

CITY OF BILOXI  
AGENDA ITEM  
FACT SHEET

Substitution

Item No.: 4C

Council Meeting Date: June 02, 2015

ITEM TITLE: RESOLUTION

INTRODUCED BY: Mayor Andrew "FoFo" Gilich

CONTACT PERSON: David Nichols, CAO

SUMMARY EXPLANATION: Resolution authorizing the city to enter into an agreement with Biloxi Baseball, LLC and Overtime Sports Management Biloxi, LLC regarding the video boards/scoreboards for the Biloxi Baseball Stadium Project.

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: Councilmember Yes No Other

Councilmember Yes No Other

Lawrence \_\_\_\_\_  
Gines \_\_\_\_\_  
Newman \_\_\_\_\_  
Deming \_\_\_\_\_

Tisdale \_\_\_\_\_  
Glavan \_\_\_\_\_  
Fayard \_\_\_\_\_

ACTION TAKEN:

GT/GB/mw 060215blegsub

Resolution No.

RESOLUTION AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT WITH  
BILOXI BASEBALL, LLC AND OVERTIME SPORTS MANAGEMENT BILOXI, LLC  
REGARDING THE VIDEO BOARDS/SCOREBOARDS FOR THE BILOXI  
BASEBALL STADIUM PROJECT

WHEREAS, the City of Biloxi, Mississippi, Biloxi Baseball, LLC, and Overtime Sports Management Biloxi, LLC wish to enter into a Definitive Purchase and Advertisement Revenue Agreement for MGM Park Video Boards/Scoreboards and Certain Other Revenue Producing Signage and for other related matters;

WHEREAS, it is in the best interests of the City of Biloxi to enter into this agreement in order to formalize the revenue producing aspects of the scoreboard agreement with the parties as well as to specify the parties' rights, duties and obligations with respect to the video boards/scoreboards and other revenue producing matters.

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

Section 1. The findings, conclusions, and statement of fact contained in the foregoing preamble are hereby adopted, ratified, and incorporated herein.

Section 2. The Mayor and/or Municipal Clerk are hereby authorized to accept, enter into, and execute the Definitive Purchase and Advertisement Revenue Agreement for MGM Park Video Boards/Scoreboards and Certain Other Revenue Producing Signage, in substantially the same form as that attached hereto as Exhibit "A".

**DEFINITIVE PURCHASE AND ADVERTISEMENT REVENUE  
AGREEMENT FOR MGM PARK VIDEO BOARDS/SCOREBOARDS  
AND CERTAIN OTHER REVENUE PRODUCING SIGNAGE**

THIS AGREEMENT is made, executed and entered into effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between the City of Biloxi, Mississippi, (hereinafter “City”), a Mississippi municipal corporation; Biloxi Baseball LLC (hereinafter “Biloxi Baseball”), a Mississippi limited liability company; and Overtime Sports Management Biloxi, LLC (hereinafter “Overtime”), a Mississippi limited liability company.

**RECITALS**

WHEREAS, the City, Biloxi Baseball and Overtime, desire to purchase, own, and operate two (2) video boards/scoreboards for use at MGM Park in Biloxi, MS (hereinafter “MGM Park”);

WHEREAS, the City, Biloxi Baseball, and Overtime further desire to divide and distribute the revenues generated from the secondary video boards/scoreboards used at MGM Park as specified herein.

NOW, THEREFORE, for and in consideration of the mutual benefits and obligations contained herein and for other good and valuable considerations, the receipt and sufficiency of all of which are hereby acknowledged, the parties hereby agree as follows:

**ARTICLE ONE  
DEFINITIONS**

- 1.1 As used herein, the following terms shall have the following meanings:
- a) Primary Video Board/Scoreboard. The term “Primary Video Board/Scoreboard” shall mean a video board/scoreboard measuring 32 feet by 46 feet inside MGM Park.
  - b) Secondary Video Board/Scoreboard. The term “Secondary Video Board/Scoreboard” shall mean a video board/scoreboard measuring 14 feet by 48 feet inside MGM Park.
  - c) MiLB. The term “MiLB” shall mean Minor League Baseball.
  - (d) Baseball Season. The term “Baseball Season” shall mean, as to each MiLB Season, starting on or around April 1 and ending on or around September 15 of that year as played by the Biloxi Shuckers Club at MGM Park from opening day, on which the Club’s first game is played, until the Club’s last game is played during the exhibition games, post-season “playoff” games and “all-star” games, or September 15, whichever shall later occur.

ARTICLE TWO  
DESCRIPTION OF PROPERTY

2.1 **Description of Property.** The property that is the subject matter of this agreement is as follows:

- a) A Primary Video Board/Scoreboard (32 feet x 46 feet).
- b) A Secondary Video Board/Scoreboard (14 feet x 48 feet).
- c) Materials necessary to operate the Primary and Secondary Video Boards/Scoreboards, including, but not limited to, the computer(s), hardware, and software.
- d) Labor and materials necessary for the installation of the foundation and structure for the Primary and Secondary Video Boards/Scoreboards.
- e) Labor and materials necessary to power and wire the Primary and Secondary Video Boards/Scoreboards to the control room, including, but not limited to, power supplies, conduit, electric wiring, wire housing, fiber optic wiring, and video wiring.
- f) Revenues generated from the use of the Secondary Video Boards/Scoreboards.

ARTICLE THREE  
CITY OF BILOXI INVESTMENT

3.1 **Investment by the City.** The City shall provide funding for the following for use in MGM Park:

- a) Labor and material necessary for the installation of the foundation and structure of the Primary Video Board/Scoreboard.
- b) Labor and materials necessary for the installation of the foundation and structure of the Secondary Video Board/Scoreboard, except as amended by the First Amendment To Stadium Sub-Lease and Use Agreement entered into by and between the parties on or about April 2, 2015.
- c) Labor and materials necessary to power the Primary and Secondary Video Boards/Scoreboards to the control room, including, but not limited to, power supplies, conduit, electric wire housing and fiber to the Primary Board.

3.2 **Installation.** The City shall bear all costs associated with the materials and installation of the foundation and structure of both the Primary and Secondary Video Board/Scoreboards, except as amended by the First Amendment to Stadium Sub-Lease and Use Agreement entered into by and between the parties on or about April 2, 2015.

3.3 **Design.** Coordination of the design of the foundation and structure of the Primary Video Board/Scoreboard shall be by the City.

ARTICLE FOUR  
BILOXI BASEBALL INVESTMENT

4.1 **Investment by Biloxi Baseball.** Biloxi Baseball shall be responsible for all costs associated with the following for use in MGM Park:

- a) The Primary Video Board/Scoreboard (32 feet x 46 feet).
- b) Any and all computer(s) and hardware necessary to operate the Primary Video Board/Scoreboard.
- c) Any and all software necessary to operate Primary Video Board/Scoreboard.
- d) Pulling of fiber from control room to Secondary Video Board/Scoreboard.

ARTICLE FIVE  
OVERTIME INVESTMENT

5.1 **Investment by Overtime.** Overtime shall provide the following for use in MGM Park:

- a) The Secondary Video Board/Scoreboard (14 feet x 48 feet).
- b) The design of the foundation and structure of the Secondary Video Board/Scoreboard.
- c) Any and all computer(s) and hardware necessary to operate the Secondary Video Board/Scoreboard.
- d) Any and all software necessary to operate Secondary Video Board/Scoreboard.

ARTICLE SIX  
ADVERTISING REVENUE FROM PRIMARY VIDEO BOARD

6.1 **Allocation of Revenue from Primary Video Board.** Any and all advertising revenue generated from the Primary Video Board/Scoreboard during MiLB games shall be allocated to, and retained by Biloxi Baseball.

ARTICLE SEVEN  
ADVERTISING REVENUE FROM SECONDARY VIDEO BOARD

7.1 **Advertising Revenue.** Biloxi Baseball shall use its best efforts to sell up to fifteen (15) three minute advertising spots at an estimated cost of twelve thousand and five hundred dollars (\$12,500.00) per Baseball Season for a total estimated advertising revenue stream of one hundred eighty-seven thousand and five hundred dollars (\$187,500.00) per Baseball Season. Such advertising spots shall be sold for MiLB games only.

**7.2 Placement of Advertisements.** The three minute advertising spots shall be rotated on the Secondary Video Board/Scoreboard during all MGM Park MiLB Season home games.

**7.3 Allocation of Revenue to City.** Fifty-three and one-half percent (53.5%) of the annual advertising revenue generated from the Secondary Video Board/Scoreboard for Baseball Seasons 2015 – 2034 shall be allocated to, and retained by the City. Overtime shall guarantee that said revenue shall total a minimum of \$50,000.00 per year. For the initial season only (2015), the revenue shall be pro-rated based on the number of games actually played in MGM Park in the initial Baseball Season.

**7.4 Limitation of Revenue from Secondary Video Board Allocated to City per Year.** Any and all advertising revenue generated from the Secondary Video Board/Scoreboard allocated to the City shall not exceed one hundred thousand dollars (\$100,000.00) in any Baseball Season and additional revenue shall be allocated to, and retained by, Biloxi Baseball.

**7.5 Allocation of Revenue from Secondary Video Board to Biloxi Baseball.** Forty-six and one-half percent (46.5%) of the advertising revenue generation from the Secondary Video Board/Scoreboard for Baseball Seasons 2015 – 2034 shall be allocated to, and retained by, Biloxi Baseball. Following the 2034 Baseball Season in MGM Park, Biloxi Baseball shall receive all revenue generated from the Secondary Video Board/Scoreboard.

**7.6 Field Name Sponsorship Rights.** Fifty Thousand (\$50,000.00) of the revenues generated by the Secondary Video Board/Scoreboard shall be allocated to the City and shall be for the purpose of compensating the City for the assignment of the awarded field name sponsorship rights to Overtime for subsequent years, and by this Agreement and for that consideration the City does hereby assign those rights to Overtime for the term of this Agreement. For purposes of this paragraph 7.6, the term of the Agreement shall be from the beginning of the Baseball Season 2015 through the end of Baseball Season 2034, as long as the compensation required hereunder is paid to the City. For the initial season only (2015), the amount of the revenue provided for in the provisions of this paragraph shall be pro-rated based on the number of games actually played in MGM Park in the initial Baseball Season.

## ARTICLE EIGHT OVERTIME SPORTS REVENUE

**8.1 Advertising and Sponsorships Sold.** Subject to the provisions of Section 7.3, and Section 7.4 above, Overtime shall receive all advertising and sponsorships sold during its events within MGM Park.

## ARTICLE NINE MAINTENANCE AND REPAIR OF VIDEO BOARDS

9.1 **Maintenance and Repair of Primary Video Board/Scoreboard.** Biloxi Baseball, shall be responsible for all maintenance and repairs on the Primary Video Board/Scoreboard.

9.2 **Maintenance and Repair of Secondary Video Board/Scoreboard.** Biloxi Baseball, Overtime, and the City shall equally divide and all maintenance and repairs on the Secondary Video Board/Scoreboard.

ARTICLE TEN  
MISCELLANEOUS

10.1 **Assignment.** The parties shall not assign any portion of this Agreement without the prior written consent of the other parties, which consent shall not be unreasonably withheld.

10.2 **Binding Effect.** This Agreement may shall be binding upon and insure to the benefit of all parties hereto and their respective heirs, successors, and assigns.

10.3 **Modification.** This Agreement may be modified only by a writing signed and authorized by all parties.

10.4 **Headings.** Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

10.5 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Mississippi. The parties hereby submit to the Jurisdiction of the federal and state courts of the Second Judicial District of Harrison County, Mississippi for the purposes of all legal proceedings arising of or relating to this Agreement and the parties irrevocably waive, to the fullest extent permitted by law any objection which they may now hereafter have to the venue of such proceeding which is brought in such a court.

10.6 **Legal Construction.** In case any one or more of the provisions contained in this Agreement are held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provision and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

10.7 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

10.8 **Time of Essence.** Time is of the essence of this Agreement.

10.9 **Entire Agreement.** This Agreement supersedes all prior agreements and constitutes the entire agreement between the parties hereto with respect to the subject matter hereof.

**10.10 Force Majeure.** No party shall be considered in breach or default in the performance of its obligations hereunder if such performance is prevented or delayed because of war, hostilities, revolution, civil commotion, epidemic, accident, labor disputes, fire, wind, flood, including, but not limited to, hurricanes and tropical storms, or because of any law, order, proclamation, regulation or ordinances of any government or of any subdivision thereof, or because of God; or for any other cause beyond the reasonable control of the party affected. Upon the occurrence of a *force majeure* event, the affected party shall inform the other party without delay, and shall provide a written statement to the other party with respect to such event within thirty (30) business days from its occurrence. Such written statement shall include a precise description of the *force majeure* event and the reasons for the delay or the inability to perform the obligations affected thereby. If the affected party does not inform the other party and/or does not provide the written statement described above, until such time as the notice are provided it shall be liable for the nonperformance of its obligations during the continuance of the *force majeure* event and all consequences caused by and resulting therefrom but only to the extent such failure to inform was prejudicial to the rights of the other party. Notwithstanding the foregoing, neither (a) normal delay, postponement or cancellation due to normal; weather conditions, (b) internal strike motivated by way of example, salary demands or dissatisfaction with general working conditions or any other factor(s) within the reasonable control of the party (i.e., resolvable by management decision) nor (c) the legislative acts of the City of Biloxi shall constitute a *force majeure* event.

**10.11 Notices.** Any and all notices required or permitted to be given hereunder shall be deemed given when actually received, if delivered personally, or upon receipt, if deposited with the U.S. Posta Service, first class postage prepaid, certified or registered mail, return receipt requested and addressed as follows:

(a) If to: Biloxi Baseball: Mr. Ken Young  
18228 U.S. Highway 41 North  
Lutz, FL 33549

Mr. Tim Bennett  
P.O. Box 173  
Biloxi, MS 39533-0173

If to the City: Mayor Andrew "FoFo" Gilich  
P.O. Box 429  
Biloxi, MS 39533-0429

With a copy to: Gerald Blessey, City Attorney  
P.O. Box 429  
Biloxi, MS 39533-0429

(b) If to Overtime: Quentin Whitwell  
1400 Meadowbrook Road  
Suite 100  
Jackson, MS 39211



10.12. The parties agree that to the extent this Agreement modifies any of the rights or obligations of each party with respect to each other contained in the Stadium Lease dated February 11, 2014, the terms of this Agreement shall control with regard to that modification; however, the parties also agree that nothing contained herein modifies or alters any parties obligations or duties with regard to Beau Rivage Resorts, Inc., contained in said Stadium Lease or the Ground Lease dated February 11, 2014.

*// Remainder of this page left blank intentionally//*

IN WITNESS WHERE OF, this Agreement has been executed by duly authorized officers of Biloxi Baseball, LLC, the City of Biloxi, and Overtime Sports Management Biloxi, LLC, each of whom hereby represents and warrants that he has the full power and authority to execute this Agreement in such capacity, all as of the day and year first written above.

Sworn and subscribed before me this the \_\_\_\_\_ of \_\_\_\_\_ 2015.

BILOXI BASEBALL, LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST

\_\_\_\_\_

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

IN WITNESS WHERE OF, this Agreement has been executed by duly authorized officers of Biloxi Baseball, LLC, the City of Biloxi, and Overtime Sports Management Biloxi, LLC, each of whom hereby represents and warrants that he has the full power and authority to execute this Agreement in such capacity, all as of the day and year first written above.

Sworn and subscribed before me this the \_\_\_\_\_ of \_\_\_\_\_ 2015.

CITY OF BILOXI, MISSISSIPPI

By: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST

\_\_\_\_\_

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_

IN WITNESS WHERE OF, this Agreement has been executed by duly authorized officers of Biloxi Baseball, LLC, the City of Biloxi, and Overtime Sports Management Biloxi, LLC, each of whom hereby represents and warrants that he has the full power and authority to execute this Agreement in such capacity, all as of the day and year first written above.

Sworn and subscribed before me this the \_\_\_\_\_ of \_\_\_\_\_ 2015.

OVERTIME SPORTS MANAGEMENT BILOXI, LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST

\_\_\_\_\_

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_