

**CITY OF BILOXI  
AGENDA ITEM  
FACT SHEET**

Item No.: 5F

Council Meeting Date: February 24, 2026

ITEM TITLE: RESOLUTION  
 INTRODUCED BY: Mayor Andrew "FoFo" Gilich  
 CONTACT PERSON: Richard Weaver, Chief Administrative Officer

**SUMMARY EXPLANATION:**

Resolution authorizing entry into Professional Services Agreement for the Management and Operation of the Saenger Theatre with Encore Saenger, Inc.

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

Exhibits for Review

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

Other (Specify): Exhibit A: Professional Services Agreement

Submittal Authorization: Council President \_\_\_\_\_ Mayor

STAFF RECOMMENDATION: Staff recommends approval

COUNCIL ACTION: Motion By: \_\_\_\_\_ Second By: \_\_\_\_\_

Vote:	Councilmember	Yes	No	AFR	ABST	Councilmember	Yes	No	AFR	ABST
	Gray	_____	_____	_____	_____	Tisdale	_____	_____	_____	_____
	Marshall	_____	_____	_____	_____	Glavan	_____	_____	_____	_____
	Nail	_____	_____	_____	_____	Shoemaker	_____	_____	_____	_____
	Creel	_____	_____	_____	_____					

ACTION TAKEN:

022426dcon

Resolution No.

RESOLUTION AUTHORIZING ENTRY INTO PROFESSIONAL SERVICES AGREEMENT  
FOR THE MANAGEMENT AND OPERATION OF THE SAENGER THEATRE WITH  
ENCORE SAENGER, INC.

WHEREAS, the City of Biloxi (the “City”) is in the process of finalizing its improvements to the Saenger Theatre, under Capital Project No. 997: Saenger Theatre Exterior Repairs (“Project 997”) and Capital Project No. 1107: Saenger Theatre Interior Repairs (“Project 1107”);

WHEREAS, the City is in need of the professional services of a theater management company to operate the Saenger Theatre;

WHEREAS, further, it is a requirement of the Gulf Coast Restoration Fund Grant, as amended, received by the City in connection with Project 997, that the City “will open the Saenger Theatre to the public and hold events by June 30, 2026” and “will execute a contract with a theater management firm or experienced theater manager to operate and maintain the theater by June 30, 2026”;

WHEREAS, Encore Saenger, Inc. (“Manager”) is a professional theatre management company with the requisite experience to manage the theatre and knowledge of the local culture, economy and history of the Theatre;

WHEREAS, under the terms and conditions of the Professional Services Agreement for the Management and Operation of the Saenger Theatre (the “Agreement”), attached hereto as “Exhibit A,” the City will receive thirty percent (30%) of the gross revenue generated by operations at the Saenger Theatre;

WHEREAS, entry into the Agreement will satisfy the terms of the Gulf Coast Restoration Fund Grant; and

WHEREAS, it is the recommendation of A.M. Gilich, Jr., Mayor, that the City enter into

the Agreement.

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 foregoing preamble are hereby adopted, ratified, and incorporated herein.

SECTION TWO: The Mayor, on behalf of the City of Biloxi, is hereby authorized to execute the Professional Services Agreement for the Management and Operation of the Saenger Theatre, attached hereto as Exhibit "A," with Encore Saenger, Inc.

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

STATE OF MISSISSIPPI  
COUNTY OF HARRISON  
SECOND JUDICIAL DISTRICT



**PROFESSIONAL SERVICES AGREEMENT  
FOR THE MANAGEMENT AND OPERATION OF THE SAENGER THEATRE**

**THIS PROFESSIONAL SERVICES AGREEMENT** (the “Agreement”) is made by and between the CITY OF BILOXI, MISSISSIPPI, a Mississippi municipal corporation (the “City”); and Encore Saenger (“Manager”) (collectively, the “Parties”), and is effective as of February 24, 2026.

**WITNESSETH:**

**WHEREAS**, the City has need of a party to operate, manage, and generally maintain the Saenger Theatre (the “Theatre”), located at 416 Reynoir Street, Biloxi, Mississippi;

**WHEREAS**, Manager is a corporation staffed by owners and members with the requisite experience to manage the theatre and knowledge of the local culture, economy and history of the Theatre; and

**WHEREAS**, it is appropriate that the following Agreement be entered into for the management and operation of the Theatre, safety and convenience of the general public in the use and enjoyment of the Theatre, and the overall enhancement of recreational experience within the City.

**NOW, THEREFORE, FOR AND IN CONSIDERATION** in consideration of the mutual promises, covenants and undertakings hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

**1. MANAGEMENT.** The City hereby grants the Manager the right to operate, manage and maintain Theatre upon the terms and conditions contained herein; Manager hereby agrees to operate, maintain, and manage Theatre upon the terms and conditions stated herein.

**2. RESPONSIBILITIES.**

- a.** The Manager shall be responsible for the day-to-day functions and operations of the Theatre and shall operate the Theatre at all times in the public interest and in accordance with the highest professional and ethical standards.
- b.** The Manager shall establish an effective system of communication that encourages linkages and collaborative efforts between the Theatre and other segments of the local hospitality, business and performing arts communities.

- c. The Manager will have oversight responsibility over any and all sub-contractors.
- d. The Manager shall abide by all applicable local, county, state and federal laws pertaining to its operation and shall secure all licenses and permits necessary for the operation of the Theatre.
- e. The Manager shall be responsible for, and pay all applicable taxes arising as a result of this Agreement
- f. The Manager will obtain a City business license.
- g. The Manager will have the right to establish rental rates for the Theatre, as well as establish all ticket prices.
- h. The Manager will negotiate, prepare and sign rental agreements, require insurance, make other requirements of Theatre clients, provide services to such clients and collect fees/rents.
- i. The Manager shall coordinate the event production needs of all Theatre clients including the provision of production services such as technical support, stage equipment, production staff, public catering, back stage catering, box office, ushers, ticket takers and other related services.
- j. The Manager shall manage and operate the Theatre box office, including the sale of event tickets, management of box office receipts, scheduling of patron seating and the management of patron sales information.
- k. The Manager shall be responsible for the development and implementation of all marketing and advertising plans for the Theatre.
- l. The Manager shall establish positive relationships with the City's local business community, media sources in order to develop and engage in advertising, solicitation and promotional activities focused on realizing the full potential of the Theatre.

**3. PERFORMANCE.** Manager acknowledges and agrees that time is of the essence and will have the Theatre open to the general public with at least one (1) event on or before June 1, 2026.

**4. TERM.**

- a. The term of this Agreement (the "Term") will begin on February 24, 2026 and will remain in full force and effect until February 28, 2029, subject to earlier termination as provided for below.
- b. This Agreement may be renewed for three (3) additional term of one (1) year, by mutual written consent of the Parties.

**5. REVENUE SHARING.**

- a. For the right to operate the Theatre, Manager shall pay to the City and amount equal to thirty percent (30%) of the gross revenue generated from the Theatre, including, but not limited to, all amounts received from the sale of tickets, concessions, merchandise, theater rental fees, and the like. All such sums shall be due and payable on the 15<sup>th</sup> day of the month following receipt of such revenue. Manager shall provide reports to the City sufficient to validate the total gross revenue on a monthly basis, to be included with Manager's monthly payments.
- b. Failure to pay said fee by the 15th day of any month shall be a material default of this Agreement and shall entitle the City to terminate this Agreement immediately upon sending written notice to Manager.

**6. UTILITIES, REPAIR, AND MAINTENANCE.**

- a. Utilities. During the term of this Agreement, City shall pay for all utilities, including power, water, internet, telephone and garbage disposal, necessary to operate the Theatre.
- b. Structure. City shall, at its own expense, maintain the structure of the Theatre, unless such maintenance and/or repair is required by reason of the intentional or negligent acts of Manager, its employees, agents, invitees, licensees, or contractors, in which case, Manager shall be responsible.
- c. Maintenance. Manager shall keep all structures, fixtures and equipment, in clean, neat, and in a good state of repair, reasonable wear and tear excepted. All areas of the Theatre shall be kept clean, orderly, attractive and sanitary at all times and in strict accordance with the applicable laws, ordinances, rules and regulations.

**7. CONCESSION AUTHORIZED.** Manager will be responsible for the procurement and sale of concessions and/or merchandise in the Theatre. The City specifically acknowledges and authorizes the use of a third-party vendor to sell such concessions and merchandise, at the discretion of the Manager, provided that the provision of Section 4: Revenue Sharing shall apply.

**8. FUNDRAISING.** Manager agrees to use best efforts to assist the City in the raising of funds necessary to make certain material improvements to the Theatre and to provide funds for ongoing maintenance. Such effort may include the sale of sponsorships. Sponsorships are not subject to revenue sharing.

**9. LOSS OR DAMAGE TO MANAGER'S PROPERTY.** Manager shall bear the risk of loss for any damage to parts, stock, equipment, inventory, or other personal property owned by Manager or its employees or agents which are located at, on, or within the Theatre. Any insurance for such loss or damage shall be obtained by and paid for by Manager. City shall have no responsibility or liability for loss or damage to property of the Manager, its employees or

agents, or third parties located at, on, or within the Theatre, or any personal injury to Manager or and agents and/or employees of Manager, at or within the Theatre, and in this regard, Manager does hereby indemnify and hold the City harmless from any such loss, damage, or injury.

#### 10. TERMINATION.

- a. 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:
  - i. the other party fails to perform any material provision of this Agreement and the failure is not corrected within thirty (30) days after the other party gives the defaulting party written notice of the breach;
  - ii. 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
  - iii. the other party suspends, discontinues or materially alters its business operations.
- b. Mutual Agreement to Terminate. This Agreement may be terminated at any time, including during the Initial Term, without penalties or prejudice, by mutual agreement of both parties in writing.
- c. Without Cause.
  - i. Either Party may terminate this Agreement without cause if it determines that such termination is in the terminating party's best interest. Such termination shall be affected by giving written notice of termination to the other party, specifying the effective date of termination, at least ninety (90) calendar days prior to the effective date of termination.
  - d. Upon expiration or termination of the Agreement, the terms of this Agreement shall survive and will apply with respect to any dispute that may exist between the parties.

11. **REMEDIES UPON DEFAULT.** Termination by either party of this Agreement shall not limit or otherwise effect the remedies of the non-defaulting or non-breaching party against the defaulting or breaching party. In the event that either party is in material default under any of the terms or conditions of this Agreement or has materially breached any of its representations or warranties in this Agreement, the non-defaulting or non-breaching party shall be entitled to pursue, in addition to any remedies specifically provided herein, all further remedies then available at law or in equity.

**12. COMPLIANCE WITH LAWS.** Manager shall, at its sole cost, meet all requirements of the State and Harrison County Health Departments and shall provide evidence of such compliance, including, but not limited to, (i) periodic reviews by the Health Department(s); (ii) immediate remedy of any and all deficiencies cited by the Health Department(s); and (3) attendance at Health Department food preparation, sales and sanitation classes.

**13. RIGHT OF INSPECTION.** The City shall have the right, but not the obligation, at City's cost and expense to inspect, investigate, sample, or monitor the Theater and Manager's books, at any time to determine whether Manager is complying with the terms of this agreement. In connection therewith, Manager shall provide the City with full access to all relevant facilities, records, and files. If Manager is not in compliance with any of the provisions of this agreement, the City shall have the right, but not the obligation, without limitation on any of the City's other rights and remedies under this Agreement, to immediately enter on the premises and to discharge Manager's obligations under this agreement. The City shall endeavor to minimize interference with Manager's business but shall not be liable for any such interference.

**14. INSURANCE:**

- a. General Liability Insurance. At all times during the primary or any renewal term hereof, the Manager shall purchase, pay for and carry general commercial liability insurance in an amount not less than One Million Dollars (\$1,000,000.00), and the Manager shall furnish to the City within thirty (30) 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.
- b. Personal Property. The Manager shall be responsible for all equipment, personal property, fixtures, works of art, and chattels which it permits to be brought into the Theatre, unless said equipment, personal property, fixtures, and chattels are brought in the Theatre 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, and chattels. The Manager shall, at its sole cost and expense and in its absolute discretion, maintain casualty insurance on its personal property, fixtures and equipment located within the Theatre, in such amounts as the Manager shall deem appropriate.
- c. Casualty and Flood Insurance. The City will be responsible for providing casualty and flood insurance for the Theatre in an amount determined by the City in its sole and absolute discretion. 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.

**15. SUCCESSORS AND ASSIGNS.** City and Manager each binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Agreement and to the partners, successors, executors, administrators, and assigns, or such party, in respect to all covenants of this Agreement. Nothing expressed or referred to in this Agreement shall be

construed as creating any personal liability on the part of any officer or agent of any public body, which may be a party hereto, nor shall it be construed as giving any rights, legal or equitable, benefits, remedies, or claims under or with respect to this Agreement or any provision of this Agreement, to anyone other than City and Manager.

**16. RELATIONSHIP OF THE PARTIES.** Manager's relationship with City is that of an independent contractor, and nothing in this Agreement is intended to, or shall be construed as creating a partnership, agency, joint venture, employment or similar relationship.

- a. Manager acknowledges that it and all its officers, employees, and agents is/are not an employee or agent of City for any purpose whatsoever. Manager shall be responsible for all applicable I-9 and work eligibility verification, earnings reports and tax payments to government agencies, such as the U.S. Internal Revenue Service and the Social Security Administration including payment of all wages due its employees, insurance premiums, license fees, fingerprinting costs, outfitting expenses, and all other obligations and/or expenses of Manager relative to its employees in performance of the duties under this Agreement.
- b. Manager acknowledges that its personnel are not entitled to receive any of the fringe benefits received by City's employees, including but not limited to, Workers' Compensation Insurance.
- c. Manager shall not have the authority to enter into any contract on City's behalf, or to otherwise bind City to any agreement, unless expressly authorized to so do in writing.
- d. Because Manager is an independent contractor, the City has no direction or control over Services to be performed hereunder, nor over Manager's personnel, and Manager shall at all times remain the employer of its personnel performing the Services (and shall be liable for each of their actions, omissions or breaches). Manager shall indemnify City from any claim made by any of Manager's personnel against City alleging rights or benefits as an employee of City.

**17. LICENSES.** Manager shall, at its expense, obtain all licenses and permits required for the conduct of its business. Manager shall, at its expense, observe and comply with all present and future laws, ordinances, directives, orders, rules and regulations of governmental authorities having or claiming jurisdiction over the Theatre or the conduct of Manager's business.

**18. NOTICES.** All notices, consents, waivers and other communications required or permitted by this Agreement, excepting the supply of schedules as described above, 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, and marked to the attention of the person (by name or title) designated below (or to such other address, facsimile number, e-mail address or person as a party may designate by notice to the other parties):

**The City of Biloxi, Mississippi:**

Attention: A. M. Gilich, Jr., Mayor  
Post Office Box 429  
Biloxi, Mississippi 39533

With a mandatory copy to:

City Attorney/Contract Manager  
140 Lameuse Street  
Biloxi, Mississippi 39530

**Manager:**  
Encore Saenger, Inc.

\_\_\_\_\_  
\_\_\_\_\_

**19. GOVERNING LAW AND JURISDICTION.**

- a. Governing Law. The laws of the state of Mississippi shall govern the application and interpretation of this Agreement.
- b. 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.

**20. AMENDMENTS.** This Agreement may not be altered or amended, nor may rights hereunder be waived, except by writing executed by both parties.

**21. ASSIGNABILITY.** Manager may not assign any of its rights or delegate any of its obligations under this Agreement without the prior express written consent of City. If the assignee is an affiliate connected with the Manager, such consent will not be unreasonably withheld. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the Manager.

**22. 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, epidemics, war, civil commotion or industrial dispute ("Force Majeure"). If such delay or failure continues for at least sixty (60) days, then either party may provide written notice to terminate the Agreement; and, upon such termination, the parties will owe no further obligations to the other except with respect to any rights or obligations that may have accrued prior to termination.

**23. 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.

**24. 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 Agreement, 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.

**25. ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement of the Parties and supersedes all prior agreements, whether written or oral, between the Parties with respect to its subject matter (including any letter of intent, memorandum of understanding or other such non-binding document).

**26. 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.

**IN WITNESS WHEREOF,** the parties have made and signed this Agreement, effective as of the date first written above.

**CITY:**

CITY OF BILOXI, MISSISSIPPI, a  
Mississippi municipal corporation

By: \_\_\_\_\_  
Name: A. M. Gilich, Jr.  
Title: Mayor

**MANAGER:**

ENCORE SAENGER, INC., a Mississippi  
non-profit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTESTED TO BY:**

\_\_\_\_\_  
Stacy L. Thacker, Municipal Clerk