

Submitted by: Chair of the Assembly at the
Request of the Mayor
Prepared by: Real Estate Dept.
For reading: August 30, 2011

CLERK'S OFFICE

APPROVED

ANCHORAGE, ALASKA

Date: 8-30-11 **AR No. 2011-222**

1 **A RESOLUTION OF THE MUNICIPALITY OF ANCHORAGE APPROPRIATING**
2 **NINETY THOUSAND DOLLARS (\$90,000) FROM THE HERITAGE LAND BANK**
3 **FUND (221) FUND BALANCE TO THE REAL ESTATE DEPARTMENT'S**
4 **HERITAGE LAND BANK FUND (221) 2011 GENERAL GOVERNMENT**
5 **OPERATING BUDGET FOR PAYMENT OF A CONTAMINATION CLAIM**
6 **SETTLEMENT.**

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9 **WHEREAS**, property located at Benson Boulevard and Cope Street was acquired by
10 the Municipality of Anchorage (MOA) at the time of its consolidation with the Greater
11 Anchorage Area Borough; and

12
13 **WHEREAS**, the subject property was placed into the Heritage Land Bank (HLB)
14 inventory, and in the 1990s a leaking underground storage tank was discovered on
15 the property and HLB undertook extensive remediation activity on the site; and

16
17 **WHEREAS**, the Alaska Department of Environmental Contamination (ADEC) issued
18 a "no further action" letter to HLB in 2005 following the completion of remediation
19 activity and decommissioning of the monitoring wells, and

20
21 **WHEREAS**, the subject property was sold "as is," and the purchaser in turn sold it to
22 the Photo Avenue Investments, LLC, who in turn discovered additional contamination
23 remaining on the property; and

24
25 **WHEREAS**, the Photo Avenue Investments filed a lawsuit in 2009 against the MOA
26 for damages and loss of income, for which MOA agreed to settle for approximately 20
27 percent of the total claimed as due by the plaintiff, or One Hundred Ten Thousand
28 Dollars (\$110,000) to resolve claims asserted in the lawsuit, which was dismissed;
29 and

30
31 **WHEREAS**, Risk Management has agreed to pay Twenty Thousand Dollars
32 (\$20,000) separately to the plaintiff, and HLB has agreed to pay Ninety Thousand
33 Dollars (\$90,000) from the HLB Fund balance (221) to satisfy the settlement claim for
34 the total amount, now therefore,

35
36 **THE ANCHORAGE ASSEMBLY RESOLVES:**


37 **Section 1.** The sum of Ninety Thousand Dollars (\$90,000) of fund balance in the
38 Heritage Land Bank Fund (221) is hereby appropriated to the Heritage Land Bank
39 Fund (221), Real Estate Department 2011 General Operating Budget for payment of
40 settlement to Photo Avenue Investments, LLC for property contamination claim.

1 **Section 2.** This resolution shall be effective immediately upon passage and approval
2 by the Assembly.
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5 PASSED AND APPROVED by the Anchorage Assembly this 30th day of
6 August, 2011.
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9 
10 Chair of the Assembly

11
12 ATTEST:

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16 Municipal Clerk

17
18 Departmental appropriation:

19 Real Estate - Heritage Land Bank Fund (221) \$90,000

MUNICIPALITY OF ANCHORAGE

ASSEMBLY MEMORANDUM

No. AM 456-2011

Meeting Date: August 30, 2011

From: MAYOR

Subject: A RESOLUTION OF THE MUNICIPALITY OF ANCHORAGE APPROPRIATING NINETY THOUSAND DOLLARS (\$90,000) FROM THE HERITAGE LAND BANK FUND (221) FUND BALANCE TO THE REAL ESTATE DEPARTMENT'S HERITAGE LAND BANK FUND (221) 2011 GENERAL GOVERNMENT OPERATING BUDGET FOR PAYMENT OF A CONTAMINATION CLAIM SETTLEMENT.

This claim involves real property located in mid-town that was formerly owned by the Municipality. The land came into the inventory of the Municipality about the time of consolidation of the Anchorage city and borough, and has a history of industrial use. During the 1990s the property was determined to have a leaking underground storage tank and MOA undertook extensive remediation activity on the site. The resulting monitoring wells were decommissioned in 2005. The Alaska Department of Environmental Conservation (ADEC) issued a "No Further Action" letter and the property was sold "as is" to the private sector. The subject parcel was in turn sold to Photo Avenue Investments, LLC, which, in the course of construction preparations discovered that the clean-up effort missed a spot.

Once MOA learned of the problems at the site it hired Shannon and Wilson, Inc. to investigate the extent of contamination and develop a remediation plan. From the beginning it was clear this would be a multi-phase process, which became even more time-consuming after ADEC decreed that quarterly sampling of soil and groundwater would be required for at least one full year. Ultimately the MOA spent \$170,000 cleaning up the site, and signed indemnity agreements with Photo Avenue Investment/plaintiff's lenders to protect them from any loss due to the presence of hazardous materials.

Plaintiff filed a lawsuit on December 7, 2009 to prevent the running of the statute of limitations, and sued MOA under AS 46.03.822,¹ for damages suffered as a result of the discharge of hydrocarbons and other pollution on the land. Plaintiff asserted losses of \$209,560, and also claimed to have lost income of \$250,000. Of that amount approximately \$46,000 in excavation and disposal costs was undisputed. Although the facts showed the MOA responded promptly and in good faith, the strict liability imposed by AS 46.03.822 created a substantial risk of loss at trial. Accordingly, the MOA participated in a mediation conference with Judge Sen Tan moderating.

¹ The Alaska Environmental Conservation Act.

The Municipality agreed to settle for about one-fifth of the total claimed due by plaintiff, including the lost income component. The settlement is a complete and final resolution of the claims asserted in the lawsuit, and the lawsuit will be dismissed. However, the MOA remains obligated to comply with the terms of a Remediation Agreement until a final closure letter is obtained from ADEC. MOA is also obligated by a separate Indemnification Agreement under which the Municipality agreed to protect the lending institutions that financed construction of the building on the property from loss due to contamination.

Payment will be made to Birch, Horton, Bittner & Cherot, ITF Photo Avenue Investments, LLC. Budget details for this appropriation are as follows:

REVENUE

Account Number	Account Name	Amount
221-0740 BP 2011	HLB Fund Balance	\$90,000

EXPENDITURE

Account Number	Account Name	Amount
221-1221-3121 BP2011	Other Settlements/Judgments	\$90,000

THE ADMINISTRATION RECOMMENDS APPROVAL OF A RESOLUTION APPROPRIATING NINETY THOUSAND DOLLARS (\$90,000) FROM THE HERITAGE LAND BANK FUND (221) FUND BALANCE TO THE REAL ESTATE DEPARTMENT'S HERITAGE LAND BANK FUND (221) GENERAL GOVERNMENT OPERATING BUDGET FOR PAYMENT OF A CONTAMINATION CLAIM SETTLEMENT.

Prepared by:	Heritage Land Bank Division
Approved by:	Tammy R. Oswald, Real Estate Dept. Acting Director
Fund certification:	Lucinda Mahoney, CFO
	\$90,000 221-0740 (HLB Fund Balance)
Concur:	Dennis A. Wheeler, Municipal Attorney
Concur:	George J. Vakalis, Municipal Manager
Respectfully submitted:	Daniel A. Sullivan, Mayor