

Attachment to Administrative Review and Appeal Form
Block 110, Lots 1-2, Tax Lot # 001.211.03A, 607 Division St.
("BHS")

I. Allegations of Error By Assessor

- A. The assessor erred by denying full property tax exemption to Norton Sound Health Corporation (NSHC) pursuant to Alaska Statute (AS) 29.45.030(a)(8). AS 29.45.030(a)(8) exempts from tax "property of a political subdivision, agency, corporation, or other entity of the United States to the extent required by federal law...." The City of Nome's tax on all real property owned by NSHC is preempted by federal law under the implied federal preemption doctrine rooted in the Supremacy Clause of the U.S. Constitution. U.S. Const., art. VI, cl. 2. Properties used to carry out federal programs and that are subject to comprehensive and pervasive federal oversight, like the NSHC properties at issue here, are exempt from state or local taxation. Federal preemption is a jurisdictional bar to the City of Nome's property taxation scheme.
- B. The assessor erred by denying full property tax exemption to NSHC based on NSHC's sovereign immunity. NSHC is an arm of its member tribes performing essential governmental services to its member tribes' beneficiaries, pursuant to self-determination contracts under the ISDEAA for health services, and as such enjoys tribal sovereign immunity. Sovereign immunity is a jurisdictional bar to the City of Nome's assessment AND collection of property tax on NSHC. There is no *in rem* exception to tribal sovereign immunity.
- C. The assessor erred by denying full property tax exemption to NSHC pursuant to AS 29.45.030(a)(3). AS 29.45.030(a)(3) exempts from property tax "property used exclusively for nonprofit religious, charitable, cemetery, hospital, or educational purposes." All portions of properties owned by NSHC are exclusively used for nonprofit hospital AND charitable purposes.

II. Property Use Description

1. General Scope of Activities on Hospital-Owned Properties.

The Norton Sound Health Corporation is a tribally owned and operated, independent, not-for-profit healthcare organization founded in 1970 to meet the healthcare needs of the Inupiat, Siberian Yup'ik, and Yup'ik people of the Bering Strait region. NSHC is governed by a 22-member board of directors who represent all communities and areas of the Bering Strait region, a 44,000 square-mile section of Northwestern Alaska. The NSHC service area encompasses these 44,000 square miles. NSHC is the only regional health system serving Northwestern Alaska.

The NSHC healthcare system includes a tribally owned regional hospital which is operated pursuant to an Indian Self-Determination and Education Assistance Act (ISDEAA) agreement. NSHC operates health facilities and provides health care services to Alaska Natives and other beneficiaries pursuant to the Alaska Tribal Health Compact (ATHC), a multi-tribe self-governance compact with the Indian Health Service (IHS) under Title V of the ISDEAA, 25

U.S.C. § 5381, et seq., and funding agreements (FAs), which include program funding amounts that are negotiated for each fiscal year between the IHS and NSHC to fund the programs, functions, services, and activities (PFSAs) that NSHC performs on behalf of IHS. IHS funds the administration of the PFSAs, including the operation of the hospital facilities in Nome, that NSHC has contracted to perform on behalf of IHS.¹

NSHC is an “instrumentality” of the United States in providing healthcare services under Title V of the ISDEAA.² Healthcare services are federal PFSAs provided under the ISDEAA pursuant to the federal trust responsibility to Indians for health care.³

The ISDEAA deems tribes and tribal organizations carrying out ISDEAA agreements to be federal executive agencies for purposes of coverage under the Federal Tort Claims Act (FTCA) and access to federal sources of supply.⁴ NSHC employees, like employees of other tribal entities operating agreements with IHS under the ISDEAA, are similarly equally covered by the FTCA and are “federal employees” for these purposes.⁵ The ISDEAA also authorizes tribal contractors and compactors to perform personal services otherwise performed by federal employees in determining eligibility for IHS services and benefits, the amounts of such services and benefits, and how such services and benefits should be provided.⁶ In addition, tribal facilities operated under the ISDEAA are interpreted by the Centers for Medicare and Medicaid Services as IHS facilities for purposes of the 100 percent Federal Medical Assistance Percentage under Section 1905 of the Social Security Act.⁷

The ATHC expressly provides that ATHC co-signers, such as NSHC, “are deemed by statute to be part of the Public Health Service (PHS), and the employees of the Tribes and Co-Signers are deemed by statute to be part of or employed by the Public Health Service, for purposes of coverage under the [FTCA],” while performing PFSAs under the ATHC’s compact and as described in its Funding Agreement.⁸ The current NSHC Funding Agreement expressly provides that “support services required to support the provision of health services,” including human resources activities, administration and board support, performance management, financial functions, and the provision of staff housing, are part of the scope of work,⁹ as is the

¹ 25 U.S.C. § 5325; 25 U.S.C. § 5396(a) (mandatory application of § 5325 to Title V agreements).

² See also, e.g., *Seneca Nation of Indians v. U.S. Dep’t of Health and Human Servs.*, 945 F.Supp.2d 135, 143 (D.D.C. 2013) (ISDEAA agreements “essentially allow Indian tribes to step into the shoes of certain United States government agencies in providing certain services to their members”).

³ 25 U.S.C. § 1602.

⁴ 25 U.S.C. §§ 5321(d) and 5324(k).

⁵ See 25 U.S.C. §§ 5321(d) and 5396(a); *M.J. ex rel. Beebe v. United States*, 721 F.3d 1079, 1084 (9th Cir. 2013).

⁶ 25 USC § 5324(g).

⁷ 42 U.S.C. § 1396(d).

⁸ See ATHC Art. V § 3(a).

⁹ Funding Agreement Between Certain Alaska Native Tribes Served By The Norton Sound Health Corporation And The Secretary Of Human Health And Human Services Of The United States of America Fiscal Years 2018-2020 § 3.5.

training of community health aides;¹⁰ emergency medical services training for staff and community members throughout the region;¹¹ and the provision of lodging for patients, family members of patients, and their escorts.¹²

2. Specific Use of BHS.

Renovation of the property is expected to be complete by June, 2024. The property will be used as temporary housing for maternal health patients and overflow housing for patients when there is no vacancy at the patient hostel. The current Funding Agreement with IHS specifies that NSHC is to provide this type of housing and maternal support at this location. This property was previously found to be exempt from property tax by the Assessor while used for behavioral health service and its intended uses for NSHC's own charitable and hospital purposes has been continuous.

III. NSHC Enjoys the Sovereign Immunity of its Member Tribes and is Immune from Suits to Collect Taxes

Tribal healthcare entities like NSHC performing self-determination contracts under the ISDEAA for health services enjoy sovereign immunity,¹³ including those operating off-reservation.¹⁴ "Indian tribes have long been recognized as possessing the common-law immunity from suit traditionally enjoyed by sovereign powers."¹⁵ "As a matter of federal law, an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity."¹⁶ "[T]ribal immunity is a matter of federal law and is not subject to diminution by the States."¹⁷ Tribal immunity extends to tribal governing bodies and to tribal agencies or entities that act as an "arm of the tribe."¹⁸ Lastly, "[i]t is settled that a waiver of [tribal] sovereign immunity cannot be implied but must be unequivocally expressed."¹⁹

In *Barron v. Alaska Native Tribal Health Consortium*, the U.S. District Court for the District of Alaska held a tribal health consortium organization enjoyed sovereign immunity where the organization was formed by Alaska Native tribes; its creation was authorized pursuant to the ISDEAA; it received federal funding to conduct activities that benefitted tribal members;

¹⁰ *Id.* §§ 3.4.4, 3.4.5.

¹¹ *Id.* § 3.4.7.

¹² *Id.* § 3.2.14.

¹³ *Manzano v. S. Indian Health Council, Inc.*, No. 20-cv-02130-BAS-BGS, 2021 WL 2826072, at *1 (S.D. Cal. July 7, 2021) (non-profit healthcare corporation formed by membership of seven tribes entitled to sovereign immunity).

¹⁴ *See Pink v. Modoc Indian Health Proj., Inc.*, 157 F.3d 1185, 1189 (9th Cir. 1998) (nonprofit corporation created and controlled by two tribes entitled to sovereign immunity).

¹⁵ *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978).

¹⁶ *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 754 (1998) (citations omitted).

¹⁷ *Id.* at 756 (citations omitted).

¹⁸ *Cook v. AVI Casino Enters., Inc.*, 548 F.3d 718, 725 (9th Cir. 2008).

¹⁹ *Santa Clara Pueblo*, 436 U.S. at 58 (citation omitted) (internal quotation omitted).

the structure of its board placed control over its ownership and management in representatives of the Alaska Native tribes; its purpose of entering into self-determination and self-governance agreements was “core to the notion of sovereignty”; and it received federal funding “to carry out governmental functions critical to Alaska Native tribes,” i.e., healthcare services.²⁰ Like the entity in *Barron*, and as more fully discussed below, NSHC shares these same attributes.

Tribal immunity extends to suits to collect unpaid taxes. This is because, as the U.S. Supreme Court noted in *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, “[a]lthough Congress has occasionally authorized limited classes of suits against Indian tribes, it has never authorized suits to enforce tax assessments.”²¹

In the U.S. Circuit Court of Appeals for the Ninth Circuit, where NSHC is located, courts look to the following factors to determine whether a tribal entity functions as an “arm of the tribe” and is therefore entitled to share in the tribe’s sovereign immunity: “(1) the method of creation of the economic entities; (2) their purpose; (3) their structure, ownership, and management, including the amount of control the tribe has over the entities; (4) the tribe’s intent with respect to the sharing of its sovereign immunity; and (5) the financial relationship between the tribe and the entities.”²² In *White v. University of California*, the Ninth Circuit upheld the district court’s application of this test to hold that a tribal repatriation committee formed by twelve tribes was entitled to sovereign immunity because it was created by resolution of each of the tribes; comprised solely of tribal members appointed by each tribe; funded exclusively by the tribes; and its purpose, “to recover remains and educate the public, [was] ‘core to the notion of sovereignty.’”²³ And in *Pink v. Modoc Indian Health Project, Inc.*, the court held that a

²⁰ 373 F.Supp.3d 1232, 1239–40 (D. Alaska 2019).

²¹ 498 U.S. 505, 510 (1991) (emphasis added).

²² *White v. Univ. of Cal.*, 765 F.3d at 1025 (2014) (citation omitted). Although not included in the Ninth Circuit’s “arm of the tribe” test, an additional factor is examined by the Tenth Circuit: “the policies underlying tribal sovereign immunity and its connection to tribal economic development, and whether those policies are served by granting immunity to the economic entities.” *Breakthrough Mgmt. Grp., Inc. v. Chukchansi Gold Casino and Resort*, 629 F.3d 1173, 1187 (2010).

Here, a grant of immunity to NSHC furthers the policies underlying tribal sovereign immunity. The doctrine of tribal sovereign immunity exists in order to avoid “interference with tribal autonomy and self-government,” *Santa Clara Pueblo*, 436 U.S. at 59, and “infringe[ment] on the right of the Indians to govern themselves.” *Williams v. Lee*, 358 U.S. 217, 223 (1959). Like the doctrine of tribal sovereign immunity, the fundamental policy underlying the ISDEAA is to enhance tribal autonomy and control in the provision of services to tribal communities. *See, e.g.*, 25 U.S.C. § 5302(a) (declaring that policy of ISDEAA is to assure “maximum Indian participation in the direction of educational as well as other Federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities”). NSHC has taken on the entire federal responsibility for health care services for its member tribes. The essential federal-tribal nature of the ISDEAA program and the fact ISDEAA programs are funded by the federal resources that would have been spent on programs serving those tribes shows that NSHC is completely financially dependent on the tribes’ right to ISDEAA funding, and has stepped into the tribes’ shoes and operates as the “health arm” of its member tribes. Because NSHC has stepped into the shoes of its member tribes as the “health arm” of those tribes in order to enter a government-to-government relationship with the United States, NSHC’s immunity from suit protects the tribal autonomy of NSHC’s member governments.

²³ *White*, 765 F.3d at 1025.

subsidiary tribal entity established and controlled by several tribes to provide health care services was protected by sovereign immunity.²⁴

1. NSHC's method of creation supports immunity.

NSHC was incorporated on November 27, 1970 under the Alaska Non-Profit Corporation Act. Article VII of the NSHC Articles of Incorporation names three individuals representing the Alaska Native villages of Shaktoolik, Gambell, and Teller to the initial Board of Directors, and Article VIII shows the same three Village representatives as the initial incorporators. The formation and governance of NSHC was thereby tied directly to the member Villages. Article I and Article III of the Articles of Incorporation also provide that NSHC shall be “non-profit in nature,” weighing in favor of treating it as an arm of the tribes. It is clear that NSHC's member tribes have delegated their governmental, rather than commercial, responsibility to provide health care to NSHC, which is not a for-profit venture but a vehicle for providing government health services.

2. NSHC's purpose to provide governmental health care supports immunity.

NSHC's Bylaws, adopted in 1977 and revised in 1978–79, expressly establish the Corporations purposes as follows:

1. To establish and maintain facilities, including but not limited to hospital and clinics, for the care of people suffering from injury, illness or disability requiring medical and hospital services and utilizing both inpatient and outpatient facilities and services, such care to be given regardless of the person's race, color, creed, age, sex, nationality or ability to pay.
2. To participate, so far as the circumstances may warrant, in any activity to promote the general health of the principal area.
3. To carry on educational programs, including the training of healing arts personnel, relating to rendering care to the sick and the promotion of health and the maintenance of high health care standards.
4. To advance general community understanding of, confidence in and proper use of the total program of health services.
5. To carry out the foregoing purposes [through the receipt and disbursement of funds and assets].

Each of these purposes reflects the delegation from the member tribes of their respective governmental health care responsibilities to NSHC. Indeed, the purpose of NSHC is to “step into the shoes” of the federal government to carry out, through the ISDEAA, the United States' responsibility to provide health care for Alaska Native and American Indian people.²⁵

3. The tribal governments' close ownership, and management and control of NSHC support immunity.

²⁴ 157 F.3d at 1188–89.

²⁵ See 25 U.S.C. § 5302.

NSHC is structured such that NSHC's member tribes directly control the governance of NSHC. Article IV of the Bylaws established a Board of Directors of 22 elected directors. Each of the 16 member villages elects one representative to the Board of Directors, and the Nome Eskimo Community elects two directors. The Nome City Council may elect one director, and the Board of Directors, among themselves, elects three additional directors representing Nome. Article V provides that the NSHC officers, including the Chairman, are elected from among the Board of Directors.

To this point, in 1980, the United States Department of the Interior unequivocally determined, based on the member tribal organizations' direct control of NSHC, that NSHC is an arm of the member tribes.²⁶

In his Memorandum, Alaska Regional Solicitor Dennis J. Hopewell informed the BIA Area Director, Juneau Area Office that "[NSHC] is not only considered the 'health arm' of the Bering Straits Native Corporation . . . which is a recognized Indian tribe . . . but the Norton Sound Health Corporation is controlled, sanctioned and chartered by other tribal governing bodies." Hopewell considered the NSHC Bylaws to be conclusive evidence of NSHC's direct control by its member tribal entities, stating "[s]ince the Bylaws for the [NSHC] also spell out that '[t]he management of the property, funds, affairs and business of this Corporation shall be vested in a Board of Directors consisting of ...' the members listed above, there can be no doubt that the corporation is controlled by tribal governing bodies." Hopewell found that NSHC "in addition to being controlled by, is also sanctioned and chartered by such tribal governing bodies," and "[t]his representation also shows that the operation and management of [NSHC] includes the maximum participation of Indians in all phases of its activities."

4. The tribal governments intended that NSHC share in their tribal sovereign immunity.

In 1975, Congress signed the ISDEAA (Pub. L. No. 93-638) into law. In the ISDEAA, Congress made clear that "Nothing in [the ISDEAA] shall be construed as-- (1) affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian tribe[.]"²⁷ In 1978 and 1979, NSHC's member Alaska Native Villages each executed resolutions authorizing NSHC to enter contracts and grants with the United States on their behalf.²⁸ In 1994, the member Villages executed additional resolutions, which provide the current authority for NSHC to enter into the compact and funding agreements.²⁹

Each resolution acknowledged that Congress enacted the ISDEAA as a "far reaching Indian Self-Determination Policy" that "grants Alaska Native villages the *sovereign right to designate tribal organizations which shall have the authority to provide services through*

²⁶ Status of Norton Sound Health Corporation As A Tribal Organization Pursuant to P.L. 93-638.

²⁷ 25 U.S.C. § 5332(1).

²⁸ A representative resolution from the Native Village of Elim is attached [hereafter Elim Resolution].

²⁹ A representative resolution from the Native Village of Diomedes is attached.

contracts or grants with the Federal Government under Public Law 93-638 for the provision of Government services to Native peoples.”³⁰ The resolutions further note that NSHC “has village representation and traditionally provided information both to and from the village on health related matters” and that NSHC “is controlled and operated by a Board of Directors appointed by the tribal governments” of its member communities.³¹

In recognition of the foregoing, the resolutions authorize NSHC “to apply for, negotiate, appeal from adverse decisions, and secure contracts and grants with the Indian Health Service of the Department of Health, Education and Welfare for health care and related programs serving Native people” in the region.³² The resolutions further authorize NSHC and its Board of Directors “to act on behalf of this village on health and related services” and “to accept funding for health and related service projects for this village from all funding agencies private and public.”³³ The United States Supreme Court has noted that “[t]he common law sovereign immunity possessed by the Tribe is a necessary corollary to Indian sovereignty and self-governance.”³⁴ The resolutions’ provisions that NSHC would “act on behalf” of the villages as their health arm and delegation of governmental duties to NSHC reflects their intent that NSHC would share in the “corollary” privilege of immunity from suit in carrying out those functions.

5. NSHC is wholly financially dependent on the member tribes’ assignment of their right to contract with IHS to provide health services to their members.

Under the ATHC, all Alaska tribes participate in the delivery of health care services to their members and other beneficiaries in accordance with the principles of tribal self-governance. The Compact allowed NSHC, on behalf of its member tribes, to enter into a government-to-government relationship with the United States. Since 1994, NSHC has participated each year with other co-signers and the IHS in the negotiation of funding agreements and amendments to the ATHC.

The funding agreement (FA) NSHC negotiates annually with IHS on behalf of the member tribes includes a broad scope of work covering a wide variety of health care services, from hospital and clinic services to long-term care, from dental services to lodging for patients.³⁵ In fact, while NSHC is the *signatory* to the funding agreement, the *parties* to the FA are the HHS Secretary and NSHC’s member villages themselves. The 2018 Funding Agreement, titled “Funding Agreement Between Certain Alaska Native Tribes Served by the Norton Sound Health

³⁰ See, e.g., Elim Resolution at 1 (emphasis added).

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*

³⁴ *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Eng'g*, 476 U.S. 877, 890 (1986) (emphasis added).

³⁵ Funding Agreement Between Certain Alaska Native Tribes Served By The Norton Sound Health Corporation And The Secretary Of Health And Human Services Of The United States Of America Fiscal Years 2018-2020 §§ 3.2, 3.4.1, and 3.2.14.

Corporation and the Secretary Of Health And Human Services Of The United States Of America,” states:

This Funding Agreement is entered into by and between certain Alaska Native Tribes in the Bering Straits region of the Norton Sound Service Unit, as identified on the signature page herein, and the Secretary of the Department of Health and Human Services. These Tribes have authorized the Norton Sound Health Corporation to sign this Funding Agreement for them and to be responsible for and carry out the terms of this Funding Agreement.³⁶

Section 2.1 of the 2018 FA “obligates NSHC to be responsible for and to provide health PSFAs identified in Section 3 [Tribal Programs and Budget], utilizing the resources transferred under this FA and other funds as they may become available to NSHC.” Section 5.2 provides these resources represent the entirety of the member Tribes’ entitlement to these funds: “NSHC will be paid 100 percent of Headquarters and Area Tribal Shares in its initial lump sum payment, as negotiated in this FA.” Section 4 of the 2018 FA describes the total FY 2018 funding made available to NSHC from funds that would otherwise be allocated to NSHC’s member tribes. Without the Compact and Funding Agreements, through which NSHC performs governmental functions for their member villages, NSHC would be unable to function. Accordingly, the financial relationship between NSHC and the tribal entities supports NSHC’s immunity.³⁷

In substance and in form, NSHC serves as an arm of its member tribes. NSHC is dependent on the authorization and support of its member tribal governments to operate, and it fills a critically under-resourced governmental function—far different from a private, for-profit economic venture or other state-incorporated non-profits that may operate in the public sector but are not fulfilling government functions. NSHC shares in the sovereign immunity of its member tribes, and this immunity from suit extends to suits to collect unpaid taxes. This sovereign immunity operates unless specifically and unequivocally waived, and NSHC has not waived its immunity.

IV. The City’s Taxation is Preempted by Federal Law

Alaska Statute 29.45.030(a)(8) exempts from tax, “property of a political subdivision, agency, corporation, or other entity of the United States to the extent required by federal law...” The City of Nome’s tax on all real property owned by NSHC is preempted by federal law under the implied federal preemption doctrine rooted in the Supremacy Clause of the U.S. The Alaska Supreme Court itself has applied the doctrine to preempt borough property taxation on “*all space in a building that contains a tribally operated clinic.*”³⁸

Under the implied federal preemption doctrine, space that is used to carry out federal programs and that is subject to “comprehensive and pervasive federal oversight” is exempt from

³⁶ *Id.* at 1.

³⁷ See *White*, 765 F.3d at 1025 (fact that entity was funded solely by the tribe supported determination that entity was an “arm of the tribe” entitled to immunity).

³⁸ *Ketchikan Gateway Borough v. Ketchikan Indian Corp.*, 75 P.3d 1042, 1044 (2003) (emphasis added).

state or local taxation.³⁹ The U.S. Supreme Court has applied the implied federal preemption doctrine to the fields of tribal timber in *White Mountain Apache Tribe v. Bracker*,⁴⁰ and Indian education in *Ramah Navajo School Board, Inc. v. Bureau of Revenue, New Mexico*.⁴¹ Like tribal timber and Indian education, Indian healthcare is subject to comprehensive and pervasive federal oversight, preempting the application of borough property taxes.

In *Ramah Navajo*, the U.S. Supreme Court found that the “[f]ederal regulation of the construction and financing of Indian education institutions is both comprehensive and pervasive.”⁴² The Court cited the federal policy of Indian self-determination, and in particular its codification and application to education in the ISDEAA and its “detailed and comprehensive” regulations.⁴³ By contrast, the state provided little support for Indian education, asserting only its general interest in raising revenue through taxation.⁴⁴ Thus, the federal and tribal interests outweighed those of the state under the preemption test.⁴⁵

In *Ketchikan Gateway Borough v. Ketchikan Indian Corporation*, in a case strikingly similar to the instant matter, the Alaska Supreme Court upheld application of the implied federal preemption doctrine to exempt from borough taxes “*all space in a building that contains a tribally operated clinic*.”⁴⁶ In that case, the tribally operated clinic was funded by the IHS and operated on land conveyed by the United States.⁴⁷ The only space held not to be exempt from taxation was “space not committed to use by the clinic,” because it was “uncertain how the uncommitted space would be used” and it “appear[ed] that at least for near-term purposes it [would] either be leased to others or used for other [i.e., non-clinic-related] programs of [the Indian corporation].”⁴⁸ The court stated that in the cases cited by the dissent, and in which the majority agreed the exemption was properly applied to vacant property, “the unused space, when used, was intended to be used for tax-exempt purposes.”⁴⁹

³⁹ *Id.* at 1048.

⁴⁰ 448 U.S. 136, 146–47 (1980).

⁴¹ 458 U.S. 832 (1982)

⁴² *Id.* at 839.

⁴³ *Id.* at 839–40 .

⁴⁴ *Id.* at 841–42.

⁴⁵ *Id.* at 843.

⁴⁶ 75 P.3d at 1044 (emphasis added).

⁴⁷ *Id.*

⁴⁸ *Id.* at 1049, 1048 n.27.

⁴⁹ *Id.* at 1048, n.27 (citations omitted). See also *United Way of the Midlands v. Douglas Cnty. Bd. of Equal.*, 337 N.W.2d 103, 107 (Neb. 1983) (“Often times a qualified organization acquires or maintains building space in reasonable anticipation of full occupancy for an exempt purpose but cannot do so because of economic conditions or other legitimate reasons.”); *Our Savior Lutheran Church v. Dep’t of Revenue*, 562 N.E.2d 1198, 1201 (Ill. 1990) (“We do not think that mere temporary vacancy or lack of use of a portion of an otherwise exempt parcel of property renders that portion taxable. To hold that when a portion of a building otherwise used for an exempt purpose becomes temporarily vacant or unused it loses its exempt status is nonsensical and impractical of application.”). The latter case was cited positively by the *Ketchikan Gateway* court. 75 P.3d at 1048, n.27.

In *Ketchikan Gateway*, the Alaska Supreme Court noted that federal preemption in Indian tax cases is quite different from federal preemption in other areas of the law, which require a clear statement from Congress of its intent to displace state law.⁵⁰ Instead, the U.S. Supreme Court has developed a “flexible pre-emption analysis sensitive to the particular facts and legislation involved” and “requires a particularized examination of the relevant state, federal, and tribal interests.”⁵¹ As the U.S. Supreme Court instructed in *Ramah Navajo*, there is no requirement for a statute to “express the intention to pre-empt” state taxation, with the Court confirming that “[t]his argument is clearly foreclosed by our precedents.”⁵²

This property is integral to the provision of healthcare under NSHC’s ISDEAA agreement. As programs and services that support the healthcare operations are included under the scope of work as defined in NSHC’s Funding Agreement, all areas used for human resources, administration and board support, performance management, training, medical personnel housing, patient housing, and financial function are integral to NSHC’s healthcare operations under the ISDEAA.

Unlike the vacant property in *Ketchikan Gateway*, NSHC has no intention to lease the space in this property to others or to use for non-clinic related programs.⁵³ NSHC’s intention is to use this property for hospital and charitable purposes, exclusively a “tax-exempt purpose[.]”⁵⁴ The vacant condition of the NSHC property is only temporary. Further, NSHC’s FA and legal obligations for the operation of the property require it to operate the property for health care purposes. Accordingly, implied federal preemption applies to this property as well.

The Alaska Supreme Court, in *Ketchikan Gateway Borough*, acknowledged that federal law preempts state taxation where the activity is subject to comprehensive and pervasive federal oversight.⁵⁵ The federal and tribal interests in the instant case are clear and strong. Provision of Indian health care services is comprehensively and pervasively regulated; this is manifest both in the ISDEAA and in the Indian Health Care Improvement Act (IHCA). Congress expressed its intention in the ISDEAA that those operating under self-determination contracts receive the same amount of funding as would the federal government if one of its departments was still providing the services in question.⁵⁶ Congress’s clear intent would be undercut if NSHC has to use its federal funding to pay property taxes from which IHS would be exempt.⁵⁷ In *Ramah Navajo*, the U.S. Supreme Court found that a similar depletion of federal funds to reimburse the contractor

⁵⁰ *Id.* at 1046.

⁵¹ *Id.* (quoting *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163, 176 (1989) and *Ramah Navajo*, 458 U.S. at 838).

⁵² 458 U.S. at 843.

⁵³ 75 P.3d at 1049. 1048 n.27.

⁵⁴ *Id.* at 1048, n.27.

⁵⁵ *Id.* at 1048.

⁵⁶ 25 U.S.C. § 5325(a)(1).

⁵⁷ *Id.* at 1049–50 (Fabe, C.J., and Carpeneti, J., dissenting).

for state gross receipts taxes would contravene federal policy and Congress’s intent and thus argued in favor of preemption.⁵⁸

Although tribes step into the shoes of the IHS when carrying out programs and providing services under the ISDEAA, the ultimate responsibility for those programs and services remains with IHS, which therefore retains a pervasive oversight role. Participation in the self-governance program requires a rigorous planning process and demonstration of financial stability and financial management capability for three (3) years.⁵⁹ ISDEAA contractors are subject to annual audits, with penalties for noncompliance with applicable cost principles.⁶⁰ And every ISDEAA agreement must, by law, include a provision allowing the Secretary to reassume operation of a program, and the associated funding, if the agency finds gross mismanagement or imminent danger to public health.⁶¹ The regulations at 25 C.F.R. Part 900 and 42 C.F.R. Part 137 elaborate these and other limitations. As noted above, nothing in the ISDEAA abrogates or weakens the trust responsibility to tribes and individual Indians,⁶² and IHS consequently retains comprehensive and pervasive oversight. In other words, NSHC is beyond the taxing authority of the state, and the borough is without the ability to apply, impose, assess, or levy borough property tax against NHSC.⁶³

In its prior determination that taxation of NSHC properties is not precluded under federal law, the BOE cited to *Alaska Native Brotherhood* and *Mescalero Apache*, 411 U.S. at 148–49, for the proposition that, outside reservation boundaries, tribes have generally been held subject to nondiscriminatory state law including tax laws. (2023 BOE COL No. 2). While that is true as a “general” proposition, there are exceptions, e.g., *Haaland v. Brackeen*, 599 U.S. 255, 275, 281, 323 (U.S. 2023), and neither of the cited cases addressed a comprehensive federal statutory scheme like the one at issue here. First, *Alaska Native Brotherhood* involved claims that a property used by the Ketchikan Indian Community for “various cultural, educational, vocational, health and community service programs[,]” 666 P.2d at 1027, was exempt from taxation under a specific provision of the Indian Reorganization Act not at issue here, 25 U.S.C. § 465 (now codified as 25 U.S.C. § 5108),⁶⁴ or on the basis that the Community held and used the property

⁵⁸ 458 U.S. at 842.

⁵⁹ 25 U.S.C. § 5383(c)(1)(C).

⁶⁰ *Id.* § 5386(c).

⁶¹ *Id.* § 5387(a)(2).

⁶² E.g., *id.* § 5332(2); *id.* § 5329(c), Model Agreement § (d)(1) (“The United States reaffirms the trust responsibility of the United States” to the contracting tribe); *id.* § 5395(b) (“Nothing in this chapter shall be construed to diminish in any way the trust responsibility of the United States to Indian tribes and individual Indians . . .”).

⁶³ See 75 P.3d at 1046 (“federal law impliedly preempted *application* of the [state] tax”) (citing *Ramah Navajo*, 458 U.S. at 838) (emphasis added), 1047 (quoting the U.S. Supreme Court’s statement that in *Bracker*, the Court addressed the question of “whether [the state] could *impose* its motor carrier license and use fuel taxes on a [non-tribal-member company]”) (citing *Cotton Petroleum*, 490 U.S. at 184) (emphasis added); *Bracker*, 448 U.S. at 148 (“[i]n a variety of ways, the *assessment* of state taxes would obstruct federal policies”) (emphasis added), 152 (where implied federal preemption is found, states are without “the privilege of *levying* [the] tax”) (citing *Warren Trading Post Co. v. Ariz. State Tax Comm’n*, 380 U.S. 685, 691 (1965) (emphasis added)).

⁶⁴ This provision applies specifically to land “taken in the name of the United States in trust for the Indian tribe or individual Indian[.]” See 666 P.2d at 1018 (citing then 25 U.S.C. § 465)

“in its sovereign capacity” or as a “federal instrumentality.” *Id.* at 1015. Neither of those arguments are advanced by NSHC in this case. Second, in the course of addressing those arguments, the Court acknowledged but declined to adopt the board’s argument that *Mescalero Apache* conclusively establishes that state tax laws always apply to tribal activity beyond reservation boundaries—instead implicitly recognizing that there can be exceptions to *Mescalero Apache*’s “general” rule. *Id.* at 1021. Here, NSHC’s conduct in carrying out its ISDEAA agreements with the IHS is subject to comprehensive federal regulation and oversight under both the ISDEAA and the Indian Health Care Improvement Act (IHCIA). That was also the case in *Ketchikan Gateway*, which cited not only *White Mountain Apache* but also *Ramah Navajo*, decided two years later.

In *Ramah Navajo*, the U.S. Supreme Court held that a state tax assessed against a non-Indian construction company building a school on the tribe’s reservation was preempted, stating:

Federal regulation of the construction and financing of Indian educational institutions is both comprehensive and pervasive. The Federal Government’s concern with the education of Indian children can be traced back to the first treaties between the United States and the Navajo Tribe. Since that time, Congress has enacted numerous statutes empowering the BIA to provide for Indian education both on and off the reservation.

458 U.S. at 839–40 (citing statutes, including the ISDEAA) (footnote omitted). The Court cited the federal policy of Indian self-determination, and in particular its codification and application to education in the ISDEAA and its “detailed and comprehensive” regulations, and concluded:

The direction and supervision provided by the Federal Government for the construction of Indian schools leave no room for the additional burden sought to be imposed by the State through its taxation[.]

Id. at 840–42. The same is true in this case, where taxation would burden federal funding for Indian health programs operated under the ISDEAA and IHCIA.

Finally, in *Ketchikan Gateway Borough*, the Alaska Supreme Court also noted that while the rule of strict construction requires that “[t]axpayer exemptions are strictly construed against the taxpayer and in favor of the taxing authority . . . where the question is whether federal law requires the exemption of tribal interests from taxation, ambiguities in federal law should be resolved *in favor of the tribe*.”⁶⁵ This further supports the application of the implied federal preemption doctrine to NSHC’s properties.

V. Alaska Law Exempts The Subject Property from Taxation

The Alaska Constitution provides that: “All, or any portion of, property used exclusively for non-profit religious, charitable, cemetery, or educational purposes, as defined by law, shall be

⁶⁵ 75 P.3d at 1045 (citing *Cotton Petroleum Corp.*, 490 U.S. 163 at 177).

exempt from taxation.”⁶⁶ Pursuant to this provision, Alaska Statute (AS) 29.45.030(a)(3) provides that “property used exclusively for nonprofit religious, charitable, cemetery, hospital, or educational purposes” is exempt from general taxation.

Alaska courts interpret “exclusive use” to require that all uses of the property be for the “direct and primary” exempt purpose.⁶⁷ The use of this property is for the direct and primary exempt purposes of NSHC, as follows.

A. Charitable Purposes

In *Matanuska–Susitna Borough v. King’s Lake Camp*, “charitable” is defined under Alaska law to mean a “broad scope” of activities given to the term:

It is quite clear that what is done out of good will and a desire to add to the improvement of the moral, mental, and physical welfare of the public generally comes within this meaning of the word “charity.” To crowd out coarseness, cruelty, brutality from social man undoubtedly results in this betterment.⁶⁸

The *Catholic Bishop* court characterized this statement as “the broad common law definition of ‘charity’ “ and observed that this definition reflects the “humanitarian rationale” of property tax exemptions: they are granted “as an aid or encouragement to individuals, corporations, or businesses, to do something supposedly for the good of the community at large.”⁶⁹

Following this definition, Alaska law recognizes that the ISDEAA has the purposes of improving the provision of federal services by making them more responsive to tribal needs, and improving the functioning of the tribes through increased self-government. *Fairbanks North Star Borough v. Henash*, 88 P.3d 124, 135 (2004). ISDEAA contracts permit tribes to “improve[] ... the moral, mental, and physical welfare” of individuals and the group. *Id.* The Alaska Supreme court therefore holds that activities in satisfying ISDEAA contracts with the government are motivated by purposes that are properly characterized as charitable. This satisfies the charitable-purposes criterion for exemption in Alaska. *Fairbanks*. 88 P.3d at 135.

Use of the subject property to house patients and integrate pre-delivery care serves no other purpose than for NSHC’s charitable purposes. The direct and primary use of the property is to accomplish the ISDEAA contracted activities which impose the following obligations on NSHC pursuant to the Alaska Tribal Health Compact Funding Agreement with IHS:

3.2.10 Services associated with **training medical students, residents, physician assistant students, nursing students, and allied health provider students** from accredited institutions, under supervision of appropriate staff;

⁶⁶ Alaska Const. art. IX, § 4.

⁶⁷ *Fairbanks North Star Borough v. Dená Nená Henash*, 88 P.3d 124 (Alaska 2004).

⁶⁸ 439 P.2d 441, 445 (Alaska 1968) (quoting *Old Colony Trust Co. v. Welch*, 25 F.Supp. 45, 48 (D.Mass.1938))

⁶⁹ 707 P.2d at 888 n. 37

3.2.11 Comprehensive, well person, emergency, acute and chronic care and preventive services at the subregional/community health centers and surrounding village clinics. These services include, but are not limited to, Early Periodic Screening, Diagnosis and Treatment (EPSDT), immunizations, maternal and child health services including family planning, prenatal care and case management of care provided to children and other high-risk individuals; urgent care services 24 hours a day; and specialty clinics, dental services, optometry services, diagnostic imaging services, laboratory services, and telemedicine, telehealth, telepharmacy, teleradiology, telepsychiatry services, dialysis, and mammography, colonoscopy and other cancer screenings, and cancer treatment;

3.2.14. Provide lodging for patients, family members of patients, and/or their escorts, including but not limited to housing at the patient hostel, and elder housing;

3.4.8 Maternal and Child Health Program...

3.5 Support Services. Support services required to support the provision of health services, **including, but not limited,** to plant operations, biomedical services, housekeeping and linen/laundry services, security (for patients and staff), human resources, information systems, administration and board support, corporate planner, grant management, compliance officer and performance improvement, material management (procurement, receiving, processing and distribution), central sterile supply, infection control/employee health, and financial, including business office functions, coding and medical records, planning and implementation of an electronic health records system, patient benefits coordinator, and the provision of staff housing.

(Emphasis added.) Appendix B to the above-referenced agreement states further:

This *non-exhaustive list* of Tribal Facilities and Locations identifies the sites where Norton Sound Health Corporation owns, leases, occupies, or otherwise used real property to carry out its responsibilities under the Alaska Tribal Health Compact and its Funding Agreement. Each description of facilities and locations is intended to include surrounding and adjacent grounds. Additionally, the cross references to specific PSFAs are not intended to limit the scope of PSFAs that may be performed at a facility or for which a facility may be used; rather, cross references are intended as an example of the type of PSFA that may be performed at the facility or of the manner in which a facility may be utilized. Cross references are not exhaustive and may not be construed to be exclusory of other PSFAs that may be performed at a facility or of the uses of the facility.

Nome	Patient/Employee Housing 607 Division Street	Section 3.2.14; Section 3.5
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(Emphasis added.) NSHC’s use of the subject property to fulfill these ISDEAA contracted obligations is charitable. *Fairbanks*, 88 P.3d. at 135.

The 2022 Decision confirms that NSHC properties operated pursuant to ISDEAA contract are used for “charitable purposes” under AS 29.45.030(a)(3). In the 2022 Decision, the Court held the Alaska Supreme Court’s decision in *Fairbanks N. Star Borough v. Dena Nena Henash* is controlling. The subject property is operated under the same ISDEAA contract at issue in the 2022 Decision, and as such, involves the same transaction and subject matter. Therefore, the 2022 Decision is controlling and establishes the subject property is exclusively used for charitable purposes.

B. Hospital Purposes

1. Exclusive Use Standard.

Use of the subject property meets Alaska’s constitutional test for “exclusive use.” The framers of Alaska’s constitution chose to pattern the property tax exemption after the standard state property tax exemptions of the day. *Cooley on Taxation* identifies the scope of exemption at that time in states with a property tax exemption based on exclusive use:

Even if the exemption is based upon the use made of the property, it is not limited to property actually indispensable unless the statute so expressly provides, but instead also includes property obviously appropriate and convenient to carry out the purposes of the corporation.

4 *Cooley, Taxation*, § 683, p. 1430. In fact, the framer’s colloquy during the Alaska Constitutional Convention makes clear an intent not to impose a “necessity” requirement on the character of the use and does not require that the property’s use be indispensable to the institution, stating:

For example, the case of an office building owned by an educational institution, part of which is being *occupied by the institution itself for its own purposes*, and part of which is rented out at a profit. It’s the intention here that the part which is rented at a profit could be taxed.

ACCP 1111–12, 2332 (emphasis added).

Alaska’s statutory and constitutional property tax exemption has been interpreted consistently with the above-cited standard. In *Catholic Bishop*, the court stated that the standard for interpreting “exclusive use” under Alaska law is whether the use is “direct and primary” to the exempt purposes:

We have interpreted “exclusive use” in accord with our rule of strict construction. In *Harmon v. North Pacific Union Conference Association of Seventh Day Adventists*, 462 P.2d 432 (Alaska 1969), we decided that “[e]ven when the uses of a piece of property are highly related to the primarily exempted activity, the

exemption will not apply when the statute requires ‘exclusive’ use.” 462 P.2d at 437. All uses of the property must be for the “direct and primary” exempt purpose. *Evangelical Covenant Church v. City of Nome*, 394 P.2d 882, 883 (Alaska 1964) (citing Annot., 154 A.L.R. 895, 898 (1945)). See *Matanuska-Susitna Borough v. King’s Lake Camp*, 439 P.2d 441, 445 (Alaska 1968).⁷⁰

“Direct and primary” to exempt purposes means use which is reasonable and appropriate to accomplish the nonprofit’s purposes. The inquiry is whether charitable aims are directly accomplished and effectuated by the activity carried out on the property.⁷¹ As noted above, NSHC operates pursuant to a federal contract which explicitly names the BHS property as a necessary property to fulfill the ISDEAA contract. The Alaska Superior Court has determined that patient housing is a direct and primary purpose of a hospital. 2022 Decision, *22; see also, *Cedars of Lebanon v. Los Angeles County*, 221 P.2d 31, 35 (Cal. 1950). The use of the subject property for housing patients and providing for integrated maternal care constitutes is necessary for the accomplishment of NSHC’s hospital purposes.

2. Hospital Purposes.

The 2022 Decision defines “hospital purposes.” The Court held in the 2022 Decision that “hospital purposes” was a plain term that must be given ordinary meaning. 2022 Decision **12, 13. The Court held that NSHC properties used for the “purpose” of allowing NSHC “to deliver health care services to the region’s residents” fell squarely within the hospital purposes exemption. *Id.* **16–17. The Court determined that the BOE’s denial of exemption based solely on their interpretation of AS 29.45.030(a)(3) as requiring exclusive use solely for treatment of sick and injured misinterprets the statute and fails to give ordinary meaning to “hospital purposes,” which has a broader meaning.” *Id.* *15. The Court held that property qualifying for exemption under its ordinary meaning will not be excluded by applying strict construction to the definition of “hospital” and that the property itself does not have to be a hospital as the City has argued. *Id.* **13–17. This Court held that combining the term “purpose” with “hospital is necessary to interpreting the statute and that the term "purposes" is defined as "something set up as an object or end to be attained: intention." 2022 Decision **14–15. This Court went on further to state:

Because there is no limiting language, properties coming within the ordinary meaning of plain terms qualify for exemption under *McKee*. There is therefore no need to apply the canon of strict construction.

Id. *15 (citing *McKee v. Evans*, 490 P.2d 1226, 1231 (Alaska 1971)).

The Court explained that a hospital is an assembly of people, functions and facilities which serves patients, doctors and the public and that NSHC is an “institution falling within the broad terms of constitution and the statute.” 2022 Decision at **15–16 (citing, *Cedars of Lebanon v. Los Angeles County*, 221 P.3d 31, 35 (Cal. 1950)). The Court held that the City’s narrow

⁷⁰ 707 P.2d. at 879.

⁷¹ *Id.* at 883 (citing 154 A.L.R. 895, 898 (1945)).

construction of the term “hospital” effectively abrogated the statutory exemption and that “hospital purposes” is a broader term and includes an assembly of people, functions and services, citing *Cedars of Lebanon Hospital v. Los Angeles County*, 221 P.3d. 31, 35 (Cal. 1950):

A hospital is primarily a service organization. It serves three groups: the patients, its doctors, and the public. It furnishes a place where the patient, whether poor or rich, can be treated under ideal conditions. It makes available room, special diet, X-ray, laboratory, surgery, and a multitude of other services...

2022 Decision *15 n.89. The use of this property to support maternal care and house patients, which NSHC is legally obligated to do, meets the hospital purposes definition.

C. Assessor’s Determination Applies the Wrong Legal Standard.

The assessor has not provided the legal basis for his determination for the 2023 tax year. Assuming it is the same legal basis he relied upon for the 2022 tax year to deny the tax exemption, his analysis misconstrues the applicable law. The assessor suggested that the standard for determining whether property is “exclusively used” for exempt purposes is set forth in *City of Nome v. Catholic Bishop of Northern Alaska*, 707 P.2d 870 (Alaska 1985) and in that regard requires a finding that the use of the property is “directly incidental to and vitally necessary” to the hospital’s exempt purposes.

As stated previously, the exclusive use test is whether the use is direct and primary to the exempt purposes. The “vitally necessary” test is an exception to the “exclusive use” test.⁷² The 2022 Decision holds that the BOE is mistaken in applying the “vitally necessary and incidental to” test to NSHC properties. *Id.* **14–15. The Court found that relying on a narrow definition of “hospital” and not interpreting the broader term of “hospital purposes” is “fundamentally inadequate” and results in the City:

Prematurely shift[ing] exemption analysis away from determining whether a property came within the ordinary meaning of ‘hospital purposes’ and instead push[ing] exemption analysis to an exception to the ‘exclusive use’ requirement as a secondary avenue for exemption.

Id.

As stated, the subject property is not “other” property or simply “support” property; it is by definition the “hospital.” And the actual uses are hospital purposes. NSHC’s charitable aims cannot be accomplished or effectuated without the activity carried out at the property. Therefore, the *Catholic Bishop* “vitally necessary” standard does not apply because this is not a case of “other property” discrete from the hospital being used for ancillary purposes or purposes outside of the statutory definition of “*hospital purposes*”.

⁷² 707 P.2d at 884–85 (emphasis added).

Even if the proper test in this instance were to establish the subject property use is “directly incidental to and vitally necessary” to the hospital purposes as the assessor suggests, that standard has been met as well. As described above, NSHC is integrating patient housing at the subject property by and on behalf of the federal government (IHS) and various tribal governments explicitly as part of their operation as a hospital. The functions occurring at the subject property are legally required as part of its operation as a hospital pursuant to NSHC’s FA with these governments. As such, the use of the subject property is directly incidental to and vitally necessary to accomplish NSHC’s exempt purposes.

D. Temporary Vacancy Does not Render the Property Non-Exempt.

In the instant case, the vacant condition of this NSHC property is only temporary. Further, NSHC’s funding agreement and legal obligations for the operation of the property require it to operate the property for the health care purposes it is being remodeled to achieve. As the court in *United Way of the Midlands* held, “Oftentimes a qualified organization acquires or maintains building space in reasonable anticipation of full occupancy for an exempt purpose but cannot do so because of economic conditions or other legitimate reasons.”⁷³ Similarly, in the *Our Savior Lutheran Church* case cited by the *Ketchikan Gateway* court, the court explained, “We do not think that mere temporary vacancy or lack of use of a portion of an otherwise exempt parcel of property renders that portion taxable. To hold that when a portion of a building otherwise used for an exempt purpose becomes temporarily vacant or unused it loses its exempt status is nonsensical and impractical of application.”⁷⁴

A special consideration is also given to property that exhibits a “continued exempt character.” *Paper Mill Playhouse v. Millburn Tp.*, 7 N.J.Tax 78, 86 (Tax 1984). The *Paper Mill Playhouse* court recognized that property which was previously exempt, but for one reason or another, discontinues actual use for a discrete period does not lose its exempt character. *Id.* at 84. The subject property housed Behavioral Health Services and was ruled tax exempt by the assessor during that use. The behavioral health services were moved to another location within the NSHC campus and this property was then slated for reconstruction to accommodate its current use, which is being commenced in June, 2024.

⁷³ 337 N.W. 2d at 107.

⁷⁴ 562 N.E. 2d at 1201.

**FUNDING AGREEMENT
BETWEEN CERTAIN ALASKA NATIVE TRIBES
SERVED BY THE
NORTON SOUND HEALTH CORPORATION
AND
THE SECRETARY OF HEALTH AND HUMAN SERVICES
OF THE
UNITED STATES OF AMERICA
FISCAL YEARS 2022-2024**

This Funding Agreement is entered into by and between certain Alaska Native Tribes in the Bering Straits region of the Norton Sound Service Unit, as identified on the signature page herein, and the Secretary of the Department of Health and Human Services. These Tribes have authorized the Norton Sound Health Corporation to sign this Funding Agreement for them and to be responsible for and carry out the terms of this Funding Agreement.

Section 1 – Obligations of the IHS.

1.1 Generally. Under the authority of Section 325 of P.L. 105-83, and P.L. 93-638 as amended, non-residual programs, services, functions and activities (PSFAs) of the Alaska Area Office and the Alaska Native Medical Center (ANMC) have been transferred to tribal management.

Delivery of PSFAs shall be consistent with each Co-Signer's Funding Agreement (FA). The Indian Health Service (IHS) shall remain responsible for performing all federal residual PSFAs. The IHS shall remain responsible for negotiating assurances with the Alaska Native Tribal Health Consortium (ANTHC) and Southcentral Foundation (SCF) on behalf of Alaska Natives and American Indians to the effect that Co-Signers continue to receive non-residual PSFAs from the ANMC and Area Office and provided by ANTHC and SCF at a minimum at the level that such PSFAs were provided by the IHS as of October 1, 1997, to the extent permitted by Section 325 of P.L. 105-83. To the extent authorized by federal law, the IHS will respond to written Co-Signer concerns about the extent with which such assurances have not been complied and take appropriate action. IHS shall further be responsible for performing its special trust responsibilities and legal obligations as provided in the Indian Health Care Improvement Act, the Indian Self-Determination and Education Assistance Act, and other applicable provisions of federal law.

This FA obligates the IHS to provide funding and services identified herein and as provided in the Alaska Tribal Health Compact (ATHC) between the Norton Sound Health Corporation (NSHC) and certain other Co-Signers thereof and the United States in Fiscal Years 2022-2024.

The "Memorandum of Agreement Describing the Continuing Services of the IHS, Alaska Area Native Health Service" among the Co-Signers and the Alaska Area Native Health Service (AANHS) reflects the understanding of the parties regarding services to be provided by the AANHS to Co-Signers. This document, attached as Appendix C, is hereby incorporated by

reference.¹

In addition, although funds are provided from Headquarters and Area Office in support of this ATHC, the IHS will agree to continue to make available to NSHC PSFAs from both Area Office and Headquarters unless 100 percent of the tribal shares for these PSFAs have been specifically included in this FA. In cases where a portion of tribal shares has been transferred, there may be some diminishment in the level of PSFAs provided by IHS. Furthermore, the IHS will reorganize both Headquarters and the Area Office to continue to provide the remaining PSFAs which have not been included in this FA, in the most effective and efficient manner possible, provided that the decisions about the array and level of PSFAs to be offered by the IHS shall be made in consultation with Alaska Tribes. The IHS PSFAs not negotiated into or listed in Appendix A are the responsibility of the IHS.

Unless funds are specifically provided from Headquarters, Headquarters retains all PSFAs and NSHC will not be denied access to, or services from, Headquarters. Specifically, NSHC will receive the following services from IHS Headquarters:

1.1.1 Information Services. IHS will provide the full range of Office of Information Technology (OIT) national support to ANTHC and ANMC OIT will provide specified services directly to NSHC. In addition, OIT will provide support to ANTHC to assist it to carry out its responsibility to provide day-to-day technical support, user support, distribution of software and files and other typical information technology support to Co-Signers as defined in the Assurances Appendix to the ANTHC FA. Upon request of ANTHC, after good faith efforts to resolve NSHC’s technical issue, OIT’s support of NSHC will include technical support needed on-site by NSHC. A list of the services due under this paragraph, with identification of the method of delivery, is shown below.

Office of Information Technology Provides:	Directly to ANTHC	Directly to Co-Signer	Indirectly to Cosigner through ANTHC
National Database Services			
100% Data Center Services	X		
Process Data exports into National Database		X	
Evaluate, correct, convert site data for National Database		X	
Telecommunications Management Services			
100% Telecommunications Management Services	X		
Maintain IHS to Alaska connection		X	
Email transfer and global address listing		X	
SMTP Gateway		X	
Intranet and Internet Access (to available bandwidth)		X	
Antivirus Software			X
Software Development and Maintenance			
100% Software Development and Maintenance	X		
Use of IHS contract vehicles		X	

¹ All references to Appendix A and Appendix C in this FA are to the Appendix for the applicable fiscal year.

Office of Information Technology Provides:	Directly to ANTHC	to Directly to Co-Signer	Indirectly to Cosigner through ANTHC
RPMS Integrated Commercial-Off-The-Shelf packages (Average Wholesale Prices, CPT, ICD-9, Immunization Algorithm) licenses (This does not include licenses for stand-alone or interfaced commercial software.)			X
RPMS Package Support/Installation			X
System Support and Training			
100% System Support and Training	X		
Nationally Available OIT Training instruction (as available)		X	
Alaska On-site training instruction (four annual classes)			X
Hardware and Operating System Support			X
Cache Upgrade (initial installations)			X
National Patient File (2000) conversion			X
Envoy (WebMD) installation			X
Additional Services - Fee for Service	X	X	X

1.1.2 Access to Training and Technical Assistance. To the extent funds are identified by the IHS, NSHC shall have access to training, continuing education, and technical assistance in the manner and to the same extent NSHC would have received such services if it were not a Self-Governance Co-Signer.

1.1.3 Intellectual Property.

IHS, through contracts, grants, sub-grants, license agreements, or other agreements may have acquired rights or entered into license agreements directed to copyrighted material. NSHC may use, reproduce, publish, or allow others to use, reproduce, or publish such material only to the extent that IHS's contracts, grants, sub-grants, license agreements, or other agreements provide that IHS has the right to allow a tribe to do so and IHS determines that it will extend its rights to NSHC. NSHC use of any such copyrighted material and licenses is limited to the scope of use defined in the agreements.

1.1.4 HIPAA Compliance. IHS retains the responsibility for complying with the Health Insurance Portability and Accountability Act of 1996 for retained IHS health care component activities.

1.2 Historical PSFAs. NSHC has historically received certain PSFAs from ANMC and AANHS. Responsibility for these PSFAs has been transferred to ANTHC by ANMC and AANHS prior to the transfer of management to ANTHC and SCF, NSHC attached to its FY 2002 FA Addendum I entitled "Memorialization of Historical Level of PSFAs provided by ANMC and AANHS." The PSFAs listed in this addendum are taken from NSHC's FY 1999 Annual FA. The addendum was attached to the FY 2002 FA only for the purpose of identifying historical levels of PSFAs received by the NSHC from ANMC and AANHS, and is specifically not made part of this FA.

1.3 Community Health Aide Program Certification. The IHS retains the responsibility, pursuant to Section 119 of the Indian Health Care Improvement Act, as amended, to maintain the

IHS Community Health Aide Program Certification Board (CHAPCB), which was established by and is under the direct control and supervision of IHS, to accredit training for and to certify community health aides, which includes community health aides/practitioners, dental health aides, and behavioral health aides/practitioners.

Section 2 – Obligations of the Co-Signer.

2.1 Generally. This FA obligates NSHC to be responsible for and to provide health PSFAs identified in Section 3 [Tribal Programs and Budget], utilizing the resources transferred under this FA and other funds as they may become available to NSHC. This FA further authorizes NSHC to consolidate and redesign PSFAs as provided in the Act and the ATHC. Whether providing, purchasing, or authorizing health care services described in the Compact and this Funding Agreement, in accordance with Section 2901(b) of Pub. L. 111-148, the Affordable Care Act, and as otherwise provided in law, NSHC shall be the payer of last resort. NSHC is committed to and will strive to provide quality health services and will strive to meet standards NSHC believes to be appropriate and applicable to the delivery of those health services.

2.2 Tribal Facilities and Locations. NSHC operates the programs described in this FA out of more than one facility or location. These include, but are not limited to the facilities and locations listed in Appendix B, which will be submitted prior to the effective date of this FA, and will be incorporated by reference herein. The Area Division of Planning Evaluation and Health Statistics shall compile from this Appendix a list of all health facilities identified in the Appendix and forward that list annually to the Headquarters' Office of Program Statistics, which shall include each of these facilities and locations in the annual list it must provide to the Centers for Medicare and Medicaid Services (CMS) (formerly Health Care Financing Administration) pursuant to the Memorandum of Agreement between the Health Care Financing Administration and the IHS (December 19, 1996).

Section 3 – Tribal Programs and Budget.

The NSHC agrees to be responsible for the health PSFAs identified below in accordance with the ATHC and this FA, including administration of the Norton Sound Service Unit of the IHS, a tribally operated Service Unit of the IHS. NSHC provides and facilitates a range of services directly, and in cooperation with ANMC, ANTHC, SCF and other Co-signers, through field clinics, referrals to ANMC, and other arrangements with tribal health organizations. Any PSFA described in this section 3 [Tribal Programs and Budget] may be performed by any organizational unit of NSHC at NSHC's discretion. For the purposes of this FA, the NSHC's General Budget Categories consolidate related health PSFAs as listed below.

3.1 Executive Leadership. NSHC through its Board of Directors and administration provides policy and administrative/executive/legal direction and oversight for all PSFAs in this FA. Board members, officers, General Counsel, and staff represent NSHC on the local, regional, state and national committees and boards to provide for advocacy, negotiations, coordination, consultation, development of new programs and information activities.

3.2 Hospital and Clinic Services. NSHC is committed to providing quality patient care achieved through maintaining qualified staff, physical plant, and adequate supply of medical provisions. Under a comprehensive health care delivery plan NSHC provides the following direct

patient care services:

3.2.1 Acute patient care swing-bed;

3.2.2 Twenty-four hour emergency services, including those associated with being a Level IV trauma center;

3.2.3 Ambulatory care services, including after-hour nursing phone triage service;

3.2.4 Medevac/air ambulance services;

3.2.5 Referral/transport system from the villages and/or Nome to and from the next higher level of care (e.g. travel coordination and authorization, patient transport vehicle, medivac transport and patient transportation, including adult escort, health professional and other escort as NSHC deems appropriate and emergency or non-emergency air transportation where ground transportation is not feasible and transportation by private vehicle where no other means is available, including specially-equipped vehicle and ambulance) subject to available funding. NSHC also provides ambulance ground transport to and from the sobering center. NSHC may provide the above described patient transportation services in accordance with Section 213 of the Indian Health Care Improvement Act as amended at 25 U.S.C. § 1621i;

3.2.6 Specialty clinic support;

3.2.7 Sexual Assault Response Team (SART), including forensic exams and counseling of victims;

3.2.8 Comprehensive health care nursing services for the elderly, disabled and others needing long term health care services as defined by Section 205(a)(4) of the Indian Health Care Improvement Act, as amended, and in accordance with Section 205(c) of such Act. Such services will include but not be limited to the nursing facility services of Quyanna Care Center;

3.2.9 Emergency surgery, and minor and other outpatient day surgery, within the scope of qualified Medical Practitioners;

3.2.10 Services associated with training medical students, residents, physician assistant students, nursing students, and allied health provider students from accredited institutions, under supervision of appropriate staff;

3.2.10.1 Physician coverage for services provided in the hospital and villages in person and through daily contact by telephone and/or video telemedicine equipment as needed with the physician assistants and/or Community Health Aides/Practitioners in the villages, and for teleradiology services;

3.2.11 Comprehensive, well person, emergency, acute and chronic care and preventive services at the subregional/community health centers and surrounding village clinics. These services include, but are not limited to, Early Periodic Screening, Diagnosis and Treatment (EPSDT), immunizations, maternal and child health services including family planning, prenatal care and case management of care provided to children and other high-risk individuals; urgent care services 24 hours a day; and specialty clinics, dental services, optometry services, diagnostic imaging services, laboratory services, and telemedicine, telehealth, telepharmacy, teleradiology, telepsychiatry services, dialysis, and mammography, colonoscopy and other cancer screenings, and cancer treatment;

3.2.12 Diabetes prevention program, including community exercise and activity programs, such as “Summercise” programs, community health fairs, and water aerobics. As authorized under Section 204(d) of the Indian Health Care Improvement Act, as amended at 25 U.S.C. § 1621c, NSHC provides dialysis services and is committed to and shall provide quality dialysis services that will at all times meet standards applicable to such services;

3.2.13 Ancillary services will be maintained at levels sufficient to support medical diagnosis, including but not limited to physical therapy, smoking cessation, respiratory therapy,

diagnostic imaging, laboratory, pharmacy, social services, nutrition services, and point of care testing;

3.2.14 Provide lodging for patients, family members of patients, and/or their escorts, including but not limited to housing at the patient hostel, and elder housing;

3.2.15 Coordination with, support of, and assistance to tribal and non-profit entities with their provision of health and social services; and

3.2.16 Provides training and continuing education for NSHC employees and NSHC beneficiaries, and, subject to availability of funding, provides limited financial support for NSHC beneficiaries to assist them to be prepared to pursue health related careers. NSHC also provides a nursing educational program.

3.3 Behavioral Health Services. Provides behavioral health services including, but not limited to:

3.3.1 Substance Abuse Services. Provide services to reduce and prevent substance abuse and associated problems through in/outpatient services, prevention/education, referral services, transitional/residential care services, outreach services, and community involvement, diagnostic and primary alcoholism and drug abuse treatment services, including individual assessment and referrals, individual and group counseling, sobering center and social detoxification services, case management, and substance abuse education classes and Alcoholics Anonymous and/or Narcotics Anonymous meeting sponsorship.

3.3.2 Mental Health Service. Provides professional and paraprofessional staff that travel within the Norton Sound Service Unit, and provides family, child, adolescent and community mental health programs. As needed, a psychiatrist provides mental health services in the hospital. Services include but are not limited to assessment and diagnostic services, individual and group therapy, crisis intervention services, suicide prevention and psychological testing, and telebehavioral health.

3.3.3 Village Based Counseling Program. Provides supportive counseling to identified clients, including abused children, children with behavioral health problems, families in crisis, adults and adolescents with substance abuse and/or mental health issues, and the chronically mentally ill. This program works in conjunction with the substance abuse and mental health program and includes the services of behavioral health aides.

3.3.4 Developmental Disability Program. Provides services to clients with developmental disabilities. The program assists clients to remain in their homes and communities by developing skills to increase self-control and participation in the community. When this is not possible, the program assists families to find appropriate treatment and services outside the home for the client.

3.3.5 Transitional Living Services. Provides transitional living services, including residential programs, to assist clients in maintaining sobriety while attending outpatient substance abuse treatment, and after completion of treatment until the client is ready to return to his/her home community.

3.3.6 Fetal Alcohol Spectrum Disorder Prevention Services. Provides education and assistance regarding Fetal Alcohol Spectrum Disorder, targeting pregnant women

with substance abuse issues to educate them about the effects of substance abuse on children and families.

3.3.7 Children's Services. Provides intensive outpatient behavioral health services to high risk clients with severe emotional problems ages 9-20 and their families. The program aims to help youth succeed at school, home and in the community while eliminating the need to send them elsewhere. Children's services also may include a full array of behavioral health prevention, early intervention, and treatment programs, including recreational and activity programs and residential and day camps. Providing culturally relevant services involving the community in the treatment process.

3.4 Other Health Services. Provides other health services, including but not limited to:

3.4.1 Dental Services. Provides services at the hospital and in field clinics to raise dental health and lower the incidence of dental disease. The field dental program offers visits to all the villages. Dental services may include dental health aide and dental health aide therapist, training, supervision, and services under the Standards and Procedures approved by the IHS Community Health Aide Program Certification Board.

3.4.2 Audiology. Audiology Services will be delivered, both at the hospital and through field clinics throughout the Norton Sound Service Unit.

3.4.3 Optometry Services. Optometry Services will be provided consistent with the needs of the patients, both in Nome and through field clinics throughout the region.

3.4.4 Village Health Services. Provides training, supervision and services of Community Health Aides/Practitioners (CHA/Ps) and the Clinic Travel Clerks who act as support staff to the village clinics. The Community Health Aide Program will be carried out under the Standards and Procedures approved by the IHS Community Health Aide Program Certification Board.

3.4.5 Health Aide Training. Provides Community Health Aide Program training to trainees from throughout Alaska.

3.4.6 Traditional and Alternative Medicine. Provides traditional healing services in coordination with existing western medicine services; and alternative healing practices only upon a referral from a provider credentialed in accord with the standards cited in Section 8 of this FA. These services will be provided in accordance with Section 831 of the Indian Health Care Improvement Act, amended at 25 U.S.C. § 1680u.

3.4.7 Emergency Medical Services. NSHC will maintain Emergency Medical Services (EMS) to lower the incidence of death and disability by providing air ambulance services. The NSHC departments also provide various levels of EMS and injury prevention training for staff and community members throughout the region. NSHC participates in EMS delivery in cooperative with community fire departments, other emergency response, and rescue services throughout the region.

3.4.8 Maternal and Child Health Program. Provides:

3.4.8.1 Prematernal home care for village women awaiting delivery in Norton Sound Regional Hospital;

3.4.8.2 Prenatal, family planning and newborn patient education; and

3.4.8.3 Assistance in risk screening and coordination of prenatal care.

3.4.9 Office of Environmental Health. Provides inspections of the hospital and clinics; water testing laboratory; washeterias; technical assistance, training and research to help protect the public from illness and injury related to problems with water, waste, food, air, pests, safety, hazardous waste sites and bioterrorism. Technical assistance is provided to local, state and federal officials as necessary to assist with funding processes and the development of local environmental programs.

3.4.10 Sanitation Engineering Services. Provides sanitation engineering services, technical assistance and support for the local community utility assistance program, and training to regional water/wastewater operators and utility managers as needed to ensure safe operation and management of environmental systems.

3.4.11 Public Health Nursing. Provides public health nursing services, including but not limited to consultation to CHA/Ps in the villages, child health and developmental screening, prenatal care, EPSDT, school screenings, immunizations, and tuberculosis and other infectious disease screening and monitoring.

3.4.12 Research and Prevention. Participate in research activities to determine whether genetic factors predispose Alaska Natives to disease.

3.4.13 Home Care and Other Community Based Services. Through a combination of western methods and traditional modalities, provides home care and other community based services, which includes but is not limited to assistance with activities of daily living such as bathing, dressing, laundry, light housekeeping, cooking, vital signs, and medication reminders. These services are provided to all individuals throughout the Bering Straits region who are unable to perform their activities of daily living on their own, or when the families are unable to meet their needs. Home and Community Based Services also provides palliative care and other end-of-life services, such as hospice care, respite, chore, nutrition, transportation, and other supportive services including various senior programs and activities. Such services may also include Assisted Living Services. NSHC will provide home and community based services, hospice and assisted living in accordance with the requirements at § 205 of the Indian Health Care Improvement Act, as amended at 25 U.S.C. § 1621d.

3.4.14 Nutrition Services for Women, Young Children, and Infants. Provides supplemental foods, and nutritional education, counseling and other services to women, infants and young children who are at nutritional risk.

3.4.15 Infant and Young Child Developmental Program. Provides services that promote growth and development of infants and young children. Children who qualify for services may have been born prematurely, have delays in their development, or have a diagnosed disability such as Down's syndrome or cerebral palsy. Other child development and family services include, but are not limited to, health-oriented education; socialization; health screening; growth and

nutritional assessment; individualized culturally-appropriate child development services; family services; and family involvement.

3.4.16 Injury Prevention Services. Provides services to lower the incidence of death and disability, including but not limited to, the provision of safety information, equipment, and training.

3.4.17 HIV Services. Provides testing, referrals, data collection, and training end education.

3.4.18 Purchased/Referred Care Services. Purchases services, which are not otherwise available or accessible to eligible beneficiaries, on a contractual or open-market basis within funds available. NSHC agrees to be bound by 42 C.F.R. Part 136, subpart I, in the administration and provision of Purchased/Referred Care (PRC) services carried out under this Agreement. Accordingly, NSHC has opted to pay at Medicare Like Rates for PRC in accordance with that subpart of the regulations.

3.4.19 Morgue. Provides morgue services in each village.

3.5 Support Services. Support services required to support the provision of health services, including, but not limited, to plant operations, biomedical services, housekeeping and linen/laundry services, security (for patients and staff), human resources, information systems, administration and board support, corporate planner, grant management, compliance officer and performance improvement, material management (procurement, receiving, processing and distribution), central sterile supply, infection control/employee health, and financial, including business office functions, coding and medical records, planning and implementation of an electronic health records system, patient benefits coordinator, the provision of staff housing, and fleet vehicle maintenance including oversight of fleet vehicle operations, scheduling, and performance of maintenance, and managing vehicle-related procurement. Child Care: to enhance their access to health care, patients may be offered child care services.

3.6 Capital Projects. Provides technical assistance, planning, design, engineering, management and general contracting for construction, maintenance and operation of all facilities used by NSHC, including both federal facilities and those leased or owned by NSHC. This program also provides technical assistance and construction related services to other tribes and tribal organizations inside and outside NSHC's service area.

3.7 Village Built Clinic (VBC) Lease Program. Provides funds to eligible entities to support the rental of CHA/P clinic space. NSHC will operate this program directly with all VBC lessees, who so elect, including the provision of support services and technical assistance. NSHC will ensure that each lessee is in compliance with the standards referenced in the VBC lease.

3.8 Public Health and Epidemiology. Directly and/or through ANTHC, including its Epidemiology Center,² NSHC carries out public health, epidemiology and health research functions. These activities include, but are not limited to: collecting and receiving personally

² The ANTHC Epidemiology Center was previously operated by the Alaska Native Health Board.

identifiable health information for the purpose of

3.8.1 preventing or controlling disease, injury, or disability;

3.8.2 reporting disease, injury, and vital events such as birth and death; and

3.8.3 the conduct of public health and epidemiological investigations, surveillance, and interventions, including the maintenance of disease and injury registries.

3.9 Other Programs/Services Funded.

3.9.1 Generally. This FA includes programs, functions, services and activities resulting from tribal redesign, or consolidation, reallocation or redirection of funds, including its own funds or funds from other sources, provided that such consolidation, redesign, or reallocation or redirection of funds results in carrying out programs, functions, services and activities that may be included in the FA pursuant to section 505 of Title V and Article III, Section 6 [Consolidation with Other Programs] of the ATHC. This includes any other new health care programs, including, but not limited to, those identified in the Indian Health Care Improvement Act funded during the fiscal years.

3.9.2 Non-IHS Funding. NSHC will complement and supplement the PSFAs described throughout Section 3 [Tribal Programs and Budget] with funding from sources other than the IHS through this Funding Agreement, subject to the availability of such other funding sources. Consistent with Article III, Section 5 [Reallocation], 6 [Merging with Other Programs], and 7 [Program Income] of the ATHC, non-IHS funds will be added to or merged with funds provided by the IHS through this FA.

3.10 FTCA. The Federal Tort Claims Act applies to NSHC’s PSFAs under this FA as provided in Section 516(a) of Title V (which incorporates Section 102(d) of Title I of the Act and Section 314 of P.L. 101-512). The extent of Federal Tort Claims Act coverage is described more particularly in 25 C.F.R. Sections §§ 900-180-900.210.

Section 4 – Amounts Available During the Term of the FA

4.1 The following amounts shall be available to NSHC pursuant to the ATHC and Title V of the Act and are subject to reductions only in accordance with Section 508(d) of Title V and Section 106 of Title I of the Act.³

Recurring Base: Inclusive of all recurring funding, including recurring contract support funds and Village Built Clinic Funds of \$460,572. ⁴	\$49,830,988
Non-recurring funds: inclusive of all non-recurring contract support funds and such other funding which may be added to the contract. ⁵	\$14,131,206

³ A breakout of these funds is shown in Appendix A, which cites the source document used to determine the amount. These amounts are subject to change under the Act and as provided in this FA. For other fiscal years to which this FA may be applicable, the replacement Appendix A will be negotiated between IHS and NSHC for the respective year and amended to this FA and incorporated by reference, accordingly.

⁴ A breakout of these recurring costs is found in Appendix A, fully incorporated herein and citing the actual documents used to determine the amount. See Footnote 3.

⁵ These non-recurring funds include contract support costs and routine Maintenance and Improvement funds

Subtotal: (This amount is subject to amendments in accordance with Section 14 [Amendment or Modification of this FA]) ⁶	\$63,962,194
Area “Tribal” share to include funding identified from the Area Office and identified in Appendix A to this Agreement. ⁷	\$1,049,412
Headquarters-tribal share: “Tribal Size Adjustment Pool,” including all funds identified in Appendix A. The amount identified is exclusive of funds for which distribution amount has not been determined. The final amount due shall be determined as set forth in this FA or Appendix A. ⁸	\$735,846
Headquarters-Tribal share: “Program Formula Pool” – to include all funds identified in Appendix A, and such additional funds which the IHS may make available on a program formula basis during the year based on the programs accepted for this allocation in Appendix A.	\$0
Subtotal – Tribal Shares ⁹	\$1,785,258
TOTAL ATHC FUNDING	\$65,505,309

These amounts are subject to additions for other reimbursements, and for new funds received during the term of this Agreement including amounts that have historically been distributed as non-recurring funds under the Act. Any amounts remaining unspent under the prior FA, after adjustments and services, as of the previous fiscal year, shall be included and spent under this FA.

Of the amount shown above for Headquarters Tribal Share “Program Formula,” \$176,509 are for Equipment Replacement, the Equipment Replacement amount paid as part of the lump sum due NSHC was determined by multiplying the FY 2021 Equipment Replacement amount paid to NSHC by 90%. The final Equipment Replacement amounts paid in FYs 2022-

available at the beginning of the fiscal year. See Footnote 3.

⁶ The Radiologist Consultation funds in the amount of \$195,131 and Biomed funds in the amount of \$67,102 are not included in this amount (neither of these amounts include any adjustments for mandatory increases). These recurring funds and any mandatories associated with them are in the ANTHC FA and will be negotiated annually as a flow-thru from the ANTHC, in accordance with the interpretation of Section 325 of P.L. 105-83 by the IHS.

⁷ Funds from the Alaska Area were distributed according to methods agreed upon in a caucus open to all Alaska Tribes and tribal organizations. The specific methodology is identified in Appendix A.

⁸ Headquarters tribal shares were allocated according to the following process, which was adopted in a caucus open to all Alaska tribal organizations: The Alaska Area Tribal shares of Headquarters was first defined using the national IHS recommended methodology. The total Alaska Area Tribal shares was then reallocated to each Co-Signer according to the agreed upon Alaska Area methodology, which is identified specifically for each line in Appendix A.

⁹ The subtotal of Tribal shares does not include certain Headquarters for which the amount or availability has not been determined. This amount will be adjusted to make available all Tribal shares for which NSHC is eligible. IHS will pay mandatory increases on some Headquarters Tribal shares, subject to appropriations.

2024 will be based on the final FYs 2022-2024 Equipment Replacement allocations. If the final Equipment Replacement amounts, as determined by the final FYs 2022-2024 Equipment Replacement allocations, is less than the 90% calculation, NSHC will return the difference to the IHS. See also Appendix A, footnote to line 22 on page 6.

The Recurring Base amount shown above includes \$291,158 that NSHC received, recurring in FY 2006 for Congressionally earmarked alcohol funds. Such funds are subject to "Adjustments Due to Congressional Actions" as described herein in Section 6 as well as any conditions on those funds that may be described in the FYs 2022-2024 Interior Appropriations Acts (Act) or Congressional Reports. After each Act is passed into law, such conditions, including Congressionally-directed reporting requirements, will be added by amendment not requiring NSHC's signature as described in Section 14 [Amendment or Modification of this FA].

The parties agree Section 505(b)(2) of Title V provides, among other things, that grants administered by the Department of Health and Human Services through the IHS may be added to NSHC's FA after award of such grants. In accordance with this provision of Title V and its implementing regulations, the Secretary will add NSHC's diabetes grants and any other statutorily mandated grant(s) administered by the Department through the IHS to this FA after such grant(s) have been awarded. Grant funds will be paid to NSHC as a lump sum advance payment through the PMS grants payment system as soon as practicable after award of the grant. NSHC will use interest earned on such funds to enhance the purposes of the grant including allowable administrative costs. NSHC will comply with all terms and conditions of the grant award, including reporting requirements, and will not reallocate grant funds nor redesign the grant program, except as provided in the implementing regulations or the terms of the grant.

4.1.1 M&I, Routine Payments, Non-Routine Pool Methodologies and Process for Opting In/Out of Non-Routine Pool Methodologies.

The amount of IHS Maintenance and Improvement (M&I) funds allocated to eligible health care facilities in Alaska, including for the competitive pool, is determined by a methodology called the University of Oklahoma (U of O) formula. By agreement with ANTHC and other Co-Signers to the Compact, including NSHC, two-thirds of each year's U of O formula allocation to Alaska is designated as "routine" funding and is paid directly by IHS to each respective Co-Signer managing M&I eligible facilities and one-third is Designated "non-routine" funding for distribution through construction project agreements and/or subawards. Specific projects are identified and recommended via ANTHC's statewide M&I program, currently through the Competitive project pool methodologies overseen by its statewide Maintenance and Improvement Resource Allocation Committee (MIRAC), an advisory committee of the ANTHC Board of Directors.

The routine M&I amount identified in Appendix A will be paid directly to NSHC as a part of the lump sum due. The amount is determined by multiplying the FY 2021 Routine M&I amount paid to the Co-Signer by 90%. The final routine M&I amount paid in FY 2022 will be based on the final FY 2022 Routine M&I allocation. If the final Routine M&I amount, as determined by the final FY 2022 Routine M&I allocation, is less than the 90% calculation, NSHC will return the difference to the IHS. NSHC and IHS have agreed that NSHC may base budget M&I funds determined to be eligible for base budget, including the amount of the two-thirds routine portion of the U of O formula funds payable to NSHC in the federal fiscal year that precedes the start of the base budget period.

For Co-Signers that have not opted out, additional non-routine funding that may be available for the maintenance and improvement of eligible facilities, such as funding for the Backlog of Essential Maintenance, Alteration and Repair (BEMAR), is distributed through construction project agreements and/or subawards to Co-Signers, with specific projects being identified and recommended via ANTHC's M&I program, for approval by IHS, currently through the BEMAR Pool methodologies.

NSHC may also opt out of participating in one or more of the nonroutine pool methodologies for its M&I eligible facilities,¹⁰ as provided in Appendix M of ANTHC's Funding Agreement, "ANTHC M&I Pools Opt In/Opt Out Process."

If NSHC elects to opt out from participation in the M&I competitive pool, it must opt out for all of its tribally owned facilities, and IHS will directly pay as "routine" M&I funds the U of O determined one-third project pool amount. NSHC shall enter into a Competitive Project Pool support agreement with ANTHC, as described in the Appendix M to ANTHC's FA. The M&I eligible federally owned facilities operated by NSHC shall continue to be eligible for Competitive Project Pool funding.

If NSHC elects to opt out from participation in the BEMAR pool, it must opt out for all of its tribally and federally owned facilities and NSHC may receive a negotiated BEMAR amount through a negotiated Construction Project Agreement with IHS. The amount of funds that may be available from the BEMAR Pool for a Co-Signer that is opting out is calculated based on the average of its percentage of U of O formula funds allocated to the Alaska Area as a result of the Co-Signer's eligible tribally and federally owned facilities and the percentage of BEMAR funds (FEDS¹¹ deficiencies) allocated to Alaska Area as a result of the Co-Signer's eligible tribally and federally owned facilities.

A federal facility's eligibility for other funding is not affected by a Co-Signer's decision to opt in or out of the Competitive Pool or the BEMAR Pool.

NSHC understands and agrees that even if it opts out of the Competitive Project Pool for tribally owned facilities, or the BEMAR Pool for any of its facilities, and that it must use funds that it receives in accordance with the appropriation language for Indian Health Facilities in the Department of Interior and Related Agencies Appropriation Act for the applicable Fiscal Year or any comparable Act of Congress that contains the subject appropriation. NSHC acknowledges that opting back in to the nonroutine M&I project pool methodologies is contingent on meeting the conditions described in Appendix M of ANTHC's Funding Agreement.

4.2 Contract Support Costs. Contract support costs (CSC) will be paid in accordance with 25 U.S.C. § 5325 and § 5388(c). The parties agree that, according to the best data available as of the date of execution of this agreement, the amount to be paid under FY 2022, which represents the parties' estimate of the Tribe's full CSC requirement pursuant to 25 U.S.C. § 5325, is \$17,177,246, including \$4,678,902 for direct CSC and \$12,498,344 for indirect or indirect-like

¹⁰ M&I eligible federally owned facilities operated by NSHC continue to be eligible to access non-routine funds through the Competitive pool.

¹¹ "FEDS" refers to the Facilities Engineering Deficiency System of which the Backlog of Essential Maintenance Alteration and Repair (BEMAR) is a subset.

CSC.¹² This estimate shall be recalculated as necessary as additional data becomes available including information regarding the direct cost base, pass throughs and exclusions, and the indirect cost rates to reflect the full CSC required under 25 U.S.C. § 5325. The parties will cooperate in updating the relevant data to make any agreed upon adjustments. In the event the parties disagree on the CSC amounts estimated and paid pursuant to this paragraph and the Tribe’s full CSC requirement under the ISDEAA, the parties may pursue any remedies available to them under the ISDEAA, the Compact, and the Contract Disputes Act, 41 U.S.C. §7101 et seq.

4.3 Base Budgets.

4.3.1 Categories and Base Year. At the end of the first period of the base budget option, the IHS and Co-Signers agreed to extend the three year (FY1998-FY2000) base budgets implemented for the ATHC for an additional two years (FY2001-FY2002). IHS and NSHC have subsequently agreed to additional extensions through FY 2009. The IHS and Co-Signers have agreed to further extend the base budget period at the Co-Signer’s option. The following categories are subject to base budgeting for the base year period and the period, as noted below.

Category of Funding	Base Period for Base Funding	Extended through:
Headquarters TSA amounts ¹³	FY 97	FY 2022
Equipment Replacement Funding	Not Included	N/A
Area Tribal Share	Not Included	N/A

4.3.2 Adjustments. Adjustments to base funding shall be permitted in direct proportion to changes in appropriated amounts (by sub-activity), as provided under Section 6.1 of this FA titled “Adjustments, Due to Congressional Actions.” Adjustments shall also be permitted for the addition of new Co-Signers to the ATHC and when current Co-Signers add or retrocede PSFAs, as provided in Section 14.4 [Due to Addition of New Programs].¹⁴ Adjustments also shall be permitted when Co-Signer chooses to restrict or un-restrict previously “restricted” or “un-restricted” categories, provided that restrictions shall be changed only during annual negotiations. NSHC shall also be eligible for funding for new service increases, mandatories, specific Congressional appropriation for population growth, health services priority system, contract support costs and other increases in resources on the same basis as all other Tribes. Adjustments for changes required when a Tribe joins or withdraws from a Tribal consortium shall also be permitted, as provided under Section 10.3 [Withdrawal Procedures] of this FA. Co-Signers shall also remain eligible for the distribution of additional Tribal shares for Assessments, Workers Compensation, Emergency Reserve, Management Initiatives, and other PSFAs from Headquarters.

¹² For other fiscal years to which this FA is applicable, the CSC estimates will be negotiated between the IHS and NSHC for the respective year and amended to this FA in Appendix A.

¹³ ATHC base budgets for TSA amounts shall be considered as a whole (entire ATHC amount) and shall be subject to adjustment of the internal allocation subject to ATHC agreements.

¹⁴ This includes addition of new facilities when the addition of these facilities includes an increase in equipment funds identified for the new facilities.

Section 5 – Methods of Payment.

5.1 Payment Schedule. Except as provided in subsection 5.2 [Availability of Tribal Shares], 5.3 [Buyback/Withholding], and 5.4 [Periodic Payments] of this Section, all funds identified in Section 4 [Amounts Available During the Term of the FA] of this FA shall be paid to NSHC, in accordance with Article II, Section 4(a) [Payment Schedule] of the ATHC; payment to NSHC to be made as follows: One annual lump sum payment to be made in advance.

5.2 Availability of Tribal Shares. NSHC will be paid 100 percent of Headquarters and Area Tribal Shares in its initial lump sum payment, as negotiated in this FA, for each year under the term of this FA.

5.3 Buyback/Withholding. NSHC may carry out its responsibility to provide certain PSFAs included in this FA by using services or other resources of the Federal government under Article V, Section 22 [Purchases from the IHS] of the ATHC, as permitted by law. Except as provided herein, the cost of such services and the terms under which they may be available to NSHC are set forth in the Buyback/Withhold Agreement between the IHS and NSHC, which is attached as Appendix D to this FA and incorporated by reference herein. The administrative surcharge provided for in Section 2.2.4 of the Buyback/Withhold Agreement for FY 2022 shall be .285 percent. During the term of this FA, the Administrative surcharge rates will be negotiated annually. Notwithstanding Section 5 of the Buyback/Withhold Agreement, upon the request of the IHS or any Co-Signer, such FA will be negotiated for future fiscal years annually during negotiation of this FA.

5.4 Periodic Payments. Payment of funds otherwise due to NSHC under this FA, which are added or identified after the initial payment is made, shall be made promptly upon request of NSHC by check or wire transfer.

Section 6 – Adjustments.

6.1 Due to Congressional Actions. The parties to this FA recognize that the total amount of the funding in this FA is subject to adjustment due to Congressional action in appropriations Acts or other law affecting availability of funds to the IHS and the Department of Health and Human Services. Upon enactment of any such Act or law, the amount of funding provided to NSHC in this FA shall be adjusted as necessary, after NSHC has been notified of such pending action and subject to any rights which NSHC may have under this FA, the ATHC, or the law.

6.2 Proposals by Authorizing Tribes. Should any authorizing Tribe assume responsibility for PSFAs (or portions thereof) under a contract or annual FA pursuant to the Act, adjustment to funding amounts under this FA will be negotiated.

Section 7 – Records.

7.1 Incorporation of the Privacy Act. Pursuant to Section 506(d)(1) of Title V, records acquired, generated or maintained by NSHC shall not be treated as Federal records under chapter 5 of title 5 of the United States Code, except that:

7.1.1 Patient medical, financial records and personnel records may be disclosed only in accordance with 5 U.S.C § 552a(b); and

7.1.2 Medical records generated by NSHC shall be eligible for storage in Federal Records Centers at NSHC's option in accordance with Section 105(o) of Title I.

7.2 Confidentiality Standards. NSHC will seek to comply with the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), including, but not limited to, privacy, security, transactions, and code set regulations, codified at 45 CFR Parts 160, 162, and 164. If a record is not subject to HIPAA, NSHC will maintain the confidentiality of its records in accordance with policies and procedures adopted by its Governing Body, which will be consistent with the purposes and guidelines of HIPAA and the Federal Privacy Act of 1974.

7.3 Quality Assurance Records. NSHC operates a medical quality assurance program and treats the records of such program as confidential and privileged in accordance with section 805 of the Indian Health Care Improvement Act as amended at 25 U.S.C. § 1674.

Section 8 – Program Rules.

NSHC in carrying out the PSFAs in this FA agrees to comply only with those guidelines, manuals, and policy directives that are listed below: Joint Commission (formerly known as JCAHO) standards, as applicable, and Community Health Aide/Practitioner certification standards.

Except as specifically set forth in this Section, pursuant to Section 517(e) of Title V, NSHC does not agree to be subject to any agency circular, policy, manual, guidance or rule adopted by the IHS, except for the eligibility provisions of Section 105(g) and the regulations promulgated under Section 517 of Title V, unless otherwise waived.

Section 9 - Real Property Reporting Requirements

9.1 Leases. The IHS must report on its federally leased facilities. NSHC agrees to notify the AANHS of changes of occupancy, size, use, and general condition of Village Built Clinic (VBC) leased facilities in locations where NSHC has bought back services from the IHS. IHS will annually, or upon renegotiation, provide to NSHC a copy of each VBC lease. No increase in the amount due to the lessor pursuant to a lease will be negotiated by IHS without advance notice to NSHC. In administering these leases, the IHS will work with NSHC to ensure that each lease is in compliance with the standards referenced in the VBC lease.

9.2 Section 105(I) Leases. To facilitate IHS Division of Engineering Services review of a Co-Signer's proposal to renew any Section 105(I) lease or leases, NSHC agrees to provide information, as might be needed to renew a lease for any facilities leased under Section 105(I) of the Act to the AANHS. Upon renegotiation of a Section 105(I) lease or leases, IHS will provide to NSHC a copy of each 105(I) lease executed by IHS and the Co-Signer.

Pursuant to 25 U.S.C. § 5385(d)(2)(B) and (D), section 105(I) leases for the following facilities are incorporated into this Funding Agreement and made a part thereof: 1) Brevig Mission Clinic;

2) Elim Clinic; 3) Gambell Clinic; 4) Golovin Clinic (Irene L. Aukongak “Dagumaaq” Health Clinic); 5) Koyuk Clinic (Ruth Quamiigan Henry Memorial Clinic); 6) Savoonga Clinic; 7) Shaktoolik Clinic; 8) Shishmaref Clinic (Katherine Miksruaq Olanna Memorial Clinic); 9) St. Michael Clinic (Kathleen L. Kobuk Memorial Clinic); 10) Stebbins Clinic (Taprarmiut Yungcarviat Clinic); 11) Teller Clinic; 12) Unalakleet Sub-Regional Clinic (Anikkan Inuit Iluuqtaat Sub-Regional Clinic); 13) Wales Clinic (Toby Anungazuk Sr. Memorial Health Clinic); 14) White Mountain Clinic (Natchirsvik Health Clinic); 15) NSHC Behavioral Health Services Facility/Clinic; 16) Nome Operations Building; 17) NSHC Wellness & Training Center; 18) Diomedea Clinic

9.3 Maintenance and Improvement Funds. NSHC agrees to use maintenance and improvement funds received through this FA in accordance with the appropriation language for Indian Health Facilities in the Department of Interior and Related Agencies Appropriation Act for FYs 2022-2024 or any comparable Act of Congress that contains the subject appropriation and in accordance with 41 U.S.C. § 12 to the extent applicable.

Section 10 – Services to Non-Beneficiaries.

Section 813 of the Indian Health Care Improvement Act, as amended, 25 U.S.C. § 1680c, (Section 813), authorizes the governing body of a Tribal Organization carrying out health services of the IHS under the Indian Self-Determination and Education Assistance Act to determine whether health services should be provided under the Tribal Organization’s FA with the IHS “to individuals who are not eligible for such health services under any other subsection of this section or under any other provision of law”, 25 U.S.C. § 1680c(c). The NSHC Board of Directors has made such determination consistent with Section 813, and provides for its findings in Resolution No. 2010-16. Resolution No. 2010-16 is attached as Appendix E and incorporated by reference herein. NSHC may provide services under this FA to “non-beneficiaries” as described in Resolution No. 2010-16. In addition services may be provided to U.S. Public Health Service Commissioned Corps Officers and their dependents.

Section 11 – Retrocession and Discontinuance.

11.1 Retrocession. The retrocession provisions of Section 506(f) of the Act are herein adopted, except that the effective date from a retrocession request of the ATHC and FA, in whole or in part, shall be one year from the date of the request by an authorizing Tribe or Village, except as provided below. Retrocession may be effective with less than one years notice, providing the Tribe or Village requesting retrocession, NSHC and the IHS agree to an effective date of less than one year from the date of retrocession request.

11.2 Discontinuance. NSHC may discontinue its participation in the ATHC after written notice to each authorizing Tribe or Village and the IHS. Notice must be provided one year in advance of the effective date of the request except that the effective date of a request may be less than one year upon approval of all authorizing Tribes and Villages and the IHS.

11.3 Withdrawal Procedures.

11.3.1 Process. Unless prohibited by law and in accordance with § 506(g) of Title V, an Indian tribe may fully or partially withdraw from a participating inter-tribal consortium or

tribal organization its share of any program, function, service or activity (or portions thereof) included in the ATHC or FA, and any such withdrawal will become effective within the time frame specified in the resolution which authorized transfer to the participating inter-tribal consortium or tribal organization, provided that in the absence of a specific time frame being set forth in the resolution, such withdrawal shall become effective on -

11.3.1.1 The earlier of

11.3.1.1.1 One year after the date of submission of such request; or

11.3.1.1.2 The date on which the FA expires, or

11.3.1.2 Such date as may be mutually agreed upon by the Secretary, the withdrawing Indian tribe, and the participating tribal organization or inter-tribal consortium that has signed the ATHC or FA on behalf of the withdrawing Indian tribe, inter-tribal consortium, or tribal organization.

11.3.2 Distribution of Funds. In accordance with Sections 503(b) and 506(g) of the Act, when a tribe proposing to enter into a contract under Title I or a compact and FA under Title V fully or partially withdraws from a participating tribal organization, the withdrawing Tribe shall, upon written request, be entitled to be paid its tribal share of funds supporting those PSFAs (or portions thereof) which it will be carrying out under its own contract or compact and FA, and such funds shall be removed from the FA of the tribal organization and awarded to the Tribe upon approval of a Title I contract or compact and FA. The IHS shall retain any funds removed, but not awarded in a Title I contract or compact and FA.

Section 12 – Memorandum of Agreement with Member Village.

Funds provided under this FA may be allocated to and expended by an Alaska Native Village (“Village”) which is party to this FA in accordance with the terms of the ATHC, this FA and a Memorandum of Agreement (MOA) approved by NSHC and the Village. The Federal Tort Claims Act shall apply to PSFAs carried out by the Village under such MOA and to the Village and its employees to the same extent as if they had been carried out directly by NSHC. Such an MOA may include provisions for the assignment of federal employees under IPA assignment or Commissioned Corps detail. Such assignment shall be subject to the approval of the AANHS Director. NSHC shall be responsible for assuring compliance by the Village with the ATHC, this FA and the MOA.

Section 13 – Consolidation of Contract and Previous Annual FAs.

The contracts listed below and all previous Annual FAs shall be amended or terminated, as appropriate to transfer applicable contract funds into this FA for services, materials and activities, programs, functions and facilities provided to the Tribes represented by NSHC: Title I, P.L. 93-638 Contract #243-89-0011, as modified.

Section 14 – Amendment or Modification of this FA.

14.1 Form of Amendments. Except as otherwise provided by this FA, the ATHC, or by law, any modifications of this FA shall be in the form of a written amendment and shall require written consent of each of the signatory Tribes, acting directly or through NSHC as authorized by

resolution, the NSHC, and the United States. Participation or written consent of Tribes and Co-Signers not subject to the terms of this FA shall not be required.

14.2 Funding Increases.

14.2.1 Written consent of NSHC shall only be required for issuing amendments for those funds which:

- 14.2.1.1** require a change to Section 3 [Tribal Programs and Budget];
- 14.2.1.2** require a specific commitment by NSHC (e.g., Maintenance & Improvement projects and prior fiscal year Sanitation Facility Construction projects); or
- 14.2.1.3** reduce funding other than changes in Congressional appropriations pursuant to Section 6.1 [Adjustments Due to Congressional Actions].

14.2.2 Amendments not requiring written consent may include, but are not limited to:

- 14.2.2.1** Program/Area/HQ Mandatories;
- 14.2.2.2** Program/Area/HQ End-of-Year Distributions;
- 14.2.2.3** CHEF, subject to the condition that if a case initially qualifying for reimbursement is paid (in whole or in part) by an alternate resource or cancels for any reason, NSHC will return the unused amount to the IHS CHEF account;
- 14.2.2.4** PRC Deferred Services;
- 14.2.2.5** Routine Maintenance & Improvement; or
- 14.2.2.6** Collections and reimbursements.

14.2.3 Amendments reflecting payment of these funds shall be provided to NSHC after any such funds are added to the FA. NSHC retains the right to reject the addition of such funds to the FA and return the funds to the IHS.

14.3 Services from IHS. Should NSHC determine that it wishes the IHS to provide PSFAs included in this FA for which funding has been identified but not provided, the parties shall negotiate an amendment to the FA to reflect the transfer of responsibilities from NSHC back to the IHS and the pro-rata share of funding for that program, services, function or activity shall be retained by the IHS. Unless otherwise negotiated, IHS will not transfer centrally paid expenses including but not limited to Workers Compensation to any ATHC Co-Signer.

14.4 Due to the Addition of New Programs. Should NSHC determine that it wishes to provide a program, service, function or activity of the IHS not included in this FA, NSHC shall submit a proposal to the IHS to provide such program, service, function or activity. The parties agree to negotiate such a proposal and, should the parties fail to reach agreement, NSHC may submit a final offer in accordance with the Title V procedures set forth in Sections 507(b)-(d) of Title V. A proposal submitted pursuant to this section shall be treated as a request for amendment to the FA and, once approved by the IHS, the Alaska Area Office shall prepare within 30 days an amendment to this FA and the amendment shall be executed through the Area Office and added to the FA.

14.5 Due to Availability of Additional Funding. NSHC shall be eligible for any increases in funding or funding for Medicaid, Medicare, maintenance and improvement, other reimbursements and new programs for which it would have been eligible had it been administering

programs under a self-determination contract, rather than under the ATHC and this FA, and for any other funds that are not restricted by appropriations language for which any Alaska Tribe or tribal organizations may be eligible, including any new funds appropriated for IHS Headquarters and funds passed to Alaska Area as recurring or non recurring funds, and this FA shall be amended to provide for timely payment of such new funds to NSHC. Such amendment shall be originated and prepared within 30 days by the Alaska Area Office and executed through the Area Office in consultation with the Co-Signer.

14.6 Other Adjustments. Upon written authorization by NSHC and agreed to by the IHS, the IHS may reallocate funds retained by the IHS, which are obligated to NSHC, for the purpose of reimbursing the IHS for services or equipment provided to NSHC to assist NSHC in carrying out the terms of the ATHC and this FA.

14.7 General Procedures for Amending or Modifying this FA. Amendments or modifications proposed by NSHC shall be submitted in writing to the IHS Alaska Area Director with a copy to the Office of Tribal Self Governance at IHS. Except as provided with respect to the incorporation of a provision of Title I under Article V, Section 21 [Applicability of Title I Provisions] of the ATHC, or as provided above in paragraphs .1, .2, .3, and .4 of this Section 14 [Amendment or Modification of this FA], a request to amend or modify this FA submitted by NSHC shall be processed in accordance with Sections 507(b)-(d) of Title V and all provisions of those identified sub-sections are incorporated herein for this purpose.

Section 15 – Third Party Recoveries.

Any funds recovered by NSHC through the filing, litigating, or settling a claim against a third party to require that third party to pay for services previously provided to IHS-eligible beneficiaries by NSHC, or for such services previously provided by the IHS in a PSFA now operated by NSHC, shall be the property of the Co-Signer and shall be considered program income to be utilized by NSHC as provided in Article III, Section 7 [Program Income] of the ATHC. Any prospective recovery of funds for such services shall likewise be considered program income to be utilized pursuant to Article III, Section 7 [Program Income] of the ATHC.

Section 16 – Severability.

This FA shall not be considered invalid, void or voidable if any section or provision of this FA is found to be invalid, unlawful or unenforceable by a court of competent jurisdiction. Should such a court make such a finding, the parties will seek agreement to amend, revise or delete any such invalid, unlawful or unenforceable section or provision, in accordance with the provisions of the ATHC.

Section 17 – Memorializing Disputes.

The parties to this FA may have failed to reach agreement on certain matters which remain unresolved and in dispute. Such matters may be addressed through the process set forth in Sections 507(b)-(d) of Title V, or, at the option of NSHC, may be set forth in Addendum II to this FA, which shall be identified as “Memorialization of Matters Remaining in Dispute.” This attachment shall not be considered a part of this FA but is attached for the purpose of recording matters in

dispute for future reference, discussion and resolution as appropriate. The NSHC does not waive any remedy it may have under the law with regard to these issues and any others not listed herein.

Section 18 – Title I Provisions Applicable to This FA. As authorized in 25 U.S.C. § 5396(b), NSHC exercises its option to include the following provisions of Title I of the Act as part of this FA, and these provisions shall have the force and effect as if they were set out in full in Title V of the Act.

- 18.1. 25 U.S.C. § 5304(e) (definition of “Indian Tribe”);
- 18.2. 25 U.S.C. § 5322(b) (related to grants for health facility construction and planning, training and evaluation);
- 18.3. 25 U.S.C. § 5322(d)(1) (related to duty of IHS to provide technical assistance);
- 18.4. 25 U.S.C. § 5324(a)(1) (exemption from Federal procurement and other contracting laws and regulations);
- 18.5. 25 U.S.C. § 5328(b), (conflicting provisions of law);
- 18.6. 25 U.S.C. § 5329(c), section 1(b)(8)(F) (screener identification);
- 18.7. 25 U.S.C. § 5329(c), section 1(b)(9) (availability of funds);
- 18.8. 25 U.S.C. § 5329(c), section 1(d)(1)(B) (construction of contract);
- 18.9. 25 U.S.C. § 5329(c), section 1(d)(2) (good faith).

Section 19 – Exemption from Licensing Fees.

In accordance with Section 124 of the IHCA, as amended at 25 U.S.C. § 1616q, employees of the NSHC health programs shall be exempt from payment of licensing, registration, and any other fees imposed by a federal agency to the same extent that officers of the Public Health Service commissioned corps and other employees of the Indian Health Service are exempt from such fees.

Section 20 – Licensure.

Licensed NSHC health professionals will be licensed in accordance with section 221 of the Indian Health Care Improvement Act, as amended at 25 U.S.C. § 1621t.

Section 21 – Purchase of Health Coverage.

NSHC may use federal funds for purchase of health care coverage in accordance with section 402 of the Indian Health Care Improvement Act, as amended at 25 U.S.C. § 1642.

Section 22 – Medicare & Medicaid Reimbursements.

22.1 Medicare & Medicaid. NSHC has elected to directly collect Medicare and Medicaid payments as provided in 25 U.S.C. § 1641, as amended. NSHC is obligated and entitled to directly collect and retain reimbursement for Medicare and Medicaid and any other third party payers for services provided under this Agreement in accordance with section 401 of the Indian Health Care Improvement Act, as amended at 25 U.S.C. § 1641 and section 206 of such Act, 25 U.S.C. § 1621e, as amended.

22.2 Recovery Right. NSHC has the right to recover reimbursement from certain third parties of the reasonable charges for health services in accordance with section 206 of the Indian Health Care Improvement Act, as amended at 25 U.S.C. § 1621e.

Section 23 – Federal Insurance. IHS will assist NSHC to obtain information about the coverage, rights and benefits available for its employees under chapters 87 and 89 of title 5, United States Code, the cost of such coverage, rights and benefits (including any options in coverage, rights and benefits that may be available), and the procedures by which NSHC may exercise its rights under Section 409 of the IHCA, as amended, to have access to such Federal insurance for its employees.

Section 24 – Environmental and Cultural Resources. The National Environmental Policy Act (NEPA), National Historic Preservation Act (NHPA), and related provisions of law require the IHS to review and approve actions resulting in the use or commitment of IHS funds or that affect IHS property, and which may significantly impact the environment or cultural resources. Unless NSHC has assumed these responsibilities under a construction project agreement in accordance with Section 509 of Title V and 42 C.F.R. §§ 137.285-.312, the IHS must carry out these responsibilities and has elected to utilize Appendix H. Where NSHC plans to undertake an action, as described in Appendix H, on IHS owned real property or utilizing IHS funds received through this Funding Agreement, and NSHC has not assumed these responsibilities, NSHC will provide the IHS with a Project Summary Document (see Appendix F) and a completed Environmental Information and Documentation Form (see Appendix G) so that the IHS can accomplish these requirements, and issue a Determination Document (Categorical Exclusion (CATEX) or Finding of No Significant Impact (FONSI)), as soon as possible. All documentation shall be submitted to the IHS as early as possible in the planning phase of the project to prevent delays in the action. No irreversible action can be taken by NSHC until the IHS completes its compliance responsibilities and so advises NSHC with a Determination Document. Pending resource availability, the IHS is available for education and consultation on NEPA, NHPA, and related provisions of law on an as needed basis.

Section 25 – Effective Date and Duration.

This Funding Agreement becomes effective on October 1, 2021, and will remain in effect through the 2024 Federal Fiscal Year or until a subsequent agreement is negotiated and becomes effective pursuant to Article II, Section 12 [Subsequent Funding Agreements] of the ATHC.

**United States of America
Secretary of Department of Health and Human
Services**

By: Evangelyn L. Dotomain -S
Alaska Area Director, Indian Health Service

Digitally signed by Evangelyn L. Dotomain -S
Date: 2022.11.04 09:32:34 -08'00'

Date: 11/4/22

**Norton Sound Health Corporation On Behalf of
Itself and Certain Alaska Native Tribes,
Identified in Exhibit A of the Compact.**



By: _____
Angie Gorn
President/CEO

10/18/22
Date: _____

**FUNDING AGREEMENT
BETWEEN
THE NORTON SOUND HEALTH CORPORATION
AND
THE SECRETARY OF HEALTH AND HUMAN SERVICES
FISCAL YEARS 2022-2024**

EFFECTIVE DATE: OCTOBER 1, 2023

In accordance with Section 14.1 of the FYs 2022-2024 Funding Agreement made and entered into by Norton Sound Health Corporation (NSHC) and the Secretary of the Department of Health and Human Services of the United States of America, effective October 1, 2021, the Funding Agreement, as amended, is hereby further amended as follows:

1. **Section 3.2.3** is amended as follows:

3.2.3 Ambulatory care services, including after-hour ~~nursing~~ provider phone triage service;

2. **Section 9.2** is amended as follows:

9.2 Section 105(I) Leases. To facilitate IHS ~~Division of Engineering Services~~ review of a Co-Signer's proposal ~~for to renew~~ any Section 105(I) lease or leases, NSHC agrees to provide information, as might be needed, ~~to renew a lease~~ for any facilities leased under Section 105(I) of the Act to ~~the AANHSIHS~~. Upon renegotiation of a Section 105(I) lease or leases, IHS will provide to NSHC a copy of each 105(I) lease executed by IHS and the Co-Signer.

Pursuant to 25 U.S.C. § 5385(d)(2)(B) and (D), ~~section~~ Section 105(I) leases for the following facilities are incorporated into this Funding Agreement and made a part thereof: 1) Brevig Mission Clinic; 2) Elim Clinic; 3) Gambell Clinic; 4) Golovin Clinic (Irene L. Aukongak "Dagumaaq" Health Clinic); 5) Koyuk Clinic (Ruth Quamiigan Henry Memorial Clinic); 6) Savoonga Clinic; 7) Shaktoolik Clinic; 8) Shishmaref Clinic (Katherine Miksrmaq Olanna Memorial Clinic); 9) St. Michael Clinic (Kathleen L. Kobuk Memorial Clinic); 10) Stebbins Clinic (Taprarmiut Yungcarviat Clinic); 11) Teller Clinic; 12) Unalakleet Sub-Regional Clinic (Anikkan Inuit Iluaqutaat Sub-Regional Clinic); 13) Wales Clinic (Toby Anungazuk Sr. Memorial Health Clinic); 14) White Mountain Clinic (Natchirsvik Health Clinic); 15) Nome Operations Building; 16) NSHC Wellness & Training Center; 17) Diomedé Clinic; 18) NSHC Patient Hostel Building; 19) Quyanna Care Center; 20) NSHC Hospital; 21)

Golovin House; 22) St. Michael Triplex; 23) Savoonga Duplex; 24)
Lawyers Apartments; 25) Kusqi House; 26) NSHC Plex Housing.

3. **Appendix.** The following appendix is incorporated by reference and attached:

- Appendix B (Facility List) for FY 2024 (October 1, 2023)

Norton Sound Health Corporation - on Behalf of Itself and Certain Alaska Native Tribes Identified in Exhibit A of the Compact

By: Angie Gorn
Angie Gorn, President/CEO

3/25/24
Date

**United States of America
Secretary of
Department of Health and Human Services**

By: Evangelyn L. Castagna -S Digitally signed by Evangelyn L. Castagna -S
Alaska Area Director, Indian Health Service Date: 2024.04.11 10:10:35 -08'00'
Date

Norton Sound Health Corporation Funding Agreement - Appendix B Fiscal Years 2022-2024

This non-exhaustive list of Tribal Facilities and Locations identifies the sites where Norton Sound Health Corporation owns, leases, occupies, or otherwise used real property to carry out its responsibilities under the Alaska Tribal Health Compact and its Funding Agreement. Each description of facilities and locations is intended to include surrounding and adjacent grounds.

Additionally, the cross references to specific PSFAs are not intended to limit the scope of PSFAs that may be performed at a facility or for which a facility may be used; rather, cross references are intended as an example of the type of PSFA that may be performed at the facility or of the manner in which a facility may be utilized. Cross references are not exhaustive and may not be construed to be exclusory of other PSFAs that may be performed at a facility or of the uses of the facility.

LOCATION	FACILITY NAME	TRIBAL PROGRAMS (including but not limited to)
1000 Greg Kruschek Ave, Nome, AK 99762	NSHC Hospital	Section 3.1; Sections 3.2.1-3.2.7; Sections 3.2.9-3.2.13; Section 3.2.15; Section 3.2.16; Section 3.3.6; Sections 3.4.1-3.4.4; Sections 3.4.6-3.4.8; Sections 3.4.12-3.4.15; Section 3.5; Section 3.6; Section 3.7; Section 3.8.
1100 Greg Kruschek Ave, Nome, AK 99762	Quyanna Care Center	Section 3.2.8
706 East N. Street Nome, AK 99762	NSHC Wellness and Training Center	Sections 3.2.11-3.2.13; Sections 3.3.1-3.3.3; Sections 3.3.5-3.3.7; Sections 3.4.4-3.4.7; Section 3.4.11; Section 3.4.13; Section 3.4.16; Section 3.8
704 East N. Street Nome, AK 99762	NHSC Patient Hostel, and Pre-Maternal Home.	Section 3.2.14; Section 3.4.8.1; Section 3.5
711 East 3 rd Avenue Nome, AK 99762	Kusqi House (2)	Section 3.2.14; 3.5
607 Division Street Nome, AK 99762	Patient/Employee Housing	Section 3.2.14; Section 3.5
117 West 5th Ave, Nome, AK 99762	Lawyers Apartments (7)	Section 3.5
990 Greg Kruschek Avenue, Nome, AK 99762	NSHC Plex Housing (20)	Section 3.5
85058 Clarence Road Brevig Mission, AK 99785	Brevig Mission Clinic	Section 3.2.5, 3.2.10, 3.2.11; Section 3.3.1-3.3.3; Section 3.4.1-3.4.4, 3.4.13; Section 3.7; Section 3.8

Norton Sound Health Corporation Funding Agreement - Appendix B
Fiscal Years 2022-2024

200 Walrus Way Diomedes, AK 99762	Diomedes Clinic	Section 3.2.5, 3.2.10, 3.2.11; Section 3.3.1-3.3.3; Section 3.4.1-3.4.4, 3.4.13; Section 3.7; Section 3.8
69 Moses Point Road Elim, AK 99739	Elim Clinic	Section 3.2.5, 3.2.10, 3.2.11; Section 3.3.1-3.3.3; Section 3.4.1-3.4.4, 3.4.13; Section 3.7; Section 3.8
110 Clinic Road Gambell, AK 99742	Gambell Clinic	Section 3.2.5, 3.2.10, 3.2.11; Section 3.3.1-3.3.3; Section 3.4.1-3.4.4, 3.4.13; Section 3.7; Section 3.8
62039 Daquamaaq Rd, Golovin, AK 99762	Golovin Clinic	Section 3.2.5, 3.2.10, 3.2.11; Section 3.3.1-3.3.3; Section 3.4.1-3.4.4, 3.4.13; Section 3.7; Section 3.8
5 Amaktookil Street Golovin, AK 99762	Golovin House	Section 3.5
East 2 nd Avenue, Koyuk, AK 99753	Koyuk Clinic	Section 3.2.5, 3.2.10, 3.2.11; Section 3.3.1-3.3.3; Section 3.4.1-3.4.4, 3.4.13; Section 3.7; Section 3.8
Lot 6, Block 16 (US Survey 8892, Plat 84- 19) Koyuk, AK	Koyuk House	Section 3.5
Bald Street St. Michael, AK 99659	St. Michael Clinic	Section 3.2.5, 3.2.10, 3.2.11; Section 3.3.1-3.3.3; Section 3.4.1-3.4.4, 3.4.13; Section 3.7; Section 3.8
100 Pioneer Drive St. Michael, AK 99659	St. Michael Triplex	Section 3.5
2 Airport Road Savoonga, AK 99769	Savoonga Clinic	Section 3.2.5, 3.2.10, 3.2.11; Section 3.3.1-3.3.3; Section 3.4.1-3.4.4, 3.4.13; Section 3.7; Section 3.8
2 Airport Road Savoonga, AK 99769	Savoonga Duplex	Section 3.5
1 st Main Street Shaktoolik, AK 99659	Shaktoolik Clinic	Section 3.2.5, 3.2.10, 3.2.11; Section 3.3.1-3.3.3; Section 3.4.1-3.4.4, 3.4.13; Section 3.7; Section 3.8
40 Runway Drive Shishmaref, AK 99772	Shishmaref Clinic	Section 3.2.5, 3.2.10, 3.2.11; Section 3.3.1-3.3.3; Section 3.4.1-3.4.4, 3.4.13; Section 3.7; Section 3.8
	Shishmaref Duplex	Section 3.5
50 School Blvd. Stebbins, AK 99671	Stebbins Clinic	Section 3.2.5, 3.2.10, 3.2.11; Section 3.3.1-3.3.3; Section 3.4.1-3.4.4, 3.4.13; Section 3.7; Section 3.8
545 Tundra Street Teller, AK 99778	Teller Clinic	Section 3.2.5, 3.2.10, 3.2.11; Section 3.3.1-3.3.3; Section 3.4.1-3.4.4, 3.4.13; Section 3.7; Section 3.8
189 Airport Road Unalakleet, AK 99684	Unalakleet Sub-regional Clinic	Section 3.2.5, 3.2.10, 3.2.11; Section 3.2.13; Section 3.3.1-3.3.3; Section 3.4.1-3.4.4, 3.4.13; Section 3.7; Section 3.8

**Norton Sound Health Corporation Funding Agreement - Appendix B
Fiscal Years 2022-2024**

270 Martha Anagick Aarons Subdivision Unalakleet, AK 99684	Ikeyuqti (Assisted Living Facility)	Section 3.2.8; Section 3.4.13
530 Snowbank Street Wales, AK 99783	Wales Clinic	Section 3.2.5, 3.2.10, 3.2.11; Section 3.3.1-3.3.3; Section 3.4.1-3.4.4, 3.4.13; Section 3.7; Section 3.8
1 Scow John Road, White Mtn, AK 99784	White Mountain Clinic	Section 3.2.5, 3.2.10, 3.2.11; Section 3.3.1-3.3.3; Section 3.4.1-3.4.4, 3.4.13; Section 3.7; Section 3.8
	staff housing owned/rented	Section 3.5
300 Division Street Nome, AK 99762	Warehouse/Storage West Campus	Section 3.5
705 East K Street Nome, AK 99762	Nome Operations Building	Section 3.4.9; Section 3.4.10; Section 3.5
All Villages	Village-Based Counselor Office Space	Section 3.3
All Villages	Village Based Morgues	Section 3.4.19

NORTON SOUND HEALTH CORPORATION

BOARD BYLAWS

**Including Amendments
Adopted by the NSHC Board of Directors
Through February 1, 2024**

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**BOARD BYLAWS OF
NORTON SOUND HEALTH CORPORATION**

ARTICLE I. PURPOSES AND POWERS

SECTION 1.1 PURPOSES

The purposes of Norton Sound Health Corporation (“the Corporation”) shall be to engage in the following activities consistent with the Corporation’s Mission, Core Values and Vision for the Future:

1. Establish and maintain facilities, including hospitals, clinics, and other inpatient and outpatient facilities, for the provision of health care services and preventive services to people in the Corporation’s principal service area suffering from injury, illness, or disability.
2. Participate, as far as the circumstances may warrant, in activities for the promotion of good health in the Corporation’s service area.
3. Carry on educational programs, including the training of healing arts personnel, relating to the provision of care to the sick, the promotion of good health, and the maintenance of high health care standards.
4. Advance general community understanding of, confidence in, and proper use of the total program of health care services offered by the Corporation.
5. To conduct any other business in any location as may be deemed necessary or desirable by the Board of Directors of the Corporation or its Executive Committee, provided that such activities do not affect the status of the Corporation as an exempt entity under Section 501(c)(3) of the Internal Revenue Code of 1986, as may be amended from time to time (the “Code”).

SECTION 1.2 EQUAL OPPORTUNITY FOR HEALTH CARE.

The Corporation shall provide care and services regardless of the person’s race, religion, color, creed, age, sex, sexual preference, physical or mental disability, marital status, changes in marital status, pregnancy, parenthood, or national origin.

SECTION 1.3 HIRING PREFERENCE.

To the extent allowed by law and funding sources, the Corporation shall exercise Alaska Native and American Indian preferences in hiring.

SECTION 1.4 POWERS.

1. **Authority.** In order to carry out the purposes of the Corporation, the Corporation has the authority to exercise all powers permitted by law.
2. **Receipt of Property.** The Corporation is empowered to receive personal or real property by gift, grant, devise, bequest, loan, or otherwise, from any private or public source, and to hold, administer, sell, invest, reinvest, manage, use, disburse, distribute, or apply the income and/or principal of such property in accordance with the directions and intent of the donor or donors of such property, or in the absence of such direction, as the Corporation may deem advisable and in its best interests.

SECTION 1.5 SERVICE AREA.

The Corporation's service area shall be the Seward Peninsula, the Norton Sound from Shishmaref to Stebbins, and the outlying islands accepted as part of the Bering Straits Region.

ARTICLE II. MEMBERSHIP

The Corporation shall have no members.

ARTICLE III. OFFICES

The principal office of the Corporation shall be located at its principal place of business or such other place as the Board of Directors may designate. The Corporation may have such other offices, either within or without the State of Alaska, as the Board may designate or as the business of the Corporation may require.

ARTICLE IV. BOARD OF DIRECTORS

SECTION 4.1 BOARD AUTHORITY.

1. **Authority and Purpose.** The affairs of the Corporation shall be managed by a Board of Directors ("the Board"). The Board shall have full authority to direct, and responsibility to oversee, all matters pertaining to the Corporation. The role of the Board is to establish policies to guide the Corporation in carrying out its purposes set forth in Section 1.1 of these Bylaws.

2. **Strategic Health Plan.** The Board shall review and approve each year a strategic health plan which shall serve as the operating plan for each division of the Corporation. The President/CEO shall report progress on the objectives detailed in the Plan to the Board of Directors at each meeting.
3. **Delegation of Authority.** The Board may delegate its powers and administrative responsibilities to:
 - a. The Executive Committee, which acts in the stead of the Board between the Board's regular meetings; and
 - b. The President/CEO of the Corporation, who is responsible for the daily administration of the Corporation's affairs.
4. **Designation of Authority for Execution of Written Documents.** The Board shall designate persons authorized on behalf of the Corporation to execute contracts, deeds, instruments, checks, notes, drafts, demands for money, and other documents, provided that such authority shall be exercisable and delegable in accordance with the provisions of these bylaws and the Board's administrative policies.

SECTION 4.2 NUMBER OF DIRECTORS.

The Board shall consist of not more than twenty-one directors. The number of directors may be changed by amendment to these bylaws, provided that no decrease in the number shall have the effect of shortening the term of any incumbent director or reducing the number of directors to less than three.

SECTION 4.3 DIRECTOR QUALIFICATIONS.

1. **Qualifications.** No person shall be a director and an employee of the Corporation at the same time. Employees are disqualified from serving on the Board of Directors for a period of one year following termination of employment with the Corporation; provided, however, that a majority of the Board may waive this prohibition. In addition, directors and alternate directors of the Corporation must have:
 - a. A basic interest in working out solutions to health problems of the Corporation's service area and the ability and willingness to learn necessary techniques of problem solving, planning, and program monitoring;
 - b. The ability and willingness to develop a comprehensive knowledge of the Corporation and the problems faced in bringing high quality health care to the Corporation's service area;

- c. The ability and willingness to communicate actively with other directors, the citizens of the director's community, and the community's local health council;
 - d. The ability and willingness to comply with the Board meeting attendance policy as set forth in the Board Administrative Policies;
 - e. The ability and willingness to be an active, sober, punctual, and serious participant during all Board and committee meetings, including training sessions; and
 - f. The ability and willingness to comply with the Corporation's drug and alcohol testing policy as set forth in the Board Administrative Policies and comply with Norton Sound Health Corporation COVID-19 Vaccine Policy as well as the Influenza Vaccine Policy. Any board member who fails to comply with the NSHC COVID-19 Vaccine or Influenza Vaccine Policy shall be removed from the Board of Directors or not be seated.
- 2. Criminal Convictions.** A person may not serve as a director or as an alternate if:
- a. S/he has been convicted of a felony or any crime involving moral dishonesty or moral turpitude; or
 - b. S/he has been convicted of a misdemeanor for importation of alcohol or the use or possession of an illegal drug within five (5) years of the time the person seeks to serve; or
 - c. Under 42 U.S.C. § 1320a-7, his/her service would allow the Secretary of the United States Department of Health and Human Services to exclude the corporation from participation in any state or Federal health care program. This includes, but is not limited to, having been convicted of certain crimes set forth in 42 U.S.C. § 1320a-7; or
 - d. S/he has been convicted of a crime involving domestic violence, child abuse or neglect or elder (aged person) abuse or neglect as such terms are defined in the Alaska Statutes or the regulations promulgated thereunder.
 - e. S/he is ineligible to serve as provided in 3 a-d below.

Each director and each alternate shall immediately notify the Executive Committee of the Board when s/he: (i) has been convicted of any offense set forth in a, b, or d above or set forth in 42 U.S.C. § 1320a-7; (ii) has a civil monetary penalty assessed against him/her under 42 U.S.C. § 1320a-7 or 42 U.S.C. § 1320a-8; or (iii) has been excluded from participation in Medicare or a state health care program (each of (i), (ii), and (iii) is referred to herein as a "Prohibited Activity.") Each director shall annually execute a Director's Certification substantially in the form attached as Appendix B to these bylaws that (x) certifies that s/he has not engaged in a Prohibited Activity, and (y)

discloses every conviction of the director. In these bylaws, “conviction” shall have the meaning set forth in 42 U.S.C. § 1320a-7(i). Each alternate shall execute a Director’s Certification before attending a board meeting. Any question regarding whether a person is disqualified from service on the basis of such a conviction shall be resolved solely by action within the discretion of the Executive Committee of the Board.

Each director shall immediately notify the Chairperson after being charged with a crime described in (i), (ii) or (iii) and shall keep the Chairperson informed of the status of such actions. If a director has been charged with a crime described in (i) or (ii) above, the alternate from that village shall serve until the charges have been dismissed or the director has been convicted.

- 3. State Law Requirements and Criminal Background Checks.** During any period of time that the Corporation is licensed by the State of Alaska as an entity listed in AS 47.32.010(b) or receives funding from the State of Alaska to provide for the health, safety, and welfare of persons who are served by programs administered by the Alaska Department of Health and Social Services and if (i) such statutes do not exempt the Corporation, and (ii) the regulations implementing such statutes include restrictions regarding the service on the Board by persons who have been charged and/or convicted of a barrier crime as defined in 7 AAC 10, then:
- a. Each director shall comply with criminal background check procedures set forth in the applicable statutes and regulations of the State of Alaska, Department of Health and Social Services and shall not be eligible to serve during any period in which the director would be barred from employment due to conviction of a “barrier crime” as defined in 7 AAC 10;
 - b. Each director shall immediately notify the Chairperson after being charged with a “barrier crime” as defined in 7 AAC 10 and shall keep the Chairperson informed of the status of such actions. The alternate from that village shall serve until the charges have been dismissed or the director has been convicted;
 - c. Each person selected by an entity to serve on the Board shall submit all documents, certifications, responses, fingerprint cards, and other materials as necessary for the Corporation to confirm that such person is eligible to serve as a director prior to being seated on the Board; and
 - d. Each alternate shall comply with a-c, above, before attending any meeting of the board of directors. An alternate who fails to comply may be prevented from participating in a meeting of the board of directors until s/he complies.

4. **Board Acceptance of Directors.** The Board shall have the final authority to approve the seating of all directors selected for service on the Board. If the Board determines within its sole discretion that a person selected to serve as a director lacks the qualifications to serve in that capacity, the Chairperson of the Board shall so notify the selecting entity by sending a letter to it substantially in the form attached as Appendix B to the Board Administrative Policies.
5. **Residency.** The person or persons to be selected as director of a village must be a resident of such village. For purposes of this subsection, “a resident of such village” shall mean a resident of such village or other community in the Bering Straits Region where the majority of the members of such village reside.

SECTION 4.4 SELECTION OF DIRECTORS.

1. **Directors.** Qualified directors shall be selected as follows:
 - a. The IRA Council or Traditional Council of each of the following federally-recognized tribes shall each select the number of directors set forth below:

<u>Village</u>	<u>Number</u>
Brevig Mission	1
Council	1
Elim	1
Gambell	1
Golovin	1
King Island	1
Koyuk	1
Little Diomede	1
Mary’s Igloo	1
Nome Eskimo Community	1
Savoonga	1
Shaktoolik	1
Shishmaref	1
Solomon	1
St. Michael	1
Stebbins	1
Teller	1
Unalakleet	1
Wales	1
White Mountain	1

In order to select a director of the Corporation, each village must deliver to the Corporation the resolutions required to authorize the Corporation to enter into direct funding agreements pursuant to the Indian Self-Determination Act.

- b.
 - c. The Board of Directors of Kawerak, Inc., shall select its Chairperson or his or her designee as a director.
2. **The President/CEO.** The President/CEO of the Corporation shall serve as a non-voting ex-officio member of the Board. In such capacity, the President/CEO: (i) shall not be counted for purposes of determining whether a quorum is present; (ii) shall not be entitled to vote; and (iii) may participate in executive sessions of the Board unless excluded by vote of a majority of the directors present and voting.
 3. **The Medical Director.** The Medical Director shall serve as a non-voting ex-officio member of the Board with the right of attendance and voice. In such capacity, the Medical Director: (i) shall not be counted for purposes of determining whether a quorum is present; (ii) shall not be entitled to vote; and (iii) may participate in those portions of executive sessions of the Board that concern subjects within the Medical Director's jurisdiction as determined by the Chairperson.

SECTION 4.5 ALTERNATE DIRECTORS.

1. **Appointment.** For each director selected pursuant to these bylaws, the entity selecting the director shall be entitled to select up to four alternates designated the first, second, third, and fourth alternates, to serve in the place of the director. For each alternate selected, the selecting entity shall complete and submit to the Corporation a Notice of Appointment of Alternate Directors(s) substantially in the form attached as Appendix A to these bylaws.
2. **Applicability of Bylaws.** All provisions of these bylaws relating to directors shall apply equally to the alternates.
3. **Terms.** Each alternate shall serve terms in this position until he or she dies, resigns, fails to meet the qualifications or is removed by the Board or the entity that selected him or her.
4. **Attendance at Board Meetings and Voting.**
 - a. The first alternate shall have the right to attend all or any part of any Board meeting for which the director is absent, and at such meeting, to act as the director (but excluding therefrom actions related to any office held by such director) and to vote in the place of the director on all matters voted upon by the Board;
5. **Committees.** In the absence of the director, the first alternate shall have the right to serve on all Board committees in place of the director, except for the Executive Committee. In the absence of the director and first alternate, the second, third, or

fourth alternate shall have the right to serve on all board committees in place of the director, except for the Executive Committee. However, if the director is the chairperson of a Board committee, the alternate shall not have the right to act as the chairperson of that committee in the absence of the director.

- 6. Expenses and Meeting Fees.** The Corporation shall be required to reimburse the expenses and pay meeting fees for only one director or alternate to attend each Board meeting, even if more than one director and/or alternates attend a meeting.

SECTION 4.6 DIRECTOR TERM OF OFFICE

- 1. Indefinite Term for Directors.** Unless a director dies, resigns, fails to meet the qualifications or is removed s/he shall hold office until removed by the entity that selected him or her. To allow time for NSHC to confirm the person selected is qualified, the Board shall ask the selecting entity to give notice to the Board of the name of the new director at least twenty days before the Board's next meeting.

SECTION 4.7 DIRECTOR RESPONSIBILITIES.

Each director shall:

1. Participate actively in all meetings and work sessions of the Board and of the committees on which s/he serves.
2. Participate in Board training activities.
3. Assume his or her share of committee assignments and other assigned responsibilities.
4. Report back regularly on results of Board meetings to the director's community health council or combined council meeting or follow some other accepted regular reporting procedure to his or her community.
5. Be available to hear the community's health concerns, answer questions, discuss problems, and report these concerns as appropriate.
6. Be a good example to his or her community in personal and public behavior and in health practices.
7. Assist in the recruitment of people in his or her community for training in careers in health care.
8. Support the community health council in its efforts to maintain the clinic program, assist in health revenue sharing planning, assist in water and waste system planning, support public health education and health maintenance, and support village based health programs.

9. Provide reports to the Board of all meetings s/he attends as a representative of the Corporation.

SECTION 4.8 DIRECTOR'S RESIGNATION.

A director may resign at any time by delivering written notice to the Board, the Chairperson of the Board or the Secretary, or by giving oral notice at any Board meeting. Such resignation shall take effect at the time specified therein, or if the time is not specified, upon delivery of the resignation or the giving of oral notice. Acceptance of such resignation shall not be required to make it effective.

SECTION 4.9 REMOVAL OF DIRECTOR BY SELECTING ENTITY.

A director shall be automatically removed from the Board without action, upon his or her failure to meet the qualifications set forth in these Bylaws or the Corporation's Board Administrative Policies. A director may also be removed by a vote of a majority of the directors present and voting for failure to comply with the provisions of these Bylaws or the provisions of the Corporation's Board Administrative Policies. Notice of a director's removal shall be sent to the entity listed in Section 4.4 of these Bylaws that selected that director. In addition, a director may be removed from the Board at any time by the entity that selected that director.

SECTION 4.10 VACANCIES.

A vacancy in the position of director shall be filled by the entity that selected the vacating director in accordance with Section 4.4. Appointing entities shall be encouraged to fill vacancies as soon as possible to ensure their continued representation on the Board.

SECTION 4.11 CONFLICTS OF INTEREST.

1. **Duty of Loyalty, Fair Dealing and Full Disclosure.** Directors have a duty of undivided loyalty to the Corporation. This means each director must exercise his/her powers in good faith and in the best interests of the Corporation, rather than in the director's own interests or the interests of another person or entity, including any of the entities that appointed, selected or elected a director to serve on the board of the Corporation. Conflicts of interest are not inherently illegal. However, the failure of a director to reveal a conflict of interest involving that director or another director reflects on the integrity of the director with the conflict and on each director who knew and failed to disclose another director's conflict. In addition, the failure of the disinterested directors to deal properly with a disclosed conflict reflects on the integrity of the board as a whole.

Conflicts of interest can arise because of a director's personal interests or the interests of a director's family members. Whenever a director has a direct or indirect material personal interest in an issue that comes before the board of directors for consideration, a conflict of interest is present. In these circumstances: (1) a director shall not use a corporate position for personal or

immediate family member advantage; (2) a director shall not take advantage of a corporate opportunity in which it is reasonably foreseeable that the Corporation would be interested without first offering the opportunity to the Corporation; (3) a director shall not buy or sell property or services to the Corporation without first fully disclosing the terms of the transaction and the nature of his/her involvement in the sale to the Board of Directors; and (4) a director shall reveal every investment or employment relationship that the director or his/her immediate family member has with any entity involved in a transaction or issue being considered by the Board of Directors or Committee.

For purposes of this section, the Corporation adopts the following definition of “family member” as set forth in the Internal Revenue Service’s Instructions for Form 990): spouse, ancestors, brothers and sisters (whether whole or half-blood), children (whether natural or adopted), grandchildren, great-grandchildren, and spouses of brothers, sisters, children, grandchildren and great-grandchildren.

Conflicts of interest can also arise because the directors are selected by many different entities, each of which may have overlapping, competing or differing interests. This creates the potential for conflicts of interest to arise between the Corporation and each of the entities that appointed, selected or elected a director. Notwithstanding a director’s duty of undivided loyalty to the Corporation, a director may properly consider and advocate the concerns of his/her appointing, selecting or electing entity and its service population in forming a good faith business judgment of what serves the best interests of the Corporation. A director does not violate the duty of undivided loyalty merely by advancing a position that is beneficial to his/her appointing, selecting or electing entity or its service population so long as the director’s actions also serve the overall best interests of the Corporation, the people it serves, its purposes, and comport with the director’s general duty of care.

Each director must inform the Board or Committee of all known potential or actual conflicts of interest involving any director and, except as noted below, disclose all relevant information about the conflict to the Board or Committee. This step must occur before the Board or Committee discusses the item that gives rise to the conflict or potential conflict or as soon as the conflict or potential conflict becomes apparent. The director with the potential conflict of interest must also inform the Board or Committee whether s/he believes the potential conflict compromises his/her ability to comply with the undivided duty of loyalty to the Corporation. In addition, if any director believes that the director with the potential conflict cannot comply with his/her duty of loyalty, s/he must inform the Board or Committee. The Board or Committee, by motion adopted by a majority of disinterested directors present and voting, shall then determine whether a conflict exists. If the Board or Committee determines that a conflict exists, the director with the conflict must leave the room during the discussion and while the Board or Committee votes on the action, although s/he may answer questions regarding the transaction or arrangement prior to leaving the room.

In situations where a director believes s/he may have a potential or actual conflict of interest but confidentiality or obligations owed to another entity or person make the director unable to disclose relevant information about the conflict or facts creating the conflict, the director must advise the Board or Committee of the existence of the potential or actual conflict. Under these circumstances, because the Board or Committee will be unable to make an informed decision regarding the nature and extent of the actual or potential conflict, the director with the conflict must leave the room during the discussion and cannot vote on the action that gave rise to the actual or potential conflict of interest.

In approving an action giving rise to a conflict of interest for one or more directors, the Board or Committee shall document the names of the directors who disclosed an actual or potential conflict of interest or otherwise were found to have a conflict, the nature of the conflict, the names of the directors who were present during the discussion and vote on the action, the content of the discussion, including the consideration of any alternative actions and the information relied upon in concluding that the action was in the Corporation's best interest, and the votes for and against the action.

2. **Statement of Acceptance and Disclosure.** As part of the process for selecting directors, the selecting entity shall provide each director with a copy of this bylaw. Prior to service on the Board and annually, each director shall acknowledge in writing that s/he has received a copy of the bylaw and that s/he understands that s/he is subject to compliance with the Corporation's policy on conflicts of interest as set forth in that bylaw. Each director shall further disclose any actual or potential conflicts of interest that may exist. The acknowledgment and disclosure shall be given substantially in the form attached as Appendix C to these bylaws. All directors possess a continuing duty to disclose any actual or potential conflicts as they arise and must supplement their disclosure should new conflicts arise.
3. **Additional Policies.** The Board of Directors shall review and adopt such additional policies as it deems necessary or desirable regarding actual or potential conflict of interest situations related to the interactions with the Corporation, the operation of the Corporation and the actions of the Corporation's employees, including but not limited to nepotism, procurement, contract award and contract administration.

SECTION 4.12 BOARD MEETINGS.

1. **Annual Meeting.** The annual meeting of the Board shall be held in September each year, the exact date and time to be set by the Chairperson of the Board. The purpose of the annual meeting shall be to elect officers and transact such business as may properly come before the meeting. If the annual meeting is not held at the date or time designated, the Board shall cause the meeting to be held as soon thereafter as may be convenient.

2. **Regular Meetings.** The Board shall hold two regular meetings each year in addition to the annual meeting. The date, time, and place of the next regular meeting shall be set at each Board meeting or be determined by the Chairperson of the Board.
3. **Special Meetings.** Special meetings of the Board may be called by the Chairperson of the Board or by any eight directors.
4. **Open Meetings.** In general it shall be the policy of the Board to open its meetings to the public, except as otherwise provided in these Bylaws. It is within the discretion of the Board to close any meeting to the public, with or without cause.
 - a. **Definition of Meeting.** A meeting is defined to mean:
 - (1) A gathering when more than three directors, or a majority of the directors, whichever is less, are present; and
 - (2) The directors discuss a matter on which the Board is empowered to act.
 - b. **The following meetings shall not be open to the public:**
 - (1) Committee meetings so long as the committee has authority only to advise or make recommendations to the Board, and has no authority to establish policies or make decisions for the Board;
 - (2) Meetings to perform a judicial or quasi-judicial function held solely to make a decision in an adjudicatory proceeding;
 - (3) Meetings of hospital medical staff;
 - (4) Meetings of the Board or any committee of the hospital when holding a meeting solely to act upon matters of professional qualifications, privileges or discipline; or
 - (5) Meetings held for the purpose of participating in or attending a gathering of a national, state, or regional organization of which NSHC is a member, but only if no action is taken and no business of NSHC is conducted at the meetings.

SECTION 4.13 PLACE OF MEETINGS.

All Board meetings and all committee meetings shall be held at the principal office of the Corporation or at such other place, accessible to all directors entitled to attend the meeting, as may be designated by the Board, the committee, the public, or any persons entitled to call the meeting. The Board shall take all reasonable steps to ensure compliance with any applicable laws regarding accessibility for the disabled.

SECTION 4.14 MEETINGS BY TELEPHONE.

Directors and NSHC staff may participate in a Board or committee meeting through use of a conference telephone or similar communications equipment, by means of which all persons participating in the meeting can hear each other at the same time. Participation in a meeting by such means shall constitute presence at the meeting and will not be considered an absence. Votes at meetings held by teleconference shall be taken by roll call. To the extent that the public desires to participate in meetings by teleconference, materials considered at the meeting should be made available at the teleconference locations, if practicable.

SECTION 4.15 NOTICE OF MEETINGS.

- 1. Annual and Regular Board Meetings.** Notice of annual or regular Board meetings stating the place, date, and time of the meeting shall be given to each director in writing. Notice of annual or regular meetings shall also be given to the public in the form described by these bylaws.
 - a. Personal Delivery.** If notice to directors is delivered by personal service, the notice shall be effective if delivered at least ten days before the meeting.
 - b. Delivery by Mail.** If notice to directors is delivered by mail, the notice shall be deemed effective if deposited in the official government mail with postage prepaid at least thirteen days before the meeting. The notice shall be addressed to the director's address as shown on the records of the Corporation.
 - c. Facsimile Notice.** If notice to directors is delivered by facsimile transmission, the notice shall be deemed effective when dispatched at least eleven days before the meeting. The notice shall be transmitted to the director's facsimile number as shown on the records of the Corporation.
 - d. E-Mail Notice.** If notice to directors is delivered by e-mail transmission, the notice shall be deemed effective when dispatched at least eleven days before the meeting. The notice shall be transmitted to the director's e-mail address as shown on the records of the Corporation.
 - e. Notice to the Public.** Notice to the public shall be effective if the notice is posted at NSHC's Administrative Offices in Nome, Alaska, at least ten days before the meeting.
- 2. Committee Meetings, Special Board Meetings and Emergency Meetings.** Notice of committee meetings or special Board meetings stating the place, date, and time of the meeting, and in the case of special Board meetings, specifying the purpose of the meeting, shall be given to each committee member or director in writing or orally. Notice of special meetings shall also be given to the public in the form described by these bylaws.

- a. **Personal Delivery.** If notice to directors is delivered by personal service, the notice shall be effective if delivered at least three days before the meeting.
- b. **Delivery by Mail.** If notice to directors is delivered by mail, the notice shall be deemed effective if deposited in the official government mail with postage prepaid at least six days before the meeting. The notice shall be addressed to the committee member or director's address as shown on the records of the Corporation.
- c. **Facsimile Notice.** If notice to directors is delivered by facsimile transmission, the notice shall be deemed effective when dispatched at least four days before the meeting. The notice shall be transmitted to the committee member's or director's facsimile number as shown on the records of the Corporation.
- d. **Oral Notice.** If notice to directors is delivered orally, it shall be effective if given to the committee member or director by telephone, in person, or by announcement over all available radio stations at least three days before the meeting. Telephonic notice may be accomplished by speaking with the director or committee member, by speaking with a responsible person over the age of 18 who accepts the message on behalf of the director or committee member or by leaving a message on an answering machine.
- e. **E-Mail Notice.** If notice to directors is delivered by e-mail transmission, the notice shall be deemed effective when dispatched at least three days before the meeting. The notice shall be transmitted to the director's e-mail address as shown on the records of the Corporation.
- f. **Notice to the Public.** Notice to the public of special meetings shall be effective if the notice is posted at NSHC's Administrative Offices in Nome, Alaska at least three days before the meeting.
- g. **Emergency Meetings.** Notwithstanding the provisions of subsections a-f set forth above, if the Chairperson declares that an emergency has occurred and a committee or the Board must meet prior to the expiration of the notice period for a special meeting in order to prevent imminent harm to the Corporation, then the Chairperson may call a meeting on shortened time and give notice in such manner as is possible under the circumstances to the directors. The call for such meeting must include the nature of the emergency, the topics to be discussed at the meeting, and the time, date and place of the meeting. Notice shall be simultaneously posted at NSHC's Administrative Offices located in Nome, Alaska.

3. **Delivery of Notice When Vacancies Exist on the Board.** In the event that there is a vacancy on the Board, notice shall be delivered to the entity which has the authority to select a director to fill the vacancy.
4. **Form of Notice to Public.** The notice to the public must include the date, time, and place of the meeting and, if the meeting is by teleconference, the location of any teleconferencing facilities that will be used.
5. **Delivery of Agenda Packets.** A packet with the agenda for annual or regular meetings and all available supporting materials shall be delivered to all directors at least ten days in advance of the meeting. A packet with the agenda for special or emergency meetings and all available supporting materials shall be made available to all directors with as much notice as possible under the circumstances.

SECTION 4.16 EXECUTIVE SESSION.

1. **Executive Session.** All meetings shall convene in open session. However, the Board of Directors or any committee thereof may discuss any matter in closed or executive session on a simple majority vote of those present and voting. The President, CEO, Medical Director and General Counsel may be present during an executive session, but may be excluded at the discretion of the Board of Directors.
2. **Motion to Convene an Executive Session.** The question of holding an executive session shall be determined by a majority vote. The motion to convene an executive session must be made in public session and must clearly and with specificity describe the subject of the proposed executive session without defeating the purpose of addressing the subject in private.
3. **Subjects Permitted to Be Discussed in Executive Session.** The Board may convene in executive session to discuss the following subjects:
 - a. Matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of NSHC;
 - b. Subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;
 - c. Matters which by law, municipal charter, or ordinance are required to be confidential;
 - d. Matters involving consideration of government records that by law are not subject to public disclosure;
 - e. Discussions relating to specific patient medical matters, including patient records and treatment and including discussions where the patient has waived the physician-patient privilege;

- f. Personnel issues; and
 - g. Matters relating to professional qualifications, privileges or discipline.
4. **Limitations Upon Executive Session.** Subjects may not be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. Motions and resolutions may not be made or adopted in executive session.

SECTION 4.17 QUORUM.

The presence of a simple majority of the Directors (excluding all ex officio members) constitutes a quorum for the transaction of business at any Board meeting. If a quorum is not present at a meeting, a majority of the directors present and voting may adjourn the meeting.

SECTION 4.18 DIRECTOR VOTING RIGHTS.

1. **Number of Votes.** Each director shall have one vote.
2. **Proxies.** Directors may not vote by proxy.

SECTION 4.19 MANNER OF ACTION.

The act of the majority of the directors present and voting at a meeting at which there is a quorum shall be the act of the Board, unless the vote of a greater number is required by other provisions of these bylaws, the Articles of Incorporation, or applicable law.

SECTION 4.20 ACTION BY BOARD WITHOUT A MEETING.

Any action which could be taken at a meeting of the Board may be taken without a meeting if a written consent setting forth the action so taken is signed by every director. Such written consents may be signed in counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one document. Any such written consent shall be inserted in the minute book as if it were the minutes of a Board meeting.

SECTION 4.21 BOARD COMMITTEES.

1. **Creation of Committees.** By resolution adopted by a majority of the number of directors fixed by these bylaws, the Board may designate and appoint one or more standing or temporary committees from its own number and invest such committees with such powers as it may see fit. The designation and appointment of any such committee and the delegation of authority thereto shall not relieve the Board or any individual director of any responsibility imposed by these bylaws, the Articles of Incorporation, or applicable law.

2. **Executive Committee.** There shall be an Executive Committee consisting of the Chairperson of the Board, the First Vice Chairperson of the Board, the Second Vice Chairperson of the Board, the Secretary, the Treasurer, and the Assistant Secretary-Treasurer, all of whom shall be elected annually by the directors as set forth in Article V of these Bylaws, and three additional directors. The President/CEO shall serve as a non-voting ex-officio member of the executive committee.
- a. **Board Supervision.** The Executive Committee shall be under the direction of the Board at all times and shall report its actions to the Board at such times as the Board may direct.
- b. **Authority.** Subject to any limitations imposed by the Board, the Executive Committee shall have and may exercise all authority of the Board, except that the Executive Committee shall have no authority to:
- (1) amend the Articles of Incorporation;
 - (2) amend these bylaws;
 - (3) adopt a plan of merger or consolidation with another corporation;
 - (4) authorize the sale, lease, exchange or mortgage of all or substantially all of the property and assets of the corporation;
 - (5) authorize the voluntary dissolution of the corporation or revoke proceedings therefore;
 - (6) adopt a plan for the distribution of assets of the corporation;
 - (7) fill vacancies on the Board or any committee thereof; or
 - (8) establish or dissolve other committees of the Board or appoint or remove the members thereof.
- c. **Responsibilities.** The responsibilities of the Executive Committee shall include, but not be limited to:
- (1) examination and approval of monthly financial reports;
 - (2) management of all endowment and trust funds, which funds may be deposited with a trust company or comparable agency for investment and accounting;
 - (3) development and submission to the Board of a five-year capital expenditures plan, including the year whose operating budget has been submitted to the Board, which identifies in detail the objectives of, and anticipated financing for, each anticipated capital expenditure in excess of \$1,000,000, such plan to be reviewed and updated at least once each year;
 - (4) make recommendations to the Board for strengthening leadership and management of the Corporation, including the evaluation, compensation, benefits and succession planning for the President/CEO and General Counsel);

- (5) determination of methods for securing funds for the support of the Corporation's facilities and programs;
 - (6) supervision of all financial interests of the Corporation, including emergency approval of funds to support any capital or non-capital expenditure when the entire Board of Directors is not in session; and
 - (7) supervision of consumer relations, including the establishment and maintenance of channels of communication between the Corporation and the public and all community-related agencies, the review of complaints and suggestions from consumers, and the transmission of consumer input to the Board on methods to improve consumer acceptance of health care in the Corporation's service area.
- d. **Meetings.** The Executive Committee shall meet not less than three times per year. The date, time, and place of the next Executive Committee meeting shall be set at each Executive Committee meeting or be determined by the Chairperson of the Board. Special meetings of the Executive Committee may be called by the Chairperson of the Board or by at least four directors then serving on the Executive Committee.
- e. **Delivery of Agenda Packets.** If possible, a packet with the agenda for the Executive Committee meeting and all available supporting materials shall be delivered to all directors serving on the Executive Committee at least five days in advance of the meeting.
- f. **Meeting Minutes.** Minutes of all Executive Committee meetings shall be prepared and retained in the permanent records of the Board. Within twelve working days following adjournment of each Executive Committee meeting, the minutes of such meeting shall be sent to all directors.
- g. **Report to the Board.** Prior to each Board meeting, the Executive Committee shall prepare a report reviewing all actions taken by the Executive Committee since the last Board meeting. The report shall be read at the Board meeting and the report of the Executive Committee shall be approved or disapproved by the Board.
3. **Standing Committees.** In addition to the Executive Committee, there shall be the following standing committees:
- a. **Clinical Services Committee.** The Clinical Services Committee shall consist of at least five directors and may be a committee of the whole upon which every director shall serve. The Chairperson shall make appointments to the Clinical Services Committee at the annual meeting each year. The President/CEO, Vice President Hospital Services (or designee), Village Health Services Director (or designee), Director of Behavioral Health, Medical Director (or designee), and Director of Nursing (or designee) shall serve as non-voting ex-officio members of the committee. Other

individuals who are not directors but who possess special skills or knowledge which would contribute to the evaluation of existing clinical programs and facilities may be appointed to serve on the committee in an advisory or consultant capacity as non-voting ex-officio members. The staff liaison for the Clinical Services Committee is the Vice President Hospital Services and the Village Health Services Director. The committee shall:

- (1) receive and consider reports on the work of the medical staff and other clinical employees and make such recommendations to the Board as the committee deems in the best interests of each clinical facility and the patients served at each clinical facility;
- (2) review and monitor corporate policies and progress of long range and annual plans developed by the administrative staff related to clinical services and make recommendations to the Board;
- (3) promote a general understanding and awareness of the corporation's clinical facilities and services throughout the region through a planned program of public education and information dissemination;
- (4) work with the administration, including the Vice President Hospital Services, the Village Health Services Director, and the Medical Staff to see that measures are implemented to review the quality and efficiency of health care delivered at all clinical facilities; receive and review periodic reports on the findings and recommendations of such review activities, and recommend action as appropriate to the Board;
- (5) annually review the corporation's Performance Improvement program, make recommendations to the Board and direct the President/CEO to select and support a Quality Director;
- (6) review the annual budget and make recommendations to the Finance and Audit Committee and the Board;
- (7) receive reports and recommendations from the Medical Staff and, on the basis of its review and consideration of such reports and recommendations, make recommendations to the Board of Directors concerning Medical Staff appointments, re-appointments and changes in staff status, disciplinary actions, including suspension, restriction, or revocation of appointments, and the granting or revision of clinical privileges. The Board of Directors has ultimate responsibility for such matters and acts upon the recommendations of the Clinical Services Committee;
- (8) oversee the development and implementation of appropriate policies and procedures for care, treatment and services at all clinical facilities, including any clinical practice guidelines, and make recommendations regarding such policies and procedures to the Board of Directors;
- (9) see that an integrated patient safety program is implemented at all clinical facilities;

- (10) receive recommendations from the Medical Staff regarding adoption or amendment of the Medical Staff Bylaws, Rules and Regulations, and make recommendations regarding the same to the Bylaws, Personnel and Policy Review Committee for its review, with final approval to be by the Board of Directors; and
- (11) perform such other duties as may be assigned to it by the Board of Directors.

b. Board Compliance Committee. The Board Compliance Committee shall consist of at least seven directors who are then serving on the Corporation's Board of Directors. The Chairperson shall appoint the Board Compliance Committee at the annual meeting each year. The President/CEO shall serve as a non-voting ex-officio member of the Committee. The Board Compliance Committee shall meet at least quarterly and more often if necessary. The staff liaison for the Board Compliance Committee is the Compliance Officer. The Board Compliance Committee shall perform the duties assigned to the Board Compliance Committee in the NSHC Compliance Plan including but not limited to the following:

- (1) work with the President/CEO, the Compliance Officer, and the Medical Staff to see that measures are implemented to review the quality and efficiency of health care delivered at any NSHC operated facility; receive and review periodic reports on the findings and recommendations of such review activities, and recommend appropriate action to the Board;
- (2) provide oversight of NSHC's procedures and systems to ensure that (i) NSHC's employees, directors, vendors, contractors, and operations comply with all applicable laws and regulations related to federal healthcare programs; (ii) NSHC, its employees and directors act in accordance with appropriate ethical standards; and (iii) NSHC's hospital and clinics deliver quality medical care to patients;
- (3) receive reports from the NSHC Compliance Officer, President/CEO, General Counsel, and other sources, such as special outside counsel on compliance matters; and
- (4) keep a record of its proceedings and report on its activities at each meeting of the Board of Directors and at each meeting of the Executive Committee, with such records and reports to be compliant with applicable laws, regulations and rules, including but not limited to those relating to privacy rights.

c. Site Planning and Construction Committee. The Site Planning and Construction Committee shall consist of the President/CEO and not less than five directors who shall be appointed by the Chairperson at the annual meeting. The Village Health Services Director and Vice President Hospital Services shall serve as non-voting ex-officio members of the committee. The President/CEO shall be a voting member. The staff liaison for the Site Planning and Construction Committee is the Project Engineer or other

person designated by the President/CEO. The committee shall review space and facility needs within the Corporation and shall make appropriate recommendations to the Board regarding capital acquisitions and construction needs. If bids or quotations from a capital project exceed in the amount of monies originally approved by the Finance Committee then the capital project manager shall call for a joint Site Planning and Construction & Finance & Audit Committee

d. Bylaws, Personnel and Policy Review Committee. The Bylaws, Personnel and Policy Review Committee shall consist of not less than five directors who shall be appointed by the Chairperson at the annual meeting. The President/CEO and Vice President-Hospital Services shall serve as non-voting ex-officio members of the committee. The staff liaison for the Bylaws, Personnel and Policy Review Committee is the General Counsel. The committee shall:

- (1) review at least biannually the Corporation's bylaws, Board Administrative Policies, and medical staff bylaws and make appropriate recommendations to the Board of Directors;
- (2) review all proposed amendments to the Corporation's bylaws, Board Administrative Policies, and medical staff bylaws and shall make appropriate recommendations to the Board of Directors;
- (3) review the Behavior Health System policy manual at least annually and make appropriate recommendations to the Board of Directors;
- (4) review all finance policies and amendments thereto proposed by the finance committee;
- (5) review new personnel policies or amendments to personnel policies proposed by staff or legal counsel and make appropriate recommendations to the Board or Executive Committee for approval;
- (6) review the corporation's personnel policies at least biannually, identify employment trends, discuss global employee issues with the human resources department, review exit interview results, and make appropriate recommendations to the Board or Executive Committee;
- (7) receive reports from the President/CEO regarding all department level policies that have been implemented or changed since the last meeting of the Committee and make recommendations to the President/CEO regarding such policies; and
- (8) review all amendments to the Compliance Plan and new or amended policies related thereto proposed by the Board Compliance Committee.

e. Finance and Audit Committee. The Finance and Audit Committee shall consist of the Treasurer and not less than five directors who shall be appointed by the Chairperson at the annual meeting. The Treasurer shall be a voting member of the committee and shall serve as chairperson of the committee. The Chief Financial Officer shall serve as a non-voting ex-officio member of the committee. The Finance and Audit Committee shall

provide direct communication between the Board of Directors and the corporation's auditors, regularly review the corporation's financial position, review the annual budget, make appropriate recommendations to the Board and operate in accordance with its Charter attached to these Bylaws as Appendix D. The Finance and Audit Committee shall also regularly review the corporation's financial policies and procedures and make recommendations regarding such policies and procedures to the Bylaws and Policy Review Committee regarding the approval of such policies and procedures by the Board of Directors. The staff liaison for the Finance and Audit Committee is the Chief Financial Officer.

f. **Norton Sound Health Corporation Hire & Development Committee.** The Norton Sound Health Corporation ("NSHC") Hire & Development Committee shall consist of not less than five directors who shall be appointed by the Chairperson at the annual meeting. The NSHC Hire and Development Committee shall work to achieve delivery and management of the corporation's services by tribal members and residents of the region through design and oversight/evaluation and monitoring of effective recruitment, retention and employee development programs. The staff liaison for the Hire & Development Committee is the Human Resources Director. The NSHC Hire & Development Committee shall:

- (1) evaluate the corporation's scholarship, intern and mentoring programs, develop policies regarding such programs and make recommendations to the Board regarding the implementation of such programs and policies;
- (2) design and evaluate programs to interest youth and young adults in the region in health careers and make recommendations to the Board regarding such programs;
- (3) develop an employee promotion, retention, and development program and make recommendations to the Board regarding such program;
- (4) develop a plan for hiring of tribal members and regional residents, make recommendations to the Board of the adoption of such a plan, and monitor the results of any plan adopted by the Board;
- (5) recommend resources available to implement the corporation's goals for Alaska Native and regional resident hire and development and the work of this committee including identifying and securing funding from third parties available to support the committee's work and make recommendations to the Board regarding securing such resources; and
- (6) make recommendations to the Board for methods to ensure the region's tribal values and cultural integrity are exemplified in the workplace.

g. **Research Ethics & Review Board.** The Research Ethics & Review Board shall consist of not less than four directors who shall be appointed by the Chairperson at the annual meeting. The Medical Director or his/her designee shall serve as a non-voting ex-officio member of the committee.

The Research Ethics & Review Board shall review and periodically monitor all human research conducted in the Norton Sound region that uses any of the corporation's resources, including but not limited to patients, records, facilities or funding. The Chair of the Research Ethics & Review Board shall be a director and s/he shall be the initial point of contact for all persons desiring to conduct human research in the Norton Sound region. The Research Ethics & Review Board shall meet at least twice per year to review human research proposals to assess safety, confidentiality, degree of benefit, need for and quality of informed consent of participants, special awareness of vulnerable populations and appropriate rationale for targeting Alaska Native people in such research. The Research Ethics & Review Board shall provide direction and advice to persons proposing to conduct such research in the Norton Sound region, and shall adopt policies and procedures as deemed necessary or desirable by the Research Ethics & Review Board. The staff liaison for the Research Ethics & Review Board shall be a person with experience in health and environmental research designated by the President/CEO.

- h. Water and Sewer Committee.** The Water and Sewer committee meet at least four times a year or more often, if necessary. The President/CEO shall serve as a non-voting ex-officio member of the committee. The Chairperson shall appoint the Water and Sewer Committee at the annual meeting each year. The staff liaison for the Water and Sewer Committee shall be the Self-Governance Liaison.
- I. Committee Requests for Information.** The chair of each standing committee listed in this Article IV, Section 4.21, subsection 3 shall be the primary point of contact between the committee and the person assigned as staff liaison to the committee. Committee members shall make requests for information needed for the performance of committee work through the committee chair, and the committee chair shall be responsible for communicating such requests to the staff liaison. Requests for information sent by a committee chair to NSHC staff shall also be copied to the Chairperson of the NSHC Board, the First Vice Chairperson of the NSHC Board, the President/CEO, and the General Counsel.
- 4. Other Standing or Temporary Committees.** Committees other than the Executive Committee and the standing committees described above shall have such authority as may be given to them by the Board.
- 5. Standing or Temporary Committee Meetings.** All standing or temporary committees shall meet upon the call of the Chairperson of such committee with the concurrence of the Chairperson of the Board. Special meetings of any standing or temporary committee may be called by the Chairperson of the Board, the Chairperson of the committee, or by a majority of the persons serving on the committee.

6. **Delivery of Agenda Packets.** If possible, a packet with the agenda for a committee meeting and all available supporting materials shall be delivered to all directors serving on that committee at least five days in advance of the meeting.
7. **Quorum.** A majority of the number of persons with voting rights composing the committee shall constitute a quorum for the transaction of business at any committee meeting. If a quorum is not present at a meeting, a majority of the directors present and voting may adjourn the meeting.
8. **Manner of Action.** The act of a majority of the persons with voting rights present and voting at a meeting at which there is a quorum shall be the act of the committee. Committees may also take action by unanimous written consent executed by each committee member.
9. **Committee Reports.** A written report of all standing or temporary committee meetings shall be prepared and included in such committee's report to the Board. All recommendations of a committee shall be presented to the Board in writing.
10. **Resignation of Committee Member.** Any member of any committee may resign at any time by delivering written notice to the Board, the Chairperson of the Board, the Chairperson of the committee, or the Secretary, or by giving oral notice at any committee meeting. Such resignation shall take effect at the time specified therein, or if the time is not specified, upon delivery of the resignation or the giving of oral notice. Acceptance of such resignation shall not be required to make it effective.
11. **Removal of Committee Member.** The Board may remove any member of any committee elected or appointed by it, but only by the affirmative vote of a majority of the number of directors fixed by these bylaws.

SECTION 4.22 DIRECTOR ACCESS TO INFORMATION.

All directors may request information pertaining to corporate business through the Chairperson of the Board. The office staff shall assist in obtaining and providing such information as instructed by the Chairperson of the Board. Committee chairs may request information pertaining to the performance of committee responsibilities and duties through their staff liaison person as set forth in Article IV, Section 4.21 above.

ARTICLE V. OFFICERS

SECTION 5.1 NUMBER AND QUALIFICATIONS.

The officers of the Corporation shall be a Chairperson of the Board, a First Vice Chairperson of the Board, a Second Vice Chairperson of the Board, a Secretary, a

Treasurer, and an Assistant Secretary-Treasurer. Each of the foregoing officers shall be directors and shall be annually elected by the Board. Other officers may be elected by the Board, with such officers to have such authority, perform such duties, and hold office for such period as may be determined by the Board.

The Board shall also select other non-voting officers as set forth in section 5.11 of these Bylaws.

The Board may assign any officer any additional title, as it deems appropriate. The Board may delegate to any officer the power to appoint subordinate officers or agents and to prescribe their respective authority, duties, and terms of office. Any two or more offices may be held by the same person, except the offices of Chairperson and Secretary.

SECTION 5.2 ELECTION AND TERMS OF OFFICE.

Except as set forth in section 5.1, the voting officers of the Corporation shall be elected each year by the Board at the annual meeting of the Board. If the election of voting officers is not held at such meeting, the election shall be held as soon thereafter as a Board meeting may conveniently be held. Unless an officer dies, resigns, or is removed from office, s/he shall hold office until the next annual meeting of the Board or until his or her successor is elected and qualifies, whichever occurs first.

SECTION 5.3 RESIGNATION.

Any officer elected by the Board may resign at any time by delivering written notice to the Chairperson of the Board, the President/CEO, or the Secretary, or by giving oral notice at any meeting of the Board. Such resignation shall take effect at the time specified therein, or if the time is not specified, upon the delivery of the resignation or the giving of oral notice. Acceptance of such resignation is not required to make it effective.

SECTION 5.4 REMOVAL.

All officers elected by the Board serve at the pleasure of the Board and may be removed with or without cause, by a two-thirds vote of the Board, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

SECTION 5.5 VACANCIES.

A vacancy in any office elected by the Board created by any cause may be filled by the Board for the un-expired portion of the term.

SECTION 5.6 CHAIRPERSON OF THE BOARD.

1. **Qualifications.** The Chairperson of the Board must have:
 - a. The confidence of the Board to represent them on their behalf;

- b. The ability and willingness to represent the region, and to act fairly and impartially with respect to the region as a whole;
 - c. The ability to present himself or herself in a professional and respectful manner;
 - d. The ability and willingness to attend local, state, and national meetings and address issues on behalf of the Board, sometimes on short notice;
 - e. The ability and willingness to address issues in a fair but also firm manner;
 - f. The ability to report to the Board in a clear and concise manner;
 - g. The ability to understand issues and be conversant regarding Board positions; and
 - h. Knowledge of parliamentary procedures, and the ability to orchestrate meetings consistent with such procedures.
2. **Duties and Responsibilities.** The Chairperson of the Board shall perform such duties as set forth in the Board Administrative Policies, these Bylaws or as shall be assigned to him or her by the Board and shall preside over meetings of the Board, unless another officer is designated by the Board to act as Chairperson of such meeting. For all committees except the Executive Committee, the Chairperson shall appoint directors to serve on each committee annually and fill vacancies in committees as needed.
3. **Chairperson's Resignation.**
- a. **Voluntary Resignation.** A Chairperson may resign at any time by delivering written notice to the Board, the President/CEO, or the Secretary, or by giving oral notice at any Board meeting. Such resignation shall take effect at the time specified therein, or if the time is not specified, upon delivery of the resignation or the giving of oral notice. Acceptance of such resignation shall not be required to make it effective.
 - b. **Involuntary Resignation.** A Chairperson shall be deemed to have involuntarily resigned if the Board, by the affirmative vote of two-thirds of the number of directors fixed by these bylaws, determines that the Chairperson has failed to fulfill his or her obligations as a chairperson as set forth in these bylaws.

SECTION 5.7 VICE CHAIRPERSONS OF THE BOARD.

Vice Chairpersons of the Board shall perform such duties as may be assigned to them by the Board or the Chairperson of the Board. In the event of the death of the Chairperson of

the Board or his or her inability to act, the First Vice Chairperson of the Board shall perform the duties of the Chairperson of the Board, except as may be limited by the Board, with all the powers of and subject to all the restrictions upon the Chairperson of the Board. In the event of the death or inability to act of both the Chairperson of the Board and the First Vice Chairperson of the Board, the Second Vice Chairperson of the Board shall perform the duties of the Chairperson of the Board, except as may be limited by the Board, with all the powers of and subject to all the restrictions upon the Chairperson of the Board.

SECTION 5.8 SECRETARY.

The Secretary shall have the power to delegate the following duties:

1. Keep the minutes of meetings of the Board and Board committees in one or more books provided for that purpose;
2. See that all notices are duly given in accordance with the provisions of these bylaws or as required by law;
3. Be custodian of the corporate records of the Corporation;
4. Keep registers of the post office address of each director;
5. Sign with the President/CEO, or other officer authorized by the Board or the Chairperson of the Board, deeds, mortgages, bond, contracts, or other instruments; and
6. Perform all duties incident to the office of Secretary and such other duties as may be assigned to him or her by the Board or the Chairperson of the Board.

SECTION 5.9 TREASURER.

The Treasurer shall have the power to delegate the following duties:

1. Have charge and custody of and be responsible for all funds and securities of the Corporation;
2. Receive and give receipts for moneys due and payable to the Corporation from any source whatsoever, and deposit all such moneys in the name of the Corporation in banks, trust companies, or other depositories selected in accordance with the provisions of these bylaws; and
3. Perform all duties incident to the office of Treasurer and such other duties as may be assigned to him or her by the Board or the Chairperson of the Board.

SECTION 5.10 ASSISTANT SECRETARY-TREASURER.

In the event of the death of the Secretary or his or her inability to act, the Assistant Secretary-Treasurer shall perform the duties of the Secretary, except as may be limited by the Board, with all the powers of and subject to all the restrictions upon the Secretary. In the event of the death of the Treasurer or his or her inability to act, the Assistant Secretary-Treasurer shall perform the duties of the Treasurer, except as may be limited by the Board, with all the powers of and subject to all the restrictions upon the Treasurer.

SECTION 5.11 NON-VOTING OFFICERS.

The Board of Directors shall elect the following nonvoting officers who shall be employees of the Corporation but shall not be Directors:

1. **President/CEO.**

- a. **Authority.** The President/CEO shall be the chief executive officer of the Corporation. Subject to the Board's control, the President/CEO shall control and supervise all of the business, affairs, and assets of the Corporation. The President/CEO shall act as the duly authorized representative of the Board in all matters on which the Board has not formally designated a representative. The President/CEO may sign deeds, mortgages, bonds, contracts, or other instruments, (i) when the signing and execution thereof have been expressly delegated by the Board to the President/CEO; (ii) when a Committee, including the Executive Committee, authorizes the President/CEO to sign and execute such document; (iii) when the Chairperson authorizes the President/CEO to sign and execute such document.
- b. **Committees and Meetings.** Except as otherwise provided in these bylaws or by the Board, the President/CEO shall serve as a non-voting, ex-officio member of all Board committees. The President/CEO shall prepare a report of each committee meeting for submission to the Board at the next Board meeting.
- c. **Duties and Responsibilities.** The President/CEO is directly responsible to the Board and the Executive Committee for the administration of the affairs of the Corporation. The President/CEO shall report to the Board on the activities and progress of corporate projects and programs. The President/CEO's duties shall be set forth in a job description, which shall be an exhibit to his/her contract. In addition, the President/CEO shall perform whatever other duties the Board prescribes. The President/CEO shall ensure that all corporate expenditures are substantiated by invoice, purchase order, or contract, are within the Corporation's operating budget, and are approved by the President/CEO or an appropriate Vice President to whom the President/CEO has delegated this function.
- d. **Absence, Death or Inability to Act.** During temporary absences from Nome, the President/CEO shall delegate his/her duties and powers to such non-voting employee officers of the Corporation as he/she deems appropriate. During such absences, the President/CEO will maintain

contact with NSHC via telephone, email, fax and other communication methods to the maximum extent possible. In the event of the death, resignation or removal of the President/CEO, the Board shall designate an acting President/CEO.

2. **Vice Presidents.** Each Vice President shall perform such duties as may be delegated or assigned to that Vice President by the CAO, COO, the President/CEO, or the Board and as set forth in that Vice President's contract, if any, and job description. Each Vice President is responsible for containing total division personnel expenses within the amount budgeted for that Vice President's division. Within a given fiscal year, changes in job descriptions for each division shall be reviewed by the Vice President of such division, and salaries or wages for each job shall be fixed pending approval of the President/CEO and confirmation that such amounts are within the total budget established by the Board of Directors. Each Vice President serves at the pleasure of the President/CEO, may be removed with or without cause by the President/CEO and if a Vice President's employment with the Corporation is terminated, such person's status as a Vice President shall automatically terminate. Each Vice President's status as an officer of the Corporation shall be subject to annual election by the Board of Directors. The removal of a Vice-President shall be without prejudice to the contract rights, if any, of the person so removed.
3. **General Counsel.** The Corporation may employ a General Counsel, who shall be an attorney licensed to practice law in the State of Alaska (or licensed in another state as long as such attorney obtains his/her license to practice law in Alaska within one year of the date of hire by the Corporation). The duties, reporting relationships, administrative oversight, and other aspects of the General Counsel position shall be set forth in a job description approved by the Board of Directors. Unless otherwise directed by the Board of Directors, General Counsel shall be the Corporation's primary contact person with outside counsel.
4. **Other Non-voting Employee Officers.** The Board of Directors may create such other officer positions, including but not limited to, a chief administrative officer ("CAO"), a chief operating officer ("COO"), Village Health Services Director ("VHS Director"), Human Resources Director ("HR Director"), and chief financial officer ("CFO"), as it deems necessary. Such officers shall be employees of the Corporation and shall report as set forth in the Corporation's organizational chart. Each such officer shall serve at the pleasure of the President/CEO, may be removed with or without cause by the President/CEO and if their employment with the Corporation is terminated, their status as an officer shall automatically terminate. Each person's status as an officer of the Corporation shall be subject to annual election by the Board of Directors. The removal of an officer shall be without prejudice to the contract rights, if any, of the person so removed.

5. **Qualifications** . In addition to the qualifications required for a non-voting officer set forth in the corporation's policies, job descriptions and employment contract, if any, a person may not serve as a non-voting officer if (a) under 42 U.S.C. § 1320a-7, his/her service would allow the Secretary to exclude the corporation from participation in any state or Federal health care program for reasons including but not limited to, having been convicted of certain crimes set forth in 42 U.S.C. § 1320a-7; or (b) s/he fails to comply with the requirements applicable to such non-voting officer under Alaska's Barrier Crimes Act and the regulations promulgated thereunder (7 AAC 10).

SECTION 5.12 SALARIES.

Directors shall be compensated for their service as directors and officers as set forth in the Board Administrative Policies. The salaries and benefits of the President/CEO and General Counsel shall be as fixed by the Board or by any person or persons to whom the Board has delegated such authority.

ARTICLE VI. ADMINISTRATIVE AND FINANCIAL PROVISIONS

SECTION 6.1 CONTRACTS.

The Board may authorize any officer or agent to enter into any contract or to execute and deliver such instrument in the name of and on behalf of the Corporation. Such authority may be general or limited to specific instances.

SECTION 6.2 LOANS, NOTES, CHECKS, ETC.

Unless authorized by the Board, no loans shall be contracted on behalf of the Corporation, no notes or other evidence of indebtedness shall be issued in its name, and no checks, drafts, or other orders of the payment of money shall be issued in its name. Such authorization may be general or limited to specific instances.

SECTION 6.3 LOANS TO OFFICERS AND DIRECTORS.

The Corporation shall make no loans to its officers or directors.

SECTION 6.4 DEPOSITS.

All funds of the Corporation not otherwise employed shall be deposited in the name of the Corporation in such banks, trust companies, or other depositories as the Board may select. All demand deposits and short term investments shall be fully collateralized with federal securities.

SECTION 6.5 BOOKS, RECORDS, MINUTES.

The Corporation shall keep correct and complete books and records of account, minutes of the proceedings of its Board and Board committees, and such other records as may be necessary or advisable.

SECTION 6.6 CORPORATE SEAL.

The corporate seal of the Corporation shall consist of a circle within which is depicted the service area, the initials of the Corporation, the year the Corporation was founded, and a harpoon.

SECTION 6.7 ACCOUNTING YEAR.

The accounting year of the Corporation shall be the twelve months ending September 30.

SECTION 6.8 RULES OF PROCEDURE.

The rules of procedure at meetings of the Board and Board committees shall be rules contained in Robert's Rules of Order on Parliamentary Procedure, newly revised, in the edition selected by the Chairperson, so far as applicable and when not inconsistent with these bylaws, the Articles of Incorporation, or any resolution of the Board.

SECTION 6.9 RESOLUTIONS.

The Board is authorized to adopt, amend, and repeal such resolutions as it deems necessary to clarify and define its duties.

SECTION 6.10 MEDICAL STAFF.

1. **Establishment, Organization, and Operation.** The Board of Directors shall cause to be created a Medical Staff organization comprised of the physicians and appropriate other persons who are appointed to membership and granted clinical privileges to provide care and treatment to patients in the hospital under Medical Staff Bylaws approved by the Board. The Board shall consider recommendations of the Medical Staff and appoint to the Medical Staff physicians and others who meet the qualifications for membership as set forth in the Bylaws of the Medical Staff. The Medical Staff shall operate within the guidelines of the Medical Staff Bylaws and Rules and Regulations and the applicable laws governing the practice of medicine in the State of Alaska.
2. **Responsibilities of the Medical Staff.**
 - a. The Medical Staff shall be responsible for evaluating and supervising the standards of medical practice conducted by members of the Medical Staff and those practitioners granted privileges pursuant to the Medical Staff Bylaws. The Medical Staff shall submit to the Board of Directors, from

time to time and as required by the Board of Directors, appropriate reports concerning the quality of medical care and quality assessment and improvement mechanisms being conducted by the Medical Staff of the hospital.

- b. The Medical Staff shall make recommendations to the Board through the Clinical Services Committee concerning:
 - (1) appointments, reappointments, and other changes in staff status;
 - (2) granting of specific clinical privileges based upon the individual practitioner's demonstrated ability to perform competently in those areas at time of appointment and at least biennially thereafter;
 - (3) disciplinary actions;
 - (4) all matters relating to professional competency and patient care; and
 - (5) such specific matters as may be referred to it by the Board.

- c. The criteria to be used for determining a practitioner's ability to provide patient care, treatment and services within the scope of the privileges requested shall be established upon the recommendation of the Medical Staff and approved by the Board. Such criteria shall include at least the following:
 - (1) current licensure and/or certification, as appropriate, verified with the primary source;
 - (2) the applicant's specific relevant training, verified with the primary source;
 - (3) evidence of physical ability to perform the requested privileges, consistent with applicable law;
 - (4) data from professional practice review by an organization that currently privileges the applicant, if available;
 - (5) peer and/or faculty recommendations; and
 - (6) when renewing privileges, review of the practitioner's performance within the hospital.

3. Right of Representation at Clinical Services Committee Meetings and Board of Directors Meetings. The Medical Staff may elect one of its members to represent it as an ex-officio non-voting member of the Clinical Services Committee. The Medical Director, or his/her designee, shall be an ex-officio member of the Board of Directors, without voting rights.

4. Medical Staff Membership and Privileges.

- a. Individuals applying for Medical Staff membership and privileges and/or renewal or changes of current membership and privileges shall complete the hospital medical staff credentialing procedure through the office of the Vice

President-Hospital Services. The Medical Staff shall verify information in the application pursuant to its credentials function.

- b. Applications for appointment, reappointment or changes in clinical privileges shall be presented by the Medical Staff Director or Vice President-Hospital Services on behalf of the Medical Staff to the Board through the Clinical Services Committee for review, delineation of privileges, and appointment or non-appointment. The Vice President-Hospital Services and the Medical Staff Director shall have the authority to grant temporary privileges until applications can be presented to the Executive Committee or Board consistent with accreditation standards. Members of the Medical Staff shall operate only within the scope of privileges granted. No appointment may be for a period greater than two (2) years.

SECTION 6.11 AUXILIARY ORGANIZATIONS.

Any auxiliary organization wishing to provide volunteer services to those individuals under the care of Corporation staff shall provide a written proposal to the Board. Such proposal shall include a charter, purpose, and function. If the proposal is accepted by the Board, the mechanism for such services shall be established by the Board.

SECTION 6.12 INDEPENDENT AUDITOR SELECTION.

The Board shall select the auditor and provide for an annual independent audit of the accounts and financial transactions of the Corporation. The audit shall be performed by a Certified Public Accountant firm who has no personal interest, direct or indirect in the fiscal affairs of the Corporation.

ARTICLE VII. INDEMNIFICATION

SECTION 7.1 INDEMNIFICATION OF DIRECTORS AND NON-EMPLOYEE OFFICERS.

Each person who was, or is threatened to be made a party to or is otherwise involved (including, without limitation, as a witness) in any actual or threatened action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that s/he is or was a Director or officer of the Corporation or, while a Director or officer, s/he is or was serving at the request of the Corporation as a Director, trustee, officer, employee or agent of another Corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is an alleged action or failure to act in an official capacity as a Director, trustee, officer, employee or agent or in any other capacity while serving as a Director, trustee, officer, employee or agent, may, upon the approval of a majority of the Board of

Directors, be indemnified and held harmless by the Corporation, for all claims, excepting only those based upon intentional acts or omissions which the Board determines were not taken in good faith, and against all expense, liability and loss (including attorney's fees, judgments, fines, ERISA excise taxes or penalties and amounts to be paid in settlement) actually and necessarily incurred or suffered by such person in connection therewith, and such indemnification shall continue as to a person who has ceased to be a Director, trustee, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that except as provided in Section 7.2 of this Article VII with respect to proceedings seeking solely to enforce rights to indemnification, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation. The right to indemnification conferred in this Section 7.1 shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition; provided, however, that the payment of such expenses in advance of the final disposition of a proceeding shall be made only upon delivery to the Corporation of a promissory note, made by or on behalf of such Director or officer, promising to repay all amounts so advanced if it shall ultimately be determined that such Director or officer is not entitled to be indemnified under this Section 7.1 or otherwise. A majority of the Board of Directors shall determine whether it is necessary for the promissory note to be wholly secured, partially secured or unsecured, and the nature of the security, if any.

SECTION 7.2 RIGHT OF CLAIMANT TO BRING SUIT.

If a claim for which indemnification is authorized under Section 7.1 is not paid in full by the Corporation within sixty (60) days after a written claim has been received by the Corporation, including the case of a claim for expenses incurred in defending a proceeding in advance of its final disposition, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, to the extent successful in whole or in part, the claimant shall be entitled to be paid also the expense of prosecuting such claim.

SECTION 7.3 PRESUMPTIONS.

The claimant shall have the burden of proving s/he is entitled to indemnification under this Article VII and must submit a written claim and request for the Board to approve his/her indemnification to the Board (and, in an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition, where the required undertaking has been tendered to the Corporation). If the Corporation rejects a claimant's request for indemnification, a claimant may resubmit his/her request at a later date for the Board's consideration. Neither the failure of the Corporation (including its Board of Directors or independent legal counsel) to have made a determination prior to the commencement of such action that indemnification of or reimbursement or advancement of expenses to the claimant is proper in the circumstances nor an actual determination by the Corporation (including its Board of Directors or independent legal counsel) that the

claimant is not entitled to indemnification or to the reimbursement or advancement of expenses shall be a defense to the action or create a presumption that the claimant is not so entitled.

SECTION 7.4 NONEXCLUSIVELY OF RIGHTS.

The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition which arises upon approval of a majority of the Board pursuant to Section 7.1 of this Article VII shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the Articles of Incorporation, Bylaws, agreement, or disinterested Directors or otherwise.

SECTION 7.5 INSURANCE, CONTRACTS AND FUNDING.

The Corporation may maintain insurance at its expense, to protect itself and any Director, trustee, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under Alaska Stat. 10.20. et. seq. or any successor statute thereto. The Corporation may enter into contracts with any Director or officer of the Corporation in furtherance of the provisions of this Section 4 and may create a trust fund, grant a security interest or use other means (including, without limitation, a letter of credit) to ensure the payment of such amounts as may be necessary to effect indemnification as provided in this Article VII.

SECTION 7.6 INDEMNIFICATION OF EMPLOYEES AND AGENTS OF THE CORPORATION.

The Corporation may, by action of its Board of Directors from time to time, provide indemnification and pay expenses in advance of the final disposition of a proceeding to employees and agents of the Corporation with the same scope and effect as the provisions of this Article VII with respect to the indemnification and advancement of expenses of Directors and officers of the Corporation (except the provisions of Section 7.3 hereof) or pursuant to rights granted pursuant to, or provided by, Alaska law.

ARTICLE VIII. AMENDMENTS

These bylaws may be amended or repealed and new bylaws may be adopted by the Board, provided that a statement setting forth a proposed amendment is delivered in writing to the Board at any properly called meeting of the Board as permitted under these bylaws. The Board shall review the proposed amendment and place the matter on the agenda of the next properly called meeting of the Board as permitted under these bylaws, where action to adopt such amendment will be taken or may take action immediately if at least two-thirds of the directors present and voting cast votes in favor of doing so. These


bylaws will be reviewed in their entirety by the Board at least once every two years for purposes of determining the need for amendments.

CERTIFICATION OF ADOPTION

These amended and restated Bylaws were adopted by the Board of Directors of Norton Sound Health Corporation at a meeting held February 1, 2024, at which a quorum was present.



Board Chairperson



Board Secretary

APPENDIX A

NOTICE OF APPOINTMENT OF ALTERNATE DIRECTOR(S)

The undersigned entity hereby provides notice to Norton Sound Health Corporation that it has appointed the following alternate director(s) for the director identified below to serve until such alternate dies, resigns, fails to meet the qualifications or is removed by the Board or the undersigned entity. Each alternate shall be required to comply with all bylaws of the Corporation, including: 1) submission of the required conflict of interest statement, 2) submission of a certification that the alternate has not been convicted of a felony or any crime involving dishonesty or moral turpitude, 3) compliance with the Alaska Barrier Crimes Act; and 4) compliance with the Corporation's drug and alcohol testing policy.

Name of Director:

Address:

Name of First Alternate:

Address:

Name of Second Alternate:

Address:

Dated this ____ day of _____, _____.

Name of Entity:

By:

Title:

APPENDIX B

DIRECTOR'S CERTIFICATION

To the Board of Directors of Norton Sound Health Corporation ("NSHC"):

I, _____, am a
_____ director _____ alternate _____ non-voting officer (employee)

of NSHC and hereby certify to NSHC, under penalty of perjury for false statements, that:

1. I have **never** been convicted of any of the following crimes:
 - Any misdemeanor or felony related to the delivery of a health care item or service under the Medicare program or a state Medicaid program;
 - Any misdemeanor or felony related to neglect or abuse of patients in connection with delivery of a health care item or service;
 - Any misdemeanor or felony relating to fraud, theft, embezzlement, breach of fiduciary responsibility or other financial misconduct if (i) the criminal act occurred after August 21, 1996 and (ii) involved a health care program or delivery of a health care service or item operated by or financed by any federal, state or local governmental agency;
 - A misdemeanor relating to the unlawful manufacture, distribution, prescription or dispensing of a controlled substance regardless of when the criminal act occurred;
 - A felony relating to the unlawful manufacture, distribution, prescription or dispensing of a controlled substance if the criminal act occurred after August 21, 1996;
 - Any misdemeanor or felony relating to fraud, theft, embezzlement, breach of fiduciary duty or other financial misconduct if the criminal act occurred after August 21, 1996 and involved a program operated by or financed by a federal, state or local government agency that is not a health care program;
 - A conviction for interference with or obstruction of an investigation into any of the crimes listed above.

The term "convicted" means (a) judgment entered by a court even if an appeal is pending; (b) judgment entered by a court even if it has been "expunged" which means the record has been sealed or destroyed after a certain period of time; (c) a finding of guilt by a court; (d) when a plea of guilty or *nolo contendere* has been accepted by the court; and (e) when a person has entered into a first offender, deferred adjudication, or other type of arrangement or program where the conviction has been withheld.

2. If I am a medical provider, I further certify that I have **never** had a monetary penalty imposed on me for a violation of any state or federal program nor have I ever been excluded from participating in the Medicare or a Medicaid program because of a program violation.

3. While I am a NSHC director, alternate or non-voting officer, I will advise NSHC's Executive Committee and President/CEO immediately if (i) I am ever convicted of any of the crimes listed in 1, above, (ii) if a monetary penalty is ever imposed on me for a violation of any state or federal program as a health care provider, or (iii) if I am ever excluded from participating in the Medicare or a Medicaid health care program because of a program violation.

4. I have been convicted of the following felonies, **none** of which are included in the list set forth in 1, above:

<u>Criminal Charge</u>	<u>Date</u>	<u>State/Federal Court</u>

(Please write "none" if you have never been convicted of a felony in any state or federal court.)

5. I have not been convicted of a misdemeanor for importation of alcohol or the use or possession of an illegal drug within five (5) years of the date of this certification.

6. I understand that if this certification is inaccurate in any way:

- The NSHC board of directors can refuse to seat me on the NSHC Board;
- If I am serving on the NSHC board of directors, I can be asked to resign my seat on the NSHC Board of Directors and, if I fail to resign, I can be immediately removed from the NSHC Board of Directors by vote of the Executive Committee.
- If I am a non-voting officer of NSHC, the Executive Committee or President/CEO can immediately terminate my employment with NSHC.

I further understand that NSHC shall communicate the reason for my removal as a director or alternate to the entity that selected me so that the entity can select a new director or alternate who meets the qualifications set forth in NSHC's bylaws.

7. In recognition of NSHC's need for state and federal funding and the impact that my conviction of certain crimes may have on NSHC's funding, I hereby waive any expectation of privacy or privacy rights that I might have under any law, regulation, ordinance, policy or bylaw and authorize NSHC to release any information regarding the matters set forth in this certification to any person or entity, including but not limited to NSHC's attorneys, officers, directors, employees and the members of the village council or other entity that selected me to serve on the NSHC board.

8. I hereby certify that I understand that any question as to whether I am disqualified from service on the Board of Directors on the basis of such a conviction shall be resolved solely by action within the discretion of the Executive Committee of the Board of Directors of the Corporation.

Dated this ____ day of _____, _____.

Signature: _____

Print name: _____

The undersigned entity declares that it has verified the certification made above and has raised any questions with the Executive Committee of the Board of Directors of Norton Sound Health Corporation.

Dated this ____ day of _____, _____.

Name of Entity: _____

By: _____

Title: _____

APPENDIX C

Acknowledgement and Disclosure

To the Board of Directors of Norton Sound Health Corporation:

I hereby acknowledge that I have received a copy of Section 4.11 of the Corporation's bylaws concerning conflicts of interests. I understand that I am required to comply with the Corporation's policy on conflicts of interest as set forth in that bylaw. I understand that the failure to disclose any conflict or potential conflict of interest as provided in said policy may subject me to legal liability, dismissal, or action or claims, and I understand that I am under a continuing duty to disclose any actual or potential conflicts of interests as they may arise. I therefore state as follows:

() I am presently in conformity with said bylaw and have been in conformity with it during the preceding twelve-month period. I am not aware of any current or potential conflicts of interest with the Corporation.

() I am presently in conformity with said bylaw and have been in conformity with it during the preceding twelve-month period. However, I wish to disclose the following information:

Dated this ____ day of _____, _____.

Signature: _____

Print name: _____

APPENDIX D

CHARTER FOR THE FINANCE AND AUDIT COMMITTEE

OBJECTIVE

The objective for the Finance and Audit Committee is to assist the Board of Directors in its oversight of Norton Sound Health Corporation's financial affairs, including the Corporation's financial policies, financial condition, financial planning, operational and capital budgeting, debt structure, debt financing and refinancing and other significant financial matters involving the Corporation.

RESPONSIBILITIES

The Committee's primary duties and responsibilities are as follows:

- **Budgets**
 - Review and recommend to the Board for approval an annual operating budget for the Corporation and its components.
 - Review and recommend to the Board for approval an annual capital expenditures budget for the Corporation and its components. If deemed appropriate by the Committee, review and recommend to the Board for approval projected capital expenditures budgets for one or more succeeding years.
- **Debt, Financing and Refinancing**
 - Evaluate and monitor the Corporation's long and short-term indebtedness, debt structure, collateral or security therefore, cash flows, and uses and applications of funds.
 - Evaluate and recommend to the Board for approval proposed debt financings and refinancings, including (i) interest rate and whether the rate will be fixed or floating rate; (ii) collateral or security, if any; (iii) issuance costs; (iv) banks, investment banks and underwriters retained or compensated by the Corporation in connection with any financing or refinancing
 - Review and approve all guarantees or other obligations for the indebtedness of any third party.
 - Periodically review the Corporation's rating from credit rating agencies.
- **Risk Management and Insurance**
 - Review and recommend to the Board for approval the Corporation's risk management policies and procedures.
 - Review and recommend to the Board for approval the Corporation's insurance coverages, including (i) identity and rating of carriers; (ii) premiums; (iii) retentions; (iv) self-insurance and captive insurance arrangements; (v) stop-loss policies; and (vi) all other aspects of insurance coverage for healthcare institutions.

- **Finance Policies**
 - Review and recommend to the Bylaws, Personnel and Policy Review Committee for approval the Corporation's Finance policies, utilizing the advice of financial consultants as the Committee deems necessary or desirable.
- **Investment Policies**
 - Review and recommend to the Bylaws, Personnel and Policy Review Committee for approval the Corporation's cash management and cash investment policies, utilizing the advice of financial consultants as the Committee deems necessary or desirable.
 - Review and recommend to the Bylaws, Personnel and Policy Review Committee for approval the Corporation's investment policies relating to assets of any employee benefit plan maintained and controlled by the Corporation, utilizing the advice of financial consultants as the Committee deems necessary or desirable.
- **Travel Review**
 - Due to the sensitive and large amount of patient and other travel paid for by the Corporation, the Finance and Audit Committee will review and approve travel policies.
 - As it deems necessary, review specific travel made by Board, management, employees or patients.
- **Corporate Credit Cards**
 - Review the credit card statements for the corporate credit cards, including appropriate receipts or other support for all charges, for all corporate credit cards held by the Corporation or its officers.
- **General**
 - Select and terminate the services of all outside financial advisors, financial consultants, banks, investment banks, and underwriters for the Corporation. Review periodically the Corporation's significant commercial and investment bank relationships.
 - Perform any other duties and responsibilities as the Board may deem necessary, advisable or appropriate for the Committee to perform.
 - Perform any other duties and responsibilities as the Committee deems appropriate to carry out its purposes as provided in this Charter.
 - Report on a regular basis, but no less frequently than quarterly, to the Board concerning the Corporation's financial affairs. Urgent and time sensitive matters shall be reported at the next regular or special Board meeting.

COMMITTEE MEMBERSHIP

The Finance and Audit Committee shall consist of at least six directors, one of whom shall be the treasurer. The Committee's membership, the chairperson, the call and conduct of Committee meetings, the preparation of Committee minutes, and the Committee's other activities shall be appointed, conducted and accomplished in accordance with applicable provisions of the Bylaws, the Board Administrative Policies, and the Corporate Governance Principles adopted by the Corporation's Bylaws, Personnel and Policy Review Committee as ratified by the Board of Directors.

COMMITTEE MEETINGS

The Finance and Audit Committee shall meet quarterly. Additional meetings may occur as the Committee or its chair deems advisable.

RESOURCES AND AUTHORITY OF THE COMMITTEE

The Finance and Audit Committee shall have the resources and authority appropriate to discharge its duties and responsibilities, including the sole authority to select, retain, terminate, and approve the engagement and other retention terms of special counsel or other experts or consultants, as it deems appropriate.

OTHER

The charter of the Finance and Audit Committee shall be reviewed and approved at least annually by the Finance Committee and the Board of Directors.