

**CITY OF BILOXI
AGENDA ITEM
FACT SHEET**

Item No.: 4 F

Council Meeting Date: October 4, 2016

ITEM TITLE: RESOLUTION

INTRODUCED BY: Mayor Andrew "FoFo" Gilich 

CONTACT PERSON:  Gerald Blessey, City Attorney & Counsel for Economic Development

SUMMARY EXPLANATION:

Resolution Approving and Authorizing the Mayor to Execute the Settlement Agreement and Release of Claims in the Matter of the Stewardship of the Public Trust Tidelands v. Secretary of State, et al, Cause No. C2402-02-760, pending in the Chancery Court of Harrison County, Mississippi, Second Judicial District

Resolution Ordinance _____ Public Hearing _____ Routine Agenda _____

Exhibits for Review

Contract _____ Minutes _____ Plans/Maps _____ Deed _____ Lease _____

Other (Specify): Exhibit A: Settlement Agreement and Release of Claims

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	___	___	___	Fayard	___	___	___
	Deming	___	___	___				

ACTION TAKEN:

RESOLUTION NO. _____

RESOLUTION APPROVING AND AUTHORIZING MAYOR TO EXECUTE THE SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS IN THE MATTER OF THE STEWARDSHIP OF THE PUBLIC TRUST TIDELANDS V. SECRETARY OF STATE, ET AL., CASE NO. C2402-02-760, PENDING IN THE CHANCERY COURT OF HARRISON COUNTY, MISSISSIPPI, SECOND JUDICIAL DISTRICT

WHEREAS, on or about July 22, 2016, the City of Biloxi filed a Motion to Enforce and Amend the Point Cadet Compromise and Settlement Agreement and the Covacevich Compromise and Settlement Agreement and for Attorney Fees, in the Chancery Court of Harrison County, Mississippi, Second Judicial District;

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

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

SECTION 2: The Mayor is hereby authorized to execute and deliver the Settlement Agreement and Release of Claims attached hereto as Exhibit "A."

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

SETTLEMENT AGREEMENT
AND RELEASE OF CLAIMS

THIS SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS is made on this ____ day of September, 2016, by and between the Secretary of State, Delbert Hosemann, (“SOS”); City of Biloxi, Mississippi (“City”); and Board of Trustees of State Institutions of Higher Learning in its Own Capacity and on Behalf of the University of Southern Mississippi, the Gulf Coast Research Laboratory and the J.L. Scott Marine Education Center (“IHL”).

- A. **“Agreement”** shall mean this Settlement Agreement and Release of Claims.
- B. **“Parties”** shall mean SOS, City and IHL.
- C. **“Lawsuit”** shall mean the City of Biloxi’s Motion to Enforce and Amend the Point Cadet Compromise and Settlement Agreement and the Covacevich Compromise and Settlement Agreement and for Attorney Fees filed in *In the Matter of the Stewardship of the Public Trust Tidelands v. Secretary of State, et al.*, Case No. C2402-02-760, pending in the Chancery Court of Harrison County, Mississippi, Second Judicial District.
- D. **“Claims”** shall mean all claims, counterclaims, demands, actions, causes of action, debts, liabilities, damages, costs, fees, expenses, rights, duties, obligations, liens, petitions, suits, losses, controversies, executions, offsets and sums of any kind or nature, whether direct or indirect, liquidated or unliquidated, contingent or actual, in law or equity, known or unknown, suspected or unsuspected or of whatever type or nature related to the Point Cadet Compromise and Settlement Agreement and the Covacevich Compromise and Settlement Agreement that have accrued at the time of execution of this agreement.
- E. **“SOS”** shall mean shall mean the SOS (officially and individually) and the SOS’ predecessors, successors, employees, agents, servants, and attorneys. “SOS” and/or Secretary of State shall **not** be construed to include the State of Mississippi, the Department of Finance and Administration, the State Treasurer, or any other department, agency, or official of the State of Mississippi that may have responsibility for removal of IHL, Public Trust Tidelands Funds and/or City’s funds from the Point Cadet Leasing Fund.

In consideration of the covenants contained herein, the Parties acknowledge, promise and agree as follows:

1. All provisions of the Point Cadet Compromise and Settlement Agreement, the Covacevich Compromise and Settlement Agreement, and the Court’s Decree Approving Agreements Relating to Point Cadet Properties recorded in the Land Records of Harrison County, Mississippi, Second Judicial District, Book 390, pages 587-639, are hereby incorporated herein by reference, reaffirmed and are in full force and effect. The Parties agree that the

Chancery Court of Harrison County, Mississippi, Second Judicial District shall retain jurisdiction to enforce the terms and conditions of such agreements and this Agreement.

2. In exchange for the consideration provided for in Paragraph three (3) below, the City and IHL release SOS from any and all Claims through the date of this Agreement and the SOS releases the City and IHL from any and all Claims through the date of this Agreement. It is expressly understood and agreed that City, IHL and Public Trust Tidelands Fund hereby reserve and retain their right to bring an action against the State of Mississippi pursuant to *Miss. Code Ann. §11-45-1 et. seq.*, and any other applicable statutes or at common law, for any amounts not restored to the Point Cadet Leasing Fund as a result of the efforts described in paragraph 4 *infra*.

3. From and after October 1, 2016, the SOS shall request monthly distributions from the Point Cadet Leasing Fund to the City of Biloxi, IHL and the Public Trust Tidelands Fund in accordance with the formulas set forth in the Point Cadet Compromise and Settlement Agreement and the Covacevich Compromise and Settlement Agreement. Such request to the Mississippi State Treasurer and the Mississippi Department of Finance to issue these direct deposits shall be made by the SOS on or before the twentieth (20th) of each month. Such payments shall be made by direct deposit to accounts designated outside of this agreement by IHL, City and Public Trust Tidelands Fund. In addition, SOS shall, upon receipt from Riverboat Corporation of Mississippi of each payment, provide to City, Public Trust Tidelands Fund and IHL copies of all monthly transmittals, reports and accountings forwarded by Riverboat Corporation of Mississippi and/or its successors and assigns. SOS shall provide an annual accounting to IHL, Public Trust Tidelands Fund and City of all transactions involving the Point Cadet Leasing Fund. Such accounting shall be due sixty days following Riverboat Corporation of Mississippi's payment of the Lease Year end final payment.

4. As a result of H.B. 878, the sum of One Million, Five Hundred Ninety-Three Thousand, Nine Hundred Seventy Dollars and Fifty-Two Cents (\$1,593,970.52) was removed by the State Legislature from the Point Cadet Leasing Fund for the 2015-2016 lease year. The Parties shall jointly use their good faith best efforts to request and obtain from the Mississippi Legislature legislation appropriating, allocating, transferring or otherwise fully restoring such deficit in funds back into the Point Cadet Leasing Fund for the 2015-2016 lease year. In the event such funds are restored, SOS shall, within seven days of such return of funds, request the Department of Finance to distribute such funds to IHL, City and Public Trust Tidelands Fund in accordance with the deficits remaining at the end of the 2015/16 lease year and as described *supra*. In the event the Mississippi Legislature does not fully restore such funds by the end of the 2017 Regular Legislative Session: (a) the City and IHL release the SOS only from all Claims related to the One Million, Five Hundred Ninety-Three Thousand, Nine Hundred Seventy Dollars and Fifty-Two Cents (\$1,593,970.52) taken from the Point Cadet Leasing Fund; and (b) all Parties reserve and preserve all rights against the State of Mississippi, the Department of Finance and any other agency, officer or official (excluding the SOS) for the funds removed by the State Legislature from the Point Cadet Leasing Fund.

5. This Agreement is the result of compromise, and is entered into in good faith for the purpose of fully and finally settling all disputes arising out of the facts alleged in or capable of being alleged in the Lawsuit, and to avoid the expense and uncertainty of further litigation.

The City and IHL acknowledge that the consideration set forth in Paragraph three (3) of this Agreement is valuable and is provided for, among other things, the purpose of termination with prejudice, and obviating further involvement in litigation based upon disputed claims raised by the City and IHL in the Lawsuit and is provided without any admission or concession whatsoever by the SOS that it engaged in any wrongful or unlawful act, or violated any federal, state or local statute, ordinance, law or regulation, which the SOS expressly denies.

6. The provisions of this Agreement shall inure to the benefit of, and shall be binding upon successors in interest of SOS, City and IHL.

7. Mississippi law shall govern the validity and interpretation of this Agreement.

8. This Agreement sets forth the entire understanding and agreement among the Parties.

9. This Agreement may not be altered or amended in any of its provisions except by the mutual written agreement of the Parties.

10. Should any of the provisions set forth herein be determined to be invalid by any court, agency or any other tribunal of competent jurisdiction, such determination shall not affect the enforceability of the other provisions herein and to this end the provisions of this Agreement are declared severable.

11. This Agreement may be executed in counterparts and/or by facsimile signatures with the same force and effect as if executed in one complete document with the original signature of all parties.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement effective as of the date first above written, regardless of the date on which such Agreement is signed.

CITY OF BILOXI, MISSISSIPPI

By: _____
Name: _____
Title: _____
Date: _____

MISSISSIPPI SECRETARY OF STATE

By: _____
Name: _____
Title: _____
Date: _____

BOARD OF TRUSTEES OF STATE
INSTITUTIONS OF HIGHER LEARNING
IN ITS OWN CAPACITY AND ON BEHALF
OF THE UNIVERSITY OF SOUTHERN
MISSISSIPPI, THE GULF COAST
RESEARCH LABORATORY AND THE J.L.
SCOTT MARINE EDUCATION CENTER

By: _____

Name: _____

Title: _____

Date: _____