

Introduced by: Mayor
Date: 4/08/97
Shortened Hearing: 4/22/97
Action: Enacted
Vote: Unanimous

**KENAI PENINSULA BOROUGH
ORDINANCE 97-24**

**AN ORDINANCE AUTHORIZING THE SALE OF APPROXIMATELY 10 ACRES OF
BOROUGH LAND FOR \$1.00 TO THE CITY OF SOLDOTNA FOR A
SEDIMENTATION POND AND ASSOCIATED STORM DRAIN SYSTEM ADJACENT
TO THE MARYDALE STORM SEWER OUTFALL**

WHEREAS, pursuant to KPB 17.10.100 (I) an application has been received from the City of Soldotna to purchase approximately 10 acres of borough land located within the City of Soldotna for a sedimentation pond and associated storm drain system adjacent to the Marydale storm sewer outfall; and

WHEREAS, the borough received State of Alaska Quitclaim Deed No. 899 to the subject land; and

WHEREAS, subject borough land is classified government; and

WHEREAS, the land is deposited into the land bank; and

WHEREAS, in order for this project to be bid and completed by the Alaska Department of Transportation and Public Facilities during the 1997 construction season a shortened hearing is requested; and

WHEREAS, the KPB Planning Commission will make their recommendation following the regularly scheduled meeting on April 14, 1997.

**NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI
PENINSULA BOROUGH:**

SECTION 1. That the Assembly finds that selling approximately 10 acres of borough land to the City of Soldotna for \$1.00 for a sedimentation pond and associated storm drain system adjacent to the Marydale storm sewer outfall is in the best interest of the public and the Borough. This finding is based on the following facts:

- a. The land will be used for a public purpose beneficial to the general public.
- b. The proposed sedimentation pond and associated storm drain system adjacent to the Marydale storm sewer outfall will assist the City of Soldotna to reduce sediment discharge into the Kenai River and other materials

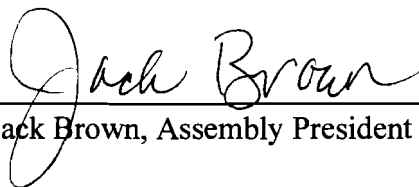
included in runoff water. Any reduction in solid materials and sediments is beneficial to the health of the Kenai River.

SECTION 2. The mayor is authorized, pursuant to KPB 17.10.100 (I), Negotiated Sale or Lease, to negotiate the sale of Tract 1, Crystalline Subdivision, KPB file No. 97-015, Kenai Recording District, Third Judicial District, State of Alaska, to the City of Soldotna subject to the sale conditions required by this ordinance and the applicable consistent provisions of KPB 17.10. The sales price shall be \$1.00. The sale shall be further subject to the terms and conditions contained in Attachment A, PURCHASE AGREEMENT. The authorization is for negotiation solely with the City of Soldotna, and it may not assign any rights to negotiate or enter an agreement for sale to any other person or entity. The City of Soldotna may accept this offer within 30 days of the date it is communicated to the City.

SECTION 3. The mayor is authorized to sign any documents necessary to effectuate this ordinance.

SECTION 4. That this ordinance shall take effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 22nd DAY OF APRIL, 1997.



Jack Brown, Assembly President

ATTEST:



Shirley Olsen
Borough Clerk

PURCHASE AGREEMENT

This Agreement is made on this 25th day of April, 1997, by and between the KENAI PENINSULA BOROUGH, an Alaska municipal corporation, whose address is 144 North Binkley Street, Soldotna, Alaska 99669 (hereinafter referred to as "KPB") and CITY OF SOLDOTNA, an Alaska municipal corporation, whose address is 177 North Birch, Soldotna, Alaska 99669 (hereinafter referred to as "BUYER").

WHEREAS, KPB is the owner of that real property located in the Kenai Recording District, Third Judicial District, State of Alaska, and more particularly described as follows:

Tract 1, Crystalline Subdivision, KPB file no. 97-15

(hereinafter referred to as "PROPERTY")

WHEREAS, Buyer has offered to buy, and KPB is willing to sell the above-described PROPERTY as evidenced by KPB Ordinance 97-24, enacted by the Assembly of the Kenai Peninsula Borough on April 22, 1997.

NOW THEREFORE, in consideration of the promises herein contained, KPB hereby agrees to sell to BUYER, and BUYER hereby agrees to purchase from KPB, the PROPERTY on the terms and conditions as set forth below:

1. PURCHASE PRICE

The purchase price of the PROPERTY is One dollar (\$1.00).

2. SURVEY

Buyers shall have the PROPERTY surveyed and platted and shall be responsible for all fees. The subdivision plat for the PROPERTY shall be filled prior to closing. Survey and platting instructions shall be approved in writing by KPB prior to commencement of survey and platting.

3. CLOSING COSTS

BUYER agrees to pay for all closing costs in connection with this Agreement, including without limitation all escrow fees, title insurance charges and recording fees. All costs must be paid in full at the time of closing.

4. CLOSING

Unless otherwise agreed in writing, closing will occur within 60 days of filing of the subdivision plat for the PROPERTY. Both parties will execute all documents required to complete the Purchase Agreement and, if applicable, establish an escrow account.

5. POSSESSION

Possession shall be delivered to BUYER at time of recording.

6. BREACH BY BUYER; REMEDIES OF KPB

In addition to the foregoing, in the event of a default in the performance or observance of any of the agreement terms, conditions, covenants and stipulations thereto, either prior to or after the closing of the sale, and such default continues thirty days after written notice of the default, KPB may cancel the agreement or take any legal action for damages or recovery of the PROPERTY. No improvements may be removed during the time which the contract is in default. This provision shall survive the execution of sale documents and shall continue in full force and effect until the sale is otherwise terminated.

7. NOTICE OF DEFAULT. Notice of the default will be in writing as provided herein below.

8. DEFENSE AND INDEMNIFICATION

BUYER covenants and agrees that it shall defend, indemnify and hold harmless KPB from and against all claims, demands, judgments, costs, expenses, and fines (including actual attorney's fees) which may arise, for any reason, from BUYER's use of or presence on the PROPERTY.

9. HAZARDOUS MATERIAL

- A. BUYER covenants and agrees that no hazardous substances or wastes shall be located on or stored on the PROPERTY, or any adjacent PROPERTY, nor shall any such substance be owned, stored, used, or disposed of on the PROPERTY or any adjacent property by BUYER, its agents, employees, contractors, or invitees, prior to BUYER's ownership, possession, or control of the PROPERTY.
- B. BUYER covenants and agrees that if the presence of hazardous material on the PROPERTY is caused or permitted by BUYER, its agents, employees, contractors, or invitees, or if contamination of the PROPERTY by hazardous material otherwise occurs on the PROPERTY, BUYER shall defend, indemnify, and hold harmless KPB from any and all claims, judgements, damages, penalties, fines, costs, liabilities, or losses (including, but not limited to, sums paid in the settlement of claims, attorney's fees, consultant fees and expert fees) which may arise as a result of such contamination. This defense and indemnification includes, without limitations, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal, or restoration work required by any federal, state or local government on or under the PROPERTY: As used herein, the term "hazardous material" means any hazardous or toxic substance, material, or waste which is or becomes regulated by any local government authority, the State of Alaska, or the United States Government.

10. ASSIGNMENTS

BUYER may assign the land upon which BUYER has an agreement only if approved by the mayor. Applications for assignment shall be made in writing on a form provided by the land management division. The assignment shall be approved if it is found that all interests of KPB are fully protected. The assignee shall be subject to and governed by the provisions and regulations applicable thereto.

11. ENTIRE AGREEMENT

This Agreement and the documents referred to herein contain the entire agreement of the parties with respect to the subject matter hereof. Any changes, additions or deletions hereto must be made in writing and signed by both KPB and BUYER or their respective successors in interest. The provisions of this agreement, unless inapplicable on their face, shall be covenants constituting

terms and conditions of the sale and of the agreement to finance the sale, and shall continue in full force and effect until the purchase price is paid in full, or this agreement is earlier terminated.

12. MISCELLANEOUS

- A. BUYER agrees to comply with any Declaration of Covenants, Conditions, and Restrictions of record, affecting the PROPERTY.
- B. BUYER acknowledges its responsibility to inspect the PROPERTY and agrees KPB assumes no liability for matters which would have been disclosed to the BUYER by an inspection of the PROPERTY. BUYER further acknowledges that KPB makes no warranties, either expressed or implied, nor assumes any liability whatsoever, regarding the social, economic or environmental aspects of the PROPERTY, to include without limitation, the soil conditions, water drainage, physical access, availability of personal use wood supplies now or in the future, or natural or artificial hazards which may or may not exist or merchantability, suitability, or profitability of the PROPERTY for any use or purpose. The parties mutually agree that this transfer will not be covered by the Residential Real Property Transfers Act, AS 34.70.010 et. seq.
- C. BUYER agrees the construction and maintenance of any improvements, roads, drainage systems and common areas shall be the responsibility of the BUYER. BUYER further agrees to comply with all federal, state, and borough regulations regarding the use and development of the PROPERTY, which includes but is not limited to; State of Alaska, Department of Environmental Conservation regulations regarding water and sewer installation; and if applicable, regulations of the U.S. Army Corps of Engineers regarding filling or draining any area within the PROPERTY designated as wetland by the appropriate authority.
- D. Time is of the essence in the performance of this Agreement.
- E. Cancellation. This agreement, while in good standing may be canceled in whole or in part, at any time, upon mutual written agreement by the BUYER and the mayor. This Purchase Agreement is subject to cancellation in whole or in part if improperly issued through error in procedure or with respect to material facts.
- F. Entry or Re-entry. In the event that this agreement is terminated, canceled or forfeited, or in the event that the demised land, or any part

thereof, should be abandoned by the BUYER during the agreement term, or prior to the payment in full of the purchase price, KPB or its agents, servants or representative, may immediately or any time thereafter, enter or re-enter and resume possession of said land or such part thereof, and remove all persons and property therefrom either by summary proceedings or by a suitable action or proceeding at law or equity without being liable for any damages therefor. Entry or re-entry by KPB shall not be deemed an acceptance of surrender of the contract.

- G. Fire Protection. The BUYER shall take all reasonable precautions to prevent, and take all reasonable actions to suppress destructive and uncontrolled grass, brush, and forest fires on the land under agreement, and comply with all laws, regulations and rules promulgated and enforced by the protection agency responsible for forest protection within the area wherein the demised premises are located.
- H. Notice. Any notice or demand, which under the terms of this agreement or under any statute must be given or made by the parties thereto, shall be in writing, and be given or made by registered or certified mail, addressed to the other party at the address shown on the contract. However, either party may designate in writing such other address to which such notice of demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed received when deposited in a U.S. general or branch post office by the addressor.
- I. Responsibility of Location. It shall be the responsibility of the BUYER to properly locate himself and his improvements on the purchased, leased, or permitted land.
- J. Rights of Mortgage or Lienholder. In the event of cancellation or forfeiture of a sale agreement for cause, the holder of a properly recorded mortgage, conditional assignment, or collateral assignment will have the option to acquire the sale agreement for the unexpired term thereof, subject to the same terms and conditions as in the original instrument. Any party acquiring an agricultural purchase or lease agreement must meet the same requirements as the original BUYER or lessee.
- K. Rights-of-way. All trails or roads in existence at the time the land is sold may be considered to be an easement for public use. Nothing herein contained shall prevent the mayor from specifically reserving such additional easements and rights-of-way across KPB land as deemed reasonable and necessary prior to the sale thereof.

- L. Sanitation. The BUYER, lessee, or permittee shall comply with all regulations or ordinances which a proper public authority in its discretion shall promulgate for the promotion of sanitation. The premises under purchase or lease agreement, or permit shall be kept in a clean and sanitary condition and every effort shall be made to prevent any pollution of the waters and land.

- M. Shore Land Public Access Easement. As established by AS 38.05, KPB land sold or leased may be subject to a minimum 50 foot public access easement landward from the ordinary high water mark or mean high water mark.

- N. Violation. Violation of any provision of chapter 17.10 of KPB Code of Ordinances, or of the terms of the agreement of sale may expose the BUYER to appropriate legal action including forfeiture of purchase interest, termination, or cancellation of BUYER's interest in accordance with state law.

- O. Written Waiver. The receipt of payment by KPB, regardless of knowledge of any breach of the Purchase Agreement by the BUYER, or of any default on the part of the BUYER, in observance or performance of any of the conditions or covenants of the agreement, shall not be deemed to be a waiver of any provision of the agreement. Failure of KPB to enforce any covenant or provision therein contained shall not discharge or invalidate such covenants or provision or affect the right of KPB to enforce the same in the event of any subsequent breach or default. The receipt by KPB of any payment of any other sum of money after notice of termination or after the termination of the agreement for any reason, shall not reinstate, continue or extend the agreement, nor shall it destroy or in any manner impair the efficacy of any such notice of termination unless the sole reason for the notice was nonpayment of money due and payment fully satisfies the breach.

- P. This Agreement shall be deemed to have been jointly drafted by both parties. It shall be constructed according to the fair intent of the language as a whole, not for or against any party. The interpretation and enforcement of this Agreement shall be governed by the laws of the State of Alaska. The titles of sections in this Agreement are not to be construed as limitations of definitions but are for identification purposes only.

This Agreement has been executed by the parties on the day and year first above written.

KENAI PENINSULA BOROUGH:

BUYER/CITY OF SOLDOTNA:

Mike Navarre
Mike Navarre, Mayor

Thomas R. Boedeker
Thomas R. Boedeker, City Manager

Dated: 4/25/97

Dated: 4-24-97

ATTEST:

APPROVED AS TO LEGAL FORM AND SUFFICIENCY:

Shirley Olsen
Shirley Olsen
Acting Borough Clerk

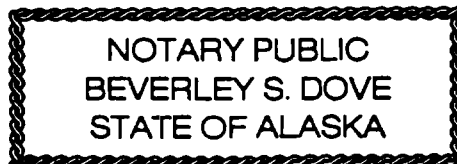
Colette G. Thompson
Colette G. Thompson,
Borough Attorney

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this 25th day of April, 1997, by Mike Navarre, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, on behalf of the corporation.

Beverley S. Dove
Notary Public in and for Alaska
My commission expires: August 22, 1999



NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this 24th day of April, 1997, by Thomas R. Boedeker, City Manager of the City of Soldotna, an Alaska municipal corporation, on behalf of the corporation.



Teresa Walker
Notary Public in and for Alaska
My commission expires: 11-17-99

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