintained as a separate restricted fund by the Museum in its budget, and the amounts in the Repair Fund, including all earnings on such amounts, shall be disbursed, from time to time solely for the purpose of financing Repairs of the Facilities (except as otherwise provided herein).

Section 7.2. Funding. The Repair Fund shall be funded with a contribution of Twenty Thousand and 00/100 Dollars (\$20,000.00) from the City, which is to be paid on or before November 15 of each year for the term and any renewal terms of this Agreement, subject to the availability of funding and approval by the governing body of the City of Biloxi. Repairs shall be funded using the Repair Fund to the extent such funds are available. An annual report of expenditures from the Repair Fund shall be provided to the City and the Museum's Board of Directors. Repairs in excess of any funds accumulated in the Repair Fund shall be the responsibility of the Museum.

ARTICLE 8. REPAIRS AND MAINTENANCE OF FACILITIES

Section 8.1. Aesthetics. The Museum shall have the right, subject to the prior approval of the City, to paint, decorate, renovate, and otherwise modify the interior of the Facilities to facilitate the operation of the Facilities, provided that the fundamental structure of the Facilities is not substantially altered.

Section 8.2. Discretionary Improvements. The Museum shall have the right, from time to time, at its own expense, to make alterations and improvements to the Facilities, as shall be reasonably necessary or appropriate, in the Museum's judgment, for the Museum's conduct of its business, provided that prior to the commencement of any alteration of any improvement, the Museum shall have provided the City with written notice of its plans and specifications and in the event such proposed alteration or improvement is in excess of Twenty Thousand Dollars (\$20,000.00), the City shall have the right to approve such alteration or improvement, such approval not to be unreasonably withheld or delayed. Unless such alterations and improvements are fixed and not capable of being removed or would damage the Facilities, all such alterations and improvements paid for by the Museum shall remain the property of Museum during and after the expiration or termination of this Agreement.

Section 8.3. Liens. The Museum shall not permit any lien to attach for labor or materials

furnished in connection with such repairs, improvements, replacements, renovations, alterations and additions. It is agreed that all improvements placed on said property by the Museum shall become the property of the City and the Museum further agrees that at the termination or cancellation of this Agreement, it will quit and surrender the Leased Premises in good repair, ordinary wear and tear excepted. The provisions of this paragraph requiring prior approvals of the City shall not apply to normal wear and tear.

Section 8.4. Routine Maintenance. The Museum shall be responsible for all routine maintenance of the Facilities. The term "routine maintenance" shall be defined as provision of labor and materials required to keep the Facilities in good order and repair which are of a routine, regular and predictable nature. Examples include garbage and trash removal, cleaning of parking areas, inspection and recurring maintenance of HVAC, plumbing, and electrical systems, maintenance painting, replacement of flooring such as carpeting and tile.

Section 8.5. Grounds Maintenance. The City shall be responsible for grounds maintenance.

Section 8.6. Cost of Repairs.

- A. Repair costs shall be paid from the Repair Fund.
- B. In the event a Repair which exceeds the balance of the Repair Fund by Ten Thousand Dollars (\$10,000.00) or more, becomes necessary or advisable, and the Museum is financially unable to make such Repair, it may petition the City for assistance in the cost of such Repair. All such petitions will be put to the Biloxi City Council and assistance with the costs of such repairs is subject to the approval of the governing body of the City of Biloxi.
- C. The full cost of any Repair not specifically authorized in advance by the City shall be borne exclusively by the Museum.

Section 8.7. City Assistance. The City will, at the request of the Museum, provide assessment, advice and recommendations regarding Repairs. Requests for City assistance should be made by contacting the City's Public Works Department (Customer Service Coordinator) at telephone number (228) 435-6279.

Section 8.8. Emergency Repairs. For the purposes of this Agreement, an "Emergency Repair" shall be defined a correction to damaged facilities in which the fault carries the risk of immediate injury to people or major damage to property. Examples of Emergency Repairs are: escape of gas or fumes, electrical fittings in contact with water, major plumbing leaks etc. In the event an Emergency Repair is deemed necessary by the Museum, outside normal business hours (8:00 a.m. to 5:00 p.m., Monday through Friday), the Museum should contact the Contract Representative at (228) 435-6388 as soon as practically possible and provide all necessary information regarding the contractor, cost, and nature of repair. After hours, on weekends and holidays, the Museum may directly engage a contractor for the sole purpose of resolving or containing the emergency condition in such a manner that the fault no longer represents an immediate threat of injury or major property damage.

Section 8.9. Labor. The City may, but shall not be obligated to, assist in or provide the labor necessary to conduct maintenance and/or repairs. The provision of such labor shall be in the sole and absolute discretion of the City.

Section 8.10. Fire System. Except as provided in Section 9.3, the Museum, funded by the Repair Fund, shall be responsible for maintenance and repair to the fire detection and prevention, and/or suppression systems (the "Fire System"), to protect the Facilities, employees and general public, unless such maintenance and/or repair is required by reason of the intentional or negligent acts of the City, its employees, agents, invitees, licensees, or contractors, in which case, the City shall be responsible.

Section 8.11. Security System. Except as provided in Section 9.5, the Museum funded by the Repair Fund, shall be responsible for maintenance and repair to the electronic security systems (the "Security System"), including burglar alarms.

Section 8.12. Elevators. Except as provided in Section 9.4, the Museum, funded by the Repair Fund, shall be responsible for all elevator repair. In order to conserve funds, the Museum shall use best efforts to ensure that all calls for repairs should be made and repairs scheduled during normal business hours.

ARTICLE 9. PARTICIPATION IN CITY CONTRACTS

Section 9.1. Participation in City Contracts. When practicable, the Museum may participate in the cost-saving benefits of City contracts for services, provided that, except as indicated below, the Museum must bear the pro rata costs associated with extending these benefits to the Museum. Nothing contained in this ARTICLE 9 shall obligate the City to enter or negotiate contracts on behalf of the Museum, except as specifically provided for herein.

Section 9.2. Pest Control. City will provide and bear the costs of regular pest control as part of city-wide contract.

Section 9.3. Fire Systems. As part of its city-wide contracts, the City will bear the costs associated with fire system monitoring, fire panel inspection, fire suppression system inspection and testing. As provided for in Section 8.10, the Museum will be responsible for all repairs to the Fire System, with funding available in the Repair Fund.

Section 9.4. Elevators. City will maintain an elevator service contract for the elevators located in the Facilities and bear the costs of such contract. In addition, the City will provide and bear the cost of state-mandating testing and inspection. As provided for in Section 8.12, any and all costs incurred for service, repairs and or maintenance which is above and beyond the contract price shall be paid from the Repair Fund.

Section 9.5. Security Systems. The City, shall be responsible for providing monitoring of the Security System, to secure the Facilities and the Museum.

ARTICLE 10. SECURITY

Section 10.1. Policing. The City shall be responsible for providing adequate police protection for the Facilities, but only such as is provided in the City's normal administrative functions.

Section 10.2. Private Security. The Parties understand and agree that the City will not provide a full-time security guard. The Museum may hire any security personnel which the Museum deems to be necessary and shall be responsible for the cost of providing such security.

Section 10.3. Securing Facilities. The Museum shall be responsible for securing the entrances and exits to the Facilities and shall be responsible for installing and replacing locks or other security devices deemed necessary or desirable by the Museum in the Facilities.

ARTICLE 11. ACCOUNTING

Section 11.1. Records. The Museum shall keep accurate, true, and complete books and records, which shall fully reflect the financial condition and results of operations of the Facilities. All books, records, accounts, canceled checks, vouchers, duplicate invoices, receipts, statements, and other documentation maintained by the Museum shall be retained by the Museum for a period of three (3) years, or such longer period as may be required by law or as the City may require in specific cases.

Section 11.2. Annual Review. Each year, the Museum will provide financial statements to the City showing monthly profit/loss statements as well as any returns filed with the IRS and Secretary of State. The Certified Public Accountant shall be licensed by the State of Mississippi. The cost of the review services and the cost of the preparation of financial statement shall be the responsibility of the Museum

Section 11.3. Tax Returns. The Museum shall bear all costs associated with the preparation and filing of its tax returns.

ARTICLE 12. CONTRACT REPRESENTATIVE

Section 12.1. The City's Contract Manager, shall serve as the Contract Representative for the City. Said representative, with the Mayor's prior approval, is authorized to carry out the terms and conditions of this Agreement on behalf of the City.

ARTICLE 13. INDEBTEDNESS

Section 13.1. Indebtedness. The Museum may not incur any original or additional mortgage indebtedness without the City's prior written consent, which consent shall not be unreasonably withheld. The City's prior written consent is further required for any renewal, modification, consolidation, replacement, or extension of any mortgage which may now or hereafter be outstanding. The term "mortgage" as used herein shall be deemed to mean a mortgage, deed of trust, note, loan document, transaction, or indebtedness of any kind, in which the Facilities, the Lease or the Leased Premises are utilized as collateral to secure repayment of such indebtedness.

ARTICLE 14. LIABILITY, INSURANCE AND INDEMNITY.

Section 14.1. Liability. It is specifically agreed and understood by and between the parties hereto that the City shall be and remain free of any liability or responsibility whatsoever for injury, loss or damage to the person (including death), property, equipment, furniture, fixtures, works of art or chattels of the Museum or any third parties, including customers, clients, invitees, agents, employees, or servants of the Museum while on, about, within, or in connection with the use of the Facilities.

Section 14.2. General Liability Insurance. At all times during the primary or any renewal term hereof, the Museum shall purchase, pay for and carry general commercial liability insurance with limits reasonable for the business or activity for which the Facilities are used by the Museum in an amount not less than One Million Dollars (\$1,000,000.00), and the Museum shall furnish to the City within fifteen (15) days after execution of this Agreement written evidence of the existence of such insurance. The City shall be named in said policy as an additional insured and shall receive notice of any policy cancellation.

Section 14.3. Indemnity. The Museum hereby agrees and binds itself to indemnify and save harmless the City from any liability, loss, damages, costs, and expenses (including reasonable attorneys' fees) sustained by any person (including death) or to any property arising out of the Museum's use or occupancy of the Facilities, or any neglect or act of the Museum (including its employees, agents, or servants), or any repairs, replacements, renovations, additions, changes, alterations or improvements made by the Museum in the Facilities.

Section 14.4. Casualty and Flood Insurance. The City will be responsible for providing casualty and flood insurance for the building in an amount determined by the City in its sole and absolute discretion. The Museum shall be responsible for providing its own insurance for its property and for the operation of the Facilities. Any insurance payment or recovery made or had as a result of insurable loss of or damage to the real or personal property which comprise the Facilities shall belong to the City.

Section 14.5. Personal Property. The Museum shall be responsible for all equipment, personal property, fixtures, works of art, and chattels which it permits to be brought into the Facilities, unless said equipment, personal property, fixtures, artifacts, works of art and chattels are brought on the Facilities at the direction of the City, and shall hold the City harmless for any liability for, damage to or loss of the aforesaid equipment, personal property, fixtures, artifacts works of art, and chattels. Equipment, personal property, fixtures, artifacts, works of art, and chattels may be brought onto the site by the City with reasonable notice to the Museum, through its Executive Director, and under the direction of Museum staff so as to prevent injury or damage to the Museum's property, including, but not limited to, its artifacts and/or works of art.

ARTICLE 15. TITLE TO ASSETS

Section 15.1. It is understood that the name of "The Maritime and Seafood Industry Museum of Biloxi, Inc.," as well as all other assets of Museum, are the exclusive property of Museum, and this Agreement shall not be deemed at any time to be or convey an interest in the Museum's property to the City.

ARTICLE 16. TERMINATION AND DEFAULT

Section 16.1. Termination by Either Party. Either party shall have the right to immediately terminate this agreement, without penalty or prejudice to any other rights and remedies it may have, if:

A. the other party fails to perform any material provision of the Agreement, and the failure is not corrected within thirty (30) days after the other party gives the defaulting party written notice of the breach;

B. the other party becomes insolvent, is unable to pay its debts as they mature or is the subject of a petition in bankruptcy, whether voluntary or involuntary, or of any other proceeding under bankruptcy, insolvency or similar laws; or makes an assignment for the benefit of creditors; or is named in, or its property is subject to a suit for appointment of a receiver; or is dissolved or liquidated; or

C. the other party suspends, discontinues or materially alters its business operations.

Section 16.2. Mutual Agreement to Terminate. This Agreement may be terminated at any time, without penalties or prejudice, by mutual agreement of both parties in writing.

Section 16.3. Default. If there shall be a default in the performance of any term, covenant, agreement, condition, rule of regulation contained in this Agreement, this Agreement may be canceled at the option of the Party not in default upon thirty (30) days written notice (which notice shall include the details of said default). If the Party in default does not cure said default within the thirty (30) days period, this Agreement shall be cancelled, and the obligations of the Parties hereunder shall cease and terminate, provided, however, that the defaulting Party shall remain liable for any damages or losses caused by the defaulting Party's action or inactions prior to termination.

Section 16.4. Vacation or Bankruptcy. If the Facilities are vacated or deserted by the Museum, or if the Museum dissolves, or proceedings are commenced against the Museum in any court under the Bankruptcy Act, or for the appointment of a trustee or receiver of the Museum's property, this Agreement shall terminate, and the City shall have the right to enter and possess the Facilities, by either force or summary proceedings, surrender or otherwise dispossess and remove the Museum, or other occupants, and their effects from the Facilities without being liable therefore.

Section 16.5. Waiver. Waiver by either party hereto of any breach or violation of terms, conditions or covenants of this lease or the non-performance of same for any particular time shall not be construed as a waiver of any succeeding breach or violation of the same or another term, condition or covenant hereof, and the consent, approval or acquiescence by the City or the Museum of any breach or violation shall not waive or render unnecessary such consent or approval of any subsequent breach.

Section 16.6. Effect of Termination. 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.

ARTICLE 17. MISCELLANEOUS

Section 17.1. Notices. All notices, Consents, waivers and other communications required or permitted by this Agreement shall be in writing and shall be deemed given to a party when (a) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid); or (b) received or rejected by the addressee, if sent by certified mail, return receipt requested, in each case to the following addresses, marked to the attention of the person (by name or title) designated below (or to such other address, or person as a party may designate by notice to the other parties):

CITY:
Mayor of the City of Biloxi
140 Lameuse Street
Biloxi, Mississippi 39530

With mandatory copy to:
City Attorney / Contract Manager
Post Office Box 429
Biloxi, Mississippi 39533

MUSEUM:
Brandon Boudreaux, Executive Director
The Maritime and Seafood Industry Museum of Biloxi, Inc.
115 East 1st Street
Biloxi, Mississippi 39530.

Section 17.2. Governing Law. The laws of the state of Mississippi shall govern the application and interpretation of this Agreement.

Section 17.3. Jurisdiction. The courts located in Harrison County, Mississippi (Second Judicial District) shall have exclusive jurisdiction of any dispute between the parties. If one party initiates an action against the other or should a party seek any form of relief against the other, then said action shall be filed in Harrison County, Mississippi (Second Judicial District). Any business or person doing business with the City of Biloxi submits to the personal jurisdiction of the courts in Harrison County, Mississippi.

Section 17.4. Arbitration. The City shall not be subject to the terms of any provision contained in the Contract or any supplemental terms that may seek to require the City to submit a dispute to arbitration; and, any such term(s) requiring same, shall be deemed to be of no force or effect as against the City.

Section 17.5. Amendments. This Agreement may not be altered or amended, nor may rights hereunder be waived, except by writing executed by both parties upon receipt of appropriate authorization by the governing body of the City and Museum's Board of Directors.

Section 17.6. Assignability. The Museum may not assign any of its rights or delegate any of its obligations under this Agreement without the prior express written consent of the City. The provisions of this Agreement shall be binding upon and inure to the benefit of both parties and their respective legal representatives, permitted successors, and permitted assigns, if any.

Section 17.7. Force Majeure. Neither party shall be liable for failure to perform or delay in performing any obligation under this Agreement if the failure or delay is caused by any circumstances beyond its reasonable control, including, but not limited to, acts of God, war, civil commotion or industrial dispute ("Force Majeure").

Section 17.8. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable for any reason, that provision shall be ineffective to the extent of such invalidity or unenforceability, and such invalidity or unenforceability shall not affect any other provision of this Agreement. If necessary, the parties shall negotiate in good faith to modify the Agreement to preserve (to the extent possible) their original intent.

Section 17.9. Authority. The parties represent that they have full power and authority to enter into and perform this Agreement and the parties know of no contract, agreement, promise or undertaking which would prevent the full corporate execution and performance of this sublease, and the persons executing this Agreement on behalf of the parties are duly authorized to do so and have the authority to bind such parties.

Section 17.10. Entire Agreement. This Agreement supersedes and cancels any prior agreement, or any amendments thereto, made between the parties. This Agreement, together with and including any attachments or exhibits, and the documents referred to herein, contains the entire agreement between the parties and may not be modified, amended or in any way altered orally but only by an agreement or amendment in writing signed by the party or parties against whom enforcement of any waiver, change, amendment, modification or discharge is sought.

Section 17.11. Non-Waiver. No delay in exercising or omission of the right to exercise any right or power by the City shall impair any such right or power or shall be construed as a waiver of any breach or default, or as acquiescence thereto. One or more waivers of any covenants, terms or conditions of this Agreement by the City shall not be construed by the other party as a waiver of a continuing or subsequent breach of the same covenant, provision or condition. The consent or approval by the City to or of any acts by the Museum or of a nature requiring consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

Section 17.12. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile or email transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

Section 17.13. Relationship of the Parties. The City and the Museum shall not be considered or deemed to be joint venturers or partners, and neither shall have the power to bind or obligate the

other except as may be provided bylaw.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

CITY:

CITY OF BILOXI, MISSISSIPPI,
Mississippi municipal corporation

MUSEUM:

THE MARITIME AND SEAFOOD INDUSTRY
MUSEUM OF BILOXI, INC., a Mississippi non-
profit corporation

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

By: _____
Name: Brandon Boudreaux
Title: Executive Director

ATTESTED TO BY:

Stacy L. Thacker, Municipal Clerk