

Introduced by: Mayor
Date: May 21, 1991
Vote: ADOPTED
Action: UNANIMOUS

KENAI PENINSULA BOROUGH

RESOLUTION 91-59

AUTHORIZING THE PURCHASE OF LAND FROM JESSE M. MEEKS AND MARY ANN MEEKS FOR THE PURPOSE OF ESTABLISHING A BUFFER ZONE OF PROPERTIES AROUND THE SOLDOTNA LANDFILL SITE

WHEREAS, the Mayor has proposed the purchase of properties adjacent to the Soldotna Landfill to establish a buffer zone; and

WHEREAS, by Ordinance 91-3, the Assembly appropriated \$2,108,600 for the purchase of the properties with the provision that the decision to purchase any individual property and approval of the terms of the sale was reserved to the Assembly; and

WHEREAS, an agreement has been reached with JESSE M. MEEKS AND MARY ANN MEEKS that would establish the terms of sale of the property to the Borough; and

WHEREAS, according to the terms of the agreement these offers will be presented to the Assembly for its consideration;

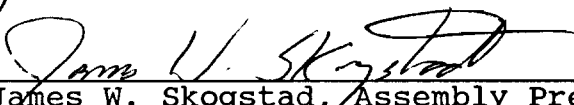
NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

Section 1. That the Assembly hereby authorizes the purchase of property as described in the attached Purchase Agreement and authorizes the Mayor to proceed with the purchase in accordance with the terms and conditions of the agreement and make such payments or execute such deeds of property as are necessary to carry out the purchase agreement.

Section 2. That the attached agreement hereby approved is hereby incorporated into this resolution as if wholly set forth and shall be a permanent part of the resolution.

Section 3. That this resolution shall take effect at 12:01 a.m. of the date after its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS 21st DAY OF May, 1991.


James W. Skogstad, Assembly President

ATTEST:


Acting Borough Clerk

AGREEMENT TO PURCHASE

The KENAI PENINSULA BOROUGH, hereinafter "Purchaser," at 144 N. Binkley Street, Soldotna, Alaska 99669, and JESSE M. MEEKS and MARY ANN MEEKS, hereinafter "Sellers," residing at Post Office Box 1342, Soldotna, AK 99669, enter into this Agreement for the purchase of the real property and improvements described as:

T4N, R11W, Sec. 12, according to Plat No. K-8047, Sterling Forest Subdivision. Lot 2, cntg. 2.74 acres m/l. KPB Assessor's Parcel No. 131-640-03.

together with all fixtures and equipment attached to and a part of the above-described property.

1. This Agreement to Purchase is subject to and conditioned upon Assembly appropriation and approval of this Agreement to Purchase. The Purchaser agrees that upon appropriation and approval by the Assembly of this Agreement it will pay \$Two Hundred Twenty Thousand Dollars (\$220,000.00) to purchase the property. This payment will be made to a closing agent who will disburse all sums necessary to pay off prior liens or encumbrances and disburse the net proceeds to the Sellers. The closing agent fee will be paid by Purchaser except as otherwise provided in this Agreement. In addition to the above stated payment, the Purchaser agrees to items stated in the following attached addendum.

2. The Sellers shall convey title by statutory warranty deed. The Sellers warrant that there are no encumbrances or interests in the property affecting the title nor are there any easements to which this property is subject other than for utilities or sectionline easements. Deeds shall be drawn in the name of the Kenai Peninsula Borough, an Alaska municipal corporation, 144 N. Binkley Street, Soldotna, Alaska 99669.

3. This Agreement is entered into by the Sellers in consideration of the Borough's promises to seek Assembly appropriation and approval of the sale agreement and for consideration of \$100.00 earnest money and other good and valuable consideration. If the purchase is completed this amount will be a credit against the purchase price.

4. Purchaser will require title insurance and all fees and expenses for title search and title insurance will be paid by the Purchaser. Arrangements for title searches and title insurance will be the responsibility of the Purchaser.

5. All expenses or costs associated with the prepayment or pay-off of any liens or mortgages on the property will be the responsibility of the Sellers. These costs, if any, will be deducted from the proceeds of the sale at closing by the closing agent. The Sellers make no representations as to the present or future working condition or acceptability of any well or sewerage system located on the property.

6. The Purchaser will take possession of the property at closing.

7. In the event that any improvements on the property are destroyed or materially damaged prior to closing, this contract shall at the Purchaser's election immediately become null and void and any earnest money or other considerations shall be returned to the Buyer on demand.

8. The Sellers represent that no hazardous, toxic, or other wastes have been disposed of on this site by Sellers. Sellers further represent that, to their knowledge, no prior owners or other persons have caused such materials to be stored or disposed of on this property. The Sellers agree that in the event that any contamination from any source is discovered to exist prior to closing, or that any such materials or fuels are found stored upon the site in such manner that Sellers cannot remove them prior to closing without contaminating the site, the Purchaser may withdraw from the Agreement to Purchase without any obligation or cost.

Should, after closing, any hazardous, toxic, or other waste materials be found to be stored on the property, or any contamination be found to exist upon the property due to disposal or storage of such materials on the property, then the parties agree as follows:

- a. The Purchaser shall not be responsible for any costs or expenses for cleanup for removal of such materials that might be assessed against the Sellers or against any prior owners by any governmental agency or other person;
- b. Purchaser shall not seek or receive reimbursement from Sellers for any costs or expenses for cleanup or removal which Purchaser may incur by reason of such storage or contamination by prior owners or entities where those activities occurred prior to Sellers acquiring of the property and without Sellers' knowledge.

- c. Purchaser shall not seek or receive reimbursement from Sellers for any costs or expenses of cleanup or removal which Purchaser may incur in the future where the cleanup or removal of contamination was caused by persons or entities other than Sellers or their tenants who were acting without permission of the Sellers in conducting the activity giving rise to the contamination requiring the cleanup or removal.
- d. The Purchaser will hold the Sellers harmless from claims or damages due to contamination on Sellers' property that exist because of Purchaser's disposal of waste at the Soldotna Landfill or other activities of the Purchaser.
- e. Purchaser agrees that it will hold the Sellers harmless from claims that may be asserted against Sellers arising out of activities of the Purchaser after closing except where the claim arises out of some act of the Sellers, their agents or representatives.
- f. Notwithstanding other rights that it may have to recover any expenses for cleanup activities under this agreement or by law, the Purchaser agrees that it will not seek indemnity, reimbursement, damages or recovery of cleanup costs from Sellers unless the costs for such activity paid or to be paid by Purchaser exceeds or is reasonably expected to exceed \$5000. This applies to all cleanup or removal activities the Purchaser may be required to take under current or future laws.
- g. Except as specifically provided in this agreement, the provisions of Section 8 of this Agreement do not create any obligation on the part of the Purchaser to defend, indemnify, or hold harmless the Sellers from any claims by other persons or entities that arise or are claimed to arise out of any storage use or disposal of fuels, hazardous or toxic materials or waste by the Sellers or any prior owner or other person. Sellers acknowledge the responsibility to handle such claims without recourse to the Purchaser.

9. Taxes and assessments for the current calendar year will be prorated as the date of closing. If at closing the amount of taxes due are not yet determined, the taxes shall be estimated

on best estimation of the Borough and the necessary amounts deposited and held in escrow for payment of the taxes. If additional amounts are necessary to pay the taxes, the Sellers and Purchaser each agree to provide the necessary additional funds to cover their prorated share of the taxes.

10. In consideration for this Agreement to Purchase the Sellers agree that they will not initiate any action prior to closing that would attempt to block or prevent the Borough from proceeding with any plans or permits for operation or expansion of the Soldotna Landfill site. If this sale is completed, the Sellers agree that they will not assert or initiate any action attempting to block or otherwise prevent any continued operations or expansion of the Soldotna Landfill. This agreement is given in consideration of the Agreement to Purchase and eventual purchase of the property if completed and in recognition that the purchase of these properties is for the express purpose of providing a buffer zone for continued and expanded operation of the Soldotna Landfill. That should the Borough Assembly not appropriate funds or disapprove this Agreement to Purchase this restriction on the Sellers shall become null and void. The parties agree to sign all documents necessary to complete the sale.

11. The Sellers agree that the Purchaser has made no representations or assertions regarding any tax consequences to the Sellers that would arise from this sale.

12. Should the Borough Assembly approve this Agreement and appropriate the necessary funds for the purchase and the Sellers refuse or fail to execute the documents conveying title within ninety days of such approval and appropriation by the Borough Assembly, Purchaser may either elect to terminate this Agreement to Purchase and be under no obligation to purchase the property or it may elect to seek performance of the Agreement at its option. In the event the Sellers fail to close as required by this Agreement, the provisions of section 10 of this Agreement whereby Sellers have agreed not to initiate any action to preclude operation or expansion of the landfill shall continue in full force and effect.

13. Purchaser has made no representations or assurances that the funds necessary for this purchase or approval of the sale will be made by the Kenai Peninsula Borough Assembly.

14. This document contains the entire agreement between the parties. No promises, representations or offers, either written or oral form a part of this agreement unless contained

ACKNOWLEDGMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me
this 13th day of May, 1991, by Jesse M Meeks

Joan K Wood
Notary Public in and for Alaska
My Commission Expires: 4-26-92

ACKNOWLEDGMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me
this 13th day of May, 1991, by Mary Ann Meeks.

NOTARY PUBLIC
Barbara A. Lewis
State of Alaska
My commission expires 3-24-94

Barbara A. Lewis
Notary Public in and for Alaska
My Commission Expires: 3-24-94

ATTEST:

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY BY:

Teresa Hudson
Acting Borough Clerk

Kristine Schmidt, Deputy Borough
for Thomas R. Boedeker Attorney
Borough Attorney

ADDENDUM TO AGREEMENT TO PURCHASE

The following is hereby incorporated into and made a part of the Agreement to Purchase by and between the Kenai Peninsula Borough "Purchaser" and Jesse M. Meeks and Mary Ann Meeks "Sellers":

1) Free rent from June 1, 1991 until September 1, 1991.

2) The Seller may remove from the property the following:

- A. Pam Air Compressor
- B. Blaze King Stove
- C. (2) Modine Suspended Furnaces
- D. Fiberglass Siding from greenhouse #1
- E. Washer
- F. Dryer
- G. Range

PURCHASER

Donald E. Gilman
Donald E. Gilman, Mayor

Dated: 5-14-91

SELLER

Mary Ann Meeks

Dated: 5-14-91

SELLER

Jesse M. Meeks

Dated: 5-14-91

by Mary Ann Meeks P.O.A.

POWER OF ATTORNEY

(GENERAL-ALASKA)

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KNOW ALL MEN BY THESE PRESENTS: That Jesse M. Meeks
P.O. Box 1342 City of Seldovia, Alaska 99669

has made, constituted and appointed, and by these presents does make, constitute and appoint
Mary Ann Meeks

... true and lawful attorney... for... and in... place and
stead, and for... use and benefit ~~of the sale and/or purchase of~~

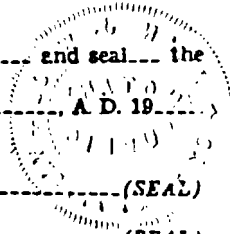
to ask, demand, sue for, recover, collect and receive all such sums of money, debts, dues, accounts, legacies, bequests, interests, dividends, annuities and demands whatsoever, as are now or shall hereafter become due, owing, payable or belonging to... and have, use and take all lawful ways and means in... or otherwise for the recovery thereof, by attachments, arrests, distress or otherwise, and to compromise and agree for the same, and acquittances or other sufficient discharges for the same for... and in... to make, seal and deliver, to bargain, contract, agree for, purchase receive and take lands, tenements, hereditaments, and accept the seizing and possession of all lands, and all deeds and other assurances in the law therefor, and to lease, let, demise, bargain, sell, remise, release, convey, mortgage and hypothecate lands, tenements and hereditaments, upon such terms and conditions, and under such covenants as... shall think fit. Also, to bargain and agree for, buy, sell, mortgage, hypothecate, and in any and every way and manner deal in and with goods, wares and merchandise, choses in action, and other property in possession or in action, and to make, do and transact all and every kind of business of what nature and kind soever, and also for... and in... and as... act and deed, to sign, seal execute, deliver and acknowledge such deeds, leases and assignments of leases, covenants, indentures, agreements, mortgages, hypothecations, bottomries, charter parties, bills of lading, bills, bonds, notes, receipts, evidences of debt, releases and satisfaction of mortgage, judgments and other debts, and such other instruments in writing of whatever kind or nature, as may be necessary or proper in the premises.

GIVING AND GRANTING unto... said attorney... full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as... might or could do if personally present, ... hereby ratifying and confirming all that... said attorney... shall lawfully do or cause to be done by virtue of these presents.

IN WITNESS WHEREOF, ... have hereunto set... hand... and seal... the... day of...

Signed, Sealed and Delivered in presence of
(GRANTOR) Jesse M. Meeks 10-16-87

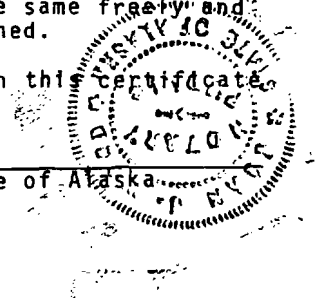
_____ (SEAL)



This is to Certify that on this 16th day of October 1987, before me the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared Jesse M. Meeks to me known be the person described in and who executed the above foregoing instrument, and acknowledged to me that he signed the same freely and voluntarily for the uses and purposes therein mentioned.

Witness my hand and official seal the day and year in this certificate first above written.

Jean Wood
Notary Public in and for the State of Alaska
residing at Soldotna



My commission expires 4/26/88

Record in Kenai Return to:

*Mary Ann Meeks
P.O. Box 1342
Soldotna, Alaska 99669*

87-009787

13-

RECORDED FILED
KENAI REC.
DISTRICT

OCT 16 10 42 AM '87

RECORDED BY Meeks

ADDRESS 535816