

**CITY OF BILOXI  
AGENDA ITEM  
FACT SHEET**

Item No.: \_\_\_\_\_

Council Meeting Date: July 07, 2015

**ITEM TITLE:**       **RESOLUTION**

**INTRODUCED BY:**       Mayor Andrew "FoFo" Gilich

**CONTACT PERSON:**       David Nichols, CAO

**SUMMARY EXPLANATION:** Resolution of the City Council of the City of Biloxi in the State of Mississippi accepting a full and final settlement of all claims against BP Horizon Oil Spill, authorizing the execution and delivery of a general release and other necessary documents and providing an immediately effective date.

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

**Exhibits for Review**

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

Other (Specify): \_\_\_\_\_

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

**STAFF RECOMMENDATION:**

Staff recommends approval

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

Vote: Councilmember   Yes   No   Other

Lawrence	_____	_____	_____
Gines	_____	_____	_____
Newman	_____	_____	_____
Deming	_____	_____	_____

Councilmember   Yes   No   Other

Tisdale	_____	_____	_____
Glavan	_____	_____	_____
Fayard	_____	_____	_____

**ACTION TAKEN:**

GB/mw 070715leg

Resolution No.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BILOXI IN THE STATE OF MISSISSIPPI ACCEPTING A FULL AND FINAL SETTLEMENT OF ALL CLAIMS AGAINST BP AND OTHERS RESULTING FROM THE DEEPWATER HORIZON OIL SPILL, AUTHORIZING THE EXECUTION AND DELIVERY OF A GENERAL RELEASE AND OTHER NECESSARY DOCUMENTS AND PROVIDING AN IMMEDIATELY EFFECTIVE DATE.

BE IT RESOLVED by the City Council of the City of Biloxi in the State of Mississippi that the City of Biloxi hereby accepts BP's offer to pay the amount of \$4,943,751.00 for the City of Biloxi's economic losses and as full and final settlement of all claims against BP and others resulting from the Deepwater Horizon Oil Spill; and

BE IT FURTHER RESOLVED that the Mayor of Biloxi, Andrew "FoFo" Gilich, is authorized and directed to execute and deliver to BP a general release, in the form attached hereto (the "Release"), of all damages resulting from or associated with the Deepwater Horizon Oil Spill, in favor of BP and all entities associated with that incident as listed in the attached Release, which form and substance are hereby approved; and

BE IT FURTHER RESOLVED that the execution of the Release shall be deemed conclusive evidence of the approval and acceptance of the Release.

THIS RESOLUTION shall take effect immediately upon execution.

RESOLVED, PASSED, APPROVED AND ADOPTED THIS 7<sup>th</sup> day of July, 2015.

City of Biloxi, Mississippi

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Andrew "FoFo" Gilich  
Mayor

Attest: \_\_\_\_\_

**SETTLEMENT COMMUNICATION: EXEMPT UNDER FOIA AND  
CORRESPONDING STATE OPEN RECORDS ACTS; SUBJECT TO  
CONFIDENTIALITY ORDER ISSUED MAY 15, 2015, PTO NO. 38 AND FRE 408**

**FULL AND FINAL RELEASE, SETTLEMENT, AND COVENANT NOT TO SUE**

1. Definitions: For purposes of this Agreement, the following definitions shall apply, and in the case of defined nouns the singular shall include the plural and vice versa:
  - a. "Agreement" means this Full and Final Release, Settlement, and Covenant Not to Sue.
  - b. "BP Entities" shall mean BP p.l.c., BP Corporation North America Inc. ("BPCNA"), BP Exploration and Production, Inc. ("BPXP"), and any parents, subsidiaries, affiliates, successors, assigns, officers, directors, employees, agents and representatives of any of the foregoing.
  - c. "Claimant" shall mean City of Biloxi, individually, and the Claimant's Affiliates.
  - d. "Claimant's Affiliates" shall mean Claimant's subdivisions, agencies, associations, authorities, boards, bureaus, councils, departments, educational institutions or systems, components, public benefit corporations, public-private partnerships, or other instrumentalities of any kind (including any business or organization of any type that is owned in whole or at least 51% in part by the Claimant or any other Claimant's Affiliate and any entity where the Board of Directors is appointed by the Claimant), administrators, elected or unelected officials or officers, delegates, assigns, insurers, attorneys, or other agents of any kind.
  - e. "Claims" shall mean any and all claims or causes of action, whether in law or in equity, known or unknown, direct or indirect, past, present, or future, between the Claimant, on the one hand, and any Released Party, on the other, arising from or related to the *Deepwater Horizon* Incident, including but not limited to (1) Economic Claims; (2) any claims that were or could have been asserted by Claimant in MDL 2179; and/or (3) any claims for fines, penalties, or criminal assessments, injunctive relief, punitive damages, exemplary damages, economic damages, or other liabilities that were or could have been asserted by Claimant in any civil, criminal or administrative proceeding. For the avoidance of doubt, Claims includes any and all such claims or causes of action regardless of the legal or equitable theory or nature under which they are based or advanced including (but not limited to) legal and/or equitable theories under any federal, state, local, administrative and international law, and including (without limitation) statutory law, codal law, regulation, common law, or equity, and whether based in maritime law, strict liability, negligence, gross negligence, punitive damages, nuisance, trespass, and all other legal and equitable theories, whether existing now or arising in the future, arising from or in any way relating to the *Deepwater Horizon* Incident. Notwithstanding the foregoing, Claims shall not include claims for punitive or exemplary damages against Transocean Inc., Transocean Holdings LLC, Transocean Ltd., Transocean Deepwater Inc, Transocean Offshore

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Deepwater Drilling Inc., Triton Asset Leasing GmbH, and Halliburton Energy Services Inc.

- f. “*Deepwater Horizon Incident*” shall mean events, actions, inactions, and/or omissions leading up to and including the following: (i) discharges of hydrocarbons or other substances from the Macondo Well, including discharges from, through, or into the *Deepwater Horizon* mobile offshore drilling unit (including its appurtenances) (“*Deepwater Horizon*”), occurring on or after April 20, 2010, regardless of any subsequent movement of such hydrocarbons or other substances; (ii) the blow-out of the Macondo Well; (iii) the explosion and fire on the *Deepwater Horizon*; (iv) the sinking and/or loss of the *Deepwater Horizon*; (v) any and all containment efforts related to the Macondo Well; (vi) construction of relief wells related to the Macondo Well; (vii) any and all clean-up, remediation, removal, response, and/or restoration efforts related to the foregoing, including but not limited to the Vessels of Opportunity program, the application of dispersants, and any diversion of fresh water; and (viii) operations of any claims facility related to the foregoing.
- g. The term “Economic Claims” shall mean any claim or cause of action related to economic loss, property damage, business interruption, breach of contract, loss of royalties, lost tourism, liens, revenue, taxes, operating costs, expenses, rents, fees, profit shares, earning capacity, injuries, or any other costs, losses, or damages, including without limitation, any claim arising out of the Oil Pollution Act (“OPA”), 33 U.S.C. §2702(b), state or federal common law, maritime law, or any other applicable provision of law.
- h. “Macondo Well” shall mean the exploratory well named “Macondo” that was being drilled by the *Transocean Marianas* and *Deepwater Horizon* rigs in Mississippi Canyon, Block 252 on the outer continental shelf in the Gulf of Mexico, approximately 130 miles southeast of New Orleans, Louisiana.
- i. “Released Parties” shall mean anyone who is or could be responsible or liable in any way for the *Deepwater Horizon Incident* or any damages related thereto, including but not limited to those liable for the Claims, whether a person, company or governmental entity, including but not limited to (i) the BP Entities; (ii) contractors and subcontractors of the BP Entities; (iii) the parties listed on Attachment A hereto and any related parties indemnified by any BP Entity with respect to the *Deepwater Horizon Incident*; (iv) the *Deepwater Horizon Oil Spill Trust* dated August 6, 2010; (v) the federal Oil Spill Liability Trust Fund and any state or local fund; and (vi) for each of the foregoing, their respective parents, subsidiaries, affiliates, successors, assigns, officers, directors, employees, agents and representatives.
- j. The verb “release,” “releases,” “released,” and its cognate forms shall mean all forms of acts or deeds to release, acquit, forever discharge, and covenant not to sue on any sort of claim.

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2. In consideration of the payment of \$4,943,751.00 from BPXP, Claimant hereby releases BPXP, all other BP Entities, and all other Released Parties from and for any and all Claims that Claimant may have or purport to have.
3. By executing this release, Claimant warrants and understands that it is forever giving up and discharging, without any right of legal recourse whatsoever, any and all rights it has or may have to the Claims against the Released Parties.
4. Claimant shall not assert any Claim against any Released Party.
5. Upon receipt and acceptance by BP of all governmental releases, payment will be made within 30 days, as per the instructions of each local entity, contained in the Agreement. Within 10 days thereafter, Claimant shall dismiss, or caused to be dismissed, with prejudice any litigation or other proceeding concerning any pending Claims filed by or on behalf of Claimant or any of Claimant's Affiliates against the BP Entities or any other of the Released Parties. Claimant also will withdraw from any existing class action and will not join any new class actions or similar procedural devices concerning the Claims.
6. As this Agreement is fully and completely resolving the Claims, BP is hereby subrogated to any and all rights that Claimant or any of Claimant's Affiliates have arising from or in any way related to the *Deepwater Horizon* Incident for those Claims.
7. The payment to Claimant is made without any admission of liability or wrongdoing by BPXP, any other BP Entity, or any other Released Party, and is made purely by way of compromise and settlement.
8. The United States District Court for the Eastern District of Louisiana will retain jurisdiction over this Agreement for the purposes of enforcement of the Agreement and any dispute(s) arising thereunder. Any and all disputes, cases, or controversies concerning this Agreement, including without limitation disputes concerning the interpretation or enforceability of this Agreement, shall be filed in the United States District Court for the Eastern District of Louisiana accompanied by a legal request made on behalf of any complainant party (whether one of the Released Parties or the Claimant or the Claimant's Affiliates) for such dispute to be made part of the multidistrict litigation pending before that Court, titled *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, MDL No. 2179 (E.D. La.) ("MDL 2179"), or in any United States District Court with venue if, but only if, MDL 2179 has been terminated by the time any dispute concerning this Agreement is filed. No action(s) to enforce this Agreement shall be filed in any state court. Claimant and the Released Parties agree not to contest the existence of federal jurisdiction in MDL 2179 or a United States District Court with venue if, but only if, MDL 2179 has been terminated by the time any dispute concerning this Agreement is filed.
9. This Agreement constitutes the final, complete, and exclusive agreement and understanding between BPXP and Claimant and supersedes any and all other agreements,

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written or oral, between any BP Entity and Claimant with respect to such subject matter of this Agreement.

10. This Agreement shall remain effective regardless of any appeals or court decisions relating in any way to the liability of the Released Parties.
11. Claimant shall not make public statements disparaging any BP Entity with respect to this Agreement or the matters addressed therein.
12. Payment shall be made in accordance with the following instructions:

**Beneficiary Name** City of Biloxi Operating Fund 2

**Payment Method (Wire Transfer or Check):** Wire

**Tax ID (EIN)** 64-6000153

**W-9 Form attached:** yes

**For Checks: Mailing Address:**

**For Wire Transfer:**

**Account No:** 1987 The Peoples Bank

**Routing No:** 065500752

**Swift Code (if applicable):** \_\_\_\_\_

13. Claimant represents and warrants that (i) its undersigned representative has authority to execute this Agreement on behalf of Claimant; and (ii) it has not sold or otherwise transferred or assigned any of the Claims, or any interests in such Claims.
14. Claimant is providing (i) herewith, a resolution or other binding authorization authorizing the undersigned signatory to execute this Agreement on behalf of Claimant and (ii) prior to payment by BPXP a legal opinion of Claimant's counsel concluding that the resolution or other binding authorization provided herewith is valid and the signatory signing on behalf of Claimant has the legal authority to settled litigation and claims on behalf of Claimant.

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Claimant: City of Biloxi , Mississippi

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

Mayor Andrew "FoFo" Gilich

Accepted by BPXP

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

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**Attachment A to Local Entities Release/Attachment 3 to State Agreement in Principle—**

**Released Parties**

Anadarko Exploration & Production LP  
Anadarko E&P Company LP  
Anadarko Petroleum Corporation  
Art Catering, Inc.  
Cameron Corporation  
Cameron International Corporation  
Cameron International Corporation f/k/a Cooper Cameron Corporation  
Cameron International Corporation d/b/a/ Cameron Systems Corporation  
Court Supervised Settlement Program in MDL 2179 and its Administrators, Employees, and Agents  
Deepwater Horizon Oil Spill Trust, Trustees and Employees  
Dril-Quip, Inc.  
Gulf Coast Claims Facility, Administrators, Employees, and Agents  
Halliburton Energy Services, Inc.  
LLOG Exploration Offshore, L.L.C.  
LLOG Bluewater, L.L.C.  
LLOG Bluewater Holdings, L.L.C.  
Lloyd's Syndicate 1036  
Mitsui & Co., Ltd.  
Mitsui & Co. (U.S.A.), Inc.  
Mitsui Oil Exploration Co., Ltd.  
Ministry of Economy, Trade and Industry of the Government of Japan  
M-I Drilling Fluids L.L.C.  
M-I, LLC a/k/a M-I Swaco  
MOEX Offshore 2007 LLC  
MOEX USA Corporation  
Oceaneering International, Inc.  
Oil Spill Liability Trust Fund  
QBE Marine & Energy Syndicate 1036  
QBE Underwriting Ltd.  
Schlumberger, Ltd.  
Sperry Drilling Services f/k/a Sperry Sun Drilling Services  
Transocean Deepwater Inc.  
Transocean Holdings LLC  
Transocean Inc.  
Transocean Ltd.  
Transocean Offshore Deepwater Drilling Inc.  
Triton Asset Leasing GmbH  
Weatherford International, Inc.  
Weatherford U.S. L.P.

# Request for Taxpayer Identification Number and Certification

Give Form to the  
requester. Do not  
send to the IRS.

Print or type  
See Specific Instructions on page 2.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

City of Biloxi

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification; check only one of the following seven boxes:

- ☐ Individual/sole proprietor or single-member LLC  
☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶  
**Note.** For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner.  
☒ Other (see instructions) ▶

Municipality

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) \_\_\_\_\_

Exemption from FATCA reporting code (if any) \_\_\_\_\_

(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.)

P O Box 429

6 City, state, and ZIP code

Biloxi, MS 39533

Requester's name and address (optional)

7 List account number(s) here (optional)

## Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

**Note.** If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

Social security number

\_\_\_\_ - \_\_\_\_ - \_\_\_\_

or

Employer identification number

6 4 - 6 0 0 0 1 5 3

## Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign  
Here

Signature of  
U.S. person ▶

*Julie L. Handel*

Date ▶

1/22/15

## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at [www.irs.gov/fw9](http://www.irs.gov/fw9).

## Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)

- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See *What is backup withholding?* on page 2.

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.