

CITY OF BILOXI  
AGENDA ITEM  
FACT SHEET

Item No.: 52

Council Meeting Date: October 06, 2015

ITEM TITLE: RESOLUTION  
INTRODUCED BY: Mayor Andrew "FoFo" Gilich  
CONTACT PERSON: David Nichols, <sup>DN</sup>CAO  
Gerald Blessey, City Attorney <sup>GB</sup>

**Summary explanation:** Resolution approving Interlocal Governmental Cooperation Agreement between the cities of Biloxi and Gulfport, Mississippi for development of Regional Fiber Optic Infrastructure for Ultra-High-Speed Internet and Broadband Service, and for related purposes.

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

Exhibits for Review

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

Other (Specify): Agreement

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

**STAFF RECOMMENDATION:**

Staff recommends approval

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

Vote: Councilmember	Yes	No	Other	Councilmember	Yes	No	Other
Lawrence	_____	_____	_____	Tisdale	_____	_____	_____
Gines	_____	_____	_____	Glavan	_____	_____	_____
Newman	_____	_____	_____	Fayard	_____	_____	_____
Deming	_____	_____	_____				

**ACTION TAKEN:**

GB/mw 100615bleg

Resolution No.

**RESOLUTION APPROVING INTERLOCAL GOVERNMENTAL COOPERATION AGREEMENT BETWEEN THE CITIES OF BILOXI AND GULFPORT, MISSISSIPPI FOR DEVELOPMENT OF REGIONAL FIBER OPTIC INFRASTRUCTURE FOR ULTRA-HIGH-SPEED INTERNET AND BROADBAND SERVICE, AND FOR RELATED PURPOSES**

WHEREAS, it is in the best interests of the health, safety and welfare of the citizens of the City of Biloxi that the City enter into the attached INTERLOCAL GOVERNMENTAL COOPERATION AGREEMENT BETWEEN THE CITIES OF BILOXI AND GULFPORT, MISSISSIPPI FOR DEVELOPMENT OF REGIONAL FIBER OPTIC INFRASTRUCTURE FOR ULTRA-HIGH-SPEED INTERNET AND BROADBAND SERVICE, AND FOR RELATED PURPOSES, attached to this resolution and made a part hereof; and

WHEREAS, the creation of a regional public entity to foster ultra-high-speed Internet service to all businesses, schools, colleges, residents, and public spaces that encourages public-private partnerships and is ubiquitous, redundant, and affordable to all persons in the City of Biloxi and other Coast communities will cause a quantum leap in economic, social and environmental improvements and sustainability;

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

Section 1: The findings, conclusions, and statements contained in the preamble of this resolution are hereby approved, adopted, and ratified.

Section 2: The Mayor and Municipal Clerk are authorized to execute and deliver the attached INTERLOCAL GOVERNMENTAL COOPERATION AGREEMENT BETWEEN THE CITIES OF BILOXI AND GULFPORT, MISSISSIPPI FOR DEVELOPMENT OF REGIONAL FIBER OPTIC INFRASTRUCTURE FOR ULTRA-HIGH-SPEED INTERNET AND BROADBAND SERVICE, AND FOR RELATED PURPOSES, and the City Attorney is

authorized to deliver the fully executed agreement to the Mississippi Attorney General for approval as required by law.

Section 3: This resolution shall take effect and be in force from and after adoption.

INTERLOCAL GOVERNMENTAL COOPERATION AGREEMENT BETWEEN THE  
CITIES OF BILOXI AND GULFPORT, MISSISSIPPI FOR DEVELOPMENT OF  
REGIONAL FIBER OPTIC INFRASTRUCTURE FOR ULTRA-HIGH-SPEED INTERNET  
AND BROADBAND SERVICE, AND FOR RELATED PURPOSES

THIS AGREEMENT ("Agreement") is entered into on the dates hereinafter set forth by and between the CITY OF BILOXI, MISSISSIPPI, a political subdivision and municipal corporation organized and existing according to the laws of the State of Mississippi (herein the "City of Biloxi" or "Biloxi"); the CITY OF GULFPORT, MISSISSIPPI, a political subdivision and municipal corporation organized and existing according to the laws of the State of Mississippi (herein the "City of Gulfport" or "Gulfport"), as authorized by Miss. Code Ann. § 17-13-1, et seq., being the "Interlocal Cooperation Act of 1974," and other applicable laws and regulations.

FOR AND IN CONSIDERATION of the mutual benefits and advantages each to the other, the parties hereby acting by and through their respective governing authorities, agree as follows:

WITNESSETH:

WHEREAS, the participating Municipal governments of the Mississippi Gulf Coast (herein collectively called, "Mississippi Coast Governing Authorities") have maintained a long, cooperative relationship where they have worked together to foster, encourage, and make possible regionally significant economic and community development and infrastructure projects, including industrial, recreational, and hospitality industry projects, wherein the participating entities have obtained benefit from the enhanced economic growth and opportunities and improvements in the quality of life of their citizens and the quality of the natural environment in their respective territories; and

WHEREAS, the cities of Gulfport and Biloxi hereby agree to take the lead, on behalf of all communities on the Mississippi Gulf Coast, in establishing regional fiber optic infrastructure for ultra-high-speed, affordable and accessible Internet service

through the creation of the Gulf Coast Broadband Commission, which will be open to all communities to join as provided herein;

NOW, THEREFORE, for and in consideration of the mutual benefits and advantages each to the other, and in order to accomplish the objectives of this Agreement in the most effective way, the parties hereto, acting under the authority of the Interlocal Cooperation Act of 1974, Miss. Code Ann. § 17-13-1, et seq., as amended, do hereby mutually contract and agree as follows:

SECTION 1: DURATION. (a) Duration: This Agreement shall be in full force and effect for a period commencing on the effective date hereof (as hereinafter provided) and running through and including September 30, 2115, unless extended by mutual agreement of the parties in the manner provided by law.

(b) Effective Date: The effective date hereof shall be the date on which the following required events are completed: (1) Approval of the Agreement by Resolution adopted by the Governing Authorities of the City of Biloxi and the City of Gulfport (hereinafter, "Mississippi Coast Governing Authorities"); (2) Execution of the Agreement by the two cities; (3) Submission of Agreement to the Attorney General and approval or ratification as required by Mississippi law; and (4) Filing of the Agreement with the Chancery Clerks and the Mississippi Secretary of State, in conformity with the requirements of Miss. Code Ann. § 17-13-11, et seq., as amended.

(c) Renewal. This Agreement may be renewed by the agreement of parties for periods not to exceed the useful life of any infrastructure improvements constructed under this Agreement; however, any renewal or extension of this Agreement shall be approved by the Mississippi Attorney General before implementation of the renewal or

extension.

**SECTION 2: PURPOSE.** The Mississippi Gulf Coast metropolitan areas are in need of infrastructure for ultra-high-speed, fiber-optic-broadband Internet service that is sufficient in scope, quality, flexibility, availability and affordability for all of its citizens, governments, and private businesses and industries to be able to compete in regional, national and international markets for the creation and retention of new jobs, technologies, businesses, and industries and for the expansion and retention of equal opportunities for all citizens to enjoy a more prosperous, just, dignified and fulfilling life. The experience of many states and communities around the nation has been that large corporate providers of data transmission facilities do not have sufficient monetary incentive to bring affordable and ubiquitous, ultra-high-speed broadband Internet service to them unless there are significant public efforts and incentives to bring that technology to a proximity to all homes, businesses and public places that will make the final connectivity and service to all homes, businesses and public places by retail public and private service providers accessible and economically viable to the retail public and private service providers, affordable to the end users, and competitive in regional, national and world markets. The purpose of this Agreement is to provide a structure for Governing Authorities along Mississippi's Coast to cooperate in bringing affordable and ubiquitous, ultra-high-speed, broadband Internet infrastructure and service to their communities, which will then be made available and affordable by or through various Governing Authorities along the Mississippi Coast to residents, businesses, and public places through competitive licensing of public and private business service providers and, where and when necessary, by provision of service directly from or through or as a result of the Commission created by this Agreement to end users. The Parties shall accomplish this purpose through the construction, installation, operation, and maintenance of fiber optic infrastructure to serve all of Biloxi and Gulfport, as well as all participating Municipalities and Counties that may join in this Agreement hereafter by amendment to this

Agreement as provided herein. Further, the purpose of this Agreement is to define the scope of the various obligations of the signatory public entities (herein the "Parties").

**SECTION 3: ORGANIZATION; ADMINISTRATIVE ENTITY PROVISIONS.**

(a) The Parties hereby create a separate legal and administrative entity to be called the Gulf Coast Broadband Commission (herein the "Commission"), and each signatory Party (also referred to herein as "Member") shall appoint one voting representative to the Commission, with such appointment to be made as other appointments are permitted by law for such Party (e.g., by a member municipality that is a Mayor-Council form of Government by appointment made by such Member's appointing authority followed by ratification and consent of that Member's Governing Authority). The Commission may take official action by an "Approval Majority", which is defined as a vote for the official action by both (a) by an affirmative vote of both Biloxi and Gulfport, and (b), in the event other municipalities and counties join in this Agreement as provided herein by amendment to this Agreement, by an affirmative vote of a two-thirds majority of all the Members of the Commission. Any municipality or county government that is not an original signatory to this Agreement may join and participate upon: (1) the adoption of a Resolution by the Governing Authority of that governmental entity authorizing participation; (2) the approval of an Approval Majority as defined above and composed of the members of the participating Parties at that time; and 3) approval by the Attorney General of the State of Mississippi to an amendment to this Agreement adding that governmental entity.

(b) The Commission shall have the authority to acquire any interest in real and personal property necessary to create, provide, operate, and/or maintain ultra-high speed, fiber-optic-broadband service and/or the infrastructure or parts thereof needed or necessary for

the provision of such service. The exercise of the power of eminent domain conferred or granted to a Member of this Commission shall only be duly exercised in the name of such Member and even then pursued when the property in question is located within the corporate limits or lawful jurisdiction of such Member. Nothing in this Agreement is meant to in any way alter or limit any authority legislatively or judicially conferred upon or provided to any Member of the Commission.

(c) The Commission shall further have the authority to seek, apply for, accept, receive, administer, and expend grants, contributions, and donations of monies, materials, and property of any kind, and to receive, administer, and expend monies, materials, and property from its Members, though use of such funds, materials, and property from its Members shall be in accordance with the stated intentions and purposes of the Members' Governing Authorities. The Commission shall also have the authority to sell, lease, transfer, convey, appropriate, and pledge any and all of its property and assets, though it shall not do so with respect to funds or property received from a Member of the Commission without the express approval of the Member's Governing Authority.

(d) The Commission shall establish and maintain a budget based on a fiscal year that begins on October 1<sup>st</sup> of each calendar year and ends on September 30<sup>th</sup> of the following calendar year and shall make and enforce, and from time to time amend and repeal, bylaws, rules, and regulations for the management of its business and affairs and for the construction, use, maintenance and operation of any of the systems and infrastructure under its oversight, management, or control.

(e) The Commission shall also have the authority to employ personnel and to



contract with public and private entities to create, acquire, construct, operate and maintain the proposed fiber optic infrastructure and broadband Internet service systems or any portion thereof and to provide Internet service to end users. The Commission may hire employees by its own action. The Commission may contract with for profit and non-profit business and social-service entities and engage in all other legal activities to assist in making ultra-high-speed Internet service accessible and affordable to all residents and businesses in the Commission's territory in pursuit of eliminating the "digital divide" and creating equal opportunity for all residents and businesses to enjoy reasonably affordable access and use of ultra-high-speed Internet and broadband services. The Commission shall take the actions contemplated by this Agreement by virtue of the authority granted to its participating Members pursuant to Miss. Code Ann. § 21-17-1 (Rev. 2015) ("General Powers"); Miss. Code Ann. § 21-17-5 (Rev. 2015) ("Home Rule"); Miss. Code Ann. § 17-13-7 (Rev. 2012) ("Interlocal Agreements"); Miss. Code Ann. § 19-5-99 (Rev. 2012) ("Creation of Economic Development Districts"); Miss. Code Ann. § 57-87-5 (Rev. 2014) ("Mississippi Broadband Technology Development Act"); Miss. Code Ann. § 57-64-5 (Rev. 2014) ("Regional Economic Development"); and Miss. Code Ann. § 57-3-9 (Rev. 2014) ("Powers of Municipalities" to erect Project).

**SECTION 4: FINANCING.** The Commission shall finance the performance of its duties under this Agreement by any means lawfully available to it, including but not limited to, direct contribution from the Commission's Member governmental entities, in-kind services contributed by any governmental entity, State and Federal grants obtained or acquired by the Commission or any other entity, and contributions, grants or in-kind services donated or granted by private persons, entities or institutions. All funds, materials, and properties received by the Commission shall be joint-undertaking funds

and properties and shall be received, disbursed, and accounted for by the treasurer or disbursing officer of one of the signatory entities, who shall be appointed by an Approval Majority vote of the Members of the Commission. All funds, materials, and properties received directly from Members of the Commission shall not be co-mingled with the funds, materials, or properties of the Commission or those of other Members of the Commission, and the Commission's use of such funds, materials, and properties from its Members shall be in accordance with the stated intentions and purposes of the Member's Governing Authority.

**SECTION 5: TERMINATION.**

(a) **By Mutual Consent of All Parties:** This Agreement may be terminated by mutual consent in writing of all of the Parties if authorized by all of the respective Governing Authorities of the Members of the Commission at the time of termination. All real and personal property owned by the Commission at the time of a termination by mutual consent in writing of all of the Parties shall become the property of the Municipality in which it is located or within the franchise or service area of such Municipality if outside of a Municipality, or of the unincorporated part of the County in which it is located if it is not located within a Municipality and not within a franchise or service area of a Municipality.

(b) **Withdrawal of One Party by Notice:** Any Party may withdraw from this Agreement by official action of the Governing Authority of that Party, which termination shall require at least thirty (30) days written notice. Termination by Notice of one Party does not automatically terminate the obligations of the remaining Parties, nor does it terminate the obligations the terminating Party may have based upon other agreements

entered into while a Party to this Agreement. All real and personal property owned by the Commission at the time of a withdrawal of one or more, but not all of the parties, shall remain the property of the Commission.

(c) Termination by Sole Remaining Party. In the event all Parties except one have withdrawn from this Agreement and then the sole remaining Party decides to withdraw and terminate this Agreement, then all real and personal property owned by the Commission at the time of such final withdrawal and termination shall, unless otherwise the property of a prior Member of the Commission or within such Member's franchise or service area or contrary to law, become the property of such sole remaining Member (the final terminating Party).

(d) Authority to Act: Action taken under this Section shall be by Resolution in the same procedural manner for each Governing Authority as required for adoption of this Agreement. The Members of this Commission shall act according to law and subject to directions from their respective Governing Authorities.

SECTION 6: AMENDMENT: This Agreement may be amended upon the written agreement of all Members of the Commission provided such amendment is approved by the Attorney General of the State of Mississippi and filed as required by law. Any Municipality or County within the Mississippi Counties of Jackson, Harrison, and Hancock may by resolution of its lawful Governing Authority apply to become a Party to this Agreement by requesting the Parties who are participating Members at the time of the request to approve an amendment to this Agreement allowing the requesting entity to become a Party on terms and conditions to be determined by an Approval Majority of the Parties who are participating Members at the time of the request, which terms and

conditions shall be subject to approval of the Governing Authority of the requesting entity prior to the amendment becoming effective and further subject to the approval of the Attorney General of the State of Mississippi.

SECTION 7: JOINT BOARD PROVISIONS. The terms and provisions of this Agreement shall be implemented by the Commission and do not require the establishment of any other Joint Board.

SECTION 8: REAL AND PERSONAL PROPERTY.

To the extent authorized by law, real and personal property shall be acquired, held, and disposed of in the name of the Commission. In any instance in which real property may not be acquired and held in that manner, it shall be acquired and held in the name of the Municipality in which it is located, or from whose franchise or service area it is located or in the Member County if not located within a Municipality or its franchise or service area, or in the Municipality in which it is most nearly located if the applicable County is not a Member of the Commission.

SECTION 9: MISCELLANEOUS PROVISIONS.

(a) Public Utility. It is the intent of the Parties that, to the fullest extent authorized by law, the Commission shall operate as a public utility, for which such services are specifically exempt from regulation by the Public Service Commission under Miss. Code Ann. § 77-3-3 (Rev. 2009).

(b) Trunk line extensions. It is the intent of this Agreement that the Commission construct and maintain the primary regional fiber optic infrastructure to deliver the capacity for ultra-high-speed Internet service at least to the boundaries of the participating Municipalities or their franchise or service areas and further to deliver the

capacity and service within all participating Municipalities and their franchise or service areas and Counties as close to end users as the Commission may find feasible and desirable, subject to the approval of the extent of such extension within each participating Municipality or County (for areas outside municipalities and their franchise or service areas) by the Governing Authorities of such Municipality or County. Furthermore, it is the intent of this Agreement that each participating Municipality and County shall be responsible for extending the facilities from its connection to the Commission's main fiber-optic infrastructure to every residence, commercial site and public place within the boundaries of each respective jurisdiction for residential and commercial use. These extensions may be done by the Municipality or County itself or by contracting with private companies or carriers. The Municipality or County may fully or partially complete any designated final extension of the service facilities and provide service directly to end users, or may fully or partially complete any designated final extension of the service facilities and contract with private companies or carriers to provide service to end users, or may contract with private companies or carriers to fully or partially complete any designated final extension of the service facilities and have the Municipality or County or private companies or carriers provide service to end users, or may do any one or more of the foregoing actions simultaneously.

(c) Standards for extension. As the purpose of this Agreement is to provide the public with the highest quality and affordability of broadband Internet service available and feasible, no Municipality or County may make such extensions from the Commission's trunk lines unless it meets minimum standards established by the Commission, which shall initially include, at least: (1) a minimum upload and download

speed of 1 gigabit per second; (2) agreement to extend service to reach all residences and businesses within a reasonable time period established by the Commission but in no event later than seven (7) years after the date that such Municipality or County becomes a Party to this Agreement; (3) agreement to create public Wi-Fi in all public spaces, parks, buildings, and facilities where it is feasible, as determined by the Commission; (4) and agreement to require its private or public service provider(s) to have a customer service facility physically located in the applicable Municipality or within the County in which the applicable Municipality is located or, for service outside a Municipality or its franchise or service areas, within the County in which the service is provided.

(d) Private Partners. The Commission may create or contract with any private for-profit or non-profit entity or effort to build, manage, operate, and/or maintain the broadband fiber optic system and/or infrastructure or any part thereof, apply for, acquire, receive, and/or administer State, Federal, and/or private grants, and contract with private foundations and public and private venture capital funds to encourage and incentivize new jobs and growth of start-up and expanding businesses based on ultra-high-speed broadband Internet service and related technologies.

(e) Severability. If any part, term, or provision of this Agreement shall be held illegal, unenforceable, or in conflict with any applicable law, the validity of the remaining portions or provisions shall not be affected thereby.

SECTION 10: APPROVAL OF ATTORNEY GENERAL. Each entity that is a Party to this Agreement has approved its execution by resolution entered on the minutes of its Governing Authority or Board. Prior to its effectiveness and as required by Miss. Code Ann. § 17-13-11 (Rev. 2012), as amended, this Agreement shall be submitted to the

Attorney General of the State of Mississippi to determine whether it is in proper form and compatible with the laws of the State of Mississippi. After approval and execution of this Agreement and the approval by the Attorney General of the State of Mississippi as herein provided, copies shall then be filed with the Secretary of State of the State of Mississippi, the Chancery Clerk of Harrison County, Mississippi, and the State Auditor.

WITNESS the signatures of the parties hereto through their duly authorized representative on the dates stated by their names below.

CITY OF BILOXI, MISSISSIPPI

BY: \_\_\_\_\_  
Andrew "FoFo" Gilich, Mayor      Date

ATTEST:

\_\_\_\_\_  
Municipal Clerk

CITY OF GULFPORT, MISSISSIPPI

BY: \_\_\_\_\_  
Billy Hewes, Mayor      Date

ATTEST:

\_\_\_\_\_  
Municipal Clerk