

**CITY OF BILOXI  
AGENDA ITEM  
FACT SHEET**

Item No.: 4 B

Council Meeting Date: May 9, 2017

ITEM TITLE: RESOLUTION  
 INTRODUCED BY: Mayor Andrew "FoFo" Gilich  
 CONTACT PERSON: E. Michael Leonard, CAO  
 Gerald Blessey, Special Counsel

**SUMMARY EXPLANATION:**

Resolution approving lease of former Beauvoir School property from the Biloxi School District, for the purpose of establishing a center of eleemosynary services and shelter for homeless families, veterans, and individuals, and for related purposes.

Resolution  Ordinance \_\_\_\_\_ Public Hearing \_\_\_\_\_ Routine Agenda \_\_\_\_\_

Exhibits for Review

Contract \_\_\_\_\_ Minutes \_\_\_\_\_ Plans/Maps \_\_\_\_\_ Deed \_\_\_\_\_ Lease \_\_\_\_\_

Other (Specify): Exhibit "A"

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	___	___	___	Fayard	___	___	___
	Deming	___	___	___				

ACTION TAKEN:

RESOLUTION NO. \_\_\_\_\_

RESOLUTION APPROVING LEASE OF FORMER BEAUVOIR SCHOOL PROPERTY FROM THE BILOXI PUBLIC SCHOOL DISTRICT, FOR THE PURPOSE OF ESTABLISHING A CENTER OF ELEEMOSYNARY SERVICES AND SHELTER FOR HOMELESS FAMILIES, VETERANS AND INDIVIDUALS, AND FOR RELATED PURPOSES

WHEREAS, there is a humanitarian need for a center of eleemosynary services and shelter for homeless families, veterans and individuals in the City of Biloxi; and

WHEREAS, it is in the best interests of the people of the City of Biloxi that the City lead the establishment of such a center; and

WHEREAS, the former Beauvoir School buildings and grounds are suited for making renovations that would provide the services and shelter needed, and the Biloxi Public School District does not need the property for school purposes;

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 authorized to execute and deliver the attached Lease Agreement with the Biloxi Public School District, attached hereto as Exhibit "A".

SECTION THREE: The Mayor is requested to prepare and present to the City Council for the fiscal year beginning October 1, 2017, a capital projects budget for renovation of the property and an annual operating budget for the center.

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

EXHIBIT "A" TO RESOLUTION

LEASE AGREEMENT BY AND BETWEEN

BILOXI PUBLIC SCHOOL DISTRICT  
AS LANDLORD

AND

CITY OF BILOXI, MISSISSIPPI  
AS TENANT

BEAUVOIR SCHOOL PROPERTY

STATE OF MISSISSIPPI  
COUNTY OF HARRISON  
SECOND JUDICIAL DISTRICT

**LEASE**

THIS AGREEMENT (the "Lease Agreement") made and entered into this day between **BILOXI PUBLIC SCHOOL DISTRICT**, a Mississippi municipal separate school district and political subdivision of the State of Mississippi, hereinafter referred to as "Landlord" or "District"; and **CITY OF BILOXI, MISSISSIPPI**, a Mississippi municipal corporation and political subdivision of the State of Mississippi, hereinafter referred to as "Tenant" or "City".

**WITNESSETH**

For and in consideration of the mutual promises contained herein, the Landlord leases to Tenant, and Tenant leases from Landlord all of the real property, buildings and grounds and all improvements thereon described on the attached Exhibit "A" and commonly known as the Beauvoir School building, property and grounds (the Leased Premises").

1. **TERM OF LEASE:** The primary term of this Lease Agreement shall be a period of thirty (30) years commencing on the date of full execution of this Lease Agreement (the "primary term").
2. **RENTAL PAYMENT:** For the primary term, the Tenant agrees to pay as rent to Landlord on the date of full execution of this Lease Agreement the total sum of Ten Dollars (\$10.00) cash, the receipt and sufficiency of which the Landlord hereby acknowledge
3. **RENEWAL OF LEASE:** Provided that the Tenant is not in default, the Tenant shall have the option to renew this Lease Agreement for an additional thirty (30)

years renewal term. Tenant must provide written notice of its intent to renew to the Landlord at least three (3) months prior to the termination of the primary term.

4. TENANT'S USE AND PURPOSE: Tenant shall use and operate the Leased Premises exclusively as a center of eleemosynary services and shelter for homeless families, veterans and individuals and all public and private businesses incident thereto.
5. RIGHT OF SALE; NOTICE OF INTENT TO SELL:
  - a. The parties acknowledge that in these uncertain economic times, it may develop that the District shall determine that the best interests of the District will be served by a sale of the subject real property ("Leased Premises"). In such an event, after giving the City six (6) months written notice of the Districts intent to sell the subject real property ("Leased Premises"), the District will proceed as directed by Mississippi Code of 1972, §37-7-455, The District will notify the City of its plan to offer its property for sale and invite the City to participate as an interested purchaser in accord with Mississippi Code of 1972, § 37-7-455.
  - b. The parties acknowledge that prospective purchasers may or may not perceive a value in the improvements to be made to the subject property ("Leased Premises") by the City. If the City is not the successful bidder, the District shall provide for an equitable distribution of the sale proceeds received from the sale of such property in such proportions as will be determined to be fair and equitable for the circumstances of the

purchaser's intended use and valuation, if any, of any improvements placed upon the property by the City.

- c. The parties acknowledge that it is possible that the District may receive an acceptable proposal for development of the subject real property ("Leased Premises") utilizing the School Property Development Act codified as Mississippi Code '37-7-485. In the event such a development is proposed which the District finds acceptable, the District shall provide for a distribution of the benefits received from the development project in such proportions as will be determined to be fair and equitable for the circumstances of the developer's intended use and valuation, if any, of the improvements placed upon the property ("Leased Premises") by the City.
- d. The City acknowledges that a successful purchaser may place no value on the improvements placed upon the Leased Premises by the City. In such an event, there will be no duty upon the part of the School District to reimburse the City for the cost of the improvements.

6. TERMINATION; ASSIGNMENT; SUB-LEASE:

- a. If the Landlord terminates the Lease Agreement in order to repossess the Leased Premises for the purpose of reactivating a school on the Leased Premises, then Tenant shall transfer to Landlord, without payment, the value of the improvements as provided by general law for transfer of property from city to public school district.

- b. The Tenant shall not assign, pledge, sub-lease or transfer all or part of Tenant's interest under this Lease Agreement without the prior written consent of the Landlord, which consent shall not unreasonably be withheld for approval of Tenant's leasehold mortgage(s) or personal property security agreements for Tenant's financing improvements and equipment for Tenant's use and purpose, provided that no such mortgage or security agreement shall encumber Landlord's interests and fee simple ownership and title to the Leased Premises.
  - c. However, Tenant may, without permission of Landlord, assign or sub-lease parts of the Leased Premises to governmental or private business entities to carry out the Tenant's use and purpose of the Leased Premises, provided that all terms and conditions of such assignments or subleases shall be subject to the terms and conditions of this Lease Agreement and provided further that Tenant shall remain responsible for all duties and obligations of Tenant and sub-tenants under this Lease Agreement.
  - d. Tenant may terminate this Lease Agreement at any time upon sixty (60) days written notice to Landlord.
7. UTILITIES: The Tenant agrees and covenants to pay or cause to be paid all bills, charges, and surcharges for all utilities on the Leased Premises during the term of this Lease Agreement, including but not limited to water, sewer, gas, cable, Internet and electricity. Tenant shall further indemnify, defend and hold Landlord harmless for all such payments and shall discharge the same in a timely manner.

8. REPAIRS AND MAINTENANCE: The Tenant shall maintain, at its sole cost and expense, all of the Leased Premises in good repair (including, but not limited to, repair, re-work and day-to-day maintenance) during this Lease Agreement.
9. DEMOLITION AND IMPROVEMENTS: Tenant may at its sole cost and expense demolish any and all buildings and improvements on the Leased Premises and make any and all additions, improvements, alterations or changes necessary for the permitted uses and business of the Tenant, provided that such work shall be completed in a good and workmanlike manner. Tenant agrees and covenants that it will not allow any liens to be placed against the subject property as a result of said construction. This includes but is not limited to contractor's liens, materialman's/mechanics liens, and lis pendens notices. Tenant shall further be solely responsible for obtaining and paying for all necessary permits, applications and approvals for any contemplated demolitions, additions, improvements, alterations or changes to the Leased Premises
10. INSURANCE AND TAXES: The Tenant shall maintain casualty insurance insuring the Leased Premises in such sums as the Tenant shall deem appropriate. Tenant shall maintain general public liability insurance for Leased Premises for the protection of the Landlord and Tenant in the minimum sum of \$1,000,000.00, per single occurrence and \$2,000,000.00, in aggregated coverage. The Tenant may at its sole expense and discretion maintain casualty insurance on its personal property, fixtures and equipment located within the Leased Premises during this Lease Agreement. Tenant shall maintain Workers Compensation insurance



pertaining to its employees according to the provisions of Mississippi law.

Although the Tenant is not subject to ad valorem real property taxes, in the event Tenant sub-leases, with approval of Landlord, all or any part of the Leased Premises to an entity that is subject to ad valorem real property taxes, Tenant shall require the sub-tenant to pay the ad valorem real property taxes, as the same shall become due and payable, and Tenant shall hold Landlord and the Leased Premises harmless from any unpaid ad valorem real property taxes.

11. "TRIPLE NET" LEASE: It is agreed between the Landlord and Tenant that this is a "triple net" lease. It is further agreed that the Tenant shall be responsible, at its sole expenses, for all costs, expenses, repairs, maintenance, insurance, taxes (if any), permits, governmental approvals, and all other charges or obligations arising out of the Tenant's occupancy and use of the Leased Premises.
12. FURNITURE AND EQUIPMENT: All furniture, equipment, and other items of personal property purchased by Tenant that are not permanently affixed to the Leased Premises shall remain the sole property of the Tenant.
13. DEFAULT: Upon the occurrence of any one or more of the events described below which shall constitute a default, the Landlord shall have the right, but not the obligation to cancel and terminate this Lease Agreement, and thereupon re-enter and take possession of the Leased Premises. Default Events:
  - a. In the event an execution, pending execution or other legal proceeding is commenced against the Leased Premises or upon the interest of the Tenant in this Lease Agreement.

- b. In the event of a petition in bankruptcy (voluntary or involuntary) by or against the Tenant, or any guarantor of the Lease Agreement.
- c. In the event the Leased Premises is used for any unlawful activity, or any other activity that constitutes a nuisance.
- d. In the event that the Tenant establishes or allows to be established any lien, other than a lien expressly approved in writing by the Landlord, against the Leased Premises, including but not limited to Materialman's, Mechanic's and Contractor's Liens.
- e. Notwithstanding the above default events, no default hereunder shall be deemed to have occurred on the part of the Tenant until ten (10) days after the first written notice of a monetary default or thirty (30) days after the first written notice of a non-monetary default shall have been given to Tenant, and within such time, Tenant has failed to cure said default. If any non-monetary default by Tenant cannot reasonably be cured with thirty (30) days after notice, then Tenant shall have an additional thirty (30) days to effect such cure, provided, however, that the Tenant commences immediate action to cure said default within the original thirty (30) day notice period and works diligently, prudently and with reasonable commercial dispatch to complete the necessary actions to cure such default.

14. TENANT'S RIGHT OF QUIET ENJOYMENT: Landlord hereby warrants and covenants that it has the right to lease the Leased Premises to Tenant for the use

and purposes stated herein, and that Tenant shall, while Tenant is not in default of the terms of this Lease Agreement, peacefully and quietly hold the Leased Premises during this Lease Agreement, without interference or hindrance from Landlord or those claiming by or through Landlord

15. BROKERAGE: The parties agree that no brokers or agents are due and commissions or payments relating to the Leased Premises or this Lease Agreement.
16. GOVERNMENTAL REGULATIONS: Tenant shall, at Tenant's sole cost and expense, comply with all of the requirements of all governmental authorities, pertaining to the Leased Premises
17. NOTICES: Any notice which is required or desired to be given in accordance with the terms of this Lease Agreement shall be deemed to have been properly given when such notice(s) shall be sent by registered or certified mail, postage prepaid and addressed as follows:

To Landlord at:        Biloxi Public School District  
                                  Attention: Superintendent  
                                  160 St. Peter Avenue  
                                  Biloxi, MS 39530

To Tenant at:            City of Biloxi  
                                  Attention: Mayor  
                                  140 Lameuse Street  
                                  Biloxi, MS 39530

18. APPLICABLE LAW/VENUE: This Lease Agreement shall be governed according to the laws of the State of Mississippi; jurisdiction and venue shall be in the Second Judicial District of Harrison County, Mississippi.
19. RIGHT OF ENTRY: The Landlord hereby expressly reserves the right to enter on and inspect the Leased Premises during the term of this Lease Agreement. The Landlord shall only enter the Leased Premises during normal business hours and shall do so in a manner that will not interfere with the Tenant's operation of business.
20. MODIFICATION: No modification, alteration or amendment of this Lease Agreement shall be binding unless in writing and executed by the parties
21. BINDING EFFECT: This Lease Agreement shall be binding upon the parties and their respective heirs, assigns, and successors in interest.
22. ENTIRE AGREEMENT: This Lease Agreement contains the entire agreement between the parties. Neither the Tenant nor Landlord has relied upon any statements, promises, or agreements in conflict with the terms of this document.

\_\_\_\_\_SIGNATURE PAGE FOLLOWS\_\_\_\_\_

IN WITNESS WHEREOF, the parties have made and signed this Lease Agreement in duplicate in the City of Biloxi, State of Mississippi, this the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

Landlord: BILOXI PUBLIC SCHOOL DISTRICT

BY: \_\_\_\_\_  
ARTHUR McMILLAN, SUPERINTENDENT

Tenant: CITY OF BILOXI, MISSISSIPPI

BY: \_\_\_\_\_  
ANDREW "FOFO" GILICH, MAYOR

EXHIBIT "A"  
LEGAL DESCRIPTION OF LEASED PREMISES

Lots 1-10, Blocks 29 & 30, Beauvoir Truck Farms Subdivision, according to the map or plat thereof recorded in the land records of the Chancery Clerk of the Second Judicial District of Harrison County, Mississippi; being approximately 17.50 acres within Sections 26 & 27, Township 7 South, Range 10 West.

Physical Address: 2003 Lawrence Avenue, Biloxi, MS 39531

Harrison County property Tax Parcel #1210F-03-012.000