KENAI PENINSULA BOROUGH
RESOLUTION 2011-017

A RESOLUTION AUTHORIZING THE ACQUISITION OF CERTAIN REAL
PROPERTY DESCRIBED AS LOT 1 BLOCK 2 OLD MILL SUBDIVISION FROM
CROWLEY WILLIAMSON LIVING TRUST FOR FAIR MARKET VALUE UNDER
THE EMERGENCY WATERSHED PROTECTION PROGRAM'S OLD MILL
SUBDIVISION/LOST CREEK VOLUNTARY BUYOUT PROJECT

WHEREAS, the Kenai Peninsula Borough, in partnership with the USDA Natural Resources
Conservation Service Emergency Watershed Protection program and the State of
Alaska Division of Homeland Security and Emergency Management is conducting
the Old Mill Subdivision/Lost Creek Voluntary Buyout Project as authorized by
Ordinance 2008-19-18 (Mayor) Substitute and Ordinance 2009-45; and

WHEREAS, property owners applied to be considered for participation in the program and
properties were ranked based on Lost Creek flood history and flood susceptibility
criteria; and

WHEREAS, highest ranking properties were reviewed under federal due diligence protocols and
were independently appraised; and

WHEREAS, under the voluntary buyout program residential properties can be purchased at the
appraised fair market value and subsequently the properties are to be returned to their
natural floodplain function; and

WHEREAS, the subject property was appraised by Robert P. Olchin, Certified Residential
Appraiser, on September 13, 2010 at $150,000, and upon completion of an
administrative review process the appraisal was accepted by the Kenai Peninsula
Borough on December 30, 2010; and

WHEREAS, under the Old Mill Subdivision/Lost Creek Voluntary Buyout project the Kenai
Peninsula Borough has offered to purchase the subject property for its appraised fair
market value subject to assembly approval; and

WHEREAS, funds for this acquisition are available in account 271.94910.OMIL2.48610; and

WHEREAS, upon acquisition the borough intends to contract for the removal of all improvements
on the land and to subsequently grant a conservation easement to the USDA Natural
Resources Conservation Service as stipulated by the Emergency Watershed
Protection program; and
WHEREAS, the KPB Planning Commission at its regularly scheduled meeting of February 28, 2011, recommended adoption by unanimous consent;

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

SECTION 1. That the purchase of the following described real property under the Old Mill Subdivision Lost Creek Voluntary Buyout Project is in the best interests of the borough:

Lot 1, Block 2, OLD MILL SUBDIVISION, according to the official plat thereof, filed under Plat Number S-93, Records of the Seward Recording District. (Assessor Parcel No. 125-370-11)

SECTION 2. That the terms and conditions substantially in the form of the Purchase Agreement accompanying this ordinance are hereby approved. The purchase price shall be $150,000 plus closing costs not to exceed $5,000.

SECTION 3. That this acquisition is for the purpose of mitigating future flood damage by returning the property to its natural floodplain function.

SECTION 4. That the proposed classification of this land is government.

SECTION 5. That the mayor is authorized to execute any and all documents necessary to purchase the real property described in Section 1 in accordance with the terms and conditions contained in this resolution and the accompanying Purchase Agreement and consistent with applicable provisions of KPB Chapter 17.10.

SECTION 6. That the cost of this acquisition shall be charged to Old Mill Subdivision/Lost Creek Voluntary Buyout Project Account 271.94910.OMIL2.48610.

SECTION 7. That this resolution shall take effect immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 1ST DAY OF MARCH, 2011.

ATTEST:

Gary Knopp, Assembly President

Johni Blankenship, Borough Clerk

Resolution 2011-017
Kenai Peninsula Borough, Alaska
Yes: Johnson, McClure, Smalley, Smith, Taurainen
No: Haggerty, Pierce, Knopp
Absent: Murphy
This Agreement is made on this ___ day of ______________, 2011, by and
between Crowley/Williamson Living Trust whose address is 2810 Pribilof Street,
Anchorage, AK 99517 (hereinafter referred to as "SELLER") and the KENAI
PENINSULA BOROUGH, an Alaska municipal corporation, whose address is 144 North
Binkley Street, Soldotna, Alaska 99669 (hereinafter referred to as "KPB").

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

Lot 1, Block 2, OLD MILL SUBDIVISION, according to the official plat thereof,
filed under Plat Number S-93, Records of the Seward Recording District, Third
Judicial District, State of Alaska.

(Assessor Parcel No. 125-370-11)

Hereinafter “the Property”

WHEREAS, KPB has offered to buy, and SELLER is willing to sell the Property as
evidenced by this Purchase Agreement;

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

1. PURCHASE PRICE

The purchase price of the Property is one hundred fifty thousand dollars and NO
cents ($150,000.00). The Purchase Price shall be paid by KPB at time of closing.
The purchase of the property and appropriation for the purchase are subject to
borough assembly approval.

2. EARNEST MONEY RECEIPT

A down payment of $1,000 paid by KPB is being held in the trust account of First
American Title Insurance Company, Seward, AK, to be applied towards the
purchase price of the Property. The purchase of the Property is subject to the
approval of the KPB assembly, and if the KPB assembly fails to authorize the
sale or if the SELLER breaches any of the terms of this agreement, the
$1,000.00 shall be returned to the KPB.
3. **TITLE**

Title shall be delivered at time of closing by Warranty Deed, which shall be issued to KPB. SELLER warrants and covenants that at the time of closing there shall be no liens or judgments recorded against SELLER in the same recording district in which the Property subject to this purchase agreement is situated. Title shall be clear of liens and encumbrances except title is subject to reservations, easements, rights-of-way, covenants, conditions and restrictions of record.

4. **ESCROW AND CLOSING COSTS**

In addition to the purchase price, KPB shall pay closing costs in connection with this Agreement, including without limitation all escrow fees, title insurance charges, recording fees and bank charges up to $5,000. Property taxes and assessments will be prorated. All costs will be paid in full at the time of closing.

5. **CLOSING**

Unless otherwise agreed in writing, closing will occur not later than **August 15, 2011**. At closing, KPB will pay the balance of the purchase price. Both parties will execute all documents required to complete the Purchase Agreement and, if applicable, establish an escrow account.

6. **POSSESSION**

Possession shall be delivered to KPB at time of recording. The Property shall be delivered in a neat, safe, and “broom-clean” condition. All personal property and all items, if any, identified in Attachment A “List of Items to be Removed by Homeowner Prior to Sale” shall be removed and retained by SELLER.

7. **KENAI PENINSULA BOROUGH ASSEMBLY APPROVAL**

Purchase of the Property by the Kenai Peninsula Borough is subject to authorization by the Kenai Peninsula Borough Assembly and appropriation of funds. If the Kenai Peninsula Borough fails to enact an ordinance authorizing the purchase of the subject land and appropriation of funds, this agreement shall be terminated without penalty.
8. HAZARDOUS MATERIAL

SELLER covenants to the best of SELLER'S knowledge, that as the date of this agreement, except as specifically identified herein, the Property is free of all contamination from petroleum products or any hazardous substance or hazardous waste, as defined by applicable state or federal law, and there are no underground storage tanks or associated piping on the Property. SELLER agrees that no hazardous substances or wastes shall be located on or stored on the Property, or any adjacent property by seller, owner or contractors, nor shall any such substance be owned, stored, used, or disposed of on the Property or any adjacent property by SELLER, its agents, employees, contractors, or invitee's, prior to KPB’S ownership, possession, or control of the Property.

NOTE: THERE IS A 500 GALLON FUEL TANK UNDERGROUND THAT SHOULD BE MIT BY CLOSING. RTC

9. 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 SELLER or their respective successors in interest. 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.

10. BREACH REMEDY

Prior to closing of the sale, in the event that KPB or SELLER fails to make any payment required, or fails 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 SELLER or KPB may terminate this Agreement.

11. MISCELLANEOUS

A. Time. Time is of the essence in performance of this Agreement.

B. Cancellation. This Agreement, while in good standing may be canceled in whole or in part, at any time, upon mutual written agreement by SELLER and KPB. 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.

C. 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
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.

D. Interpretation. This Agreement shall be deemed to have been jointly drafted by both parties. It shall be construed 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:

David R. Carey, Mayor
Dated: ____________

SELLERS:

Robert T. Crowley, Trustee
Dated: 2/9/11

Judith M. Williamson, Trustee
Dated: 2/9/11

ATTEST: APPROVED AS TO LEGAL FORM AND LEGAL SUFFICIENCY:

Johni Blankenship, Holly B Montague,
Borough Clerk Deputy Borough Attorney

Kenai Peninsula Borough, Alaska
KPB/Crowley-Williamson Living Trust – Purchase Agreement
NOTARY ACKNOWLEDGMENT

STATE OF ALASKA  )
 ) ss
THIRD JUDICIAL DISTRICT  )

The foregoing instrument was acknowledged before me this _______ day of
________________________________________, 2011, by David Cárey, 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
______________, 2011, by Robert T. Crowley, Trustee of the
Crowley/Williamson Living Trust, for and on behalf of the Trust.

Cheryl A. Vonada
Notary Public in and for Alaska
My commission expires: 6/14/12

STATE OF ALASKA
NOTARY PUBLIC
Cheryl A. Vonada
NOTARY ACKNOWLEDGMENT

STATE OF ALASKA                        )
                                        ) ss
THIRD JUDICIAL DISTRICT     )

The foregoing instrument was acknowledged before me this 9th day of
February, 2011, by Judith M. Williamson, Trustee of the
Crowley/Williamson Living Trust, for and on behalf of the Trust.

Cheryl Vonada
Notary Public in and for Alaska
My commission expires: 6/14/12

STATE OF ALASKA
NOTARY PUBLIC
Cheryl A. Vonada