

EXCHANGE AGREEMENT

WHEREAS, the Kenai Peninsula Borough and the City of Seward are owners of certain real property that the City of Seward wishes to exchange; and

WHEREAS, the objectives are to construct an office/warehouse building that would become a barrier between the elementary school and a backup generation facility as well as additional sidewalk on Sea Lion Avenue to accommodate foot traffic between schools; and

WHEREAS, the parties have designed the exchange to include lands of approximate equal area and value;

NOW, THEREFORE, this Agreement is made on this _____ of _____, 2012, 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"), pursuant to KPB Ordinance 2011-__ enacted _____, 2012, and the City of Seward, an Alaska municipal corporation, whose address is P.O. BOX 167 Seward, AK 99664-0167 (hereinafter referred to as "CITY OF SEWARD").

1. KPB PARCEL

Subject to other applicable provisions of this Agreement, for good and valuable consideration, the KPB will convey all interest it has in the following described parcel of land ("KPB Property") to CITY OF SEWARD. The KPB makes no warranties, express or implied, nor assumes any liability whatsoever, regarding the social, economic, or environmental aspects of the KPB Property, including, without limitation, the soil conditions, water drainage, access, natural or artificial hazards that may exist, or the merchantability, profitability or fitness of the KPB Property for any particular purpose. CITY OF SEWARD shall have 30 days from the date of this agreement in which to inspect title to KPB Property and associated title records. If CITY OF SEWARD determine said title to be unacceptable, CITY OF SEWARD may cancel this agreement without penalty by written notice. If no such notice is given, it shall be deemed that CITY OF SEWARD accept title to KPB Property after having had a full opportunity to inspect the KPB Property and associated title records, and have determined them suitable for the purposes addressed by this Agreement.

Property Description

A 0.56 Acre +/- portion of Lot 8A-1 Fort Raymond Subdivision Replat No. 2 according to plat no. 2002-18 Seward Recording District, as shown on attached Exhibit A; subject to modification upon field survey and final platting action.

2. CITY OF SEWARD PARCEL

Subject to other applicable provisions of this Agreement, for good and valuable consideration, the CITY OF SEWARD will convey all interest it has in the following described parcel of land ("CITY OF SEWARD Property") to KPB. The CITY OF SEWARD makes no warranties, express or implied, nor assumes any liability whatsoever, regarding the social, economic, or environmental aspects of the CITY OF SEWARD Property, including, without limitation, the soil conditions, water drainage, access, natural or artificial hazards that may exist, or the merchantability, profitability or fitness of the CITY OF SEWARD Property for any particular purpose. KPB shall have 30 days from the date of this agreement in which to inspect title to CITY OF SEWARD Property and associated title records. If KPB determine said title to be unacceptable, KPB may cancel this agreement without penalty by written notice. If no such notice is given, it shall be deemed that KPB accept title to CITY OF SEWARD Property after having had a full opportunity to inspect the CITY OF SEWARD Property and associated title records, and have determined them suitable for the purposes addressed by this Agreement.

Property Description

A 0.56 Acre +/- portion of Lot 6A-1 Fort Raymond Subdivision Replat No. 2 according to plat no. 2002-18 Seward Recording District, as shown on attached Exhibit A; subject to modification upon field survey and final platting action.

3. CONSIDERATION

KPB and CITY OF SEWARD agree that the property subject to this exchange is of similar value, and each party is benefitted by this exchange for their respective purposes, and therefore the land received by each party is the full consideration for the land conveyed under this agreement.

4. TITLE

A. KPB PROPERTY

Title shall be delivered to CITY OF SEWARD at time of closing by **quitclaim deed**. KPB conveys only its interest in the property, if any, without warranty of any kind or nature whatsoever. Title shall also be subject to reservations, easements, rights-of-way, covenants, conditions and restrictions of record.

B. CITY OF SEWARD PROPERTY

Title shall be delivered to KPB at time of closing by **quitclaim deed**. CITY OF SEWARD conveys only its interest in the property, if any, without warranty of any kind or nature whatsoever. Title shall also be subject to reservations, easements, rights-of-way, covenants, conditions and restrictions of record.

5. ESCROW AND CLOSING COSTS

Unless agreed otherwise, KPB and CITY OF SEWARD will be responsible for their respective costs under this Agreement. CITY OF SEWARD will be responsible for surveying and platting costs associated with this exchange. Settlement for costs shall occur no later than the date of closing. Property taxes shall be fully paid for each property by its current owner prior to closing.

6. CLOSING

Unless otherwise agreed in writing, closing will occur within 90 days of plat recordation. KPB and CITY OF SEWARD will execute all documents required to complete the Agreement including signing required plat documents and, if applicable, establish an escrow account.

7. POSSESSION

Possession shall be delivered at time of recording.

8. BREACH REMEDY

Prior to closing of the sale, in the event that KPB or CITY OF SEWARD fail to make any payment required, or fail to submit or execute any and all documents and papers necessary for closing and transfer of title within the time period specified in this agreement, the other party may terminate this agreement.

9. MUTUAL DEFENSE AND INDEMNIFICATION

Each party shall indemnify, defend, save and hold the other party, their elected and appointed officers, agents and employees, harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorneys fees resulting from their own performance or failure to perform in accord with the terms of this Agreement in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions by the other party or their agents which are said to have contributed to the losses, failure, violations, or damage. However, neither party shall not be responsible for any damages or claim arising from the sole negligence or willful misconduct of the other party, their agents, or employees.

10. HAZARDOUS MATERIAL

Both parties covenant and agree that no hazardous substances or wastes shall be located on or stored on either property prior to closing.

11. ASSIGNMENTS

This agreement may not be assigned.

12. MISCELLANEOUS

- A. 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 parties. Provisions of this agreement, unless inapplicable on their face, shall be covenants constituting terms and conditions of the exchange, and shall continue in full force and effect and will survive closing.

- B. Residential Real Property Transfers Act. 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. Development. Both parties agree to comply with all federal, state, borough and city regulations regarding 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 wetlands by the appropriate authority.
- D. Time. Time is of the essence in 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. This exchange 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, the owner or its agents, servants or representatives, may immediately or any time thereafter, enter or re-enter and resume possession of said lands 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.
- G. Fire Protection. Both parties 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 each party to properly locate improvements on the subject parcels.
- J. Rights of Mortgagee 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 agreement for the unexpired term thereof, subject to the same terms and conditions as in the original instrument
- K. Sanitation. Greens agree to comply with all regulations or ordinances which a proper public authority in its discretion shall promulgate for promotion of sanitation. Premises under purchase agreement shall be kept in a clean and sanitary condition and every effort shall be made to prevent any pollution of waters and lands.
- L. Construction. 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

CITY OF SEWARD

Mike Navarre, Mayor

James Hunt, City Manager

ATTEST:

ATTEST:

Johni Blankenship
Borough Clerk

Johanna Kinney
City Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

Holly B. Montague
Deputy Borough Attorney

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by Mike Navarre, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, for and on behalf of the corporation.

Notary Public in and for Alaska
My commission expires: _____

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by James Hunt, City Manager of the CITY OF SEWARD, an Alaska municipal corporation, for and on behalf of the corporation.

Notary Public in and for Alaska
My commission expires: _____