

CITY OF BILOXI
AGENDA ITEM
FACT SHEET

Item No.: 4F

Council Meeting Date: June 02, 2015

ITEM TITLE: RESOLUTION

INTRODUCED BY: Mayor Andrew "FoFo" Gilich

CONTACT PERSON: David Nichols, CAO

SUMMARY EXPLANATION: Resolution authorizing execution of first amendment to the contract with W. G. Yates & Sons Construction, Inc., for Project No. 978, Caillavet Park Baseball Stadium.

Resolution Ordinance Public Hearing Routine Agenda

Exhibits for Review

Contract Minutes Plans/Maps Deed Lease

Other (Specify): Exhibit "A" and "B"

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:

GB/mw 060215jleg

Resolution No.

RESOLUTION AUTHORIZING EXECUTION OF FIRST
AMENDMENT TO THE CONTRACT WITH W. G. YATES & SONS
CONSTRUCTION, INC., FOR PROJECT NO. 978,
CAILLAVET PARK BASEBALL STADIUM

WHEREAS, on July 22, 2014, the City of Biloxi and W. G. Yates & Sons Construction, Inc., ("Yates") entered into a General Works Contract for the construction of Caillavet Park Biloxi Stadium, Project No. 978, now known as MGM Park; and,

WHEREAS, since that time it has been necessary to enter into Change Orders amending the Contract Sum, which is a lump sum contract, to reflect the changes in the scope of work referenced in each change order; and,

WHEREAS, in order to expedite the opening of the MGM Park Baseball Stadium, the Contractor (Yates) has had to and will continue to accelerate the construction process, including but not limited to additional safety measures requiring barricades, temporary egress and access measures, temporary fencing, temporary storage, and unanticipated work stoppages and re-mobilizations, all of which will result in extra costs which has been determined by agreement between Contractor and Owner to be \$200,000.00, to be added to the total of the lump sum Contract; and,

WHEREAS, the Contract Sum increase in the amount of \$200,000.00 shall be processed by the City and made payable to Yates on or before August 2, 2015; and,

WHEREAS, pursuant to Article 3, Contract Time, and subsequent change orders, the contract completion date is currently established as August 4, 2015; however, Contractor and Owner agree that, due to delays that will be caused by the expedited construction process and the inability to do certain work during Club Home Games, the contract completion date must be extended for a reasonable time, with the new completion date to be determined by agreement of

the parties within a reasonable time after the first round of Club Home Games, but the contract completion date shall not be later than September 30, 2015, which constitutes a maximum increase of the Contract Time under this First Amendment to the Contract of 58 days; and,

WHEREAS, in order to accomplish the expedited opening it may be necessary and appropriate for the City to issue temporary certificates, however, any temporary certificate of occupancy or other temporary permits issued by the City of Biloxi permitting the use of the stadium for Minor League Baseball play does not constitute acceptance of the premises from the Contractor by the City, as Owner, does not relieve the Contractor of any warranties, does not relieve the Contractor of any other duties under the contract except as specified in this First Amendment to the Contract, and does not waive any liability the Contractor may have arising out of or related to the construction Contract; and,

WHEREAS, since Biloxi Baseball, LLC will use portions of the premises prior to the extended final contract completion date, it will be necessary and reasonable for certain warranty periods to begin upon their utilization for Minor League Baseball purposes; therefore, Contractor and Owner agree that the warranty period for the equipment and facilities listed on the document attached as Exhibit "B" hereto shall begin on June 6, 2015, instead of the date of final acceptance of the project under the terms of the General Works Contract;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILOXI, MISSISSIPPI, AS FOLLOWS:

Section 1: The Mayor and Municipal Clerk are hereby authorized to execute and deliver a First Amendment to General Works Contract in substantially the form as the document attached hereto as Exhibit "A", and to do all things necessary and proper to carry out the terms of that amendment and the intent of this resolution.

Section 2: The warranty period for the equipment and facilities listed on the document attached as Exhibit "B" hereto shall begin on June 6, 2015, instead of the date of final acceptance of the project under the terms of the General Works Contract.

Section 3: This resolution shall be in full force and effect from and after the date of its adoption.

EXHIBIT "A"
FIRST AMENDMENT TO GENERAL WORKS CONTRACT
PROJECT NO. 987 - MGM PARK

WHEREAS, on July 22, 2014, the City of Biloxi, Mississippi ("City" or "OWNER"), and W. G. Yates & Sons Construction, Inc., ("Yates" or "CONTRACTOR"), entered into a General Works Contract for the construction of Caillavet Park Biloxi Stadium, Project No. 978, now known as MGM Park; and,

WHEREAS, it is necessary to amend certain provisions in said contract to expedite the availability of the Baseball Stadium portion of the work in order to make portions of it available to Biloxi Baseball, LLC, to begin Minor League Baseball play;

NOW, THEREFORE, FOR IN CONSIDERATION OF the lump sum payment of \$200,000.00 by the City to Yates as provided hereinafter, and other good and valuable consideration, including the mutual covenants and promises contained herein, the receipt and sufficiency of all of which are hereby recognized, the City of Biloxi, Mississippi, and W. G. Yates & Sons Construction, Inc., hereby amend the General Works Contract between the parties originally dated July 22, 2014, and thereafter amended by change orders (collectively the "General Works Contract"), as follows:

SECTION ONE - SCOPE OF WORK. The Scope of Work provided for in Article 1 of the General Works Contract and the Contract Documents described therein, and as amended, are hereby further amended by adding the following:

In order to expedite the opening of portions of the MGM Park Baseball Stadium for use on June 6, 2015, for Minor League Baseball play, CONTRACTOR shall accelerate the construction process, including, but not limited, to taking additional safety measures requiring barricades, temporary egress and access measures, temporary fencing, and temporary storage and completion of the items listed in Section Four to this First Amendment to the Contract. In addition, CONTRACTOR and its sub-contractors shall conduct such work stoppages and re-mobilizations as may be necessary to permit Minor League Baseball games to continue to be conducted and attended safely thereafter for the home games of Biloxi Baseball, LLC, until the project is completed and work is finally and fully accepted by the City.

SECTION TWO - CONTRACT SUM. The Contract Sum, as that amount has variously been amended by change order, shall be further increased by a Lump Sum Payment of \$200,000.00, to be processed by the City as expeditiously as is appropriate and possible to be made payable on or before August 2, 2015, it being understood and agree that this payment of \$200,000.00 will be due and payable for work performed by Yates even if Biloxi Baseball, LLC, for reasons unrelated to the scope of work performed in Section One, above, does not begin playing Club Home Games on June 6, 2015.

SECTION THREE - CONTRACT TIME. The Contract Time, as that has been amended previously by change order to result in a current Completion Date of August 4, 2015, is hereby

further amended to a later date to be determined as follows: because the extent of the delays that shall be necessitated by the expedited construction process is not known with certainty at this time, the parties covenant and agree that it shall be temporarily considered "To Be Determined". The parties further agree to establish the new Contract Time (Contract Completion Date) at the earliest opportunity to do so with reasonable certainty, but the Contract Time (Contract Completion Date) shall not extend beyond September 30, 2015.

SECTION FOUR - PERMITS, WAIVERS, AND WARRANTIES. The parties acknowledge and agree that in order to accomplish the expedited opening for Minor League Baseball use as of June 6, 2015, it may be necessary and appropriate for the City to issue temporary certificates; however, any temporary certificate of occupancy or other temporary permits issued by the City of Biloxi permitting the use of the stadium for Minor League Baseball play does not constitute acceptance of the premises from Contractor by the City as owner, does not relieve Contractor of any warranties, does not relieve the Contractor of any other duties under the Contract except as specified herein, and further does not waive any liability Contractor may have arising out of or relating to the construction Contract.

The foregoing notwithstanding, because of the use of portions of the premises by Biloxi Baseball, LLC, prior to the final completion date, it will be necessary and reasonable for certain warranty periods to begin upon utilization for Minor League Baseball purposes. Therefore, the Contractor and Owner agree that the warranty period for the equipment and facilities listed below shall begin upon June 6, 2015, rather than on the date of Contract Completion and final acceptance of the project under the terms of the General Works Contract, as that date is ultimately established by the parties—thus, the warranty period shall begin on June 6, 2015 for the following equipment and facilities:

- Playing field
- Seats
- Clubhouses and Umpires room, including Trainer and weight rooms
- Batting Screens, field screens, batters eye, pitching warm up area, batting cages, pitching mounds
- Dugouts, including bat/helmet racks
- Concourse bathrooms
- Food Service areas which have been turned over to Ovation
- Scoreboard
- Press box and radio rooms
- North side box office
- Outfield fence, padded, and padded dugout rails, foul poles, crowd protective netting, field and bullpen tarps
- Service road behind first base side of stadium
- I-110 netting

SECTION FIVE - GENERAL. All provisions, terms, and conditions in the General Works Contract as amended by change orders, which are not specifically modified herein shall remain in full force and effect.

EXECUTED ON THIS THE _____ day of June 2015.

CITY OF BILOXI, MISSISSIPPI

W. G. YATES & SONS CONTRACTORS, INC.

BY: _____
Mayor Andrew "FoFo" Gilich

BY: _____

Municipal Clerk

EXHIBIT "B"

Mayor Andrew "FoFo" Gilich
City of Biloxi, Mississippi
140 Lameuse Street
Biloxi, MS 39530

Dear Mayor Gilich:

This letter confirms that the following items the team has deemed necessary to begin Minor League Baseball games at MGM Park have been completed by the Contractor (Yates) to the satisfaction of Biloxi Baseball, LLC:

- * Playing field
- * Seats
- * Clubhouses and Umpires room, including Trainer and weight rooms
- * Batting Screens, field screens, batters eye, pitching warm up area, batting cages, pitching mounds
- * Dugouts, including bat/helmet racks
- * Concourse bathrooms
- * Food Service areas which have been turned over to Ovations
- * Scoreboard
- * Press box and radio rooms
- * North side box office
- * Outfield fence, padded, and padded dugout rails, foul poles, crowd protective netting, field and bullpen tarps
- * Service road behind first base side of stadium
- * I-110 netting

Witness my signature this ____ day of June 2015.

Biloxi Baseball, LLC

By: _____
Ken Young