

1st Reading: June 27, 2016

2nd Reading: July 25, 2016

Presented By:
City Manager

Action Taken:

Yes 4

No 0

Abstain 0

CITY OF NOME, ALASKA

ORDINANCE NO. O-16-07-01

**AN ORDINANCE AUTHORIZING THE SALE OF SURPLUS REAL PROPERTY OWNED BY
THE CITY OF NOME (BLOCK 85, LOTS 3-6 [TO BE REPLATTED AS "BLOCK 85, LOT 3A"])
TO KAWERAK, INC.**

SECTION 1. CLASSIFICATION

This is a non-Code ordinance.

SECTION 2. AUTHORIZATION

This ordinance is adopted pursuant to NCO 2.10.030.


SECTION 3. AUTHORIZATION FOR LAND DISPOSAL

NOW, THEREFORE, BE IT ORDAINED BY THE NOME COMMON COUNCIL THAT:

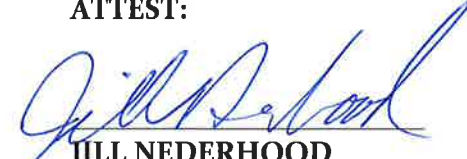
- (A) The following described real property is no longer necessary for any municipal or public purpose:

Lots 3-6, Block 85, Nome Townsite (606 I Street).
- (B) Per NCO 2.10.030, the city council may, by ordinance, provide for the disposal of any interest in real property to a municipal, borough, state or federal entity, or to any other entity providing a necessary public service without seeking bids and for less than the current assessed value or current appraised value of that interest in real property. All disposals made pursuant to this subsection shall include a condition requiring that the interest of the city being disposed of reverts to the city in the event the real property disposed of is not being used to provide the necessary public service justifying the original disposal.
- (C) The City of Nome reserves the full right of rejection unless and until an acceptance has been communicated to the purchaser in writing.
- (D) The agreed-upon sale price is for one-million five-hundred thousand dollars (\$1,500,000).

APPROVED and SIGNED this 25th day of July, 2016.


RICHARD BENEVILLE
Mayor

ATTEST:


JILL NEDERHOOD
Deputy City Clerk

AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE

For good and valuable consideration the receipt whereof is hereby acknowledged, the City of Nome, an Alaska municipal corporation (“**Nome**” or “**City**” or “**Seller**”) and Kawerak Inc. (“**Buyer**”), an Alaskan nonprofit corporation, hereby agree as follows:

1. Property to Be Sold.

from (a) Seller hereby agrees to sell to Buyer and Buyer hereby agrees to purchase Seller, subject to the terms and conditions set forth herein, the following-described real property and improvements:

Block 85 Lot 3
Block 85 Lot 4
Block 85 Lot 5
Block 85 Lot 6

1905 Nome Townsite Plat which have been consolidated
as:

Block 85, Lot 3A Doc. No. 2016-000599-0, Cape
Nome Recording District, Second Judicial District,
State of Alaska

(collectively, the “**Property**”).

(b) At the Closing, Seller shall convey to Buyer all of the Property by Limited Warranty Deed in the form attached as Exhibit A subject to the following:

- (i) Rights-of-way and easements of record acquired by any person or entity, public or private, including, but no limited to, public rights-of-way.
- (ii) All restrictions, regulations, requirements, laws, ordinances, resolutions and orders of all boards, bureaus, commissions, departments and bodies of any municipal, state or federal authority.
- (iii) Provisions and reservations as made applicable by terms of the U.S. Patent or by law.

2. Price. Buyer shall pay Seller one-million five hundred thousand dollars (\$1,500,000) for the Property in cash at closing.

3. Title Insurance. Buyer may, at Buyer's sole option and expense, purchase Buyer's title insurance.

4. Conditions Precedent to Closing. The following matters shall be completed prior to or coincident with Closing or waived in writing by the parties ("Conditions Precedents to Closing"):

(a) Seller and Buyer have complied with their respective obligations as set forth in Sections 5 and 6;

5. Seller's Obligations. Provided that (i) this Agreement has not been cancelled, and (ii) Buyer has delivered (or will deliver) all items required to be delivered, then Seller shall deposit with Title Company at or before the Closing the following:

(a) The original Deed, duly executed by Seller, substantially in the form attached as Exhibit A; and

(b) Documents reasonably required by the Title Company such as an executed settlement statement or evidence of Seller's authority

6. Buyer's Obligations. Provided that (i) all Conditions Precedent to Closing set forth in Section 5 have been satisfied, (ii) this Agreement has not been cancelled, and (iii) Seller has delivered (or will deliver) all items required to be delivered, then Buyer shall deposit with Title Company prior to the Closing date:

(a) The Purchase Price in cash or by wire transfer.

(b) Documents reasonably required by the Title Company such as an executed settlement statement or evidence of Seller's authority.

7. Closing.

(a) The closing ("Closing") shall be held and delivery of all items to be made at the Closing under the terms of this Agreement shall be made at the offices of Yukon Title Company at 714 Gaffney Road, Fairbanks, AK 99701. The delivery of all sums due Seller pursuant to Section 2 above and the recording of documents by Title Company shall occur not later than September 1, 2016, (the "Closing Date"). All funds and documents shall be deemed simultaneously delivered on and as of the Closing Date. The Closing may occur on such earlier date as Buyer and Seller may agree but the Closing Date may not be extended without the written approval of

both Seller and Buyer.

- (b) In the event the Closing does not occur on or before the Closing Date, Title Company shall, unless it is notified in writing by both parties to the contrary within five (5) days after such date, return to the depositor thereof all items which may have been deposited with Title Company hereunder. Any such return shall not, however, relieve either party hereto of any liability it may have for its wrongful failure to close.
- (c) Possession/Lease Termination. Possession of the Property shall be delivered to Buyer on the Closing Date. All existing leases between Seller and Buyer for the Property (Child Care Center Lease Agreement dated January 1, 2014 as amended) shall terminate as of the date of Closing.

8. Remedies for Breach. Seller and Buyer shall have all remedies available by law and equity for any breach of this Agreement, including, but not limited to, the remedy of specific performance.

9. Site Assessment and Hazardous Substances.

- (a) Buyer acknowledges that some or all of its officers and owners are familiar with the Property through their lease of all or a portion of the property for many years. Buyer further acknowledges that it has (i) thoroughly inspected the Property and has had complete access to inspect the Property, and (ii) evaluated to the extent Buyer deems necessary the need for an Environmental Site Assessment or any testing; and (iii) retained ECI-Hyer ("ECI") to assess the condition of the Gold Hill Tutit Ininat Building ("the Building") on the Property; and (iv) has received and studied a report from ECI dated May 2016 identifying a number of items in the Building in need of maintenance or repair (Deferred Maintenance Items) at an estimated cost of more than one million dollars.
- (b) Seller shall have no obligation to incur any expense or to accept a reduction in the Purchase Price or other consideration set forth in this Agreement in connection with completion of any Deferred Maintenance Items, remediation of Hazardous Substances or any other repairs to the Property.
- (c) "Hazardous Substances" shall mean:
 - (i) all substances, the cleanup and disposal of which is regulated by the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA) and the Resource Conservation

Recovery Act (RCRA), both as amended and all implementing regulations and any similar or successor statutes and regulations;

- (ii) The applicable provisions of Title 46 of the Alaska Statutes and all implementing regulations, as amended and any similar or successor statutes and regulations; and
- (iii) All substances containing petroleum or other hydrocarbons, asbestos, solvents, paints, thinners or other materials, substances or waste which are or become regulated as hazardous or toxic under federal, state or local law.

- (d) The terms of this Paragraph shall survive the Closing.

10. As Is, Where Is Sale, Release and Indemnification.

SELLER SELLS AND BUYER BUYS THE PROPERTY HEREUNDER "AS IS" AND "WHERE IS." SELLER SHALL HAVE NO LIABILITY OR RESPONSIBILITY TO BUYER WHATSOEVER FOR ANY VIOLATIONS OF ANY LAW, REGULATION, BUILDING CODE, ORDINANCE OR OTHER LEGAL REQUIREMENT OF ANY KIND WHATSOEVER APPLICABLE TO THE PROPERTY AS MAY BE DISCOVERED AT ANY TIME, INCLUDING BUT NOT LIMITED TO MATERIAL (OR NON-MATERIAL) HAZARDOUS SUBSTANCES CONTAMINATION, VIOLATIONS OF BUILDING OR SAFETY CODES, LATENT DEFECTS, DETERIORATION OR PROBLEMS OR LIABILITIES OF ANY KIND. BUYER HEREBY RELEASES SELLER FROM AND SHALL INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS FROM ANY AND ALL LIABILITIES, COSTS, EXPENSES OR CLAIMS OF ANY KIND WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH THE PROPERTY, INCLUDING BUT NOT LIMITED TO ANY THAT MAY DATE TO OR ORIGINATE DURING THE TIME OF OWNERSHIP OF ALL OR ANY OF THE PROPERTY BY SELLER OR ITS PREDECESSORS IN INTEREST; **PROVIDED, HOWEVER,** THAT BUYER DOES NOT HEREBY RELEASE SELLER FROM AND SHALL HAVE NO RESPONSIBILITY TO INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS FROM LIABILITIES, COSTS, EXPENSES OR CLAIMS, IF ANY; (1) FOR DAMAGES TO LAND OTHER THAN THE PROPERTY SOLD HEREUNDER AS SHALL DIRECTLY AND ENTIRELY RESULT FROM AND BE CAUSED BY ACTS OF SELLER, ITS AGENTS OR EMPLOYEES WHICH WERE PERFORMED ON LAND OTHER THAN THE PROPERTY SOLD HEREUNDER.

THE INTENT OF THE PARTIES IS THAT BUYER HAS HAD ALREADY AND SHALL CONTINUE TO HAVE A THOROUGH OPPORTUNITY TO INSPECT AND STUDY THE PROPERTY BEFORE THE CLOSING, BUT THAT ONCE SUCH CLOSING OCCURS, SELLER WALKS AWAY FROM THE PROPERTY SO CONVEYED AND FROM ANY AND ALL LEGAL LIABILITY OR RESPONSIBILITY OF ANY KIND WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH SUCH PROPERTY, EXCEPT AS EXPRESSLY

STATED HEREIN, AND THAT SELLER SHALL HAVE, AFTER THE CLOSING, NO FURTHER RESPONSIBILITY OR LIABILITY TO BUYER OR ANY OTHER PERSON OR ENTITY FOR ANY CLAIMS OF ANY KIND THAT MAY ARISE AS TO OR IN CONNECTION WITH THE PROPERTY. BUYER ACKNOWLEDGES THAT BUYER HAS HAD THE OPPORTUNITY AND WILL HAVE THE OPPORTUNITY TO INSPECT THE PROPERTY AND WILL BE RELYING ENTIRELY THEREON.

NEITHER SELLER, NOR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, ATTORNEYS, OR REPRESENTATIVES HAVE PREVIOUSLY NOR DOES UNDER THIS AGREEMENT MAKE ANY REPRESENTATIONS OR WARRANTIES, AND NONE OF THE PERSONS OR ENTITIES DESCRIBED ABOVE SHALL IN ANY WAY BE LIABLE FOR OR WITH RESPECT TO:

- (A) THE CONDITION OF THE PROPERTY OR THE SUITABILITY OF THE PROPERTY FOR BUYER'S INTENDED USE, OR FOR ANY USE WHATSOEVER;
- (B) THE PRESENCE OR EXISTENCE OF ANY HAZARDOUS SUBSTANCES, ASBESTOS, OIL OR OTHER PETROLEUM PRODUCT CONTAMINATION OR ANY OTHER MATERIAL AS TO WHICH THE DISCHARGE, LEAKAGE, SPILLAGE OR PRESENCE ON THE PROPERTY WOULD BE REGULATED BY APPLICABLE STATE OR FEDERAL LAW.

BUYER PURCHASES THE PROPERTY "AS IS" AND "WHERE IS" AND ASSUMES THE RESPONSIBILITY AND RISKS OF ALL DEFECTS AND CONDITIONS OF THE PROPERTY (AND RELEASES AND AGREES TO INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS FROM THE SAME), INCLUDING BUT NOT LIMITED TO ENVIRONMENTAL HAZARDS AND DETERIORATION FROM AGE, WEATHER, DISUSE, LIMITED MAINTENANCE OR OTHER CAUSES.

The terms of this Paragraph shall survive the Closing.

11. Notices. All notices, waivers, elections, approvals and demands required or permitted to be given hereunder shall be in writing and shall be personally delivered, mailed by certified mail with postage prepaid, or transmitted by facsimile to the location for each party designated herein. Either party may, by proper notice to the other, designate a different address for the giving of notice. Any notice shall be effective when personally delivered, or, if mailed as provided herein, five (5) business days after deposit, postage pre-paid in the U.S. Mails, or in the case of facsimile notice when sent, if answer back or confirmation received:

SELLER:

City of Nome
P.O. Box 281
Nome, AK 99762

BUYER:

Kawerak Inc.
P.O. Box 948
Nome, AK 99762

With a courtesy copy to:

Brooks W. Chandler
Boyd, Chandler & Falconer, LLP
911 W. 8th Avenue, Suite 302
Anchorage, AK 99501
Facsimile No. 907/274-3698

12. Costs. Each party shall bear its own costs and attorneys fees, except as expressly provided herein. Unless specifically made the responsibility of one party elsewhere in the Agreement, all other fees and closing costs in connection with the Closing shall be shared equally by the Seller and Buyer. Any and all prepaid expenses, rents or income of any kind and all taxes and assessments shall be prorated.

13. No Broker. Seller and Buyer each mutually represent and warrant to the other that it/they have not dealt with any broker or real estate agent regarding the Property of this transaction. Each party shall be responsible to defend, indemnify and hold harmless the other as to any claim made by any person or entity for a commission claim due as a consequence of the indemnifying party's acts or conduct.

14. Access to Premises. At all times during normal business hours prior to the Closing, Buyer shall, upon reasonable notice to Seller, have reasonable access to the Property for the purpose of making such inspections, examinations, tests or surveys of the Property as Buyer may reasonably desire.

15. Survival of Terms and Waiver. The terms and condition of this Agreement shall survive the Closing and are expressly intended to bind the parties notwithstanding any statute of limitations.

16. Merger and Integration. This Agreement expresses and embodies all understandings and agreements between the parties and is entered into after full investigation, neither party relying upon any statements or representations not embodied in this Agreement. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof, and supersedes all such prior or contemporaneous oral or written representations, statements, documents or written agreements and shall remain unaffected by any representations, statement or understandings subsequent to the date hereof which shall not be represented by a mutually executed amendment to this Agreement.

17. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns, and may be modified only by a written instrument signed by both parties.

18. Relationship of the Parties. This Agreement shall not authorize either party to act as an agent for the other.

19. Law and Venue. This Agreement shall not be governed by and construed under the laws of the State of Alaska. Venue of any dispute shall be the Superior Court of the State of Alaska in Nome, Alaska.

20. No Waiver. The failure of any party to insist upon the strict performance of any provision of this Agreement, or the failure to exercise any right, power or remedy available hereunder, shall not constitute a waiver by said party of any such provision as to any other breach or subsequent breach of the same or any other provision.

21. Warranties of Authority. Each party and each natural person who executes this Agreement on behalf of such party acknowledges, warrants, and represents for the benefit of the other party to this Agreement: (a) that such person is duly authorized and empowered to execute this Agreement on behalf of such party; (b) that such party has been duly formed and organized and is in good standing; (c) that all necessary and appropriate resolutions and actions by such party's managers or ordinances by such party's governing body authorizing such party to enter into, execute, and perform this Agreement and the transactions contemplated by this Agreement have been obtained; and (d) that all steps have been taken and acts performed that are conditions precedent to making this Agreement valid, enforceable, and binding against such party in accordance with its terms and conditions.

22. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and which, taken together, shall constitute a single Agreement. This Agreement shall not become binding upon any Party unless and until at least one counterpart of this Agreement shall have been fully executed by each party hereto. Facsimile signatures shall be valid so long as an original signature shall be promptly delivered to the other party.

DATED: _____

SELLER:

CITY OF NOME

By: _____

Thomas Moran

Its: City Manager

DATED: _____

BUYER:

KAWERAK INC.

By: _____

Melanie Bahnke

Its: President

STATE OF ALASKA)
) ss.
SECOND JUDICIAL DISTRICT)

The foregoing instrument was acknowledge before me this ____ day of _____, 2016, by Tom Moran, the City Manager of the City of Nome, a municipal corporation, on behalf of the municipality.

NOTARY PUBLIC FOR ALASKA
My Commission Expires: _____

STATE OF ALASKA)
) ss.
SECOND JUDICIAL DISTRICT)

The foregoing instrument was acknowledge before me this ____ day of _____, 2016, by Melanie Bahnke, the President of Kawerak Inc., an Alaskan corporation, on behalf of the corporation.

NOTARY PUBLIC FOR ALASKA
My Commission Expires: _____

RECORD IN CAPE NOME RECORDING DISTRICT

LIMITED WARRANTY DEED

The Grantor, the City of Nome, of P. O. Box 281, Nome, AK 99762, for valuable consideration, conveys and warrants to Kawerak, Inc., P.O. Box 948 Nome, Alaska 99762 any and all interests which it has, if any, in that certain real property in the Nome Recording District, Second Judicial District, State of Alaska, described as follows:

Block 85, Lot 3A Doc. No. 2016-000599-0 a minor lot consolidation of Lots 3, 4, 5 and 6, Block 85, according to the 1905 Plat of the Nome Townsite, Cape Nome Recording District, Second Judicial District, State of Alaska.

Subject to:

1. Rights-of-way and easements of record acquired by any person or entity, public, or private, including but not limited to public rights-of-way.
2. All restrictions, regulations, requirements, laws, ordinances, resolutions, and orders of all boards, bureaus, commissions, departments, and bodies of any municipal, state or federal authority.
3. Provisions and reservations as contained in the U.S. Patent or made applicable by law.

DATED this ____ day of _____, 2016.

CITY OF NOME

BY: Tom Moran

ITS: CITY MANAGER

AFTER RECORDING, RETURN TO:

Brooks W. Chandler
Boyd, Chandler & Falconer
911 W. 8th Ave., Suite 302
Anchorage, AK 99501

EXHIBIT A