

**CITY OF BILOXI
AGENDA ITEM
FACT SHEET**

Item No.: 4 F

Council Meeting Date: **November 6, 2018**

ITEM TITLE: **RESOLUTION**

INTRODUCED BY: **Mayor Andrew "FoFo" Gilich**

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

Peter Abide, City Attorney *PA*

SUMMARY EXPLANATION:

Resolution authorizing agreement with BBR Biloxi, LLC, a Delaware Limited Liability Company, for joint feasibility analysis and development planning for an East Biloxi convention center and retail complex and option to purchase real property; and for related purposes.

Resolution Ordinance _____ Public Hearing _____ Routine Agenda _____

Exhibits for Review

Contract _____ Minutes _____ Plans/Maps _____ Deed _____ Lease _____

Other (Specify): Exhibit "A" - Agreement for for joint feasibility study

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 BBR Biloxi, LLC, A DELAWARE LIMITED LIABILITY COMPANY, FOR JOINT FEASIBILITY ANALYSIS AND DEVELOPMENT PLANNING FOR AN EAST BILOXI CONVENTION CENTER AND RETAIL COMPLEX AND OPTION TO PURCHASE REAL PROPERTY; AND FOR RELATED PURPOSES

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 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 of the City as a convention destination; and

WHEREAS, to meet the City's strategic plans and goals, the City and BBR BILOXI, LLC, a Delaware limited liability company ("BBR"), desire to create a world class, waterfront, mixed use convention center and retail complex in Biloxi east of I-110 ("the Project") that will also stimulate further retail and related residential development; and

WHEREAS, The City and BBR Biloxi desire to create such project with world class design and mixture of uses consistent with the City's Waterfront Design Standards and Guidelines and other applicable Land Use Ordinances in order to create a development similar to successful waterfront projects; and

WHEREAS, it is appropriate that the agreement with BBR Biloxi, LLC, for joint feasibility analysis and development planning for an East Biloxi convention center and retail complex and option to purchase real property attached hereto as Exhibit "A" (the

“Agreement”) and made a part hereof, be entered in order for BBR Biloxi and the City jointly to conduct feasibility analysis and planning for a convention center and related retail complex and to grant to BBR Biloxi an option to purchase the Tullis Property, in the event such site is selected for the location of the Project, because the joint studies and the sale and development of the Tullis Property or the sale or purchase and development of any other property that the City may select for these purposes 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 Coast region, and the State of Mississippi; and

WHEREAS, the City is the fee simple owner of certain land, commonly known as the former Tullis Manor property (the “Tullis Property”), located on Highway 90 and Howard Avenue in the City of Biloxi, Mississippi, 39530, as more fully described in the attached Agreement (Ex. “A”); and

WHEREAS, adoption of the Agreement (Ex. “A”) is in the best interest of economic growth and development of the City of Biloxi and is consistent with the City of Biloxi ordinances applicable to the East Biloxi area; and

WHEREAS, the Mayor and City Council, under the authority of Mississippi Code of 1972, Section 21-17-1(2), find that the municipally-owned City properties described in the legal descriptions and tax parcels identified in the attached Agreement (Exhibit “A”) (i) are no longer needed for municipal purposes or related purposes and are not to be

used in the operation of the municipality; (ii) the sale of such properties 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 sold, conveyed or 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 real property described in the attached Agreement (Ex. "A") to be surplus property not needed for governmental purposes and should be set aside and improved for the commercial purposes described in the attached Agreement (Ex. "A"); and

WHEREAS, in the attached Agreement (Ex. "A"), the option to purchase granted to BBR Biloxi, LLC, provides that, in the event the option to purchase is exercised, the purchase price to be paid to the City will be an amount equal to the average of two appraisals of fair market value plus 20% of the average of the two appraisals of fair market value.

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 Agreement (Ex. "A") with BBR Biloxi, LLC, and hereby authorizes the Mayor and Municipal Clerk to execute and deliver the attached

Agreement (Ex. "A") and further authorizes the Mayor and Municipal Clerk to execute all deeds of conveyance, instruments, and other documents necessary to effectuate the purpose and intent of this resolution, including, without limitation, in the event BBR Biloxi exercises its option to purchase, all instruments, deeds of conveyance, and closing statements and all other documents necessary to effectuate sale to and purchase by BBR Biloxi of the real property described in the attached Agreement (Ex. "A")

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 BBR BILOXI, LLC FOR JOINT
FEASIBILITY ANALYSIS AND DEVELOPMENT PLANNING
FOR AN EAST BILOXI CONVENTION CENTER AND RETAIL
COMPLEX AND OPTION TO PURCHASE REAL PROPERTY**

This AGREEMENT FOR JOINT FEASIBILITY ANALYSIS AND DEVELOPMENT PLANNING FOR AN EAST BILOXI CONVENTION CENTER AND RETAIL COMPLEX AND OPTION TO PURCHASE REAL PROPERTY, (the "Agreement") is made and entered into this day between **CITY OF BILOXI, MISSISSIPPI**, a Mississippi municipal corporation, hereinafter referred to as "City"; and **BBR Biloxi, LLC**, a Delaware limited liability company, hereinafter referred to as "BBR".

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 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 of the City as a convention destination; and

WHEREAS, to meet the City's strategic plans and goals, the City and BBR desire to create a world class, waterfront, mixed use convention center and retail complex in Biloxi east of I-110 ("the Project") that will also stimulate further retail and related residential development; and

WHEREAS, The City and BBR desire to create such project with world class design and mixture of uses consistent with the City's Waterfront Design Standards and Guidelines and other applicable Land Use Ordinances in order to create a development similar to successful waterfront projects; and

WHEREAS, it is appropriate that this Agreement be entered to provide for BBR and the City jointly to conduct feasibility analysis and planning for a convention center and related retail complex and to grant to BBR a future option to purchase the Tullis Property, in the event such site is selected for the location of the Project, because the joint studies and the sale and development of the Tullis Property or the sale or purchase and development of any other property that the City may select for these purposes 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 Coast region, and the State of Mississippi; and

WHEREAS, the City is the fee simple owner of certain land, commonly known as the former Tullis Manor property (the "Tullis Property"), located on Highway 90 and Howard Avenue in the City of Biloxi, Mississippi, 39530, as more fully described in this Agreement;

WHEREAS, this Agreement is in the best interest of economic growth and development of the City of Biloxi and is consistent with the City of Biloxi ordinances applicable to the East Biloxi area;

NOW THEREFORE, the City and BBR agree as follows:

**AGREEMENT FOR JOINT FEASIBILITY ANALYSIS AND
DEVELOPMENT PLANNING FOR
EAST BILOXI CONVENTION CENTER
AND RETAIL COMPLEX**

1. For and in consideration of the covenants and mutual promises contained in this Agreement, the City and BBR agree that BBR shall secure, fund, pay for, and provide certain professional services and reports, acting through third-party professionals selected by BBR, for analysis and development of a project to create a world class, waterfront, mixed use convention center and retail complex in Biloxi, with a preliminary estimated cost of One Hundred Fifty Million Dollars (\$150,000,000), at a feasible site to be determined by the City and BBR somewhere in the area of the City east of Interstate Highway I-110 on the terms and conditions stated below:
 - a. These professional services shall provide reports as soon as reasonably possible but no later than March 31, 2019, on the following subjects:
 - i. To determine the feasibility and recommended size and location of a convention center and retail complex in the area of East Biloxi defined as that land and water mass from Interstate Highway I-110 eastward over all of the land and into the bodies of water bordering the Biloxi peninsula out to the boundaries of the City. This report shall consider and analyze at a minimum the following potential sites for a convention center and retail

complex: the vacant parcel south of Hwy 90 and east of extended Myrtle Street that is held jointly by the City and State pursuant to the Point Cadet Compromise and Settlement Agreement; vacant parcels bordering the east side of Holley Street and south side of Howard Avenue; vacant parcels east of Myrtle Street and north of Hwy 90; vacant parcels on Caillavet Street north of Division Street; the City's land and waterfront at the Sherman Canaan Back Bay Fishing Docks on Bayview Avenue; and the Tullis Property;

- ii. To analyze and recommend commercially reasonable costs, ownership entities, management concepts, and marketing concepts for the convention center and related retail spaces;
- iii. To provide due diligence regarding public and private utilities and other preliminary engineering matters, environmental assessments, insurance availability, and land title to recommended site;
- iv. To provide preliminary architectural and engineering planning and design of land use, buildings, grounds, utilities, landscape and waterscape pertaining to the recommended location of the convention center and retail complex;
- v. To estimate the economic impact of the Project in terms of construction jobs and permanent jobs, tax revenues to state,

county and city, new housing units, and increase in population of the city;

vi. To identify and recommend sources of public and private funding for the project, prepare applications for public grants, and draft legislation, if recommended; and

vii. To provide other studies and reports that BBR and City may determine to be necessary and proper to fulfill the purposes of this Agreement.

b. BBR hereby agrees to expend up to, but no more than, Two Hundred Fifty Thousand Dollars (\$250,000.00) to obtain professional services and reports by such third-party professionals for the purposes stated in sub-paragraph 1. a., above. BBR will provide copies of invoices and proof of payment to the City.

c. BBR shall provide to the City all interim and final reports of the third party professionals; these reports shall become the property of the City, with BBR licensed to possess and use copies of the same studies; and

d. In the process of selecting third-party professionals and ongoing input and feedback to the third-party professionals, BBR shall make reasonable efforts to consult the Mayor and his designees.

2. If the report(s) produced by the professional services obtained under paragraph 1., above, determine that a convention center and retail

complex is feasible at one or more sites recommended in the report(s) and acceptable to the City, the City, in consultation with BBR, shall:

- a. Select a site;
 - b. Select a public-private partnership structure for ownership and management to make their best efforts to obtain funding and establish, own and operate the convention center and retail complex;
 - c. Work in good faith with BBR to develop a construction and financing plan for the Project.
3. After completion of those items listed in Paragraph 2 above, the City shall make a final determination of feasibility based on economic development, funding sources, and any other factors determined to be relevant.
- Following such final determination, the City shall invest up to Two Hundred Fifty Thousand Dollars (\$250,000.00) in further pre-development costs pertaining to the selected site, as may be needed for
- a. Professional services selected by the City and acceptable to the private investors in whatever public-private partnership is selected, in order to begin final design and specifications for construction of a convention center and retail complex, and
 - b. Initial costs of application for public and private grants and/or issuance of public and private loans, and/or bonds from funding sources selected by the City and acceptable to the private investors in the public-private partnership, for the purpose of obtaining ownership of the site and construction of the convention center and retail complex.

OPTION TO PURCHASE

4. **GRANT OF OPTION:** For and in consideration of an option fee of FIFTY THOUSAND DOLLARS (\$50,000.00) (“Option Fee”), cash in hand paid by BBR to City, and of the covenants and mutual promises contained herein, the receipt and sufficiency of which is hereby acknowledged, the City does hereby grant unto BBR the exclusive and irrevocable option to purchase all of the City’s right, title and interest in and to the Tullis Property, whose primary address is 947 Beach Blvd. (Hwy. 90), Biloxi, MS 39530, and all appurtenances thereunto belonging, upon the terms and conditions stated in this Agreement, “as is, where is”, being more fully identified as comprised of the aggregate of Harrison County Tax Parcels #14101-04-079.000, #14101-04-031.000, #14101-04-030.000.000, #14101-04-080.000, #14101-04-081.000, and more fully described on that certain legal description and aerial sketches of the subject tax parcels collectively attached as Exhibit “A” to this Agreement, which is made a part of this Agreement (the “Tullis Property”). The Option Fee is non-refundable, except for termination of this Option to Purchase because of an unacceptable and uncured exception to title determined pursuant to paragraph 5.b. of this Agreement or a default by City hereunder, but the Option Fee shall be applied to the purchase price.

5. **NOTICE OF EXERCISE OF OPTION TO PURCHASE; TERMS AND CONDITIONS:** If the Tullis property is selected as the project site, BBR

may exercise its option to purchase fee simple title to the Tullis Property described herein, on the following basic terms and conditions—to wit:

- a. BBR shall notify City in writing of its intent to exercise the option to purchase before the end of the Term. The closing shall be no later than ninety (90) days after City's receipt of such written notice, subject to expiration of the "title review period" and receipt of the appraisals referenced below.
- b. TITLE: Within fifteen (15) days after BBR has exercised this Option, BBR shall obtain, at its expenses, a Certificate of Title by a reputable attorney upon whose certificate title insurance can be obtained, covering the Tullis Property described in Exhibit "A" hereto, which shall reflect that marketable fee simple title to the subject property is vested in City and that same is insurable by a title company of BBR's choice. Said Certificate shall be subject only to taxes for the current year, easements, and rights of way of record, all applicable laws and ordinances, prior mineral reservations, and the use restrictions stated in this Agreement. Should said Certificate reflect any other exceptions to the title unacceptable to BBR, BBR shall notify the City in writing of any defects within fifteen (15) days of BBR's receipt of the Certificate of Title (the title review period), and the City shall have a reasonable time (but not more than 25 days) in which to make the title good and marketable or insurable, and shall use due diligence in an effort to do so but without any obligation to expend any money to cure such

exceptions. If after using due diligence the City is unable to make the title acceptable to BBR within such reasonable time, it shall be the option of BBR either to accept the title in its existing condition with no further obligation on the part of the City to correct any defect, or to cancel this Option to Purchase stated in this Agreement. (BBR shall not have the right to cancel the remainder of this Agreement pertaining to the Joint Feasibility Analysis and Development Planning for East Biloxi Convention center and Retail Complex.) If this Option to Purchase is thus canceled pursuant to this sub-paragraph, the Option Fee of Fifty Thousand Dollars (\$50,000.00) paid by BBR to the City upon the execution of this Agreement shall be returned to BBR, and the Option to Purchase part of this Agreement shall terminate without further obligation of either party to the other regarding the Option to Purchase.

- c. The purchase price shall be the sum of the two following amounts (the total being the "Purchase Price":
 - i. The amount of the average of two appraisals of fair market value estimated by two licensed real estate appraisers selected by the City and approved by BBR, with the fair market value determined as of the date of the notice of intent; plus
 - ii. An amount equal to twenty percent (20%) of the amount of the average of two appraisals of fair market value as determined in the foregoing sub-paragraph 5.c.i.;

- d. The Purchase Price shall be paid to the City in cash at closing.
 - e. At closing City shall convey title to BBR by Special Warranty Deed conveying the Tullis Property "as is, where is" and the deed of conveyance will provide that the property conveyed is subject to all state, federal and municipal laws, codes, covenants and restrictions of record and subject to use restrictions as stated in the deed providing that the Tullis Property shall be developed, used and operated exclusively for a convention center, retail establishments, residential units and any and all lawful business incident thereto;
 - f. At closing, BBR and City shall each pay their respective attorneys fees, but BBR shall pay all other closing costs;
 - g. BBR shall be entitled to possession of the Tullis Property at closing;
 - h. During the term of this Option to Purchase, BBR shall be entitled to enter upon the Tullis Property for the purpose of conducting soil tests, engineering studies, environmental assessments and surveys;
 - i. BBR shall not assign its interest in this Option to Purchase to any third party, unless written approval for such assignment has first been obtained from the City.
 - j. The parties agree that there are no brokers or agents relating to this Option to Purchase and that no person is due any broker or agent commission.
- 6. TERM.** The term of this Option to Purchase shall be a period of twenty-four (24) months from the date of full execution of this Agreement (the

"Term"), unless extended by amendment in writing executed by both parties. Upon sixty (60) days advance notice to BBR Biloxi, City will grant an automatic additional twelve (12) months to exercise the notice of intent.

MISCELLANEOUS PROVISIONS

7. NOTICES: Any notice which is required or desired to be given in accordance with the terms of this Agreement 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:

To City: City of Biloxi
Attn: Mayor A. M. Gilich, Jr.
City Hall
140 Lameuse St.
Biloxi, MS 39530

With Copy to :
Peter Abide, Biloxi City Attorney
City Hall
140 Lameuse St.
Biloxi, MS 39530

To BBR: BBR BILOXI, LLC
Attn: Jeff Bartlam
18167 E. Petroleum Drive
Baton Rouge, LA 70809

8. APPLICABLE LAW AND VENUE: This Agreement 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.

9. ENTIRE AGREEMENT: This Agreement 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 executed by the parties.
10. BINDING EFFECT: This Agreement shall be binding upon the parties and their respective heirs, assigns, and successors in interest.
11. 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.
12. NOT JOINT VENTURERS OR PARTNERS: City and BBR 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 by law.
13. TERM OF AGREEMENT: The term of this entire Agreement shall be a period of twenty-four (24) months from the date of full execution (the "Term"), unless otherwise extended by written agreement of the parties.

IN WITNESS WHEREOF, the parties have made and signed this Agreement in triplicate in the City of BILOXI, State of Mississippi, this the ____ day of _____, 2018.

CITY: CITY OF BILOXI, MISSISSIPPI

BY: _____
A. M. GILICH, JR., MAYOR

Attest:

Municipal Clerk

BBR BILOXI, LLC:

BY: _____, its Manager

EXHIBIT "A"

TULLIS TAX PARCEL MAP IS ATTACHED ON THE FOLLOWING PAGE

AND

THE LEGAL DESCRIPTION OF TULLIS PROPERTY IS COMPOSED OF ALL OF THE LEGAL DESCRIPTIONS OF THE PARCELS DESCRIBED IN THE THE FOLLOWING DEEDS RECORDED IN THE LAND RECORDS IN THE OFFICE OF THE CHANCERY CLERK OF THE SECOND JUDICIAL DISTRICT OF HARRISON COUNTY, MISSISSIPPI:

1. **WD recorded in Book 62, Page 215; Tax Parcel #1410I-04-079.000**
2. **WD recorded as Instrument #2011-955D-J2; Tax Parcel #1410I-04-080.000 and parcel --081.000**
3. **WD recorded as Instrument #2011-957F-J2; Tax Parcel #1410I-04-031.000**
4. **WD recorded as Instrument #2011-956D-J2: Tax Parcel #1410I-04-030.000**

LESS AND EXCEPT ALL OF THE LITTORAL (RIPARIAN) RIGHTS APPURTENANT THERETO AND ALL THE PROPERTY DESCRIBED IN TAX PARCEL #1410I-03-009.000, WHICH ARE SPECIFICALLY SEPARATED AND RESERVED BY THE CITY TO REMAIN IN OWNERSHIP AND TITLE VESTED IN THE CITY. THE EXCEPTED LAND AND LITTORAL (RIPARIAN) RIGHTS INCLUDE ALL OF THE PARCEL OF FASTLANDS DEPICTED IN TAX PARCEL #1410I-03-009.000, AND ALL OF THE LITTORAL (RIPARIAN) RIGHTS APPURTENANT TO THE UPLAND OWNER SOUTH TO THE BILOXI NAVIGATION CHANNEL.

44785109.v2

HOWARD AVE

14101-04-030.000

14101-04-026.000

14101-04-031.000

14101-04-084.000

MEAUT ST

14101-04-081.000

14101-04-079.000

14101-04-080.000

14101-04-083.000

BEACH BLVD

BEACH BLVD

