



City of Homer

www.cityofhomer-ak.gov

Office of the City Manager

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City Manager's Report

TO: Honorable Mayor Wythe and Homer City Council
FROM: Katie Koester, City Manager
DATE: October 26, 2015
SUBJECT: City Manager's Report

Request to Postpone Strategic doing until second meeting in January

A Strategic Doing work session is currently scheduled for November 23. I would like to request the Strategic Doing work session be rescheduled to the second meeting in January. November will be the height of the educational campaign on HART and the December 1 special election and will be my focus. We will also be short staffed in my office for the month of November.

Should City Assume Maintenance of Lake Street Bike Paths?

The City has been informed by ADOT/PF that their Lake Street Improvements will incorporate a bike lane on each side of the road. However, they are requesting that maintenance of the signage and pavement markings for the bike lane on the west side be maintained by the City. If the City does not agree to take on maintenance responsibilities, the State will still build the dedicated space for bike traffic, however it will be considered a 'bike route' with minimal signage and no pavement markings (bike stencils in path). Any agreement for the City to take over maintenance of the bike path would have to include the State plowing and sanding the path and associated liability or we would be looking at a considerable expense. The maintenance expense (replacement cost of signage and stenciling) is estimated at \$2,400 a year.

The City is currently designing similar bike lanes on Waddell Way. Ideally signing and pavement markings should be consistent on Lake Street and Waddell Way.

Lake Street bike lane signage/markings cost \$9,000 to install. \$2,400/ year to maintain.

Waddell Way bike lane signage/markings cost \$6,000 to install. \$1,800/ year to maintain.

\$4,200 annual total

Should the City take on the additional maintenance cost for bike lane signage and markings (on both streets) or should the lanes be constructed as 'bike routes' with minimal signage/markings (on both streets)?

Buccaneer Creditors' Liquidating Trust Settlement

You may recall that in June of this year the City of Homer received letter from the Trustee of the Buccaneer Creditors' Liquidating Trust demanding the City return \$17,460 in payment that had been received in the 90 days preceding Buccaneer's bankruptcy. The City Attorney countered with a letter stating that the payment was made during the course of regular business. Nevertheless, the City Attorney has negotiated a 50% reduction in the original demand (\$8730) which I have agreed to. While it gives me heartburn to acquiesce to the claim, it is a modest amount that could quickly be surpassed in legal fees if we were to engage in a lengthy battle. The funds received were for services delivered at the Port and Harbor and will be assigned a legal settlement code in the enterprise budget so we can track these types of expenses.

Update on Sale of Lillian Walli Lots

Council directed staff to sell all 8 City-owned parcels in the Lillian Walli subdivision. I wanted to provide you an update on that process. A request for proposals was posted on the City website on October 12th. The total appraised value and minimum bid for all lots is \$91,000. Written questions are due by October 28th to the City Clerk's Office. Bids are due by noon November 12, 2015 and will be opened by the City Manager. <http://www.cityofhomer-ak.gov/rfps>.

Woodard Creek Coalition

City Planner Abboud attended the Woodard Creek Coalition Workshop Saturday, October 17th. The meeting was held to prioritize several problem statements and set goals and objectives for the coalition. Channelization, erosion, and flooding have been identified as public safety concerns. Development in and around the drainage area has contributed to these problems. The coalition prioritized raising public awareness of the condition of the creek and the value it has to the community. See the attached press release for more information.

Upcoming Elections

We have two more elections before the end of the year. I wanted to remind everyone when absentee voting starts so they can make sure and fit it in – it is coming right up.

November 3 Runoff: Absentee voting started Tuesday, October 20.

December 1 Special Election: Absentee voting starts Monday, November 16.

Enc:

Settlement agreement with Buccaneer Creditors' Liquidating Trust

Woodard Creek Coalition Press Release

Thank you to SPH for Hosting Dinner on September 15

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Settlement Agreement") by and between Jeff Compton, Trustee of the Buccaneer Creditors' Liquidating Trust, (the "Trustee") and City of Homer Port & Harbor ("City of Homer") (the Trustee and City of Homer will be collectively referred to as the "Parties") is made and entered into as of October 14, 2015.

WHEREAS, on May 31, 2014, Buccaneer Resources, LLC, *et al.* (the "Debtors") filed voluntary petitions for relief under Chapter 11, Title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of Texas, Victoria Division (the "Court"), in Case No. 14-60041-drj;

WHEREAS, the Trustee has asserted that the Debtor made transfers totaling \$17,457.15 (the "Transfers") to City of Homer that are avoidable under the provisions of 11 U.S.C. §§ 547 & 550;

WHEREAS, the Trustee sent a demand letter to City of Homer on June 4, 2015 demanding City of Homer return the Transfers;

WHEREAS, City of Homer has denied liability for any alleged preferential transfer and has asserted the ordinary course of business defense under 11 U.S.C. §547(c) to the Transfers amounts, if any, credited by the Trustee;

WHEREAS, following good faith negotiations, the Trustee and City of Homer desire to settle and compromise this matter on the terms set forth herein; and

WHEREAS, City of Homer has agreed to pay the sum of **EIGHT THOUSAND SEVEN HUNDRED THIRTY AND 00/100 (\$8,730.00)** in U.S. Dollars (the "Settlement Payment") in full and final settlement of its alleged liability for the avoidance and recovery of the Transfers,

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties hereby stipulate and agree as follows:

1. Settlement Payment. On or before October 21, 2015, City of Homer shall pay the Settlement Payment to the Trustee. "Pay" shall mean good funds have actually been received by counsel for the Trustee, such as a cleared wire transfer or a check that has cleared the bank and enough time has elapsed that payment on it cannot be stopped. Checks should be made payable to "Snow Spence Green LLP, IOLTA Account." Wire transfers should be made to:

Amegy Bank, N.A.
4400 Post Oak Parkway
Houston, TX 77027
Swift code SWBKUS44
ABA# 113011258
Account Name: Snow Spence Green LLP IOLTA ACCOUNT

Account Number: 0030341878

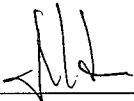
2. Section 9.4 of Confirmed Plan. Upon receipt of this Settlement Agreement executed by City of Homer and receipt of the Settlement Payment, Trustee shall seek approval of this Settlement Agreement in accordance with Section 9.4 of the First Amended Joint Chapter 11 Plan of Reorganization for the Debtors and Debtors-In-Possession (as modified through November 5, 2014 [Doc. No. 506] (the “Confirmed Plan”) and, if necessary, from the Court in Case No. 14-60041-drj. The Parties understand and acknowledge that this Settlement Agreement is conditioned upon approval of the Settlement Agreement in accordance with Section 9.4 of the Confirmed Plan or the Court.
3. Compromise of Disputed Claim. It is understood that this Settlement Agreement is a compromise of a disputed claim and that the Settlement Payment made hereunder is not to be construed as an admission of any liability for preferential transfers. This Settlement Agreement is intended to fully resolve and settle all claims for the avoidance and recovery of the Transfers.
4. Release by Trustee. Upon Trustee’s receipt of the full Settlement Payment, Trustee waives and releases any and all claims and causes of action against City of Homer for the avoidance and recovery of the Transfers.
5. Release by City of Homer. Upon City of Homer’s execution of this Settlement Agreement, City of Homer waives and releases the Trustee, Buccaneer Creditors’ Liquidating Trust (the “Trust”), the Debtors and the Trustee’s professionals from and all claims and causes of action, whether known or unknown, anticipated or unanticipated, suspected or unsuspected, absolute, fixed, conditional or contingent, matured or unmatured, liquidated or unliquidated amounts, due or to become due, and whether arising from contract, tort or otherwise, including, but not limited to, any right it may have to file a claim for the Settlement Payment under 11 U.S.C. § 502(h) or any other applicable statute of right.
6. Authority and Requisite Approval. The Parties represent and warrant with respect only to themselves and none of the other Parties that it is duly authorized to fully and completely resolve all disputes between the Parties that are the subject of this Settlement Agreement and is fully authorized to make this Settlement Agreement.
7. Representations. The Parties hereby declare that the terms of this Settlement Agreement have been completely read and are fully understood and voluntarily accepted for the purposes of making a full and final compromise, settlement and release as set forth herein. The Parties each represent and warrant that they have made no assignment and hereafter will make no assignment of any claim, action, right of action, or any other right released pursuant to this Settlement Agreement. The Parties represent that this Settlement Agreement has been explained to them by their respective legal counsel, and that each understands all of the provisions

hereto. The Parties each hereby stipulate, declare and acknowledge that he is relying on his own judgment and the advice of his own attorneys in executing this Settlement Agreement. Each of the Parties expressly warrants and represents and does hereby state and represent unto each other that no promise of agreement which is not herein expressed has been made to him in executing this Settlement Agreement, and that none of the Parties is relying upon any statement or representation of the other Party or their agents and attorneys.

8. Modifications. This Settlement Agreement may not be modified, amended or terminated orally. No modification, amendment or termination, or any waiver of any of the provisions of this Settlement Agreement, shall be binding unless same is in writing and signed by the person against whom such modification, amendment or waiver is sought to be enforced.
9. No Waiver. The failure of any of the Parties to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way affect the validity of this Agreement or any part thereof or any right of any person thereafter to enforce each and every provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other breach.
10. Severability. If any provision of this Agreement is or may be held by a court of competent jurisdiction (or by any arbitrator or arbitration panel) to be invalid, void or unenforceable, the remaining provisions shall nonetheless survive and continue in full force and effect without being impaired or invalidated in any way.
11. Attorneys' Fees. The Parties shall each bear their respective attorneys' fees and costs relating to the costs associated with the settlement negotiations and implementation of this Settlement Agreement. However, if any action is commenced by any party hereto to enforce the provisions of this Settlement Agreement, the prevailing party shall be entitled to an award, in addition to any other claims or damages, of its costs and expenses including attorneys' fees, in connection with said action.
12. Counterparts. The Parties agree that the facsimile and electronic signatures shall have the same force and effect as original signatures. This Settlement Agreement may be executed in counterparts and all counterparts so executed shall constitute one agreement which shall be binding on the Parties hereto.
13. Headings and Construction. Headings in this Settlement Agreement are for the convenience of the Parties and are not to be used in construing this Settlement Agreement. This Settlement Agreement shall not be construed or interpreted against either Party, either by having drafted this Agreement or otherwise.

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be executed by themselves or on their behalf by their respective attorneys as of the date first above written.

J.A. COMPTON, TRUSTEE OF THE BUCCANEER CREDITORS' LIQUIDATING TRUST

By:  _____
J.A. Compton, Trustee of the Buccaneer Creditors' Liquidating Trust

CITY OF HOMER PORT & HARBOR

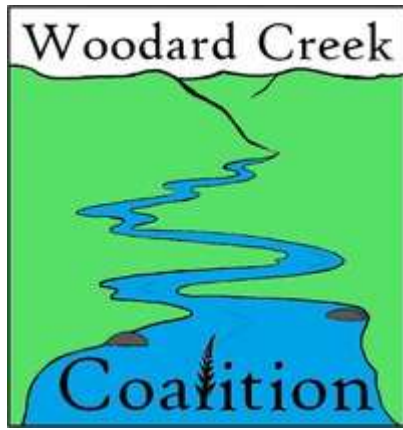
By: _____
Print Name: _____
Title: _____

Either Return with Check for **\$8,730.00** U.S.
Dollars payable to Snow Spence Green LLP,
IOLTA Account.

c/o Ross Spence
Snow Spence Green, LLP
2929 Allen Parkway, Suite 2800
Houston, Texas 77019

OR Wire **\$8,730.00** to Snow Spence Green LLP,
IOLTA Account.
Wiring Instructions:

Amegy Bank, N.A.
4400 Post Oak Parkway
Houston, TX 77027
Swift code SWBKUS44
ABA# 113011258
Account Name: Snow Spence Green LLP IOLTA
ACCOUNT
Account Number: 0030341878



FOR IMMEDIATE RELEASE

October 19, 2015

PRESS RELEASE

More Info:

Marv Hanson: 907.240.8295

Jim Preston: 907.235.8906

Woodard Creek Coalition Presses Forward on Vital Community Asset

HOMER, AK – Local citizens, property owners and groups comprising the Woodard Creek Coalition came together this past Saturday, October 17, at the Pratt Museum to continue efforts aimed at promoting the community values surrounding Woodard Creek. A representative from the National Park Service facilitated the session under a generous grant from the River & Trails Conservation Assistance Program.

“We made some great progress today,” said Jim Preston, a property owner along Woodard Creek. “Our goal to open-up the creek, and make it more accessible, will go a long way toward improving the quality of life in Homer.”

Woodard Creek is a perennial creek which flows from its headwaters on the bluff above the South Peninsula Hospital, runs down through Hornaday Park and parallel to Bartlett Street before discharging into Kachemak Bay at Bishops Beach. The creek has been neglected over the years, with multiple culverts and obstructions making it invisible and inaccessible to most Homer residents. The Woodard Creek Coalition formed in 2013 to transform Woodard Creek into a vibrant, healthy and safe community asset.

“Woodard Creek is an unpolished gem sitting right in the middle of town,” said property owner Marv Hanson. “Our goal is to dust off that gem and make Woodard Creek a gathering place where local residents and tourists alike can enjoy a natural stream setting in downtown Homer.”

The Woodard Creek Coalition will continue to meet and work toward enhancing Woodard Creek, and all interested businesses and residents are encouraged to join-in.



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October 12, 2015

South Kenai Peninsula Hospital Service Area Board
4300 Bartlett St.
Homer, AK 99603

Dear South Kenai Peninsula Hospital Service Area Board of Directors,

On behalf of Mayor Wythe and Homer City Council I would like to thank you for the tasty and informative dinner you hosted on September 15th for the Kenai Peninsula Borough Assembly, Homer City Council and staff. In addition to being a chance to get together with Borough leaders, it was a great opportunity to showcase our first class hospital. The progressive dinner made the most of everyone's time (and was delicious).

Thank you for a productive and enjoyable evening.

Sincerely,

Katie Koester
City Manager