

**CITY OF BILOXI
AGENDA ITEM
FACT SHEET**

Item No.: 5 D

Council Meeting Date: September 19, 2023

ITEM TITLE: RESOLUTION
INTRODUCED BY: Mayor Andrew "FoFo" Gilich
CONTACT PERSON: E. Michael Leonard, CAO
Peter Abide, City Attorney

SUMMARY EXPLANATION:
Resolution authorizing entry into Amendment #1 to Memorandum of Understand between Harrison County, Mississippi, the City of Biloxi, and the City of D'Iberville

Resolution Ordinance _____ Public Hearing _____ Routine Agenda _____

Exhibits for Review

Contract Minutes _____ Plans/Maps _____ Deed _____ Lease _____

Other (Specify): Exhibit A: Amendment #1

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 ENTRY INTO AMENDMENT #1 TO MEMORANDUM OF UNDERSTANDING BETWEEN HARRISON COUNTY, MISSISSIPPI, THE CITY OF D'IBERVILLE AND THE CITY OF BILOXI

WHEREAS, in the wake of the 2019 openings of the Bonnet Carré Spillway that diverted nutrient-rich, “fresh” Mississippi River water into the Mississippi Sound devastating Coast seafood and tourism industries, Harrison County, Mississippi, the City of Biloxi (the “City”), and other local entities formed an ad hoc “Mississippi Sound Coalition” (the “Coalition”) as advisory committee to seek ways and means to protect and restore the Sound;

WHEREAS, pursuant to Resolution No. 390-23, Harrison County (the “County”) and the City entered a Memorandum of Understanding (the “MOU”) for funding and management of further litigation and advocacy related to this matter in order to protect and restore the Mississippi Sound;

WHEREAS, Resolution No. 390-23 specified that the City and County intended to “invite other local governments and private businesses to join this Coalition to fund litigation and legal services”;

WHEREAS, since entering the MOU, the City of D'Iberville (“D'Iberville”) has committed to joining in the Coalition;

WHEREAS, it is necessary and advisable that Biloxi enter into the Amendment #1 to Memorandum of Understanding, attached hereto as Exhibit “A,” recognizing D'Iberville's commitment to the Coalition; and

WHEREAS, Amendment #1 has no impact on the financial commitment to the Coalition by Biloxi.

BE IT RESOLVED BY THE MAYOR AND 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 is authorized to execute and deliver the Amendment #1 to Memorandum of Understanding, attached as Exhibit "A" and made a part of this resolution.

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

EXHIBIT "A" to RESOLUTION

**AMENDMENT #1 TO MEMORANDUM OF UNDERSTANDING ("MOU") BETWEEN
HARRISON COUNTY, MISSISSIPPI, CITY OF BILOXI, MISSISSIPPI, AND CITY OF
D'IBERVILLE, MISSISSIPPI**

WHEREAS, in the wake of the 2019 openings of the Bonnet Carré Spillway that diverted nutrient-rich, "fresh" Mississippi River water into the Mississippi Sound and devastated Coast seafood and tourism industries, Harrison County, Mississippi, the City of Biloxi, the City of D'Iberville and other local entities formed an ad hoc "Mississippi Sound Coalition" as an advisory committee to seek ways and means to protect and restore the Sound; and

WHEREAS, the Coalition filed litigation against the United States Army Corps of Engineers and obtained a U.S. District Court Order compelling the Corps to consult with National Marine Fisheries Service by September 30, 2023, regarding impacts of Spillway openings on essential fisheries habitat; and

WHEREAS, further litigation, advocacy, public education, and state and federal legislation are needed to protect and restore the Sound, which is of paramount significance to the health, safety, and welfare of the citizens the local governments that are parties to this MOU, as amended, and all other local governments on the Mississippi Coast, as well as for the economic development of the Coast economy, especially for seafood and tourism businesses that depend on a healthy and productive Mississippi Sound; and

WHEREAS, the parties hereto desire to enter an Amendment No. 1 to the Memorandum of Understanding ("MOU") for funding and management of further litigation and advocacy related to this matter to protect and restore the Mississippi Sound, a fully executed copy of the original MOU effective June 14, 2023, being attached hereto as Ex. "1" and made a part of this Amendment #1; and

WHEREAS, for efficiency, the original MOU authorized the County to establish and administer a SAVE OUR SOUND COALITION FUND (the "Fund") account in the County's book of accounts and budget and that the County procure and pay for legal services and expenses for joint litigation that the parties anticipate filing in appropriate forums and for advocacy, education, grant applications, and drafting state and federal legislation to advance the Coalition's mission of protecting and restoring the Mississippi Sound; and

WHEREAS, the parties to this Amendment No.1 intend for Harrison County to pay invoices as received for legal services and expenses procured by the County on behalf of all parties to the MOU, as amended; the County will bill the other parties for reimbursement to the County for each respective invoice with the respective shares of each invoice to be paid in direct proportion to the amount committed to the fund by each party as compared to the total of all commitments to the Fund; invoices may include payment of outstanding and unpaid legal services incurred prior to this Amendment No. 1; and

WHEREAS, the County and Biloxi each have committed \$250,000.00 to the Fund as of the date of this Amendment #1, with the intent to carry over into their respective budgets for future fiscal years, any unspent amount of their respective commitments; and

WHEREAS, the City of D'Iberville has committed \$33,079.00 to the Fund, with \$16,540 being paid at the beginning of FY23/24 and \$16,539 being paid at the beginning of FY24/25 and with the intent to carry over into its budget for future fiscal years, any unspent amount of its commitment; and

WHEREAS, the County, Biloxi, and D'Iberville intend to invite other local governments and private businesses to commit money to the Fund, which would adjust the shares of each entity's payment of invoices; now therefore:

For and in consideration of the mutual promises made herein, Harrison County, Mississippi the City of Biloxi, Mississippi, and the City of D'Iberville agree as follows:

The numbered paragraphs of the original MOU effective June 14, 2023, attached and made a part hereof as Ex. "1" to this Amendment No. 1, are hereby amended to read as follows:

1. County has established and administers a "SAVE OUR SOUND COALITION FUND" account in the County's book of accounts and budget to carry out the intent and purposes described in the recitals to this Amendment No. 1 to MOU, which are adopted as part of this Amendment No. 1 to MOU.
2. County shall procure and pay for legal services and expenses for joint litigation that the County and parties to this MOU, as amended, may from time to time approve for filing in appropriate forums and for joint advocacy, education, applications for grants, and drafting state and federal legislation described in the recitals of the resolution approving this MOU.
3. County will bill the other parties to this MOU, as amended, for reimbursement of their respective shares (defined in the recitals of the Resolution approving this Amendment No. 1) of the amount of each payment of invoices for legal services and expenses made by the County under this MOU, as amended. In the event other entities join in funding the purposes of this MOU, as amended, then the County's bills to the other parties for reimbursements and likewise the County's share of the expenses, shall be adjusted in direct proportion to the amount committed to the fund by each party as compared to the total of all commitments to the Fund.
4. The other parties to this MOU will pay respective reimbursements to the County within thirty (30) days of receipt of each bill from the County.
5. Total expenses paid by the parties to this Amendment No. 1 shall not exceed the following respective amounts:
 - a. Harrison County: \$250,000.00
 - b. City of Biloxi \$250,000.00
 - c. City of D'Iberville \$ 33,079.00
6. The parties may extend this MOU and obligate additional funds for future fiscal years by mutually acceptable, written amendment.
7. In the event other entities commit to joining this MOU, as amended, the parties agree that other parties may join this MOU, as amended, by having all parties simply adopt amendments to paragraph 5 of this Amendment No. 1 to reflect the adjusted amounts that each party has committed to the Fund as of the date of each such amendment, with all other provisions of the MOU, as amended, to remain in full force and effect.

_____SIGNATURE PAGE FOLLOWS_____

WITNESS our signatures and agreement effective on the date of the last signature below.

CITY OF D'IBERVILLE, MISSISSIPPI:

BY: Rusty Quave DATE: 9/5/23
RUSTY QUAVE, MAYOR

CITY OF BILOXI, MISSISSIPPI

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

HARRISON COUNTY, MISSISSIPPI

BY: _____ DATE: _____
Rebecca Powers, President, _____ DATE: _____
Harrison County Board of Supervisors Chancery Clerk

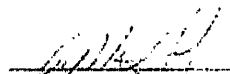
EXHIBIT "1" to Amendment No. 1
**MEMORANDUM OF UNDERSTANDING BETWEEN HARRISON COUNTY, MISSISSIPPI,
AND CITY OF BILOXI, MISSISSIPPI**

For and in consideration of the mutual promises made herein, Harrison County, Mississippi and the City of Biloxi, Mississippi, agree as follows:


1. County shall establish and administer a "SAVE OUR SOUND COALITION FUND" account in the County's book of accounts and budget to carry out the intent and purposes described in the recitals of the resolution approving this MOU, which are adopted as part of this MOU.
2. County shall procure and pay for legal services and expenses for joint litigation that the County and City may from time to time approve for filing in appropriate forums and for joint advocacy, education, applications for grants, and drafting state and federal legislation described in the recitals of the resolution approving this MOU.
3. County will bill the City for reimbursement of one-half the amount of each payment of legal services and expenses made by the County under this MOU. In the event other entities join in funding the purposes of this MOU, then the County's invoice to the City, and likewise the County's share of the expenses, shall be adjusted according to a mutually agreed, written, formula for sharing expenses to be reimbursed by participants to the County.
4. City will pay respective reimbursements to the County within thirty (30) days of receipt of each bill.
5. Total expenses paid jointly by County and City under this MOU shall not exceed Five Hundred Thousand Dollars (\$500,000.00), with the City and County each obligated each for \$250,000.00 for the fiscal year ending September 30, 2023.
6. The parties may extend this MOU and obligate additional funds for future fiscal years by mutually acceptable, written amendment.

WITNESS our signatures and agreement effective on the date of the last signature below

CITY OF BILOXI, MISSISSIPPI

BY:  DATE: June 14, 2023
A.M. GILICH, JR.

HARRISON COUNTY, MISSISSIPPI

BY:  DATE: May 22, 2023 REBECCA POWERS DATE: 11/21/2023
Rebecca Powers, President Chancery Clerk Chancery Clerk
Harrison County Board of Supervisors