



CITY OF NOME
ADMINISTRATIVE REVIEW AND APPEAL FORM

Appeal #:

This form is for you to appeal the assessed valuation on your property. Complete Sections 1, 2 and 3. Retain a copy for your records, and return or mail the original copy to the City Clerk's Office. Appeals must be returned or postmarked no later than the date indicated on the Assessment Notice. The Assessor will contact you regarding your appeal.

1) I appeal the value of tax parcel #: 0 0 1 . 2 1 1 . 0 3 B

Property legal description: Block 110, Lot 3A, Mineral Survey _____, Other _____

Print Owner's Name: Norton Sound Health Corporation

Owner's Mailing Address: PO Box 966, Day Phone: () 443 3337

Nome, AK 99762, Evening Phone: () 443 3337

Address to which all correspondence should be mailed (if different than above): _____

C/O Dan Pardee, CFO (same address as above)

2)

Assessor's Value	Land: \$82,400	Bldg: \$682,800	Total: \$765,200	Purchase Date:
Owner's Estimate of Value				

Owner's reason for estimate of value (including inventory corrections, sales of comparable properties, and property income statements, if appropriate). The Appellant bears the burden of proof. Grounds for adjustment of assessment are proof of unequal, excessive, improper, or under-valuation based on facts that are stated in a valid written appeal or proven at the appeal hearing.

Total Taxable Value should be \$0

Basis for Exemption: AS 29.45.030(a)(3); AS 29.45.030(a)(8); NCO 17.20.020(a)(1); Federal Preemption

RECEIVED

MAY 12 2025

See Attached

CITY OF NOME
CLERK'S DEPARTMENT

(PLEASE ATTACH STATEMENT IF YOU NEED MORE SPACE)

3) I hereby affirm that the foregoing information is true and correct, that I have read and understand the guidelines above, and that I am the owner or owner's authorized agent of the property described above.

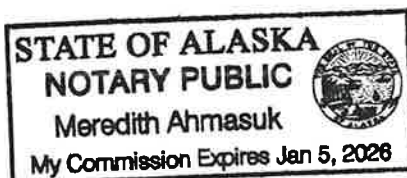
Dan Pardee
Signature of owner or authorized agent

5/12/25
Date signed

Dan Pardee
Print Name (if different from item # 1)

SUBSCRIBED and SWORN to before me this 12th day of May, 2025

NOTARY PUBLIC in and for the STATE of ALASKA: Meredith Ahmasuk
Commission Expires: 1-5-2026
Seal:



Appeal#:

4)

Assessor's Decision	From:	Land:	Building:	Total:
	To:			

Assessor's Reason for Decision: _____

(PLEASE ATTACH STATEMENT IF YOU NEED MORE SPACE)

Date Rec'd Decision made by Date Approved by Date Date mailed

5) Appellant's Response:

- ☐ I ACCEPT the assessor's decision in Block 4 above and hereby withdraw my appeal.
- ☐ I DO NOT ACCEPT the assessor's decision and desire to have my appeal presented to the Board of Equalization.

Signature of owner or authorized agent Date Printed Name

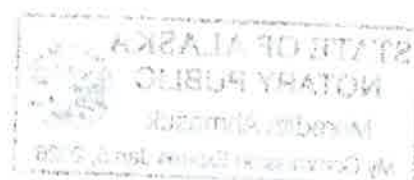
6)

BOARD OF EQUALIZATION DECISION	LAND:	BUILDING:	TOTAL:
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Date Received Date Heard Certified (Chairman or Clerk of Board) Date Date Mailed

2025 BOARD OF EQUALIZATION DATE: April 30, MAY 1 & 2 2025

THE FINAL DAY TO APPEAL (April 25, 2025) IS 30 DAYS AFTER THE POSTMARK OF YOUR ASSESSMENT NOTICE (March 26, 2025)



Attachment to Administrative Review and Appeal Form
001.211.03B, Block 110, Lot 3A | 207 W. 6th Ave | ("Old HAT Building")

I. Allegations of Error by the 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) and Nome Code of Ordinances (NCO) 17.20.020(a)(1). 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. . . ." And, NCO 17.20.020(a)(1) exempts from tax "[a]ll property required to be exempted by . . . federal law, including, but not limited to, property identified in AS 29.45.030[.]" The tax assessed by the City of Nome (City or Nome) on this real property owned by NSHC and located in Nome is preempted by federal law under the implied federal preemption doctrine rooted in the Supremacy Clause of the U.S. Constitution.¹ Properties used to carry out federal programs and that are subject to comprehensive and pervasive federal oversight, like the NSHC property at issue here, are exempt from state or local taxation. Federal preemption is a jurisdictional bar to the City's property taxation scheme.
- B. The assessor erred by denying full property tax exemption to NSHC pursuant to AS 29.45.030(a)(3) and NCO 17.20.020(a)(1). AS 29.45.030(a)(3) exempts from tax "property used exclusively for nonprofit religious, charitable, cemetery, hospital, or educational purposes." NCO 17.20.020(a)(1) exempts from tax "[a]ll property required to be exempted by state . . . law, including, but not limited to, property identified in AS 29.45.030[.]" NSHC exclusively uses the property at issue here for nonprofit hospital AND charitable purposes, each of which is independently sufficient for exemption.

II. Property Use Description

A. 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.² 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 ISDEAA³ and

¹ U.S. Const., Art. VI, cl. 2.

² See *attached* Bylaws.

³ 25 U.S.C. § 5381 et seq.

funding agreements (FAs) entered thereunder, 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 the IHS.⁴ IHS funds the administration of the PFSAs that NSHC has contracted to perform on behalf of IHS, including the operation of NSHC's hospital facilities in Nome.⁵

NSHC acts as an "instrumentality" of the United States in providing healthcare services under Title V of the ISDEAA.⁶ Healthcare services are federal PFSAs provided under the ISDEAA pursuant to the federal trust responsibility to Indians for health care.⁷

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.⁸ 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.⁹ 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.¹⁰ 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.¹¹

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.¹² The current NSHC Funding Agreement expressly provides that its scope of work includes: "[s]upport 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;¹³ technical assistance, planning, design, engineering, management, and general contracting for facility construction, maintenance, and operation ("capital projects");¹⁴ the training of community health

⁴ See attached Alaska Tribal Health Compact Between Certain Alaska Native Tribes and the United States of America October 1, 1994 — Amended and Restated October 1, 2023 [hereinafter ATHC]; 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 [hereinafter FA].

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

⁶ 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").

⁷ 25 U.S.C. § 1602.

⁸ 25 U.S.C. §§ 5321(d), 5324(k).

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

¹⁰ 25 U.S.C. § 5324(g).

¹¹ 42 U.S.C. § 1396(d).

¹² See ATHC Art. V, § 3(a).

¹³ FA § 3.5.

¹⁴ FA § 3.6.

aides;¹⁵ emergency medical services training for staff and community members throughout the region;¹⁶ a maternal and child health program including prematernal home care for village women awaiting delivery at the hospital;¹⁷ and the provision of lodging for patients, family members of patients, and their escorts.¹⁸

B. Specific Use of the Old HAT Building

As of December 1, 2024, this building is vacant. NSHC will renovate the property this spring and summer for its intended use to support families of patients enrolled in the Intensive Outpatient Services program. The use is similar to the Patient Hostel, and will enable NSHC to provide housing to families from the surrounding Villages so that they can support family member patients in the program.

The HAT Building will be integrated into, and necessary for, the delivery of effective care. The provision of support services and housing to patients, family members of patients, and their escorts is also required by the NSHC funding agreement.

III. The City is Precluded by Operation of Law from Denying Property Tax Exemption

The City is precluded by operation of law from denying exemption for the subject property. The Alaska Superior Court has determined, in litigation between NSHC and the City for property taxes assessed in the 2023 year, that the City of Nome must grant full property tax exemption for the similarly used “BHS Building” on each of two, independently sufficient bases: (1) the property is used exclusively for “hospital purposes” under AS 29.45.030(a)(3), and (2) the property is used exclusively for “charitable purposes” under AS 29.45.030(a)(3).¹⁹ This decision is referred to hereinafter as the “2023 Memorandum.” (The court’s decision in the case for the 2022 tax year is referred to hereinafter as the “2022 Decision.”²⁰).

With regard to the property’s prior use (lease to the State of Alaska, a tax-exempt government entity, for the State’s operation of its public health nursing), the court held in the 2023 Memorandum that the use was exempt.²¹ And, with regard to its future intended use, the court held in the 2022 Decision that the similarly used Patient Hostel was exempt.²² The City did not appeal the 2022 Decision with respect to the Patient Hostel, and the decision precludes the City from relitigating the exempt status of properties used for similar purposes. The 2022 Decision is also a final decision of law despite the fact the City has appealed the 2022 Decision as to a separate property (the “7-Plex”), where a decision is pending from the Alaska Supreme

¹⁵ FA §§ 3.4.4, 3.4.5.

¹⁶ FA § 3.4.7.

¹⁷ FA §§ 3.4.8, 3.4.8.1.

¹⁸ FA at § 3.2.14.

¹⁹ See *attached Norton Sound Health Corp. v. City of Nome Equalization Board*, No. 2NO-23-156CI, Memo. and Decision at 12–14 (Jan. 16, 2025) [hereinafter 2023 Memorandum].

²⁰ See *generally attached Norton Sound Health Corporation v. City of Nome*, No. 2NO-22-00095CI, Memo. Decision (July 18, 2023) [hereinafter 2022 Decision].

²¹ 2023 Memorandum at 14–15, 19.

²² 2022 Decision at 16, 19, 23.

Court.²³ And, in the 2023 Memorandum, the court held the similarly used BHS Building exempt, where the temporarily vacant property was under renovation for a future exempt use for hospital or charitable purposes, and which was previously used for exempt hospital or charitable purposes.²⁴

While the 2023 Memorandum is not an immediately appealable decision because it remanded to the Nome Board of Equalization (BOE) to determine apportionment of a separate parcel (the “20-Plex”) based on the proportion of vacant land thereon, the limited nature of the remand clearly demonstrates that the Superior Court’s holding as to the BHS Building will not be affected by however the remand is resolved. And, the 2022 Decision is a final decision of law despite the fact the City has appealed the 2022 Decision as to a separate property (the “7-Plex”), where a decision is pending from the Alaska Supreme Court.²⁵

Even if the City were not legally precluded from taxing the subject property, however, NSHC is entitled to tax exemption based on the following legal authorities and principles.

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

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 . . .” And, NCO 17.20.020(a)(1) exempts from tax, “[a]ll property required to be exempted by state . . . law, including, but not limited to, property identified in AS 29.45.030 . . .”

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 Superior Court in litigation between NSHC and the City has applied federal preemption to exempt properties used to provide, e.g., medical provider housing, patient housing, storage of essential equipment and supplies for operations of the hospital, from municipal property tax.²⁶ The Alaska Supreme Court has upheld application of the doctrine to preempt borough property taxation on “*all space in a building that contains a tribally operated clinic.*”²⁷

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 state or local taxation.²⁸ 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*,²⁹ and Indian

²³ *Rapoport v. Tesoro Alaska Petro. Co.*, 794 P.2d 949, 951–52 (Alaska 1990) (“The irrelevance of a pending appeal is also supported by our other collateral estoppel cases.” (citing cases)); *Lyman v. State*, 824 P.2d 703, 705 (Alaska 1992).

²⁴ 2023 Memorandum at 12–14.

²⁵ *Rapoport v. Tesoro Alaska Petro. Co.*, 794 P.2d 949, 951–52 (Alaska 1990) (“The irrelevance of a pending appeal is also supported by our other collateral estoppel cases.” (citing cases)); *Lyman v. State*, 824 P.2d 703, 705 (Alaska 1992).

²⁶ 2022 Decision at 21–23; 2023 Memorandum at 16.

²⁷ *Ketchikan Gateway Borough v. Ketchikan Indian Corp.*, 75 P.3d 1042, 1044 (2003) (emphasis added).

²⁸ *Id.* at 1048.

²⁹ 448 U.S. 136, 146–47 (1980).

education in *Ramah Navajo School Board, Inc. v. Bureau of Revenue, New Mexico*.³⁰ 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*, 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.”³¹ 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.³² By contrast, the state provided little support for Indian education, asserting only its general interest in raising revenue through taxation.³³ Thus, the federal and tribal interests outweighed those of the state under the preemption test.³⁴

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*.”³⁵ In that case, the tribally operated clinic was funded by the IHS and operated on land conveyed by the United States.³⁶ 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 tribe].”³⁷ The court stated that in 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.”³⁸

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.³⁹ 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.”⁴⁰ As the U.S. Supreme Court instructed in *Ramah*, there is no requirement for a

³⁰ 458 U.S. 832 (1982).

³¹ *Id.* at 839.

³² *Id.* at 839–40.

³³ *Id.* at 841–42.

³⁴ *Id.* at 843.

³⁵ 75 P.3d at 1044 (emphasis added).

³⁶ *Id.*

³⁷ *Id.* at 1049, 1048 n.27.

³⁸ *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) (“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.”); *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.

³⁹ *Id.* at 1046.

⁴⁰ *Id.* (quoting *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163, 176 (1989) and *Ramah Navajo*, 458 U.S. at 838).

statute to “express the intention to pre-empt” state taxation, with the Court confirming that “[t]his argument is clearly foreclosed by our precedents.”⁴¹

This property is integral to the provision of healthcare under NSHC’s ISDEAA agreement, and to enabling NSHC to carry out its federally contracted obligations. As programs and services that support the healthcare operations, including NSHC’s maternal and child health program, are included under the scope of work as defined in NSHC’s FA, all areas used for human resources, administration and board support, performance management, training, capital projects, medical personnel housing, patient housing, financial function, storage, and support services are integral to NSHC’s healthcare operations under the ISDEAA.

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.⁴² 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 (IHCIA).

Congress has expressed also 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.⁴³ 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.⁴⁴ In *Ramah*, the U.S. Supreme Court found that a similar depletion of federal funds to reimburse the contractor for state gross receipts taxes would contravene federal policy and Congress’s intent and thus argued in favor of preemption.⁴⁵

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 ISDEAA Title V “self-governance” program requires a rigorous planning process and demonstration of financial stability and financial management capability for three (3) years.⁴⁶ ISDEAA contractors are subject to annual audits, with penalties for noncompliance with applicable cost principles.⁴⁷ 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.⁴⁸ 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

⁴¹ 458 U.S. at 843.

⁴² 75 P.3d at 1048.

⁴³ 25 U.S.C. § 5325(a)(1).

⁴⁴ 75 P.3d at 1049–50 (Fabe, C.J., and Carpeneti, J., dissenting).

⁴⁵ 458 U.S. at 842.

⁴⁶ 25 U.S.C. § 5383(c)(1)(C).

⁴⁷ *Id.* § 5386(c).

⁴⁸ *Id.* § 5387(a)(2).

ISDEAA abrogates or weakens the trust responsibility to tribes and individual Indians,⁴⁹ 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.⁵⁰

In its prior determination that taxation of NSHC properties is not precluded under federal law, the Nome BOE cited to the *Board of Equalization for Borough of Ketchikan v. Alaska Native Brotherhood and Sisterhood, Camp No. 14*⁵¹ and *Mescalero Apache Tribe v. Jones* decisions⁵² for the proposition that, outside reservation boundaries, tribes have generally been held subject to nondiscriminatory state law including tax laws.⁵³ While that is true as a “general” proposition, there are exceptions,⁵⁴ 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 a tribe for “various cultural, educational, vocational, health and community service programs”⁵⁵ 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),⁵⁶ or on the basis that the tribe held and used the property “in its sovereign capacity” or as a “federal instrumentality.”⁵⁷ Neither of those arguments are advanced by NSHC in its exemption applications. Second, in the course of addressing those arguments, the court acknowledged, but declined to adopt, the 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.⁵⁸ 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 IHCIA. That was also the case in *Ketchikan Gateway*, which cited not only *White Mountain Apache* but also *Ramah*, decided two years thereafter.

In *Ramah*, 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:

⁴⁹ *E.g.*, *id.* §§ 5332(2), 5329(c), Model Agreement § (d)(1) (“The United States reaffirms the trust responsibility of the United States” to the contracting tribe), 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 . . .”).

⁵⁰ *See* 75 P.3d at 1046 (“federal law impliedly preempted application of the [state] tax”) (citing *Ramah*, 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 Corp. v. New Mexico*, 490 U.S. 163, 184 (1989) (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)).

⁵¹ 666 P.2d 1015 (Alaska 1983).

⁵² 411 U.S. 145 (1973).

⁵³ *E.g.*, BOE Conclusion of Law No. 2 (June 7, 2023) (concerning the 2023 tax year).

⁵⁴ *E.g.*, *Haaland v. Brackeen*, 599 U.S. 255, 275, 281, 323 (U.S. 2023).

⁵⁵ 666 P.2d at 1027.

⁵⁶ This provision applies specifically to land “taken in the name of the United States in trust for the Indian tribe or individual Indian[.]” *See id.* at 1018 (citing then 25 U.S.C. § 465).

⁵⁷ *Id.* at 1015.

⁵⁸ *Id.* at 1021.

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.⁵⁹

The *Ramah* 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[.]⁶⁰

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. . . . [W]here 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*."⁶¹ This further supports the application of the implied federal preemption doctrine to NSHC's properties.

NSHC uses this property for capital projects, for intended future exempt use for lodging for patients, family members of patients, and their escorts, and support services, as required by Sections 3.6, 3.2.14, and 3.5 of the FA. NSHC uses the property to carry out its obligations under its ISDEAA agreement and FA. Federal law preempts taxation against this property.

A. The Assessor's Arguments to the Contrary are Unavailing

The assessor identifies no new, relevant City services that would substantively affect the weighing of tribal and federal interests against the City's interest in its municipal property taxation, which the Superior Court has already found are preempted as provided in the 2022 Decision and 2023 Memorandum. To the contrary, in further *support* of preemption, during the subject tax year (2025), NSHC will continue to provide ambulance services previously provided by the City. NSHC's provision of ambulance services, assumed by NSHC from the City in 2024, lessens the burdens of government, further supporting that "the City has made no effort to provide healthcare services to the Bering Strait Region, and as such, should be precluded from

⁵⁹ 458 U.S. at 839–40 (citing statutes, including the ISDEAA) (footnote omitted).

⁶⁰ *Id.* at 840–42.

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

imposing an additional burden on the tribally owned and operated organization that was created to provide this healthcare.”⁶²

The assessor cites to *Cotton Petroleum Corporation v. New Mexico* for the proposition that “[t]he [U.S. Supreme] Court has ... determined that state taxation of on-reservation activities was not preempted where ‘a purpose of the [Congressional] Act is to provide Indian tribes with badly needed revenue, but [it found] no evidence for the further supposition that Congress intended to remove all barriers to profit maximization.’”⁶³ First, the assessor’s citation misleadingly omits identification that the “Congressional Act” at issue in *Cotton Petroleum* was not the ISDEAA, but rather the entirely inapposite Indian Mineral Leasing Act of 1938 (IMLA). This fact alone renders the case of no value.

The case is inapposite for several additional reasons: (1) the *Cotton Petroleum* Court explicitly found that the IMLA’s regulations were not as exclusive as those in *Bracker* and *Ramah* (in which the Court upheld preemption relying on laws including the ISDEAA),⁶⁴ (2) the taxes fell on the *non-Indian operator* Cotton Petroleum Corp. (here, the property taxes clearly fall on NSHC),⁶⁵ and (3) the IMLA sought to place tribal leasing on par with federal leasing, *which leasing was already subject to state taxation*⁶⁶ (here, if the IHS operated the facilities themselves, they would be exempt from property taxes, see AS 29.45.030(a)(8)). The assessor’s citation to the decision for the proposition that the Court found “no evidence for the further supposition that Congress intended to remove all barriers to profit maximization” is inapposite, because, as above, the Court was looking at an entirely different law, but, additionally, the assessor’s argument entirely fails to account for NSHC’s (and the Superior Court’s) express identification of “Congress’s intent to see that those operating under [ISDEAA] self-determination contracts *would receive the same amount of funding as would the federal government*.”⁶⁷ This Congressional intent would be undercut if NSHC were subject to the City’s property tax and would place NSHC on an unequal playing level as the federal government.

The assessor argues that the City’s interest in self-government must be considered in the weighing of interests. The assessor cites no legal authority for the proposition. The argument also fails to address that the implied federal preemption analysis requires that in order for a state or local government tax to survive preemption, the state or local government must provide services that bear a nexus to the activity that the state or local government seeks to tax.⁶⁸ As

⁶² 2022 Decision at 23 n.141 (citing *Ramah*, 458 U.S. at 843), 23 n.136 (stating that in *Ramah*, the Court “[f]ound] that the burden imposed by the state’s taxation impeded educational opportunities for Indians by depleting the funds available for the construction of Indian Schools” (citing 458 U.S. at 842)); see also 2023 Memorandum at 18 n.127 (“The Court finds it instructive that if Norton Sound were not in the region, the City of Nome would likely need to build or fund a hospital. Norton Sound has filled a gap in governmental services that the City of Nome does not need to provide.”).

⁶³ City of Nome Assessor’s Decision In the Matter of Norton Sound Health Corporation Applications for 2025 Real Property Tax Exemption at ¶ 47 n.69 (citing 490 U.S. 163, 180 (1989)) [hereinafter Written Decision]; see also *id.* at ¶ 71 n.93.

⁶⁴ 490 U.S. at 186.

⁶⁵ *Id.* at 185.

⁶⁶ *Id.* at 179.

⁶⁷ 2022 Decision at 23 n.137 (emphasis added).

⁶⁸ See, e.g., *Ramah*, 458 U.S. at 843–45; *id.* at 845 n.10 (“We are similarly unpersuaded by the State’s argument that the significant services it provides to the Ramah Navajo Indians justify the imposition of this tax. The State does not

above, the assessor does not identify City services relevant to the analysis. Instead, the argument demonstrates that, as in previous tax years, the City's interest in the property tax is merely a "generalized interest in raising revenues" insufficient to find that preemption does not apply.⁶⁹

For similar reasons, the assessor's arguments that: (1) NSHC has not shown that the "activities at th[e] propert[ies], much [less] the propert[ies] [themselves], [are] comprehensively and pervasively regulated by the federal government,"⁷⁰ and (2) that "[a]ll of NSHC's Nome real property is regulated by" City sources of law,⁷¹ are unavailing. As the Superior Court has found, these types of argument miss the mark because the inquiry is whether *Indian healthcare* is comprehensively and pervasively regulated by the federal government—which the Superior Court has already properly found is the case and which is not meaningfully disputed by the assessor in his decision.⁷² The Superior Court also noted that this type of argument has been rejected by the U.S. Supreme Court.⁷³

The assessor cites to several decisions from the Ninth Circuit federal appeals court for the proposition that the implied federal preemption doctrine does not apply on non-reservation lands, and thus, does not apply in Alaska.⁷⁴ First, decisions of federal appellate courts are not binding on Alaska state courts; the Supremacy Clause requires only that state courts defer to federal law rulings from the U.S. Supreme Court.⁷⁵ And, Alaska courts certainly owe no deference to the decisions of the Fifth Circuit (the assessor similarly cites to one such decision for the proposition

suggest that these benefits are in any way related to the construction of schools on Indian land."); *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 343 (1983) ("[T]he State has pointed to no services it has performed in connection with hunting and fishing by nonmembers which justify imposing a tax in the form of a hunting and fishing license . . ."); *Seminole Tribe of Fla v. Stranburg*, 799 F.3d 1324, 1337, 1341–42 (11th Cir. 2015) ("[T]he state's tax must relate to services it provides in connection with the entity and activity being taxed and not merely serve a generalized interest in raising revenue."); *Hoopa Valley Tribe v. Nevins*, 881 F.2d 657, 661 (9th Cir. 1989) ("Although California points to a variety of services that it provides to residents of the reservation and the surrounding area, none of those services is connected with the timber activities directly affected by the tax. To be valid, the California tax must bear some relationship to the activity being taxed."); see also 2022 Decision at 23 ("Additionally, this Court notes that the City has made no effort to provide healthcare services to the Bering Strait Region, and as such, should be precluded from imposing an additional burden on the tribally owned and operated organization that was created to provide this healthcare." (citing *Ramah*, 548 U.S. at 843)).

⁶⁹ *Bracker*, 448 U.S. at 151.

⁷⁰ Written Decision at ¶ 152; see also *id.* at ¶ 83.

⁷¹ Written Decision at ¶ 58.

⁷² 2023 Memorandum at 17 (rejecting the City's arguments that NSHC's individual properties must be "individually pervasively regulated" or that "federal law must 'regulate the most minute details' of the individual properties"); see also *id.* ("Therefore, the City of Nome's argument that Norton Sound must regulate the 'most minute detail' is incorrect.").

⁷³ 2023 Memorandum at 17 n.117 ("The Court also notes that the dissenting opinion in *Ramah* makes this exact argument, arguing that the specific activity 'school construction' was not pervasively regulated. This argument failed in that case which similarly involves ISDEAA. *Ramah*, 458 U.S. at 851 (J. Rehnquist, White, and Stevens dissenting) ('But the regulations on which the Court relies do not regulate school construction, which is the activity taxed. They merely detail procedures by which tribes may apply for federal funds in order to carry out school construction.[?]').").

⁷⁴ Written Decision at ¶ 49 n. 71 (citing *Malabed v. N. Slope Borough*, 335 F.3d 864, 872 (2003) and *Blunk v. Arizona Dep't of Transp.*, 177 F.3d 879, 882–84 (1999)).

⁷⁵ *Lockhart v. Fretwell*, 506 U.S. 364, 376 (1993) (Thomas, J., concurring); *Steffel v. Thompson*, 415 U.S. 452, 482 n.3 (1974) (Rehnquist, J., concurring)).

that the doctrine should not apply in Alaska).⁷⁶ Second, the Ninth Circuit cases involved entirely inapposite facts. *Malabed* did not involve tribal self-governance (but rather was a challenge to a borough's hiring preference).⁷⁷ *Blunk* involved a non-Indian billboard advertisement operator.⁷⁸ Neither case included a tribal defendant or implicated the federal statutory scheme of ISDEAA or its comprehensive regulation and strongly pro-tribal federal policies.

The assessor's similar reliance on several decisions of the Alaska Supreme Court for the proposition that implied federal preemption is not applicable in the State are inapposite and fail to account for the fact that the court has repeatedly undertaken implied federal preemption analysis.⁷⁹ The Alaska Supreme Court has done so despite expressly noting the holdings of the Ninth Circuit in the two cases relied upon by the assessor (*Malabed* and *Blunk*).⁸⁰ These Alaska Supreme Court decisions instead support the vitality of the doctrine in the State.

The assessor's citation to *Alaska Native Brotherhood* for alleged support that the Alaska Supreme Court has suggested that the implied federal preemption doctrine does not apply in the state fails to recognize that the "*Williams v. Lee* [infringement] test," discussed in the relevant paragraph of the assessor's decision, is an entirely different test and doctrine from the implied federal preemption test that NSHC relies on.⁸¹ In fact, the court noted in a separate footnote that its analysis was in accord with the recently-decided *Ramah*.⁸² The assessor's additional reliance on this decision for its weighing of federal, state, and tribal interests to find the borough tax permissible is misplaced because, in that case, the tribe carried out activities that, while socially helpful, were not identified to have been provided under the ISDEAA.⁸³ Seemingly for this reason, the court did not identify any federal interests in the decision.⁸⁴

The assessor's reliance on *Ketchikan Gateway* for its weighing of federal, tribal, and state interests is similarly misplaced. In that case, the court found that no federal programs were carried out in the vacant space at issue in the case.⁸⁵ Accordingly, the Court did not identify any tribal or federal interests to be weighed against the borough's interest.⁸⁶ Additionally, the Court noted that the intended use of the vacant space was not clear, and that it appeared there was an intention for at least some of the space to be leased to others.⁸⁷ These facts do not align to NSHC's exemption claims.

⁷⁶ See Written Decision at ¶ 50 (citing *Tunica-Biloxi Tribe v. Louisiana*, 964 F.2d 1536, 1542 (5th Cir. 1992)).

⁷⁷ 335 F.3d 864.

⁷⁸ 177 F.3d 879.

⁷⁹ See *Ketchikan Gateway Borough v. Ketchikan Indian Corp.*, 75 P.3d 1042 (1983); *Board of Equal. for Borough of Ketchikan v. Alaska Native Broth. and Sisterhood, Camp No. 14*, 666 P.2d 1015, 1022 n.5 (1983) ("[W]e conclude that our analysis is in complete accordance with *Ramah*. . . . [I]t is apparent that when 'the relevant state, federal, and tribal interests,' ... are examined and balanced, [the borough's] assertion of taxing authority is reasonable.").

⁸⁰ 75 P.3d at 1047 n.22.

⁸¹ Written Decision at ¶ 51.

⁸² 666 P.2d at 1022 n.5.

⁸³ See generally *id.*, 666 P.2d 1015.

⁸⁴ *Id.*

⁸⁵ 75 P.3d 1042.

⁸⁶ *Id.* The dissent would have held the vacant space exempt under implied federal preemption, further demonstrating the vitality of the doctrine in the State. 75 P.3d at 1050-51 (J. Fabe & J. Carpeneti, dissenting).

⁸⁷ *Id.* at 1048 n.27.

The assessor also relies on *Ketchikan Gateway* for the apparent proposition that preemption should not apply because the City provides generalized services to NSHC and its properties.⁸⁸ But, the U.S. Supreme Court has clearly held taxes to be preempted even where it assumed that the state's assertion that it provided substantial services to the tribe was true.⁸⁹ The assessor's argument fails to address that the preemption inquiry requires there to be a nexus between the services provided by the City and the activity it seeks to tax.⁹⁰ The assessor fails to prove this nexus, showing only the City's general interest in raising revenues.

Lastly, in his decision, the assessor fails to identify or weigh the compelling federal interests in Indian healthcare, which were identified and relied upon by the Superior Court in its decisions in the cases for the 2022 and 2023 tax years. Failing to do so renders the assessor's case entirely deficient.

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 exempt from taxation."⁹¹ Pursuant to this provision, 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.⁹² The use of this property is exclusively 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.⁹³

The Alaska Supreme Court, in *City of Nome v. Catholic Bishop of N. Alaska*, 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[.]"⁹⁴

⁸⁸ Written Decision at ¶ 52.

⁸⁹ *Ramah*, 458 U.S. at 845 n.10.

⁹⁰ *See, e.g., id.*

⁹¹ Alaska Const. art. IX, § 4.

⁹² *Fairbanks N. Star Borough v. Dena Nena Henash*, 88 P.3d 124, 132 (Alaska 2004).

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

⁹⁴ 707 P.2d 870, 888 n.37 (Alaska 1985).

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.⁹⁵ The *Dena Nena Henash* court found that ISDEAA contracts permit tribes to “improve[] ... the moral, mental, and physical welfare” of individuals and the group.⁹⁶ 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.⁹⁷

In applying the “charitable purposes” decision to NSHC properties at issue in litigation between NSHC and the City regarding taxes assessed in the 2022 tax year, the Superior Court cited the Alaska Supreme Court’s statement in *King’s Lake Camp*, above.⁹⁸ The court also cited statements of the Alaska Supreme Court in *Dena Nena Henash*, including the court’s “recogni[tion] that the [ISDEAA] is a unique relationship between Indian tribes and the federal government to provide ‘support to tribes for health, education, employment, irrigation, administration, and real estate services,’” and the “conclu[sion] that satisfying [ISDEAA] contracts ‘are motivating by purposes that are properly characterized as ‘charitable’ and that this ‘satisfies the charitable-purposes criterion for exemption in Alaska.’”⁹⁹ The 2023 Memorandum upheld the 2022 Decision’s application of the “charitable purposes” exemption.¹⁰⁰

NSHC’s active redesign and renovation of this property for patient housing 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 FA:

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[.]¹⁰¹ [. . .]

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

⁹⁵ *Dena Nena Henash*, 88 P.3d at 135.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ 2022 Decision at 17 (citing 439 P.2d at 445).

⁹⁹ 2022 Decision at 18 (citing 88 P.3d at 134 n.54, 135).

¹⁰⁰ 2023 Memorandum at 4 (“The Court will apply ... ‘charitable purposes’ as defined in [the 2022 Decision].”).

¹⁰¹ FA § 3.2.14.

maintenance, and managing vehicle-related procurement. Child Care: to enhance their access to health care, patients may be offered child care services.¹⁰²

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 . . .¹⁰³

NSHC's use of the subject property to fulfill NSHC's ISDEAA contracted obligations is charitable.¹⁰⁴

The assessor argues that "vacant property does not constitute a gift to the public nor does it improve the moral, mental, and physical welfare,"¹⁰⁵ but this argument entirely misses the point that NSHC is actively redesigning and renovating the property for patient housing, and such housing is essential to operating the hospital and operation of the hospital, which adds to the moral, mental, and physical welfare of the public.

The 2022 Decision and the 2023 Memorandum confirm that NSHC properties operated pursuant to its ISDEAA contract are used exclusively for "charitable purposes" under AS 29.45.030(a)(3). In the 2022 Decision and the 2023 Memorandum, the Superior Court held the Alaska Supreme Court's decision in *Dena Nena Henash* is controlling. For this tax year, the subject property has the same use and is operated under the same ISDEAA contract at issue in the 2022 Decision and the 2023 Memorandum. Thus, the same conclusion that the subject property is exclusively used for charitable purposes is unavoidable. Further, since this tax year involves the same transaction and subject matter, the 2022 Decision and the 2023 Memorandum are controlling precedent and establish 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.¹⁰⁶

¹⁰² FA § 3.5.

¹⁰³ FA § 3.6 (second emphasis added).

¹⁰⁴ *Dena Nena Henash*, 88 P.3d at 135.

¹⁰⁵ Written Decision at ¶ 225.

¹⁰⁶ 4 Cooley, Taxation, § 683, p. 1430.

In fact, the framers' colloquy during the Alaska Constitutional Convention makes clear an intent not to impose a "necessity" requirement on the character of the use and not to 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.¹⁰⁷

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).¹⁰⁸

The inquiry is whether charitable aims are directly accomplished and effectuated by the activity carried out on the property.¹⁰⁹ The Alaska Superior Court has held that the use of buildings by NSHC for staff housing, patient housing, storage, and to renovate between periods of exempt hospital purposes is for the direct and primary purpose of the hospital and meets the exclusive use for hospital purposes test.¹¹⁰

As noted above, NSHC operates pursuant to a federal contract which requires it to undertake capital projects activities, including design, and to provide patient housing and support services as an integral function of NSHC's exempt activity as a hospital. The building's use is entirely integrated with the hospital. Its use is not ancillary or incidental. Thus, actual hospital activities are occurring on the subject property because the uses of the property are an exercise of key, integral functions required by the federal government to operate as a hospital.¹¹¹

2. Hospital Purposes

The 2022 Decision defines "hospital purposes." The Superior Court held that "hospital

¹⁰⁷ Alaska Constitutional Convention 2332 (Nov. 8 – Dec. 12, 1955) (statement of Barrie M. White) (emphasis added) [hereinafter Constitutional Minutes]; see also *id.* at 1111–12 (statement of Barrie M. White).

¹⁰⁸ 707 P.2d. at 879.

¹⁰⁹ *Id.* at 880–81.

¹¹⁰ 2022 Decision at 16–17; 2023 Memorandum at 8, 12–14.

¹¹¹ See FA §§ 3.6, 3.2.14, 3.5.

purposes” was a plain term that must be given ordinary meaning.¹¹² 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.¹¹³ The court determined that the BOE’s denial of exemption based 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 must have a broader meaning than “hospital.”¹¹⁴

The court held that property qualifying for exemption under the ordinary meaning of “hospital purposes” 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 argued, and as the assessor again argues in his decision for the instant tax year.¹¹⁵ The court held that combining the term “purpose” with “hospital” is necessary to interpret the statute and that the term “purposes” is defined as “something set up as an object or end to be attained: intention.”¹¹⁶ The court further stated:

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.¹¹⁷

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 the constitution and the statute.”¹¹⁸ The court held that the City’s narrow construction of the term “hospital” effectively abrogated the statutory exemption and that “hospital purposes” is a broader term that 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 . . .¹¹⁹

The Superior Court’s construction is consistent with Alaska courts’ determinations that they do not need a legislative or constitutional exemption to define “charitable purposes”¹²⁰ or “educational purposes”¹²¹ broadly, even in light of the canon of strict construction. The same is true for “hospital purposes.”

¹¹² 2022 Decision at 12–13.

¹¹³ 2022 Decision at 16–17.

¹¹⁴ 2022 Decision at 15.

¹¹⁵ 2022 Decision at 13–17.

¹¹⁶ 2022 Decision at 14–15.

¹¹⁷ 2022 Decision at 15 (citing *McKee v. Evans*, 490 P.2d 1226, 1231 (Alaska 1971)). The *McKee* decision dealt with the similarly phrased “educational purposes” exemption. *E.g.*, 490 P.2d at 1230.

¹¹⁸ 2022 Decision at 15–16 (citing *Cedars of Lebanon v. Los Angeles Cnty.*, 221 P.3d 31, 35 (Cal. 1950)).

¹¹⁹ 2022 Decision at 15 n.89.

¹²⁰ *Catholic Bishop*, 707 P.2d at 888–89.

¹²¹ *McKee v. Evans*, 490 P.2d 1226, 1230 (Alaska 1971).

The assessor argues that the Alaska Supreme Court “has twice rejected that property ‘reasonably necessary for the fulfillment of the generally recognized functions of a completely modern hospital . . . therefore can be characterized as used exclusively for hospital purposes,’” and stated “[t]his formulation of the ‘exclusive use’ test derives from *Cedars of Lebanon* . . . , 221 P.3d [at] 40.”¹²² This is an incorrect reading of the two cases. The *Sisters of Charity* court found the *Cedars of Lebanon* reasoning to be inapplicable because of differing facts: office space in a property was being leased out for the doctor’s *private business use* (in *Cedars of Lebanon*, the “living quarters were not used for the private practice of medicine”).¹²³ And in *Harmon*, the court similarly “declined to adopt that part of the *Cedars of Lebanon* opinion . . . because of factual differences.”¹²⁴ In *Harmon*, the taxpayer sought exemption for various residences under the religious purposes exemption (a critical detail omitted by the assessor that also explains his misleading assertion that the court identified a difference in statutory language). Unlike the “hospital purposes” exemption, the Alaska Legislature had specifically limited the types of properties, including residences, that may be exempt under the “religious purposes” exemption.

Thus, NSHC’s active redesign and renovation of this property for patient housing directly accomplishes NSHC’s hospital purposes. As the Superior Court recognized in the 2022 Decision and the 2023 Memorandum, the purpose of each NSHC property, the “end to be attained,” is “to allow Norton Sound to deliver health care services to the region’s residents; or, using the Board of Equalization’s formulation of ‘hospital,’ ‘to provid[e] medical and surgical treatment and nursing care.’”¹²⁵ The 2023 Memorandum upheld this definition of “hospital purposes.”¹²⁶

The subject property is integral to NSHC providing health care services to the Bering Strait Region.¹²⁷ The subject property is integral, as follows:

1. Patient housing is integrated into the medical care provided by NSHC, including by providing meals, easy hospital and provider access, and handicap and other supportive infrastructure.
2. Patients who travel from outlying villages for care at NSHC have inadequate resources to pay for temporary housing while receiving essential care at NSHC.
3. NSHC’s funding agreement requires it to provide patient housing, support services, and planning, design, engineering, management and general contracting for construction.

¹²² Written Decision at ¶ 27 (citing *Greater Anchorage Area Borough v. Sisters of Charity of House of Providence*, 553 P.2d 467, 470 (Alaska 1976), and *Harmon v. N. Pac. Union Conf. Ass’n of Seventh Day Adventists*, 462 P.2d 432, 437–38 (Alaska 1969)).

¹²³ 553 P.2d at 470.

¹²⁴ *Id.*

¹²⁵ 2022 Decision at 16–17.

¹²⁶ 2023 Memorandum at 4 (“The Court will apply ‘hospital purposes’ . . . as defined in [the 2022 Decision]. The Court defined the term ‘hospital’ as ‘an institution providing medical and surgical treatment and nursing care for sick or injured people.’ And, the Court defined ‘purposes’ as ‘something set up as an object or end to be attained: intention.’”).

¹²⁷ 2022 Decision at 16; 2023 Memorandum at 13.

The assessor argues that “vacant property does not constitute a gift to the public nor does it improve the moral, mental, and physical welfare,”¹²⁸ but this argument entirely misses the point that NSHC is actively redesigning and renovating the property for patient housing, between periods of exempt use, and such housing is essential to operating the hospital and operation of the hospital, which adds to the moral, mental, and physical welfare of the public.¹²⁹

C. Receipt of Revenue Does Not Preclude Tax Exemption

The assessor, in paragraphs 41–44 of his decision, cites to the Alaska Constitutional Convention Proceedings to improperly extrapolate a meaning not intended by the framers. The citations are misleading in their incompleteness. Recognizing that the constitutional property tax exemptions are “pretty standard,”¹³⁰ the framers clarified by example that there would be no exemption in the following instance:

Mr. President, in answer to Mr. Cooper’s question, the intent of the Committee here is to allow for tax exemptions on property used for religious, charitable, cemetery, or educational purposes, to be exempt from taxation, but to provide for taxation of income-producing property, and furthermore, to allow for proration of such income-producing property. **For example, if a religious organization should own an office building, a part of which is rented out, a part of which is used for its own purposes, the intent here is to allow the taxation of the income-producing part of that office building and exemption on the non-income producing part.**¹³¹

The above example (which was not included in the assessor’s citation to the proceedings) limits the income-producing prohibition to situations where the property is not being used for the organization’s own purposes. This is the interpretation followed by Alaska courts. Alaska courts distinguish between property of an organization which is used by a third party for their own business purposes versus property used for the nonprofit organization’s own purposes. The Alaska Supreme Court in *Sisters of Charity* reiterated the primary rule of law: when the property in question is used even in part by non-exempt parties *for their private business purposes*, there can be no exemption.¹³²

That is not the case here. NSHC uses the subject property for its own purposes in designing and renovating the property for a future exempt use.

¹²⁸ Written Decision at ¶ 225.

¹²⁹ This type of argument was also rejected in the 2023 Memorandum, with the Superior Court finding that NSHC’s provision of staff housing “fits within the plain meaning of a hospital purpose and provides a public benefit to the region.” 2023 Memorandum at 10.

¹³⁰ Constitutional Minutes at 1100 (statement of Barrie M. White).

¹³¹ Constitutional Minutes at 1112 (statement of Barrie M. White) (emphasis added); *see also id.* at 2332.

¹³² 553 P.2d at 471 (citing *Evangelical Covenant Church of Am. v. City of Nome*, 394 P.2d 882 (Alaska 1964)) (emphasis added).

The colloquies cited by the assessor do not mean generally that “a use is not nonprofit, and therefore, not exempt, if it is profitable.”¹³³ The assessor’s conclusion is contrary to established law.

The assessor seeks to make a mountain out of a molehill using the “nonprofit” modifier in AS 29.45.030(a)(3). Fortunately, the Alaska Supreme Court has already explained the role of the “nonprofit” modifier in the statutory language. Regarding the “educational purposes” exemption, in *McKee v. Evans*, the court stated: “Under our statute once it is determined that the institution involved is nonprofit in character and that the property is exclusively used for educational purposes, the exemption attaches.”¹³⁴ This common sense interpretation of the exemption for properties used exclusively for “nonprofit ... charitable ... [or] hospital ... purposes” is that the exemption is available to entities that are nonprofit in character and that exclusively use a property for its charitable or hospital purposes. The court clarified, further, in *Dena Nena Henash*: “Our decisions have previously discussed this nonprofit qualifier only briefly, and have translated it to mean that a property generating income will not lose its exemption if payment is ‘not sought as a result of a dominant profit motive.’”¹³⁵ For this proposition, the *Dena Nena Henash* court cites directly to the three-element test from *Catholic Bishop*, discussed below. There is absolutely no dispute that NSHC is organized as a nonprofit corporation and operating as a nonprofit.¹³⁶ Thus, the exemption is available to nonprofit entities using the properties exclusively for their hospital or charitable purposes; and, if revenue is generated, the *Catholic Bishop* test applies.

Catholic Bishop provides that property will not lose exemption under AS 29.45.030(a)(3) even if payment is received for the use of the property, if: (1) the property is used exclusively for exempt purposes; (2) the payment is not sought as a result of a dominant profit motive; and (3) the payment is both incidental to and reasonably necessary to the accomplishment of the exempt activity and does not exceed the operating costs of the exempt activity for which payment is received.¹³⁷ And, as the Alaska Supreme Court stated in *Dena Nena Henash*, an operational surplus, in itself, does not defeat a claim of exemption under the charitable purposes exemption.¹³⁸

The assessor’s general position throughout the Written Decision is that any revenue generated that exceeds operational costs renders a property non-exempt.¹³⁹ The assessor’s broad arguments about “profit” are off-base and would eviscerate exemption for nonprofit entities.

¹³³ Written Decision at ¶ 44.

¹³⁴ 490 P.2d at 1231.

¹³⁵ 88 P.3d at 131 (citing *Catholic Bishop*, 707 P.2d at 889).

¹³⁶ See attached NSHC Board Bylaws (Sept. 27, 2017); see also attached IRS Form 990.

¹³⁷ *City of Nome v. Catholic Bishop of Northern Alaska*, 707 P.2d 870, 889 (Alaska 1985). Without citation, the assessor states that “earlier decisions state that exemption remains only if the payment does not exceed operating costs.” Written Decision at ¶ 40. NSHC assumes that the assessor is alluding to the *Catholic Bishop* test, which remains good law.

¹³⁸ 88 P.3d at 131 (“The fact that use of a given parcel created an operational surplus does not necessarily preclude a conclusion that the activity had a nonprofit purpose. That a given charity manages, through effective fund-raising and careful management, to generate a surplus while carrying out its charitable purposes does not necessarily deprive the charity of a property tax exemption.”).

¹³⁹ The assessor also advances novel arguments about the incentive of a nonprofit entity to operate at a deficit to the extent the deficit would be less than the payment of property taxes, citing *Dena Nena Henash*. Written Decision at ¶

The assessor misconstrues the nature of a nonprofit organization.¹⁴⁰ The difference between a “nonprofit” organization and a for-profit company is that the former is established for eleemosynary purposes and the revenue is invested back into the organization to further those purposes. A for-profit entity, on the other hand, will distribute its profit to private owners and does not operate for eleemosynary purposes. Nonprofit entities necessarily must make a “profit” (i.e., generate a surplus) on their operations to maintain liquidity and build reserves to ensure their sustainability.¹⁴¹

Thus, tax exempt entities always generate revenue. The requirement is that the revenue be related to their exempt purposes. Examples of related revenues include patient fees, program income, grants, donations, government contracts, and, notably, income from rental of the organization’s property.¹⁴² As explained above, Alaska law follows the same principles as federal law, as illustrated by Alaska Supreme Court’s articulation of the 3-part *Catholic Bishop* test.

D. The Assessor Incorrectly Applies the Law

1. Charitable Purposes

The assessor argues that *Dena Nena Henash* stands for the proposition that activities of a “tribally affiliated organization done to satisfy a[n] [ISDEAA] contract ha[s] a charitable motivation” rather being done for charitable purposes.¹⁴³ The assessor argues that the *Dena Nena Henash* court held that certain uses of property—i.e., to “economically benefit certain businesses (Credit and Finance), provide for economic development of certain areas (Planning), and technical assistance to tribal entities like drafting ordinances and constitutions (VGS)” —was held to be non-exempt “notwithstanding the ISDEAA activity.”¹⁴⁴

There are several problems with the assessor’s interpretation of this case. First, it ignores prior decisions of the Superior Court holding NSHC’s use of its property to provide healthcare services to the Bering Strait Region to be for exempt charitable purposes. Second, it runs counter to the express statement in *Dena Nena Henash* that: “We conclude that [the tribe’s] activities in satisfying its Self-Determination Act contracts with the government are motivated by purposes that are properly characterized as charitable. This satisfies the charitable-purposes

200. First, the *Dena Nena Henash* court made no such finding. Second, the assessor’s (unattributed) reliance on *Evangelical Covenant* in support of his novel argument is misplaced because that case dealt with the entirely inapposite situation of a church operating a radio station that sold commercial air time. *Id.* at ¶ 200.

¹⁴⁰ *E.g.*, Written Decision at ¶¶ 203–08.

¹⁴¹ *See, e.g.*, Nat’l Council on Nonprofits, *Administration and Financial Management*, <https://www.councilofnonprofits.org/running-nonprofit/administration-and-financial-management> (last visited May 9, 2025).

¹⁴² *See* I.R.C. § 512; *see also* IRS Form 990 at p.9, Part VIII (Statement of Revenue).

¹⁴³ Written Decision at ¶ 34 n.42 (citing 88 P.3d at 132–36).

¹⁴⁴ Written Decision at ¶ 34 n.43 (citing 88 P.3d at 140); *see also id.* at ¶ 34 n.44 (discussing fund-raising, lobbying, political activity, economic development, and commercial loan programs).

*criterion for exemption in Alaska.*¹⁴⁵ Third, the court noted that the non-exempt activities were funded from a variety of state and federal sources, but did not identify that the non-exempt activities were required under the tribe's ISDEAA agreement or funded thereunder.¹⁴⁶ That the tribe did not pursue exemption under the implied federal preemption doctrine further supports that this was likely the case.¹⁴⁷ Even if the case stood for the proposition that the assessor asserts, the assessor has not meaningfully made an argument that delivering healthcare services to the Bering Strait Region would fall into the alleged category of activities "motivated by a charitable motivation" but not exempt under the charitable purposes exemption. NSHC's provision of health care to Nome, and the entire Bering Strait Region, contributes to the public health and welfare, and lessens governmental burdens. The provision of health care is not akin to the economic development and governmental activities that were found non-exempt in *Dena Nena Henash*, and the assessor makes no meaningful argument to the contrary. Lastly, the assessor's argument entirely obviates established law that "charitable purposes" is to be broadly construed when applying the Alaska property tax exemption.¹⁴⁸

The assessor also argues that, relative to a separate property (the "20-Plex"), "[a] footnote in *Catholic Bishop* suggests that construction of a building intended for exempt use and later put to such use is not exempt during the period of construction."¹⁴⁹ This reasoning is inapposite to the HAT Building because the property discussed in *Catholic Bishop* was undergoing initial construction.¹⁵⁰ The assessor also argues, again relative to the 20-Plex, that "[n]othing in the plain language of AS 29.45.030(a)(3) provides exemption based on intent for future use."¹⁵¹ These arguments do not address the holding of the 2023 Memorandum that the similarly used BHS Building was exempt,¹⁵² and that NSHC's charitable purposes (and federal law exemption claims) are also based on NSHC actively using the property to carry out obligations under its FA, as explained *supra*.¹⁵³

Similarly, the assessor's argument that the property is not exempt because NSHC is in the "design phase" and had not "obtained any building or renovation permits" is unavailing.¹⁵⁴ As provided in NSHC's February 25, 2025 letter, at Section VI.1, NSHC has "engaged design/architect firms to design and develop a suitable layout for this property to facilitate additional patient lodging needs, which is an exempt use of property under [the 2022 Decision]." And, "planning, design, engineering ... [and] general contracting for construction" is expressly included as a PFSA under Section 3.6 of NSHC's FA.

¹⁴⁵ 88 P.3d at 135. For several properties, the assessor argues that NSHC did not identify ISDEAA funding for NSHC's operation of the property. The inquiry is not whether ISDEAA funding is used for a property, but rather whether NSHC uses a property to "satisfy[] its [ISDEAA] contract[]." *Id.*

¹⁴⁶ 88 P.3d at 130, 139–42.

¹⁴⁷ 88 P.3d at 142 n.88.

¹⁴⁸ *Catholic Bishop*, 707 P.2d at 887–88.

¹⁴⁹ Written Decision ¶ 144 n.108 (citing 707 P.2d at 895 n.51).

¹⁵⁰ 707 P.2d at 895 n.51.

¹⁵¹ Written Decision at ¶ 148.

¹⁵² 2023 Memorandum at 12–14.

¹⁵³ *Dena Nena Henash*, 88 P.3d at 135.

¹⁵⁴ Written Decision at ¶ 218.

2. Hospital Purposes

With regard to the hospital purposes exemption, the assessor argues that “hospital” must be read as an “adjective” to modify purposes. Because, the assessor argues, “hospital” as a noun means “an institution providing medical and surgical treatment and nursing care for sick or injured people,” “(adjective) hospital purposes are the provision of medical and surgical treatment and nursing care for sick or injured people,” and “[p]roperty is therefore used for ‘hospital purposes’ if it is actually used for providing of [sic.] medical and surgical treatment and nursing care for sick or injured people.”¹⁵⁵ The assessor provides no citation for this proposition. The ultimate construction of the exemption language is unconvincing for several reasons:

- First, as the Superior Court held in the 2022 Decision, this ultimate construction of the statutory exemption gives no meaning to the term “purposes.” The statutory exemption is not for “hospitals,” but rather for properties used for “hospital purposes.” The assessor’s narrow construction of “hospital purposes” to mean “hospital” impermissibly results in exemption analysis shifting from whether the property is exclusively used for “hospital purposes” to an exception to the exclusive use test (e.g., whether the property is “directly necessary and vitally necessary” for other exempt property).¹⁵⁶ This construction deprives NSHC of the proper exemption analysis: i.e., whether the property is used for “hospital purposes.”¹⁵⁷
- Second, the assessor’s construction would essentially require, in an alternative phrasing, that a property be used for a “hospital use,” i.e., it must be used to provide medical and surgical treatment or nursing care for sick or injured people. This type of mischaracterization of the similarly worded “charitable purposes” exemption has already been dismissed by the Alaska Supreme Court.¹⁵⁸
- Lastly, 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 redesigning and renovating the property for exempt use for patient housing 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

¹⁵⁵ Written Decision at ¶¶ 29–30.

¹⁵⁶ 2022 Decision at 14–15; *see also id.* at 14 (finding that combining the term “purpose” with “hospital” is necessary to interpreting the statute and defining “purposes” as “something set up as an object or end to be attained: intention”). The assessor repeats the City’s legal error numerous times throughout the Decision. *See, e.g.*, Decision at ¶¶ 176 (arguing for the Kusqii House that “leasing real property at fair market value is not the direct and primary purpose of NSHC as a beneficent institution”), 243 (arguing for the “Storage” property that “payments NSHC collects for the storage of the use of the property would not destroy exemption if storage is the direct and primary purpose of NSHC as a benevolent institution”).

¹⁵⁷ 2022 Decision at 14–15.

¹⁵⁸ *See Dena Nena Henash*, 88 P.3d at 130 n.20 (assuming that the borough’s use of “charitable use” in its briefing was not an attempt by the borough to “recast the constitutional test, which requires that the property be exclusively used for ‘charitable purposes’”) (emphases added).

The assessor makes this same legal error as to the charitable purposes exemption, essentially arguing that storage is not a “charitable use,” disregarding that the exemption is for “charitable purposes.” *See* Written Decision ¶ 239 (“Storing one’s own stuff is not charitable even if one is a charitable organization.”).

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.

3. Exclusive Use Test

The assessor appears to misunderstand the exclusive use test, repeating a legal error made by the City in litigation between NSHC and the City regarding property taxes assessed for the 2022 and 2023 tax years. Under *Catholic Bishop*, all uses (not just income producing activities) must be for the direct and primary purpose exempt purpose. The assessor's citations for his mistaken position are unconvincing:

- The assessor cites to *Evangelical Covenant Church [of Am.] v. City of Nome*, for the proposition that "[w]hen use of a property involves fee-for-service, the activity generating the revenue must be the 'direct and primary purpose of the beneficent institution.'"¹⁵⁹ There is no such quotation in that decision. Nonetheless, the Superior Court has correctly recognized that the assessor's position is incorrect and that the "direct and primary" purpose test applies to all uses of a property.¹⁶⁰
- The assessor next cites to the *Evangelical Covenant Church* decision for the proposition that the court denied exemption to the church's property, notwithstanding that the "profits from the operation were used for the church's missionary work," because "to hold otherwise would result in a taxed commercial business being forced to compete with the commercial activities of institutions claiming a tax exempt status under the law."¹⁶¹ This case, and the assessor's related reasoning, is inapposite for several reasons. First, the activity being conducted at the property (which the assessor does not identify) was the operation of a radio station that was "actively engaged in the sale of commercial radio time."¹⁶² The parties in that case also stipulated that under a quarter (1/4) of radio time was used for broadcasting religious material.¹⁶³ As the Alaska Supreme Court has explained: "[e]ven though the funds generated by the radio station were used for religious purposes, we held they were taxable because operation of the radio station was not itself the 'direct and primary purpose' of the church."¹⁶⁴

On the other hand, the Superior Court has repeatedly held that NSHC properties are used exclusively for exempt charitable and hospital purposes. NSHC does not engage in any of the types of non-exempt commercial activities implicated by *Evangelical Covenant Church*. See attached IRS Form 990 (showing no unrelated business income). Second, the decision does not stand for the broad proposition, argued by the assessor, that exemption must be denied so that providers of similar services are not forced to compete

¹⁵⁹ Written Decision at ¶ 36 n.46 (citing 394 P.2d at 883).

¹⁶⁰ E.g., 2023 Memorandum at 5 n.32 ("Whether a property is exclusively used for an exempt purpose depends whether it is used for the 'direct and primary' purpose." (citing *Catholic Bishop*, 707 P.2d at 881)).

¹⁶¹ Written Decision at ¶ 36 n.47 (citing 394 P.2d at 885).

¹⁶² 394 P.2d at 883.

¹⁶³ *Id.* at 883 n.2.

¹⁶⁴ *Matamaska-Susitna Borough v. King's Lake Camp*, 439 P.2d 441, 445 n.13 (Alaska 1968) (citing *Evangelical Covenant Church*, 394 P.3d at 883).

any activity of an exempt institution. Rather, that reasoning extended only to the institution's *non-exempt activity* in operating a commercial radio station.

The assessor's citation to *Greater Anchorage Area Borough v. Sisters of Charity of House of Providence* for the proposition that NSHC must demonstrate "exclusive use" and not "benefits" is unavailing.¹⁶⁵ First, the Superior Court has already identified that the City has mistakenly relied on this decision in litigation for the 2023 tax year, stating that "the City of Nome fail[ed] to mention that in *Sisters of Charity* the doctors were for-profit, the space was leased at market rates, they served different patients, and the doctors were not employed with the hospital."¹⁶⁶ The assessor similarly repeats the City's misplaced reliance on this case, failing entirely to identify that it was the use of leased office space by doctors *for their private practice of medicine* that meant that the exclusive use requirement was not met. This was the case despite the fact that the doctors held admitting privileges at the hospital, which conferred a benefit to the hospital.¹⁶⁷ The assessor's reliance on this case throughout his decision (often, without citation) for the proposition that "to qualify for an exemption ... the taxpayer must show, not benefits, but exclusive use" is without merit.

Lastly, the assessor's (at times, unattributed) citations to *Sisters of Providence in Wash., Inc. v. Municipality of Anchorage*¹⁶⁸ are similarly unavailing.¹⁶⁹ The assessor fails to recognize a critical factual difference between the decision and NSHC's exemption applications: in *Sisters of Providence*, a for-profit company leased equipment to a non-profit hospital and the case concerned the taxability of that personal property.¹⁷⁰ The assessor fails to identify that it was the leasing of the personal property by the for-profit entity that meant that the exclusive use requirement was not met, notwithstanding that the not-for-profit lessee may have been using the equipment for exempt hospital purposes. Here, there is no such lessor-lessee relationship with regard to potentially taxable property: NSHC uses its properties for its own charitable and hospital purposes. There is no third-party commercial use. The decision's holdings related to the for-profit lessor's economic activity in the "leasing of the [personal] property for profit" are inapposite because NSHC is not engaged in commercial, non-exempt activities. For similar reasons, the assessor's citation to the case in paragraph 40 is misleading because it omits that the Court was considering the use of the property by the for-profit lessor.¹⁷¹

¹⁶⁵ *E.g.*, Written Decision at ¶ 105.

¹⁶⁶ 2023 Memorandum at 14.

¹⁶⁷ 553 P.2d at 468, 468 n.6, 470.

¹⁶⁸ 672 P.2d 446 (Alaska 1983).

¹⁶⁹ *E.g.*, Written Decision at ¶ 26.

¹⁷⁰ *See* 672 P.2d at 447 (describing Sisters of Providence in Washington, Inc. as a "non-profit corporation which owns and operates Providence Hospital" that "entered into an agreement with Crocker McAlister Equipment Leasing Inc. [Crocker] to obtain beds, televisions, and x-ray equipment").

¹⁷¹ Written Decision at ¶ 40 n.53 (citing 672 P.2d at 450–52).

ALASKA TRIBAL HEALTH COMPACT

BETWEEN

CERTAIN ALASKA NATIVE TRIBES

AND THE

UNITED STATES OF AMERICA

OCTOBER 1, 1994

—

AMENDED AND RESTATED

OCTOBER 1, 2023

ALASKA TRIBAL HEALTH COMPACT

OCTOBER 1, 1994
AMENDED AND RESTATED
OCTOBER 1, 2023

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ALASKA TRIBAL HEALTH COMPACT
BETWEEN
CERTAIN ALASKA NATIVE TRIBES
AND THE
UNITED STATES OF AMERICA
OCTOBER 1, 1994
AMENDED AND RESTATED
OCTOBER 1, 2023

This Compact of Self-Governance, which under Title III of Public Law No. 93-638, as amended, became effective October 1, 1994, was amended and restated effective October 1, 1995, October 1, 1996, October 1, 1997, October 1, 1998, October 1, 2000, and was further amended and restated in FY 2001, effective October 1, 2000, to conform with Public Law 106-260, Title V of the Indian Self-Determination and Education Assistance Act, as amended (hereinafter Title V), October 1, 2003, October 1, 2006, October 1, 2008, October 1, 2010, and October 1, 2023 is made and entered into by and between the Secretary of Health and Human Services of the United States of America, represented by the Director of the Indian Health Service, and certain Alaska Native Tribes recognized by the United States acting collectively, and the Alaska Native Tribal Health Consortium, as set forth in Exhibit A. This Compact is entered into under Title V, which authorizes the Secretary to enter into Compacts and Funding Agreements with the governing bodies of participating Tribal governments. The Secretary has delegated the authority to enter into this Compact and funding agreements to the Director, Indian Health Service (hereinafter IHS). This Compact reflects the United States' special trust responsibility and legal obligations to Indians and Alaska Natives, as stated in 25 U.S.C. § 1602, and the unique Tribal cooperation that has developed in Alaska to assure that all Alaska Natives have access to a comprehensive, integrated, and Tribally-controlled health care delivery system. The parties are committed to ensuring that the essential statewide functions of the Alaska Native Medical Center in Anchorage remain intact, whether operated by the Indian Health Service, the Alaska Native Tribal Health Consortium or by Alaska Native Tribes recognized by the United States.

WITNESSETH:

WHEREAS, the Alaska Native people have governed themselves and lived in the area known as Alaska since time immemorial;

WHEREAS, federally recognized Tribal governments in the State of Alaska

. . . have the same governmental status as other federally acknowledged Indian tribes by virtue of their status as Indian tribes with a government-to-government relationship with the United States; are entitled to the same protection, immunities, privileges as other acknowledged tribes; have the right, subject to general

principles of Federal Indian law, to exercise the same inherent and delegated authorities available to other tribes; and are subject to the same limitations imposed by law on other tribes;

(Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 58 Fed. Reg. 54364 (October 21, 1993));

WHEREAS, for the purposes of ensuring that all Alaska Natives and American Indians in Alaska can receive the services provided by the Federal Government through an Alaska Native provider, the Congress has defined the term, "Indian Tribe," to mean:

. . . any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(Indian Self-Determination and Education Assistance Act, as amended, 25 U.S.C. § 5304(e));

WHEREAS, to prioritize between the entities eligible to authorize contracting under the Indian Self-Determination and Education Assistance Act, as amended, the Indian Health Service has established in the Alaska Area the following order of precedence:

If there is an Indian Reorganization Act (IRA) Council, and it provides governmental functions for the village, it will be recognized.

If there is no IRA Council, or it does not provide governmental functions, then the traditional village council will be recognized.

If there is no IRA Council and no traditional village council, then the village profit corporation will be recognized.

If there is no IRA Council, no traditional village council, and no village profit corporation, then the regional profit corporation will be recognized for that particular village.

(Alaska Area Guidelines for Tribal Clearances for Indian Self-Determination Contracts, 46 Fed. Reg. 27178);

WHEREAS, the United States of America has recognized certain entities in Alaska as Indian Tribes for purposes of the Indian Self-Determination and Education Assistance Act (*See* 25 U.S.C. § 5304(e); *Indian Entities Recognized and Eligible To Receive Services from the United States Bureau of Indian Affairs*, 58 Fed. Reg. 54364 (October 21, 1993); and *Alaska Area Guidelines for Tribal Clearances for Indian Self-Determination Contracts*, 46 Fed. Reg. 27178, (hereinafter "the Tribes"));

WHEREAS, certain Tribes of Alaska have formed and authorized certain Tribal Organizations and Inter-Tribal Consortia, as defined in 25 U.S.C. § 5304(I) and 25 U.S.C. § 5381(a)(5), for the purpose of providing health care to Alaska Natives and to contract with the Indian Health Service and other federal and non-tribal agencies for such purpose as well as to provide health care to the other residents of their respective service areas, as permitted by section 813 of the Indian Health Care Improvement Act (IHCIA), as amended, or other applicable law;

WHEREAS, Title V of ISDEAA, 25 U.S.C. § 5381(b) provides that “[i]n any case in which an Indian tribe has authorized another Indian tribe, an inter-tribal consortium, or a tribal organization to plan for or carry out programs, services, functions, or activities (or portions thereof) on its behalf under this subchapter, the authorized Indian tribe, Inter-tribal consortium, or tribal organization shall have the rights and responsibilities of the authorizing Indian tribe (except as otherwise provided in the authorizing resolution or in this subchapter). In such event, the term “Indian tribe” as used in this subchapter shall include such other authorized Indian tribe, inter-tribal consortium, or tribal organization.”;

WHEREAS, the Congress has declared its commitment to the maintenance of the Federal Government's unique and continuing relationship with, and responsibility to, Alaska Native and American Indian Tribes and to the Alaska Native and American Indian people as a whole through the permanent establishment of a meaningful Indian self-governance policy, which will permit an orderly transition from the federal domination of programs for, and services to, Alaska Natives and American Indians to effective and meaningful participation by the Alaska Native and American Indian people in the planning, conduct, and administration of those programs and services; Tribal Self-Governance Amendments of 2000, P.L. 106-260, § 3(2)(A), (B), (F), Aug. 18, 2000, 114 Stat. 712; 42 C.F.R. § 137.2(b)(2)(vi);

WHEREAS, the Congress has declared its commitment to strengthening the government-to-government relationship and to supporting and assisting Alaska Native and American Indian Tribes in the orderly transition from the federal domination of programs and services to provide Alaska Native and American Indian Tribes with meaningful authority, control, funding and discretion to plan, conduct, redesign and administer Programs, Services, Functions, and Activities (PSFAs) (or portions thereof) that meet the needs of the individual Tribal communities, Tribal Self-Governance Amendments of 2000, P.L. 106-260, § 3(2)(E), (F), Aug. 18, 2000, 114 Stat. 712; 42 C.F.R. § 137.2(b)(2)(vi);

WHEREAS, Federal health services to maintain and improve the health of the Indians and Alaska Natives are consonant with and required by the Federal Government's historical and unique legal relationship with, and resulting responsibility to, the American Indian and Alaska Native people, 25 U.S.C. § 1601(1);

WHEREAS, in accordance with 25 U.S.C. § 1601(2) a major national goal of the United States is to provide resources, processes and structures that will enable American Indians and Alaska Natives to obtain the quality and quantity of health care services and opportunities that will eradicate health disparities between Indian and Alaska Natives and the general population of the United States;

WHEREAS, the Congress has declared that it is the policy of the United States as stated in 25 U.S.C. § 1602, in fulfillment of its special trust responsibilities and legal obligations to the American Indian and Alaska Native people, to ensure the highest possible health status for Indians and Alaska Natives and to provide all resources necessary to effect that policy; to raise the health status of Indians to at least the levels set forth in the goals contained within the Healthy People 2010 initiative or successor objectives; and also to ensure maximum Indian and Alaska Native participation in the direction of health care services so as to render the person administering such services and the services themselves more responsive to the needs and desires of Indian and Alaska Native communities;

WHEREAS, for the purposes of this Compact,

“ANTHC” shall mean only Alaska Native Tribal Health Consortium;

“Co-Signer” shall mean all Tribes and Tribal Organizations or Inter-Tribal Consortia, including ANTHC, participating in the Compact;

“Signatory Tribe(s)” shall mean a Tribe or Tribe(s) participating in the Compact either directly or through a Tribal Organization or Inter-Tribal Consortium authorized to participate by resolution;

“Tribal Co-Signer” shall mean only those Tribes, Tribal Organizations and Inter-Tribal Consortia authorized by resolution of a Tribe, as defined in 25 U.S.C. § 5304(l) and 25 U.S.C. §§ 5381(a)(5) & (b), to participate in the Compact and shall not include ANTHC; and

WHEREAS, under authority from the Tribes, certain Tribal Organizations and Inter-Tribal Consortia in Alaska have provided health services for many years under self-determination contracts with the Indian Health Service and have been recognized by the Indian Health Service as Tribally-operated service units;

WHEREAS, pursuant to section 325 of P.L. 105-83, the Alaska Native Tribal Health Consortium (herein “ANTHC”), a Tribal Organization and Inter-Tribal Consortium, as defined in 25 U.S.C. § 5381(a)(5), was organized and is controlled by the Alaska Native Tribes and Tribal Organizations which are represented on its Board of Directors;

WHEREAS, Tribes, Tribal Organizations and Inter-Tribal Consortia throughout Alaska are reliant on the services to be provided by ANTHC;

WHEREAS, participation by ANTHC in the Alaska Tribal Health Compact promotes the commitment of Alaska Native Tribes, Tribal Organizations and Inter-Tribal Consortia to maintain the unique Tribal cooperation that has developed in Alaska to assure that all Alaska Natives have access to a comprehensive, integrated, organized, Tribally controlled health care delivery system in which Alaska Tribal health providers participate in numerous joint activities including utilization review and provide their health services in a clinically integrated care setting in which individuals typically receive health care from more than one of these Alaska Tribal providers;

WHEREAS, in furtherance of the federal policy of Alaska Native and American Indian Tribal self-determination and self-governance, Congress has directed the Secretary of Health and Human Services (herein the "Secretary") to carry out the Tribal Self-Governance Program under Title V;

WHEREAS, Congress, in Title V, has authorized the Secretary to negotiate and implement a Compact of Self-Governance and Funding Agreements with the governing bodies of participating Tribal governments of qualified Alaska Native and American Indian Tribes that have completed a planning activity, 25 U.S.C. § 5383;

WHEREAS, Congress has directed that the Funding Agreements, which the Secretary negotiates with Alaska Native and American Indian Tribes, shall authorize the Co-Signers to plan, conduct, consolidate, administer, receive full tribal shares of funding, redesign programs, and reallocate funds for PSFAs (or portions thereof) as provided in 25 U.S.C. § 5385(b)(1)-(2) and 25 U.S.C. § 5386(e);

WHEREAS, each Funding Agreement shall specify the PSFAs (or portions thereof) to be performed or administered, the funds to be provided, and the responsibilities of the Co-Signer and the Secretary in accordance with 25 U.S.C. § 5385;

WHEREAS, the Funding Agreement shall address the authority of the Co-Signer to redesign or consolidate PSFAs (or portions thereof) and to reallocate or redirect funds or modify budget allocations pursuant to 25 U.S.C. § 5386(e);

WHEREAS, to the extent to which, funding is provided to a Co-Signer, as authorized by Alaska Native Tribes, pursuant to a Funding Agreement, such Co-Signer shall be responsible for administration of PSFAs (or portions thereof) pursuant to the Agreement, consistent with 25 U.S.C. § 5385;

WHEREAS, nothing in this Compact or associated Funding Agreements shall be construed to limit or reduce in any way the funding for any program, projects or activities, serving an Indian Tribe under Title V or any other applicable Federal law, pursuant to 25 U.S.C. § 5395(a);

WHEREAS, in Title V, Congress has directed that the Funding Agreements, which the Secretary negotiates with Co-Signers shall contain certain provisions and, at the option of the Co-Signers, apply to certain PSFAs (or portions thereof) of the Indian Health Service (including construction) as specified in 25 U.S.C. § 5385, 25 U.S.C. § 5387(a)(2)(A), and 25 U.S.C. § 5389;

WHEREAS, Congress has directed that, at the request of the governing body of qualifying Tribes and ANTHC and under the terms of a Funding Agreement, the Secretary shall provide funding to the Tribes and ANTHC to implement the Funding Agreement in accordance with 25 U.S.C. § 5388;

WHEREAS, Congress has directed that the Secretary shall interpret federal laws and regulations in a manner that will facilitate the implementation of a Compact of Self-Governance and Funding Agreement in accordance with 25 U.S.C. § 5392(a);

WHEREAS, Congress has directed that the Secretary shall interpret federal laws and regulations in a manner that will facilitate the inclusion of PSFAs (or portions thereof) in Compacts of Self-Governance and Funding Agreements in accordance with 25 U.S.C. § 5392(a);

WHEREAS, it is the intent of certain Alaska Native Tribes to collectively enter into a single Compact with the Secretary. To carry out that intent, such Tribes (hereafter referred to as Signatory Tribes) enter into this Compact either by individual signature or by means of a delegation of signature authority as authorized by resolution of the Tribal government. (Such resolutions are attached as Exhibit "A");

WHEREAS, it is the intent of the Signatory Tribes that this Compact will be carried out either by the Tribe itself, by Tribal Organizations or Inter-Tribal Consortia, as authorized by resolution of Tribe(s) as defined by 25 U.S.C. § 5304(e), 25 U.S.C. § 5381(b), and by ANTHC under section 325 of P.L. 105-83. These Tribes, Tribal Organizations and Inter-Tribal Consortia, including ANTHC, are bound by the terms of this Compact and are signing separately as Co-Signers;

WHEREAS, it is the intent of the parties that each Tribal Co-Signer Funding Agreement entered into under this Compact shall be executed by the Tribes, either by individual signature or by means of a delegation of signature authority as authorized by resolution of the Tribal government. Each such Funding Agreement also will be signed by a Tribal Co-Signer, designated by the Tribal governing body. The Tribal Co-Signer will carry out the terms of the Funding Agreement for the Signatory Tribe(s) from which it has obtained a resolution of authority and be bound by its terms;

WHEREAS, ANTHC may enter into this Compact and into Funding Agreements under this Compact as authorized by the Board of Directors of Alaska Native Tribal Health Consortium;

WHEREAS, for purposes of clarification, and to recognize the government-to-government relationship between the Signatory Tribes and the Secretary, the parties agree that the Signatory Tribes, by entering into this Compact, do not relinquish any aspects of Tribal sovereignty to the Co-Signers. The Tribal Co-Signers act only for and on behalf of the Signatory Tribe(s) within the scope of the authority granted to them by Tribal resolution or by law and ANTHC has only the authority granted to it under section 325 of P.L. 105-83. Tribal Co-Signers and ANTHC by carrying out the terms of this Compact and the associated Funding Agreements do not gain the status of a sovereign Tribal government;

WHEREAS, the parties have determined that all of the provisions of this Compact are authorized by Title V or other provisions of federal law and the parties have executed this Compact in reliance on this representation;

NOW, THEREFORE, the Secretary, Signatory Tribe(s) and the Co-Signers do hereby agree to enter into, undertake, and be bound by this Compact in accordance with the foregoing principles.

ARTICLE I — AUTHORITY AND PURPOSE

Section 1 – Authority. This Compact of Self-Governance, which became effective October 1, 1994, was amended and restated effective October 1, 1995, October 1, 1996, October

1; 1997, October 1, 1998, and October 1, 2000, and was further amended and restated in FY 2001 effective October 1, 2000, to conform with Title V, October 1, 2003, October 1, 2006, October 1, 2008, October 1, 2010, and October 1, 2023 (hereinafter the "Compact"), is authorized by Title V of the Indian Self-Determination and Education Assistance Act, as amended, and is hereby entered into by the Secretary of the Department of Health and Human Services of the United States of America (hereinafter the "Secretary"), represented by the Director of the Indian Health Service, certain Alaska Native Tribes, as identified in Exhibit A, recognized by the United States, acting individually or collectively, and Alaska Native Tribal Health Consortium (hereinafter "ANTHC"). The Director of the Indian Health Service by signing this Compact commits the Secretary to the extent and within the scope of the Secretary's delegation of authority to enter into Compacts and Funding Agreements pursuant to Title V or as otherwise authorized.

Section 2 – Purpose. This Compact shall be liberally construed to achieve its purposes:

(a) This Compact is to carry out a Self-Governance Program authorized by Title V, and is intended to transfer to Tribal governments, at a Tribe's request, the power to decide how federal PSFAs (or portions thereof) shall be funded and carried out. Title V is meant to strengthen the government-to-government relationship and to uphold the United States trust responsibility for each Indian Tribe. This Compact promotes the autonomy of the Tribes in Alaska in the realm of health care.

(b) This Compact is to enable the Signatory Tribes and the Co-Signers to redesign health PSFAs (or portions thereof) of the Indian Health Service; to reallocate funds for PSFAs (or portions thereof) according to the priorities of the Signatory Tribes and Co-Signers; to enhance the effectiveness and long-term financial stability of the Tribes and the Co-Signers; and to streamline the federal Indian Health Service bureaucracy.

(c) This Compact is to enable the United States to maintain and improve its unique and continuing relationship with and special trust responsibilities and legal obligations pursuant to 25 U.S.C. §1602 of the IHCA to the Tribes through Tribal self-governance and to permit an orderly transition from federal domination of programs and services.

(d) This Compact and Funding Agreement shall transfer to Signatory Tribes, acting individually or collectively, and ANTHC the responsibility for the PSFAs (or portions thereof) of the Indian Health Service included in the Funding Agreement. This Compact allows Signatory Tribes, acting individually or collectively, and ANTHC to exercise meaningful authority to plan, conduct, and administer those programs and services to meet the health care needs of the Alaska Native Tribes. In fulfilling its responsibilities under the Compact and consistent with 25 U.S.C. §§ 1602(5),(6), and the April 29, 1994, Memorandum from the President of the United States of America for the Heads of Executive Departments and Agencies, Executive Order 13175 on Consultation and Coordination with Indian Tribal Governments, the September 23, 2004, Memorandum from the President of the United States of America for the Heads of Executive Departments and Agencies, the November 5, 2009 Memorandum for the Heads of Executive Departments and Agencies (Tribal Consultation), the January 26, 2021 Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships, and the Department of Health and Human Services Tribal Consultation Policy, the Secretary hereby pledges that the Indian Health Service will conduct all relations with the Tribes on a government-to-government basis.

ARTICLE II — TERMS, PROVISIONS AND CONDITIONS

Section 1 – Term and Resolutions.

(a) **Term.** The term of this Compact begins as to each Co-Signer on the effective date of the Co-Signer's first Funding Agreement and shall extend thereafter as to each Co-Signer throughout the period authorized by Title V of the Indian Self-Determination and Education Assistance Act, and any subsequent amendment thereto, provided the Co-Signer has a Funding Agreement in effect, and shall remain in effect for so long as is permitted by Federal law or until terminated by mutual written agreement, retrocession, or reassumption pursuant to 25 U.S.C. § 5384(d).

(b) **Resolutions from Signatory Tribes.** Those Tribes which intend to participate in this Compact and the applicable Funding Agreement through a delegation of signature authority as provided in this Compact must have issued a written resolution authorizing the Tribal Co-Signer, on their behalf, to enter into this Compact and Funding Agreement on or before the date the Compact and the applicable Funding Agreement is signed by the Tribal Co-Signer for that Tribe, provided that if a Tribal Co-Signer negotiates a Funding Agreement prior to obtaining an authorizing resolution from a Tribe, nothing herein shall be construed to limit or impair in any way a Tribal government's sovereign right to decide whether or not to sign such a resolution.

(c) **Resolution from the Board of ANTHC.** ANTHC may participate in this Compact and the applicable Funding Agreement upon receipt of an authorizing resolution of the Board of Directors of ANTHC, attached hereto as a part of Exhibit A.

Section 2 – Effective Date.

(a) Once this Compact is approved and signed by the Co-Signers and the Secretary, it shall be effective as of October 1, 2023. Funding Agreements will be effective on the date signed by the Secretary and Co-Signer or another date mutually agreed upon or in accordance with 25 U.S.C. § 5385(e).

(b) During the term of this Compact any Co-Signer which has not previously negotiated a Funding Agreement may do so. All Funding Agreements shall be subject to, and all the activities thereunder shall be governed by, the terms of this Compact to the same extent as the initial Funding Agreements.

(c) Each Funding Agreement and subsequent Funding Agreement of a Co-Signer is deemed to be incorporated, as negotiated, by reference into this Compact, for the purposes only of that Co-Signer and the United States. In the event of inconsistency between the Compact and any subsequent Funding Agreement, the provisions of the Compact shall prevail.

Section 3 – Funding Amount. Subject only to the appropriation of funds by the Congress of the United States and in accordance with 25 U.S.C. § 5388, the Secretary shall provide the total amounts specified in the Funding Agreements.

Section 4 – Payment.

(a) Payment Schedule. Payment shall be made expeditiously and shall include financial arrangements to cover funding during periods under continuing resolutions to the extent permitted by such resolutions. For each fiscal year covered by the Compact, the Secretary shall make available the funds specified for that fiscal year under the Funding Agreements by paying the respective total amount as provided for in each Funding Agreement in advance lump sum, as permitted by law, or such other payments as provided in the schedule set forth in each Funding Agreement. The first payment shall be made on or before ten calendar days after the date on which the Office of Management and Budget (hereinafter “OMB”) apportions the appropriations for that fiscal year for the PSFAs (or portions thereof) subject to the Compact. The Prompt Payment Act, Chapter 39 of Title 31, United States Code, shall apply to the payment of funds due under this Compact and to each Funding Agreement negotiated thereunder.

(b) Interest on Advances. Co-Signers receiving funds under applicable Funding Agreements pursuant to this Compact shall be permitted to retain interest earned on funds advanced pending disbursement as authorized by law. Interest earned on advances shall not diminish the amount of funds the Co-Signer is authorized to receive under its Funding Agreement in the year earned or in any subsequent fiscal year. All funds transferred under Funding Agreements pursuant to this Compact shall be managed using the prudent investment standard pursuant to 25 U.S.C. § 5388(h).

Section 5 – Reports to Congress. In accordance with 25 U.S.C. § 5394, the Secretary shall submit to the Senate Committee on Indian Affairs and the House Resources Committee a written report not later than January 1 of each year on the administration of Title V. Each report shall include a detailed analysis on the level of need being presently funded or unfunded for each Signatory Tribe and Co-Signer. The contents of each report shall comply with 25 U.S.C. § 5394(b). In compiling the reports, the Secretary may not impose any reporting requirements on Co-Signers not otherwise provided in Title V. The Secretary shall provide each Co-Signer with a draft of each report required to be submitted to Congress under this provision for a thirty (30) day comment period prior to the submission of the report to Congress so that the Co-Signers may comment on the report. The Secretary shall include each Co-Signer's comments in the final report to Congress.

Section 6 – Audits

(a) Single Audit. Each Co-Signer that has executed a Funding Agreement pursuant to this Compact shall provide to the Federal Audit Clearinghouse (or its successor), an annual single organization-wide audit as prescribed by the Single Audit Act of 1984, as amended, 31 U.S.C. §§ 7501—7506.

(b) Cost Principles. Each Co-Signer shall apply cost principles under 25 U.S.C. § 5386(c)(2) and applicable regulations, except as modified by 25 U.S.C. § 5325(k). The Secretary will assist the Co-Signers in obtaining such additional waivers from OMB as are requested by the Co-Signers. No other audit or accounting standards shall be required by the Secretary. Any claim by the Federal Government against any Co-Signer receiving funds under a Funding Agreement based on any audit under this section shall be subject to the provisions

of 25 U.S.C. § 5325(f), relating to any disallowance of costs of the Indian Self-Determination and Education Assistance Act, as amended. 25 U.S.C. § 5386(c)(2).

Section 7 – Records. Each Co-Signer's practices relating to document disclosure and record-keeping associated with this Compact shall, in accordance with applicable law, be set forth in the respective Funding Agreement.

Section 8 – Property.

(a) **In General.** The provisions of 25 U.S.C. § 5392(c) and section 1(b)(8) of the Model Agreement set forth in 25 U.S.C. § 5329(c), are hereby incorporated into this Compact.

(b) **Property Management.** Management of property under this Compact shall be in accordance with additional provisions included in each Co-Signer's Funding Agreement.

(c) **Access to Property Subject to Destruction.** Prior to the destruction of federal property which would otherwise be declared surplus or excess and which is located within the service area of a Co-Signer, the Secretary, if previously requested by the Co-Signer, shall provide notice of such proposed destruction to the Co-Signer. Such notice shall inform the Co-Signer of the name and address of the official responsible for determining whether such property will be destroyed or declared surplus or excess. If the Secretary is the responsible official, the Secretary will consider information provided by the Co-Signer regarding transfer of the property, rather than destruction, and, if not the responsible official, the Secretary will assist the Co-Signer in communicating information to the responsible official.

(d) **Leases.** Upon the request of a Co-Signer, the Secretary shall enter into a lease with the Co-Signer in accordance with 25 U.S.C. § 5324(I).

Section 9 – Regulatory Authority. The Secretary and the Co-Signers agree to utilize the following procedures governing the establishment and application of program rules and regulations under this Compact:

(a) **Program Rules.** No Co-Signer is required to comply with any agency circular, policy, manual, guidance or rule adopted by the Indian Health Service other than those identified in this section or expressly incorporated by reference in the individual Co-Signer's Funding Agreement in carrying out the PSFAs (or portions thereof) under the Compact, except for the eligibility provisions of 25 U.S.C. § 5324(g), and regulations promulgated under 25 U.S.C. § 5397.

(b) **Federal Regulations.**

(1) **Applicable Federal Regulations.** The Co-Signers, in carrying out the provisions of this Compact and applicable Funding Agreements, will be required to comply only with applicable federal regulations, which include regulations promulgated under 25 U.S.C. § 5397, unless waived as provided in 25 U.S.C. § 5392(b).

(2) **Waiver of Federal Regulations.** Waivers of regulations shall be submitted and addressed in accordance with 25 U.S.C. § 5392(b).

(c) **Title I Section Incorporated by Reference.** 25 U.S.C. § 5324(a)(1), is hereby incorporated in this Compact and shall have the same force and effect as if it were set forth in full in Title V of the Act.

Section 10 – Disputes.

(a) All disputes between the Indian Health Service and any Co-Signer or between the Indian Health Service and all Co-Signers under this Compact shall be subject to Title V and 25 U.S.C. § 5331, and all remedies provided for therein shall be available to each Co-Signer of this Compact. Actions and proceedings to enforce the Co-Signer's rights and the Secretary's obligations under this Compact shall be subject to the Equal Access to Justice Act, Public Law 96-481, as amended, to the same extent as are actions and proceedings involving Public Law 93-638 contracts. 42 C.F.R. § 137.450.

(b) In the alternative, the Indian Health Service and the Co-Signers may use the processes authorized and encouraged in the Administrative Dispute Resolution Act, 5 U.S.C. §§ 571-584, for more informal resolution of disputes arising under this Compact and associated Funding Agreements.

Section 11 – Retrocession. The retrocession provisions of 25 U.S.C. § 5386(f) shall apply if a Signatory Tribe decides to retrocede a portion or all of the programs contained in the applicable Funding Agreement. Retrocession shall be in accordance with the procedures and timelines included in the Co-Signer's Funding Agreement.

Section 12 – Subsequent Funding Agreements.

(a) Negotiations for subsequent Funding Agreements, as provided for in Article VI, section 2, shall begin no later than 120 days in advance of the conclusion of the preceding Funding Agreement. Each Co-Signer is hereby assured that future funding of the Co-Signer's subsequent Funding Agreements shall only be reduced pursuant to the provisions of 25 U.S.C. § 5388(d), however, that future funding for each Co-Signer's non-recurring funds and tribal shares shall be subject to adjustments in accordance with a yearly reallocation decision by the Co-Signers. The Secretary agrees to prepare and supply relevant information, and promptly to comply with the Co-Signers' requests for information reasonably needed to determine the funds that may be available for a subsequent Funding Agreement as provided for in Article VI, Section 2 of this Compact.

(b) If the parties are unable to conclude negotiation of a subsequent Funding Agreement, the terms of this Compact and the existing Funding Agreement shall, at the option of the Co-Signer, absent notification of a withdrawal or retrocession as specified in 25 U.S.C. § 5385(e), or unless otherwise agreed by the parties, remain in full force and effect until a subsequent Funding Agreement becomes effective. As provided in 25 U.S.C. § 5385(e), the terms of the subsequent Funding Agreement will become retroactive to the end of the term of the preceding Funding Agreement. Any increases in funding to which Tribes are entitled by law or which have been made available by Congress, or increases which Co-Signers subsequently negotiate, shall be included in each Co-Signer's subsequent Funding Agreement.

Section 13 – Health Status Reports. In accordance with 25 U.S.C. § 5387(a)(1), Co-Signers shall provide the Secretary a health status and service delivery report to the extent that relevant data is not otherwise available to the Secretary and specific funds for this purpose are provided to the Co-Signer in its Funding Agreement. Such reporting may impose only minimal burdens on the Co-Signer and shall be consistent with regulations promulgated under 25 U.S.C. § 5397.

Section 14 – Secretarial Approval. For the term of the Compact, the provisions of 25 U.S.C. § 81 and 25 U.S.C. § 5123 shall not apply to attorney and other professional contracts of Signatory Tribal governments of Alaska Native Tribes operating under the Compact pursuant to 25 U.S.C. § 5391(b).

Section 15 – Transportation and Other Supply Sources.

(a) **Use of Motor Vehicles.** Subject to agreement of the General Services Administration, the Secretary hereby authorizes each Co-Signer to obtain Interagency Motor Pool vehicles and related services for performance of any PSFAs under this Compact.

(b) **Other Supply Sources.** Federal supply sources (including lodging, airline transportation, and other means of transportation) shall be available to each Co-Signer in accordance with 25 U.S.C. § 5388(e).

Section 16 – Limitation of Costs. Each Co-Signer shall not be obligated to continue performance that requires an expenditure of funds in excess of funds awarded under the Funding Agreement. In accordance with 25 U.S.C. § 5388(k), if, at any time the Co-Signer has reason to believe that the total amount required for performance of a Funding Agreement, or a specific activity conducted under the Funding Agreement, would be greater than the amount of funds awarded under the Funding Agreement, the Co-Signer shall provide reasonable notice to the Indian Health Service and affected Tribes and Tribal Organizations. If the Indian Health Service does not take such action as may be necessary to increase the amount of funds awarded under the Funding Agreement, the Co-Signer may suspend performance of the Funding Agreement until such time as additional funds are transferred.

Section 17 – Reassumption. The Secretary may reassume operation of any PSFAs (or portions thereof), and associated funding under any funding agreement, in accordance with 25 U.S.C. § 5387(a)(2) and applicable regulations set forth in 42 C.F.R. Part 137, Subpart M.

ARTICLE III — OBLIGATIONS OF EACH CO-SIGNER

Section 1 – Consolidation. Each Co-Signer will be responsible for performing the health PSFAs (or portions thereof) as specified in Section 3 of this Article III and in their respective Funding Agreements, as provided for in Article VI, Section 2 of this Compact. To the extent a program, activity, function, or service included within a contract or grant entered into pursuant to 25 U.S.C. §§ 5321—5322, is included within a Funding Agreement, that contract or grant shall be modified or terminated as appropriate. The parties' obligations shall be governed by this Compact and all funds previously obligated under contracts or grants (including carry-over funds) will be re-obligated to the Co-Signer under the applicable Funding Agreement. Such terminated contracts shall be identified by contract number in each Funding Agreement.

Section 2 – Amount of Funds. The total amount of funds covered by the consolidation and redesign provided for in Section 1 of this Article that the Secretary shall make available to the Co-Signers shall be determined in accordance with 25 U.S.C. § 5388(c), and shall be set forth in the respective Funding Agreements between the Secretary and each Co-Signer.

Section 3 – Compact Programs. The health PSFAs (or portions thereof) will be the responsibility of each Co-Signer under this Compact and shall be identified in each Co-Signer's Funding Agreement.

Section 4 – Eligibility for Services. In determining eligibility for services, the Co-Signers shall comply with applicable eligibility provisions set forth in the Indian Health Care Improvement Act, as amended, applicable regulations, and other statutory law.

Section 5 – Reallocation, Redesign and Consolidation. In accordance with 25 U.S.C. § 5386(e), a Co-Signer may redesign or consolidate PSFAs (or portions thereof) included in a Funding Agreement and reallocate or redirect funds for such PSFAs (or portions thereof) in any manner in which the Co-Signer deems to be in the best interest of the health and welfare of the Indian community being served, only if the redesign or consolidation does not have the effect of denying eligibility for services to population groups otherwise eligible to be served under applicable federal law.

Section 6 – Consolidation with Other Programs. Each Co-Signer may consolidate PSFAs and associated funds identified in its funding agreement with other PSFAs (or portions thereof) provided with its own funds or funds from other sources, provided that the PSFAs (or portions thereof) are allowable for inclusion in a funding agreement under 25 U.S.C. § 5385. When PSFAs (or portions thereof) are consolidated in a funding agreement by a Co-Signer in accordance with the terms of the Funding Agreement and Title V, the Co-Signer and its employees carrying out those PSFAs (or portions thereof) may receive Federal Tort Claims Act coverage in accordance with the statutory provisions and regulations cited in the Compact. Whether the Federal Tort Claims Act applies in any particular case is decided on an individual case-by-case basis by the United States Department of Justice and subsequently by the Federal courts. In cases in which a Co-Signer consolidates PSFAs (or portions thereof) under this section, the Co-Signer shall not be required to separate dollars or PSFAs (or portions thereof) so long as the Co-Signer can provide sufficient data to permit an acceptable program and financial audit to be conducted.

Section 7 – Program Income, including Medicare/Medicaid. All Medicare, Medicaid or other program income earned by a Co-Signer shall be treated as additional supplemental funding to that negotiated in the Funding Agreement and the Co-Signer may retain all such income, including Medicare/Medicaid, and expend such funds in the current year or in future years, nor shall such funds result in any off-set or reduction in the negotiated amount of the Funding Agreement. Medicare/Medicaid collections of a Co-Signer under Title IV of Public Law 94-437, as amended, shall be used by the Co-Signer in accordance with any applicable statutory restrictions on the use of such funds.

Section 8 – Carry-over. In accordance with 25 U.S.C. § 5388(i), all funds paid to a Co-Signer pursuant to this Compact shall remain available to each Co-Signer until expended. In the

event that a Co-Signer carries over funding from one year to the next, such carryover shall not diminish the amount of funds the Co-Signer is authorized to receive under its Funding Agreement in that or any subsequent fiscal year.

Section 9 – Matching Funds. Funds may be used to meet matching and other cost participation requirements under any other federal or non-federal programs pursuant to 25 U.S.C. § 5392(d).

ARTICLE IV — OBLIGATIONS OF THE UNITED STATES

Section 1 – Trust Responsibility. In accordance with 25 U.S.C. § 5387(g) and 25 U.S.C. § 5396(b), nothing in this Compact waives, modifies, or diminishes in any way the trust responsibility of the United States with respect to the Alaska Native Tribes or individual Alaska Natives and American Indians which exists under treaty, executive orders, and acts of Congress.

Section 2 – Programs Retained.

(a) The Secretary hereby retains the responsibility for the PSFAs (or portions thereof) with respect to the Signatory Tribes that are not specifically assumed by the Signatory Tribes, acting individually or collectively, or by ANTHC through their applicable Funding Agreements and they shall continue to be entitled to the full benefit of those PSFAs (or portions thereof) retained by the Indian Health Service. In accordance with 25 U.S.C. § 5386(h), each Co-Signer shall be eligible for new programs of the Secretary and the Indian Health Service on the same basis as other Tribes and Tribal Organizations. The Indian Health Service, in consultation with the Tribes, may reorganize to sustain its ability to provide, in the most effective and efficient manner, all PSFAs (or portions thereof) that have not been included in the Funding Agreement.

(b) No later than 120 days prior to the end of each fiscal year, the Indian Health Service shall provide each Signatory Tribe and Co-Signer with a written list of the retained PSFAs relevant to Native health care in Alaska for the upcoming fiscal year. To the fullest extent permitted by law, the Secretary shall provide any requesting Signatory Tribe and Co-Signer access to, and copies of, all documents and other information relevant to any ongoing retained PSFAs (or portions thereof), and shall cooperate with any evaluation which the Co-Signer or Signatory Tribe may wish to conduct. The Secretary will cooperate with each Tribe and Co-Signer to facilitate the inclusion of PSFAs (or portions thereof) in future Funding Agreements of those Tribes and Co-Signer.

Section 3 – Financial and Other Information.

(a) To assist the Tribes and Co-Signers in monitoring compliance with 25 U.S.C. § 5388(c), the Secretary shall provide to Co-Signers:

(1) relevant financial information as requested concerning funds provided to support PSFAs (or portions thereof) provided by Tribes or Tribal Organizations under this Compact and funds retained by the Indian Health Service to support PSFAs (or portions thereof) retained by the Indian Health Service; and

(2) prompt notice of any new PSFAs for which the Tribes or Co-Signers are eligible, including the funding available for such PSFAs.

(b) The Secretary shall prepare and promptly supply relevant financial information and comply with each Co-Signer's request for information needed to determine funds that may be available for a successor Funding Agreement.

Section 4 - Savings. If the PSFAs (or portions thereof) carried out under Title V Funding Agreements and this Compact result in a reduction to the administrative or other responsibilities of the Secretary, with respect to the operation of Indian programs, and thereby result in saving that have not otherwise been included in the amount of tribal shares and other funds determined under 25 U.S.C. § 5388(c), the Secretary shall make such savings available to the Co-Signers for the provision of additional services in accordance with 25 U.S.C. § 5387(f).

ARTICLE V — OTHER PROVISIONS

Section 1 – Designated Officials/Agent.

(a) **Parties.** On or before the effective date of this Compact, both the Secretary and each Co-Signer shall provide a written designation of an individual as their representative/liaison. The Secretary shall direct all communications about the Compact, and relevant Funding Agreement to the Co-Signer's designee, except in the case where the Compact or Funding Agreement requires notice to the Signatory Tribes, in which case notice shall also be sent to the Tribes. Reference herein to Co-Signers or the Secretary shall include the respective Designated Official thereof.

(b) **Agent for Notice.** If Co-Signers assign an agent to accept and distribute notices, those Co-Signers shall provide the name and address of the agent and a description of the limited powers and duties of the agent.

Section 2 – Indian Preference in Employment, Contracting and Sub-Contracting. The Co-Signers will comply with the Indian and Alaska Native preference provisions of 25 U.S.C. § 5307(b) & (c). The parties agree that a Co-Signer may comply with its Indian or Alaska Native preference established by their respective Tribes, including preference based on Tribal affiliation.

Section 3 – Federal Tort Claims Act Coverage; Insurance.

(a) The Tribes and Co-Signers 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 Federal Tort Claims Act, while performing PSFAs (or portions thereof) under this Compact and described in the Co-Signer's Funding Agreement (including new and existing PSFAs (or portions thereof) as provided under Article III, Section 5 or 6, or supported with income received in accordance with Article III, Section 7), including coverage for claims of medical malpractice, as is more fully described in 25 C.F.R. Part 900 Subpart M, and 25 U.S.C. § 5321(d), as required by 25 U.S.C. § 5396(a).

(b) The above status of a Tribe or Co-Signer, or an employee's status as an employee of a Tribe or employee of a Co-Signer, is not affected by the source of the funds used by the Tribe or Co-Signer to carry out the PSFAs (or portions thereof) or to pay the employee's salary and benefits as long as the employee does not receive any additional compensation for the performance of covered services from anyone other than the Tribe or Co-Signer.

(c) The Tribe's employee or the Co-Signer's employee may, while performing under this Compact and any applicable Co-Signer's Funding Agreement and as a condition of employment, be required by the Tribe or Co-Signer to provide services to non-Indian Health Service beneficiaries in order to meet the obligations under this Compact either in facilities of the Tribe or Co-Signer or in facilities other than those of the Tribe or Co-Signer.

(d) Funds provided under a Funding Agreement may be used to purchase such additional liability and other insurance as is prudent in the judgment of a Co-Signer performing under this Compact and Funding Agreement for its protection and the protection of its directors, officers, and employees.

(e) Personal services contracts shall be covered under this provision to the extent provided under 25 U.S.C. § 5321(d), and 25 U.S.C. § 1680c.

(f) Coverage shall also apply in accordance with section 314 of P.L. 101-512, as amended by P.L. 103-138, 25 U.S.C. §§ 1680c(c)(2) and 1680c(e).

Section 4 – Compact Modifications or Amendments.

(a) Any request for a modification of this Compact must be communicated in writing to all Signatory Tribes and Co-Signers and to the Indian Health Service. To be effective any modifications of this Compact shall be in the form of a written amendment to the Compact, and shall require written consent of each of the Signatory Tribes, acting directly or through an agent authorized by resolution, ANTHC, and the Secretary.

(b) This provision shall not apply to amendment of the Compact to include additional Tribes and/or Co-Signers. Such amendment shall only require the concurrence of the additional Tribe and/or Co-Signer, and the Secretary.

Section 5 – Construction. This Compact shall apply to funds included in the facilities category of Indian Health Service appropriations. A Co-Signer may assume construction projects or programs in accordance with Titles I or V or P.L. 86-121. In doing so, the Co-Signer elects to comply with the regulations of the elected statutory provision.

Section 6 – Officials Not To Benefit. No member of or delegate to Congress shall be admitted to any share or part of any Contract executed pursuant to this Compact, or to any benefit that may arise there from; but this provision shall not be construed to extend to any contract under this Compact if made with a corporation for its general benefit.

Section 7 – Covenant Against Contingent Fees. The parties warrant that no person or selling agency has been employed or retained to solicit or secure any contract executed pursuant to this Compact upon an agreement or understanding for a commission, percentage, brokerage,

or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business.

Section 8 – Penalties. The parties agree that the criminal penalties set forth in 25 U.S.C. § 5306 apply to all activities conducted pursuant to this Compact.

Section 9 – Use of Federal Employees. 25 U.S.C. § 5323 shall apply to this Compact and to any individuals assigned or detailed to any Co-Signer performing functions under this Compact or leaving federal employment to perform services under this Compact, including assignments either on detail or on leave without pay and with or without reimbursement by the Co-Signer for the travel and transportation expenses to or from the place of assignment and for the pay, or supplemental pay, or a part thereof, of the employee during assignment.

Section 10 – Extraordinary or Unforeseen Events. This Compact is intended to obligate each Co-Signer to carry out all usual and ordinary functions respecting the PSFAs (or portions thereof) that it is undertaking to assume responsibility for under its Funding Agreement. In the event major unforeseen or extraordinary events occur, as jointly identified by each Co-Signer and the Secretary, with consequences beyond the control of the Co-Signer, that the Co-Signer shall have access to additional services and funding amounts for its Funding Agreement as described in its Funding Agreement. The parties will seek to ensure that funds available to the Co-Signer to deal with the unforeseen circumstance will not be less than would have been available to non-Compact Tribes or the Indian Health Service had they encountered a similar circumstance. Each Co-Signers participation in the Indian Health Service Catastrophic Health Emergency Funds will be identified in the Co-Signer's Funding Agreement.

Section 11 – Mature Contractor Status upon Compact Termination. In accordance with 25 U.S.C. § 5386(g)(3), should any Signatory Tribe, Tribal Organization at the direction of a Signatory Tribe or Tribes, or ANTHC, elect to convert all or some of the programs operated under the Compact back to contract status under Public Law 93-638, as amended, such conversion shall not affect the Co-Signer's or the Tribe's status as having operated a mature contract within the meaning of 25 U.S.C. § 5304(h) of the Indian Self-Determination and Education Assistance Act, as amended. Such conversion would occur only at the end of the Compact term, on another date mutually acceptable to the Tribe, the Co-Signer and the Secretary, or as otherwise provided in this Compact, and will be implemented in a manner which avoids any interruption of services to individual Tribal members. If the Compact is terminated or a Tribe determines that it will retrocede any PSFAs (or portions thereof) operated under the Compact, neither the Tribe nor the Co-Signer shall lose its mature contractor status under 25 U.S.C. § 5304(h) as provided above.

Section 12 – Startup Costs. In accordance with 25 U.S.C. § 5388(c), startup costs may be separately negotiated by each Co-Signer and shall be included in each Co-Signer's Funding Agreement, if available.

Section 13 – Limitation of Liability. Any liability to the United States or to any third party incurred by a Co-Signer arising out of its performance of or expenditure of funds under this Compact and each Co-Signer's Funding Agreement shall be the obligation only of that Co-Signer and shall not be the obligation of any Co-Signer of this Compact which did not participate in such performance or expenditure.

Section 14 – Contracting Rights. Nothing in this Compact or in any Funding Agreement shall be construed to preclude a Co-Signer from contracting with the Secretary to perform a PSFA (or portions thereof) under Title I of P.L. 93-638, as amended, subject, however, to constraints against duplication pursuant to 25 U.S.C. § 5386(h).

Section 15 – Sovereign Immunity. Nothing in this Compact or in any Funding Agreement shall be construed to affect the sovereign immunity, to the extent that it may exist, of any Tribe or Co-Signer.

Section 16 – Interpretation of Federal Law. In the implementation of this Compact, the Secretary, to the extent feasible, shall interpret all federal laws, executive orders, and regulations and this Compact in a manner that effectuates and facilitates the purposes of this Compact and achievement of the Co-Signers' health goals and objectives in accordance with 25 U.S.C. § 5392(a).

Section 17 – Inadequacy of Program Funding. The parties to this Compact understand that the Indian Health Service budget is inadequate to fully meet the special responsibilities and legal obligations of the United States to assure the highest possible health status for American Indians and Alaska Natives and that, accordingly, the funds provided to the Co-Signers are inadequate to permit the Co-Signers to achieve this goal. The Secretary commits to advocate for increases in the Indian Health Service budget to further the ability of the Co-Signers to provide the full range of services that are the responsibility and obligation of the United States to make available to American Indian and Alaska Native people and to meet the goals of the Indian Health Care Improvement Act.

Section 18 – Effect on Non-Signatory Tribes.

(a) Nothing in this Compact or associated Funding Agreements shall be construed to limit or reduce in any way the service, contracts or funds that any Indian Tribe, Inter-Tribal consortium or Tribal Organization is eligible to receive. It is the intent of the parties to this Compact that the Compact will not have an adverse impact on any Tribe choosing not to participate in this Compact directly or through a Tribal Organization.

(b) The Compact shall not be construed to limit or curtail the right of any Tribe to pursue a contract under Title I of the Indian Self-Determination and Education Assistance Act, as amended, individual participation in this Compact under Title V, or an independent Compact under Title V.

Section 19 – Gaining Mature Contractor Status. Subject to Secretarial approval, a Tribe that participates in this Compact by authorizing a Tribal Organization or Inter-Tribal consortium to be a Co-Signer and receive funds on its behalf, which enters into a Memorandum of Agreement with the Co-Signer, for three years manages a PSFA (or portions thereof) identified in the Co-Signer's Funding Agreement and obtains three audits with no material unresolved audit exceptions, shall be deemed a mature contractor for all purposes, including entering into a Compact under 25 U.S.C. § 5383(c). Nothing in this section precludes the right of a Tribe to become a mature contractor under other provisions of law.

Section 20 – Severability. This Compact shall not be considered invalid, void or voidable if any section or provision of this Compact 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 this Compact.

Section 21 – Applicability of Title I Provisions. At the request of a Co-Signer, any provision of Title I, not already specified in 25 U.S.C. § 5396(a), to the extent such provision does not conflict with a provision in Title V, shall be made a part of a Funding Agreement. The Secretary is obligated to include such provision at the option of the Co-Signer. If such provision is incorporated it shall have the same force and effect as if it were set out in full in Title V. In the event a Co-Signer requests such incorporation at the negotiation stage of this Compact or a Funding Agreement, such incorporation shall be deemed effective immediately and shall control the negotiation and resulting Compact and Funding Agreement.

Section 22 – Purchases from the Indian Health Service. With respect to functions transferred by the Indian Health Service to a Co-Signer under this Compact or an applicable Funding Agreement, the Indian Health Service shall provide goods and services to the Co-Signer, on a reimbursable basis, including payment in advance with subsequent adjustment. The reimbursements received from those goods and services, along with the funds received from the Co-Signer pursuant to this section, may be credited to the same or subsequent appropriation account which provided the funding, such amounts to remain available until expended.

ARTICLE VI — ATTACHMENTS

Exhibit A – Approval of Compact. The resolution(s) of the Tribe(s) approving this Compact for each Co-Signer are attached as part of Exhibit A. The resolution of the Board of Directors of ANTHC is attached as part of Exhibit A.

Exhibit B – Funding Agreements. Each Co-Signer's Funding Agreement shall be attached hereto as Exhibit B.

ARTICLE VII — COUNTERPART SIGNATURES

This Compact may be signed in counterparts.

**ALASKA TRIBAL HEALTH COMPACT – October 1, 1994
AMENDED AND RESTATED OCTOBER 1, 2023**

**UNITED STATES OF AMERICA
SECRETARY OF
THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

BY: _____
Alaska Area Director, Indian Health Service Date

[CO-SIGNER]

BY: _____
[Signatory Title, Co-Signer] Date

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

Pursuant to 25 U.S.C. § 5385(d)(2)(B) and (D), section 105(l) 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 Miksrueq 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) NSHC Behavioral Health Services Facility/Clinic; 16) Nome Operations Building; 17) NSHC Wellness & Training Center; 18) Diomed 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 year's 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 IHCIA, 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.**

A handwritten signature in black ink that reads "Angie Gorn". The signature is written in a cursive, flowing style.

By: _____
Angie Gorn
President/CEO

10/18/22
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 Building	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	Pre-Maternal Home	Section 3.2.14; Section 3.4.8.1; 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
700 East K Street Nome, AK 99762	Itinerant Provider Housing	Section 3.5

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

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
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 Daquumaaq 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
123 Oceanview Shishmaref, AK 99772	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 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

Amended and Restated effective December 5, 2024

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

Teller, AK 99778		
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
270 Martha Anagick Aarons Subdivision Unalakleet, AK 99684	Ikayuqti (Assisted Living Facility)	Section 3.2.8; Section 3.4.13
Airport Junction Road Wales, AK 99783	Wales Health Clinic and Morgue	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 3.4.19; 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
NSA West 6 th Avenue Nome, AK 99762	West Campus (4 Storage Buildings)	Section 3.5
705 East K Street Nome, AK 99762	Nome Operations Building	Section 3.4.9; Section 3.4.10; Section 3.5
O Street & Tank Road Unalakleet, AK 99684	Unalakleet Plex Housing (4)	Section 3.5
Airport Junction Road Wales, AK 99783	NSHC Tri-Plex Provider Housing	Section 3.5
Mile 20 Nome-Council Hwy	Nuuk Cabins	Section 3.3.2, 3.3.7
All Villages	Village-Based Counselor Office Space	Section 3.3
All Villages	Village Based Morgues	Section 3.4.19
All Villages	Washeterias	Section 3.4.9

**NORTON SOUND HEALTH CORPORATION
BOARD BYLAWS**

**Including Amendments
Adopted by the NSHC Board of Directors
Through September 27, 2017**

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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-two 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.
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. The Nome City Council shall select one director;
- 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 two alternates designated the first and second 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 first and second 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; and
 - b. The second alternate shall have the right to attend all or any part of any Board meeting for which the director and the first alternate are both 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 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; 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 seven persons 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.

- 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. 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 September 27, 2017, 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.

Approved September 27, 2017

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

Criminal Charge	Date	State/Federal Court

(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: _____

Approved September 27, 2017

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: _____

Approved September 27, 2017

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 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.

Form **990**Department of the Treasury
Internal Revenue Service**Return of Organization Exempt From Income Tax**
Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations)
Do not enter social security numbers on this form as it may be made public.
Go to www.irs.gov/Form990 for instructions and the latest information.

OMB No. 1545-0047

2022
Open to Public Inspection**A For the 2022 calendar year, or tax year beginning 10/01/22, and ending 09/30/23****B** Check if applicable:

- ☐ Address change
☐ Name change
☐ Initial return
☐ Final return/terminated
☐ Amended return
☐ Application pending

C Name of organization**NORTON SOUND HEALTH CORPORATION**

Doing business as

Number and street (or P.O. box if mail is not delivered to street address)

P.O. BOX 966

Room/suite

City or town, state or province, country, and ZIP or foreign postal code

NOME**AK 99762****F** Name and address of principal officer:**ANGELA GORN****P.O. BOX 966****NOME****AK 99762****D** Employer identification number**92-0041488****E** Telephone number**907-443-3311****G** Gross receipts \$ **246,536,630****H(a)** Is this a group return for subordinates? ☐ Yes ☒ No**H(b)** Are all subordinates included? ☐ Yes ☐ No

If "No," attach a list. See instructions.

I Tax-exempt status: ☒ 501(c)(3) ☐ 501(c) () (insert no.) ☐ 4947(a)(1) or ☐ 527**J** Website: **HTTP://WWW.NORTONSOUNDHEALTH.ORG****H(c)** Group exemption number**K** Form of organization: ☒ Corporation ☐ Trust ☐ Association ☐ Other**L** Year of formation: **1970** **M** State of legal domicile: **AK****Part I Summary**

Activities & Governance	1 Briefly describe the organization's mission or most significant activities:		
	COMMITMENT TO PROVIDING THE NATIVE PEOPLE OF NORTON SOUND REGION WITH THE HIGHEST QUALITY HEALTH CARE POSSIBLE.		
	2 Check this box ☐ if the organization discontinued its operations or disposed of more than 25% of its net assets.		
	3 Number of voting members of the governing body (Part VI, line 1a)	3	22
	4 Number of independent voting members of the governing body (Part VI, line 1b)	4	21
Revenue	5 Total number of individuals employed in calendar year 2022 (Part V, line 2a)	5	992
	6 Total number of volunteers (estimate if necessary)	6	0
	7a Total unrelated business revenue from Part VIII, column (C), line 12	7a	0
	b Net unrelated business taxable income from Form 990-T, Part I, line 11	7b	0
	8 Contributions and grants (Part VIII, line 1h)	Prior Year	Current Year
Expenses	9 Program service revenue (Part VIII, line 2g)	109,003,392	148,138,221
	10 Investment income (Part VIII, column (A), lines 3, 4, and 7d)	92,050,839	89,835,659
	11 Other revenue (Part VIII, column (A), lines 5, 6d, 8c, 9c, 10c, and 11e)	1,239,577	6,565,674
	12 Total revenue - add lines 8 through 11 (must equal Part VIII, column (A), line 12)	1,216,581	1,802,408
	13 Grants and similar amounts paid (Part IX, column (A), lines 1-3)	203,510,389	246,341,962
	14 Benefits paid to or for members (Part IX, column (A), line 4)	1,077,046	1,222,393
	15 Salaries, other compensation, employee benefits (Part IX, column (A), lines 5-10)		0
	16a Professional fundraising fees (Part IX, column (A), line 11e)	114,344,592	127,064,862
	b Total fundraising expenses (Part IX, column (D), line 25)		0
	17 Other expenses (Part IX, column (A), lines 11a-11d, 11f-24e)	65,652,228	73,133,296
Net Assets or Fund Balances	18 Total expenses. Add lines 13-17 (must equal Part IX, column (A), line 25)	181,073,866	201,420,551
	19 Revenue less expenses. Subtract line 18 from line 12	22,436,523	44,921,411
	20 Total assets (Part X, line 16)	Beginning of Current Year	End of Year
	21 Total liabilities (Part X, line 26)	468,101,447	514,895,339
	22 Net assets or fund balances. Subtract line 21 from line 20	61,776,338	61,757,075
		406,325,109	453,138,264

Part II Signature Block

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

Sign Here	Signature of officer	Date			
	CHRISTOPHER BOLTON Type or print name and title	CHIEF OPERATING OFR			
Paid Preparer Use Only	Print/Type preparer's name	Preparer's signature	Date	Check ☐ if self-employed	PTIN
	ROBERT L. REHFELD	ROBERT L. REHFELD	08/16/24	☐	P00104959
	Firm's name	Firm's EIN	Phone no.		
	ELGEE REHFELD, LLC	92-0127098	907-789-3178		
	9309 GLACIER HWY STE B200				
	JUNEAU, AK 99801-9300				

May the IRS discuss this return with the preparer shown above? See instructions

☒ Yes ☐ No

For Paperwork Reduction Act Notice, see the separate instructions.

Form **990** (2022)

DAA

Part V Statements Regarding Other IRS Filings and Tax Compliance (continued)

Yes No

2a	Enter the number of employees reported on Form W-3, Transmittal of Wage and Tax Statements, filed for the calendar year ending with or within the year covered by this return	2a	992			
b	If at least one is reported on line 2a, did the organization file all required federal employment tax returns?	2b		X		
3a	Did the organization have unrelated business gross income of \$1,000 or more during the year?	3a			X	
b	If "Yes," has it filed a Form 990-T for this year? If "No" to line 3b, provide an explanation on Schedule O	3b				
4a	At any time during the calendar year, did the organization have an interest in, or a signature or other authority over, a financial account in a foreign country (such as a bank account, securities account, or other financial account)?	4a			X	
b	If "Yes," enter the name of the foreign country See instructions for filing requirements for FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR).					
5a	Was the organization a party to a prohibited tax shelter transaction at any time during the tax year?	5a			X	
b	Did any taxable party notify the organization that it was or is a party to a prohibited tax shelter transaction?	5b			X	
c	If "Yes" to line 5a or 5b, did the organization file Form 8886-T?	5c				
6a	Does the organization have annual gross receipts that are normally greater than \$100,000, and did the organization solicit any contributions that were not tax deductible as charitable contributions?	6a			X	
b	If "Yes," did the organization include with every solicitation an express statement that such contributions or gifts were not tax deductible?	6b				
7	Organizations that may receive deductible contributions under section 170(c).					
a	Did the organization receive a payment in excess of \$75 made partly as a contribution and partly for goods and services provided to the payor?	7a			X	
b	If "Yes," did the organization notify the donor of the value of the goods or services provided?	7b				
c	Did the organization sell, exchange, or otherwise dispose of tangible personal property for which it was required to file Form 8282?	7c			X	
d	If "Yes," indicate the number of Forms 8282 filed during the year	7d				
e	Did the organization receive any funds, directly or indirectly, to pay premiums on a personal benefit contract?	7e			X	
f	Did the organization, during the year, pay premiums, directly or indirectly, on a personal benefit contract?	7f			X	
g	If the organization received a contribution of qualified intellectual property, did the organization file Form 8899 as required?	7g				
h	If the organization received a contribution of cars, boats, airplanes, or other vehicles, did the organization file a Form 1098-C?	7h				
8	Sponsoring organizations maintaining donor advised funds. Did a donor advised fund maintained by the sponsoring organization have excess business holdings at any time during the year?	8				
9	Sponsoring organizations maintaining donor advised funds.					
a	Did the sponsoring organization make any taxable distributions under section 4966?	9a				
b	Did the sponsoring organization make a distribution to a donor, donor advisor, or related person?	9b				
10	Section 501(c)(7) organizations. Enter:					
a	Initiation fees and capital contributions included on Part VIII, line 12	10a				
b	Gross receipts, included on Form 990, Part VIII, line 12, for public use of club facilities	10b				
11	Section 501(c)(12) organizations. Enter:					
a	Gross income from members or shareholders	11a				
b	Gross income from other sources. (Do not net amounts due or paid to other sources against amounts due or received from them.)	11b				
12a	Section 4947(a)(1) non-exempt charitable trusts. Is the organization filing Form 990 in lieu of Form 1041?	12a				
b	If "Yes," enter the amount of tax-exempt interest received or accrued during the year	12b				
13	Section 501(c)(29) qualified nonprofit health insurance issuers.					
a	Is the organization licensed to issue qualified health plans in more than one state? Note: See the instructions for additional information the organization must report on Schedule O.	13a				
b	Enter the amount of reserves the organization is required to maintain by the states in which the organization is licensed to issue qualified health plans	13b				
c	Enter the amount of reserves on hand	13c				
14a	Did the organization receive any payments for indoor tanning services during the tax year?	14a			X	
b	If "Yes," has it filed a Form 720 to report these payments? If "No," provide an explanation on Schedule O	14b				
15	Is the organization subject to the section 4960 tax on payment(s) of more than \$1,000,000 in remuneration or excess parachute payment(s) during the year? If "Yes," see instructions and file Form 4720, Schedule N.	15			X	
16	Is the organization an educational institution subject to the section 4968 excise tax on net investment income? If "Yes," complete Form 4720, Schedule O.	16			X	
17	Section 501(c)(21) organizations. Did the trust, any disqualified or other person engage in any activities that would result in the imposition of an excise tax under section 4951, 4952 or 4953? If "Yes," complete Form 6069.	17				

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
SECOND JUDICIAL DISTRICT AT NOME

NORTON SOUND HEALTH CORP.,

Appellant,

v.

CITY OF NOME,

Appellee.

Case No. 2NO-22-00095CI

MEMORANDUM DECISION

Before the Court is Norton Sound Health Corp.'s (Norton Sound) appeal of the City of Nome Board of Equalization's (Board of Equalization) decision denying tax exemptions for six properties. Norton Sound argues the properties qualify for exemption: 1) as property used "exclusively for nonprofit charitable...or hospital purposes" under Alaska's exemption statute;¹ and 2) because the City of Nome is preempted from taxing these properties as a matter of federal law under the implied federal preemption doctrine or jurisdictionally barred under tribal sovereign immunity. The City of Nome opposes.

FACTS AND PROCEDURAL HISTORY

Based in Nome, Alaska, Norton Sound is a tribally owned and operated, independent, not-for profit health care organization that was founded in 1970 to meet the needs of the Inupiat, Siberian Yup'ik and Yup'ik people of the Bering Strait region.² As it began, its goal was to bring health care services to a remote area with limited resources.³ Norton Sound provides health care services through a regional hospital in Nome, 15 village clinics, and additional facilities that train medical and nonmedical staff and house doctors, nurses, and patients. Norton Sound carries out its health care services to the region pursuant to an Indian Self-Determination and Education

¹ AS 29.45.030(a)(3).

² Appellant's Excerpt R. 44 of 284. The Bering Strait region totals more than 10,000 residents, seventy-five percent of which are Alaska Native or American Indian. *Id.* at 51 of 284.

³ *Id.* at 48 of 284.

Assistance Act (ISDEAA) agreement.⁴ This agreement requires Norton Sound to provide health programs, hospital and clinic services, behavioral health services, dental services, village health services, health aide training, public health nursing, home care and other community-based services, support services, and many other services.⁵

On January 27, 2022, Norton Sound submitted applications for Municipal Tax Exemption for several of its Nome properties, including the hospital and six other facilities and buildings that it relies on to carry out its health services, duties, and responsibilities under the ISDEAA agreement.⁶ For each application, Norton Sound indicated the basis for exemption as “AS 29.45.030(a)(3)” and either “Hospital,” “Hospital and Charitable Purposes,” or “Hospital and Charitable Activities.”⁷ Norton Sound also included a detailed description of each property’s use as an attachment to each exemption form.⁸ Norton Sound described each property as follows:

Property 1: “7-Plex” houses hospital employees, including doctors and nurses.⁹

Property 2: “West Campus” is used for “storage of essential equipment and supplies for operations of the hospital.”¹⁰

Property 3: “Kusqii House” houses “village-based clinic employees, including doctors, nurses, health aid trainees and regional EMS and EMT’s.”¹¹

Property 4: “Norton Sound Patient Hostel, Wellness Center and Operations Buildings”

The patient hostel “houses patients currently undergoing medical treatment.”¹²

⁴ Appellant’s Opening Br. 2 (citing Appellant’s Excerpt R. 28 of 284). This also includes a governance compact with the Indian Health Service (IHS) under Title V of the ISDEAA, and funding agreements which dictate program funding amounts negotiated for each fiscal year between IHS and Norton Sound to fund the programs, functions, services, and activities that Norton Sound performs on behalf of IHS. This funding is comprehensive since it funds the administration of Norton Sound’s programs, including the operation of the hospital facilities in Nome, that Norton Sound has contracted to perform on behalf of IHS.

⁵ See Appellant’s Excerpt R 67–142 of 284.

⁶ See *id.* at 1–18 of 284.

⁷ *Id.*

⁸ *Id.* at 3, 6, 9, 12, 15, 18 of 284.

⁹ *Id.* at 3 of 284. Identified as Block 91, Lots 3 and 4 in Norton Sound’s support documentation appended to its appeal filings before the Board of Equalization. Norton Sound’s description for the property also details that rent is charged after 30 days for “direct hire [Norton Sound] employees staying on the property” but that the rent does not include certain costs including “maintenance, snow removal, insurance, or depreciation” and is “not intend[ed] to make [Norton Sound] a profit.”

¹⁰ *Id.* at 6 of 284. Identified as Block 127, Lot 7A in Norton Sound’s support documentation appended to its appeal filings before the Board of Equalization.

¹¹ *Id.* at 9 of 284. Identified as Block 33, Lot 19 in Norton Sound’s support documentation appended to its appeal filings before the Board of Equalization. Norton Sound indicates no rent is charged to any employee staying at this property.

¹² *Id.* at 12 of 284. Identified as Block 116, Lot 1A in Norton Sound’s support documentation appended to its appeal filings before the Board of Equalization. The Wellness Center and Operations Buildings were granted exemptions

Property 5: “BIA Building” is currently vacant.¹³

Property 6: “BHS Building” is currently vacant.¹⁴

On March 25, 2022, the City of Nome issued assessment notices listing exemption amounts as zero dollars for all six of Norton Sound’s properties.¹⁵ Receiving these assessment notices effectively meant that Norton Sound’s applications for tax exemption the six properties were denied. The City of Nome’s Assessor did not provide a written decision detailing the reasons for the denial.¹⁶

On April 20, 2022, Norton Sound timely filed its appeal of the City of Nome Assessor’s denial of exemptions to the Board of Equalization.¹⁷ On the appeal forms, Norton Sound listed the basis as “AS 29.45.030(a)(3), Hospital, Charitable Activities and Federal Law.”¹⁸ Norton Sound also included a detailed attachment specifying the uses of each property, citing federal cases and statutes in support of exemption under federal law theories of sovereign immunity and federal preemption, summarizing the nature of Norton Sound’s tribal ownership and purpose to provide health care,, and citing state cases and a state statute in support of exemption as properties used for “charitable or hospital purposes.”¹⁹

The Nome City Council, sitting as a Board of Equalization, held hearings over several days in May of 2022. Norton Sound presented arguments consistent with those indicated in its detailed appeal form, including that it was entitled to tax exemption under federal law through the implied federal preemption doctrine.²⁰ No sworn testimony was taken at these hearings. Instead, the Board of Equalization allowed Norton Sound’s attorneys, the city assessor, and the Nome city attorney to provide argument and commentary throughout the hearing. From the record minutes, it does not

from taxation and are not the subject of Norton Sound’s appeal. *See* Nome City Council Meeting Hr’g Tr. 34, May 6, 2022.

¹³ Appellant’s Excerpt R. 15 of 284. Identified as Block 30, Lots 66 and 67 in Norton Sound’s support documentation appended to its appeal filings before the Board of Equalization.

¹⁴ *Id.* at 18 of 284. The Appellant’s Administrative Review and Appeal Form lists this as “BIA building.” *Id.* at 260 of 284. But the Court accepts this as a scrivener’s error since this property (Block 110, Lots 1 and 2) is identified in Appellant’s opening brief as “the BHS building.” Appellant’s Opening Br. 10.

¹⁵ *See* Appellant’s Excerpt R. 19–25 of 284. However, the property where the Norton Sound Regional Hospital and Main Campus are located received a large, partial exemption. *Id.* at 23 of 284.

¹⁶ *See id.* at 279 of 284, (explaining that on or about March 25, 2022, the City Assessor issued assessment notices against each of the six properties and these notices acted as a denial of the applications).

¹⁷ *Id.* at 1–18 of 284.

¹⁸ *Id.* at 26–27 of 284.

¹⁹ *Id.* at 28–42 of 284.

²⁰ *See* Nome City Council Meeting Hr’g Tr. 9, May 4, 2022.

appear that there were any factual disputes about how Norton Sound's various properties were used.

On May 23, 2022, the Board of Equalization issued its written findings of fact and conclusions of law denying tax exemptions for each of the six properties. In doing so, it affirmed the City of Nome Assessor's decision. Important to the Court's analysis here, the Board of Equalization found that Norton Sound was a nonprofit corporation and did not contest Norton Sound's descriptions of how it used the six properties to carry out health care services.²¹ The Board of Equalization concluded as a matter of law that "hospital purposes" was to be narrowly construed and defined "hospital" as "an institution providing medical and surgical treatment and nursing care for sick or injured people."²² By applying this definition, none of Norton Sound's properties qualified for exemption.²³

Norton Sound filed its appeal of the Board of Equalization's decision denying exemption to this Court on June 21, 2022. Oral argument was heard on December 28, 2022. Supplemental briefing was completed January 17, 2023.

LAW AND DISCUSSION

The Court views the issues on appeal as follows:²⁴

1. Tax Exemption under Alaska Statute 29.45.030(a)(3):
 - a. How is "hospital purposes" defined under the exemption statute? Do any Norton Sound properties qualify as property used exclusively for "hospital purposes"?
 - b. Do any Norton Sound properties qualify as property used exclusively for "charitable purposes"?
2. Federal law questions

²¹ Appellant's Excerpt R. 278–280 of 284.

²² *Id.* at 281 of 284. The Court's summary is a partial list of the Board of Equalization's key findings and is not a complete list.

²³ *Id.* at 281–83. The Board of Equalization also concluded that Norton Sound properties did not qualify under the "narrow exception" to the "exclusive use" rule since they were not "directly incidental to and vitally necessary" to Norton Sound hospital. *Id.* at 281–82 (quoting *City of Nome v. Catholic Bishop of N. Alaska*, 707 P.2d 870, 874 (Alaska 1985)).

²⁴ The parties largely agree on what issues are presented by this appeal, although they differ in how they phrase the issues. Norton Sound outlines two primary issues. Appellant's Opening Br. 1. The City of Nome identifies four issues. Appellee's Br. 1.

- a. Did Norton Sound preserve for appeal the issue of whether the implied federal preemption doctrine applies? If yes, is the City of Nome precluded from taxing Norton Sound properties?
- b. Is tribal sovereign immunity ripe for decision? If yes, is the City of Nome precluded from taxing Norton Sound properties?

Introductory considerations in this case

As will be discussed in this opinion, the Board of Equalization misconceived or overlooked applicable exemption law in this case. The Court proffers two clear examples at the outset. First, the Board of Equalization failed to consider if Norton Sound properties qualified under the “charitable purposes” exemption even though Norton Sound had presented this as a basis for exemption to the City Assessor²⁵ and the Board of Equalization.²⁶ The Board of Equalization simply did nothing with this argument when deciding Norton Sound’s appeal. Secondly, the Board of Equalization failed to consider whether it was preempted under the implied federal preemption doctrine despite Norton Sound presenting the correct legal standard and case citation both in writing²⁷ and orally at two hearings.²⁸ Instead the Board of Equalization cited a test it knew was bad law—“the federal instrumentalities test”—to resolve the federal preemption question.²⁹ By doing so, it overlooked controlling federal law.³⁰

Norton Sound concedes Properties 5 “BIA Building” and 6 “BHS Building” are vacant and not currently used for hospital or charitable purposes.³¹ However, Norton Sound argues these

²⁵ Appellant’s Excerpt R. 1–18 of 284.

²⁶ *Id.* at 26, 182, 191, 217, 234, 257 of 284.

²⁷ In each appeal application to the Board of Equalization, Norton Sound cited *Ketchikan Gateway Borough*, 75 P.3d 1042, 1048 (Alaska 2003), for the proposition that under the implied federal preemption doctrine “federal law preempts state taxation where the activity is subject to comprehensive and pervasive federal oversight.” *See, e.g.*, Appellant’s Excerpt R. 266 of 284.

²⁸ Norton Sound presented oral argument that the City of Nome was precluded under the implied federal preemption doctrine to the Board of Equalization during hearings held in May of 2022. Nome City Council Meeting Hr’g Tr. 9–16, May 4, 2022; *Id.* at 9–12, May 6, 2022.

²⁹ Appellant’s Excerpt R. 282 of 284.

³⁰ When it ultimately denied Norton Sound’s appeal, the Board of Equalization cited federal law that it recognized was no longer good law, the “federal instrumentalities test,” and which Norton Sound had not argued, in holding that federal law did not preclude taxation. As will be discussed later in this Decision, the Board of Equalization cited the correct case, *Ketchikan Gateway Borough v. Ketchikan Indian Corporation*, but for a legal holding that was not in the case claiming the court held the “vacant space exempt under the ‘federal instrumentalities doctrine’” when the case weighed instead the “implied federal preemption doctrine” which the Board of Equalization did not consider. *See* Appellant’s Excerpt R. 282–83 of 284.

³¹ Appellant’s Opening Br. 22.

vacant properties may still be exempt under the implied federal preemption doctrine or tribal sovereign immunity.³² Therefore, the Court will only analyze whether Properties 5 and 6 are exempt under federal law. Finally, the City of Nome does not dispute Norton Sound's description of how the properties are used or that Norton Sound is a nonprofit organization. The Court will therefore rely on Norton Sound's descriptions and its nonprofit status when analyzing whether these properties qualify for exemption.

Standard of Review

An appellant or the assessor may appeal a determination of a board of equalization to the superior court as provided in the rules of court that apply to appeals from the decisions of administrative agencies.³³ Appeals are heard on the record established at the hearing before the board of equalization which consists of the original papers and exhibits filed with, and a typed transcript of the record of proceedings before, the board of equalization.³⁴ When courts hear appeals from agency decisions (like a board of equalization) "the record on appeal in such cases properly consists of evidence that was either 'submitted to' or 'considered by' the administrative board."³⁵

The parties dispute whether six properties qualify for exemption under AS 29.45.030(a)(3) as "property used exclusively for nonprofit... charitable [or] hospital... purposes," and also under federal law—through the implied federal preemption doctrine or sovereign immunity. Because answering these questions requires interpretation of statutes and case law, the Court does not defer to the Board of Equalization's administrative expertise. Instead, the Court reviews the Board of Equalization's conclusions of law under the "substitution of judgment test."³⁶

In reviewing the Board of Equalization's factual findings, the Court uses the "substantial evidence" test.³⁷ Under the substantial evidence test, "findings will be upheld so long as there is enough relevant evidence to allow a reasonable mind to adequately support such a conclusion. [The Court does] not reweigh conflicting evidence, determine witness credibility, or evaluate

³² *Id.*

³³ AS 29.45.210(d).

³⁴ AS 29.45.210(d); Alaska R. App. Pro. 604(b)(1)(A).

³⁵ *Pacifica Marine, Inc. v. Solomon Gold, Inc.*, 356 P.3d 780, 793 (Alaska 2015) (quoting *Alvarez v. Ketchikan Gateway Borough*, 28 P.3d 935, 939 (Alaska 2001)).

³⁶ *City of Nome v. Catholic Bishop of N. Alaska*, 707 P.2d 870, 876 (Alaska 1985); see also *Henash v. Fairbanks*, 365 P.3d 302, 304 (Alaska 2011).

³⁷ *Catholic Bishop*, 707 P.2d at 876; see also *Henash*, 365 P.3d at 304.

competing inferences from testimony, as these functions are reserved to the [Board of Equalization].”³⁸

Principles to consider when interpreting tax exemption statutes

A taxpayer has the burden of proving eligibility for an exemption by producing sufficient evidence.³⁹ Statutes granting tax exemptions are to be narrowly construed.⁴⁰ The canon of strict construction “is an aid to, not a substitute for, statutory interpretation; the interpretation must still be a reasonable one.”⁴¹ But there is “no occasion for employing the canon of strict construction” when an “institution [fall[s] within the broad terms of the constitution and the [exemption] statute” and the legislature has “not... add[ed] limitation or qualification” to the exemption.⁴²

I. TAX EXEMPTION UNDER ALASKA LAW

Article IX, Section 4 of the Alaska Constitution states in relevant part:

All, or any portion of, property used exclusively for non-profit religious, charitable, cemetery, or educational purposes, as defined by law, shall be exempt from taxation. Other exemptions of like or different kind may be granted by general law.

AS 29.45.030(a)(3) restates and expands the list of properties that are tax exempt:

(a) The following property is exempt from general taxation:

....

(3) property used exclusively for nonprofit religious, charitable, cemetery, *hospital*, or educational purposes;⁴³

³⁸ *Pacifica Marine, Inc.*, 356 P.3d at 788 (quoting *Haar v. State*, 349 P.3d 173, 177 (Alaska 2015)).

³⁹ *Catholic Bishop*, 707 P.2d at 878; *Ketchikan Gateway Borough v. Ketchikan Indian Corp.*, 75 P.3d 1042, 1045 (Alaska 2003).

⁴⁰ *Catholic Bishop*, 707 P.2d at 879 (citing *Greater Anchorage Area Borough v. Sisters of Charity of the House of Providence*, 553 p.2d 467, 469 (Alaska 1976)).

⁴¹ *Catholic Bishop*, 707 P.2d at 879 (quoting *Sisters of Providence in Washington, Inc. v. Mun. of Anchorage*, 672 P.2d 446, 447 (Alaska 1983)).

⁴² *McKee v. Evans*, 490 P.2d 1226, 1231 (Alaska 1971) (“Under our statute once it is determined that the institution involved is nonprofit in character and that the property is exclusively used for educational purposes, the exemption attaches.”).

⁴³ AS 29.45.030(a)(3) (emphasis added).

Under the above constitutional and statutory language, to qualify for tax exemption under AS 29.45.030(a)(3), a property must be “used exclusively for nonprofit...charitable, [or]...hospital...purposes.” The Court will first analyze whether Norton Sound properties qualify under the “hospital purposes” exemption. Secondly, the Court will turn to the question of whether Norton Sound qualifies under the “charitable purposes” exemption.

A. “HOSPITAL PURPOSES”

Deciding what the term “hospital purposes” means under the exemption statute is a question of first impression in Alaska. The Alaska Legislature has not defined “hospital purposes” in the exemption statute. No Alaska cases have determined its meaning.

Neither case cited in briefing—*Sisters of Providence*⁴⁴ nor *Sisters of Charity*⁴⁵—required the court to determine the meaning of “hospital purposes.” Instead, each case turned on whether the property was being used for “exclusively nonprofit” purposes. Though the property owner in both cases had argued that the properties qualified for exemption under “hospital purposes,” when evaluating those cases, neither presented circumstances requiring the court to decide how “hospital purposes” should be defined under the exemption statute.⁴⁶ However, both cite *McKee v. Evans*,⁴⁷ a supreme court case typically referenced for its statement applying canons of strict construction in tax exemption cases. But more significant here, *McKee* analyzed the exemption statute to answer a similar question before this Court, how to give meaning to a plain, undefined term in the exemption statute.⁴⁸ Understanding *McKee* is therefore instructive.⁴⁹

⁴⁴ *Sisters of Providence in Washington, Inc. v. Mun. of Anchorage*, 672 P.2d 446 (Alaska 1983).

⁴⁵ *Greater Anchorage Area Borough v. Sisters of Charity of the House of Providence*, 553 p.2d 467, 469 (Alaska 1976).

⁴⁶ *Sisters of Charity*, 553 P.2d at 470 (holding that office space leased to doctors for the private practice of medicine was not space used exclusively for a nonprofit hospital purpose); *Sisters of Providence*, 672 P.2d at 449 (holding that because leased hospital equipment was being used for private business purposes, it was not exempt as property used exclusively for a nonprofit hospital purpose).

⁴⁷ 490 P.2d 1226 (Alaska 1971).

⁴⁸ The *McKee* Court analyzed the predecessor statute to AS 29.45.030(a)(3). Because the predecessor statute contains the same statutory language, *McKee*'s analysis is still informative.

⁴⁹ The Court reviewed Norton Sound's and the City of Nome's Supplemental Briefs discussing the applicability of *Cedars of Lebanon v. Los Angeles County*, 221 P.2d 31 (Cal. 1950), and Cooley, *The Law of Taxation* (4th ed., 1924). Because the Court is persuaded that the Alaska Supreme Court's holding in *McKee v. Evans* provides a framework for this Court to follow, it is unnecessary to look to another jurisdiction for guidance to define “hospital purposes.” The Court appreciates counsel's effort and timeliness in submitting these supplemental filings.

Interpreting plain, undefined exemption terms under McKee

The sole question in *McKee* was whether a Trust Fund owned property, utilized for an apprenticeship training program—comprised of three buildings: a school building, a storage building, and a welding shop—was entitled to exemption as property “used exclusively for nonprofit...educational purposes.”⁵⁰ The Anchorage Borough Assembly, sitting as a Board of Equalization had ruled the Trust Fund was not entitled to exemption.⁵¹

The Trust Fund was a management trust established in 1957 between the National Electrical Contractors Association (NECA) and the Local Union of the International Brotherhood of Electrical Workers (IBEW). The Trust Fund owned the property which was managed by the Joint Apprenticeship Training School Committee, comprised of five members each from NECA and the local IBEW. The property was used in conjunction with an apprenticeship training program which included formal training at the school, on the job training, and a return refresher course at the school.⁵² The training culminated in a Journeyman Electrician’s examination and upon successful passing, a certificate as a journeyman electrician from the United States Department of Labor.⁵³ Guidelines for the training were developed by the United States Department of Labor and the Bureau of Apprenticeship Training and were similar to programs in other states.⁵⁴

The training was open to anyone who applied and acceptance was not limited by NECA or IBEW.⁵⁵ Other than a \$10 fee, there was no charge for any of the formal training, except students were required to purchase their own text books and arrange their own lodging.⁵⁶ The Trust Fund was a nonprofit and the training facilities were not used for any non-training purpose. The facilities were also used to train and provide refresher courses to journeymen electricians.⁵⁷

The court began its analysis by reviewing the constitution and statutory exemption language, noting the constitutional convention minutes did not reveal what the drafters intended to constitute “educational purpose” and the legislature had also not defined the term, “as it [had]

⁵⁰ The tax exemption statute at issue in *McKee*, AS 29.10.336(a), is the predecessor statute to AS 29.45.030(a)(3) at issue in Norton Sound’s appeal.

⁵¹ *McKee v. Evans*, 490 P.2d 1226, 1227 (Alaska 1971).

⁵² *Id.* at 1227–28.

⁵³ *Id.* at 1228.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

done with regard to 'religious purposes.'" ⁵⁸ After citing these sources, the supreme court proclaimed, "[t]his case basically presents a dispute over the meaning of the term 'educational purposes' as used in our constitution and the exemption statute."⁵⁹

The court then looked to other jurisdictions that had considered the question. First it considered *Nashville Labor Temple v. City of Nashville*, a property exemption case under "constitutional and statutory language similar to [Alaska's]."⁶⁰ In that case, the Tennessee Supreme Court held that a building where the union conducted classes, including sometimes only for union members, was exempt.⁶¹ In particular, our court quoted the Tennessee court's reasoning which stressed the public benefit that came from the classes stating:

[T]o teach men in these arts or crafts is as essential and beneficial to the public as to teach one astronomy, civil engineering, medicine, pharmacy, or other useful professions. All of such arts or crafts, in which instructions are given by complainant corporation, are highly essential to the commercial and business interests of the country, and to the public welfare. Instructions which will make a better machinist, boiler maker, steam pipe fitter, plumber, or carpenter confers a benefit upon the public, and a consequent relief, to some extent, of the burden upon the state to care for and advance the interests of its citizens.⁶²

The *McKee* court noted that the types of schools that had generated the greatest amount of litigation concerning education exemption claims was in the area of business schools or colleges.⁶³ And it observed that most courts faced with an exemption issue involving schools utilized a similar public benefit analysis. As an example, the court looked to *Wilson's Modern Business College v. King County*,⁶⁴ where the Washington Supreme Court rejected a generalized/specialized school distinction by stating:

⁵⁸ *Id.* (citing AS 29.10.336(b) that defines "property used exclusively for religious purposes," the predecessor statute to AS 29.45.030(b) which has seen numerous legislative refinements).

⁵⁹ *Id.*; see also *id.* at 1228 n.8 (noting that the Trust Fund's nonprofit status and exclusive use of the property were not at issue on appeal).

⁶⁰ *Id.* at 1229.

⁶¹ *Id.* at 1228-29 (citing *Nashville Lab. Temple v. City of Nashville*, 243 S.W. 78, 81 (Tenn. 1922)).

⁶² *Id.* at 1229 (quoting *Nashville Lab. Temple*, 243 S.W. at 81).

⁶³ *Id.*

⁶⁴ 104 P.2d 580 (Wash. 1940).

“[t]he plain import of the exemption statute is that the terms ‘school or college’ should be given their ordinary meaning. The fundamental object of the statute is to exempt from taxation property used for school purposes and it would be a narrow construction to hold that business colleges like the respondent are not within the purview of the statute.”⁶⁵

Both the Tennessee and Washington Supreme Courts relied on public benefit analysis and interpreted the plain import of the exemption statutes using their “ordinary terms.” However, other courts did not rely on plain meaning to interpret the exemption statute. *McKee* characterized these other courts as having “placed a judicial gloss” on education exemption provisions because rather than use plain meaning to interpret terms, they required the program of instruction to generally parallel what was offered in publicly supported institutions in order to receive an exemption.⁶⁶ The rationale these other courts used to justify granting exemptions in this restricted manner being “only such school properties as relieve some substantial educational burden from the state should receive rights of tax exemption.”⁶⁷

Unconvinced but recognizing the “quid pro quo reasoning [that] has superficial appeal during a time of financial crisis for local government,” our court pronounced that in Alaska the power of deciding what types of education are to be publicly supported by tax exemption, is vested with the legislature.⁶⁸ And since our statute “in no way” limited the term “educational purposes,” the court found no justification to give to that term anything other than its ordinary meaning.⁶⁹ That such limits would be a legislative concern seems “especially apparent at a time when there is increasing desire for specialized practical education, a proliferation of new kinds of educational institutions, and rapidly changing concepts of mass education.”⁷⁰

Based on these considerations, the court concluded: “...the phrase ‘educational purposes’ as used in Article IX, Section 4, of the Alaska Constitution and AS 29.10.336(a) includes systematic instruction in any and all branches of learning from which a substantial public benefit

⁶⁵ *McKee*, 490 P.2d at 1228–29 (quoting *Wilson’s Mod. Bus. Coll.*, 104 P.2d at 584–85).

⁶⁶ *Id.* at 1229 n.13. The court listed several cases where schools were denied under this narrow approach including banking schools, a mortician’s school, an electronics trade school, a school of design, a printing trade school, and a radio and television repair school.

⁶⁷ *Id.* at 1229–30.

⁶⁸ *Id.* at 1230.

⁶⁹ *Id.*

⁷⁰ *Id.*

is derived."⁷¹ A broad definition, that when shown to result in substantial public benefit, qualified property for exemption.

Next, the court, strikingly, viewed the canon of strict construction *inapplicable* stating:

We are not unmindful of the widely accepted canon of construction which requires that provisions exempting property from ad valorem taxation be strictly construed against the property holder in favor of the taxing authority. Nor do we now intend to reflect unfavorably upon the policy behind that canon of construction. We hold only that if that policy is to be implemented so as to exclude property which is clearly being used exclusively for nonprofit educational purposes, it must be done by the legislature.

Under our statute once it is determined that the institution involved is nonprofit in character and that the property is exclusively used for educational purposes, the exemption attaches.⁷²

Interestingly, *McKee* is generally cited for the principle that "the canon [of strict construction] is an aid to, not a substitute for, statutory interpretation; the interpretation must still be a reasonable one."⁷³ But the *McKee* court *never* applied this canon of construction when it defined "educational purposes." Under the court's analysis, since there was no limiting language in the statute, the plain term "educational purposes" was given its ordinary meaning. In the court's view, any limitation given to a plain term must be done by the legislature and not by the court applying a canon of strict construction.⁷⁴

From *McKee*, this Court can easily derive an analytical flow. A reviewing court must give "ordinary meaning" to plain terms. Property coming within the ordinary meaning of the term qualifies for exemption. Excluding property that comes within the ordinary meaning of a plain term can only be accomplished by legislative amendment and not by a court applying the canon of strict construction.

⁷¹ *Id.*

⁷² *Id.* at 1230-31.

⁷³ *Id.* at 1230 n.8. This rule statement has been cited repeatedly in subsequent cases interpreting the exemption statute. See *City of Nome v. Catholic Bishop of N. Alaska*, 707 P.2d 870, 879 (Alaska 1985); *Greater Anchorage Area Borough v. Sisters of Charity of the House of Providence*, 553 P.2d 467, 469 n.9 (Alaska 1976); *Sisters of Providence in Washington, Inc., v. Mun. of Anchorage*, 672 P.2d 446, 447 (Alaska 1983).

⁷⁴ *McKee*, 490 P.2d at 1231 ("The legislature has directed that the exemption be available to 'all' such properties; it did not see fit to add limitation or qualification. Because the Trust Fund is an institution falling within the broad terms of the constitution and the statute, there is no occasion for employing the canon of strict construction.").

Applying these rules, the court found the Trust Fund was an institution that “[fell] within the broad terms of the constitution and the statute” and therefore there was “no occasion for employing the canon of strict construction.”⁷⁵ And the court deemed the property used for the apprenticeship training program qualified for exemption because: the Trust Fund was nonprofit; it “would be difficult to characterize the training given as anything but formal and educational;” and the general public was “clearly benefited both by the increased opportunity for Alaskans to obtain vocational training not otherwise available, and by the increased quality of service from a skilled trade.”⁷⁶ Notably, the court spent no effort scrutinizing the *necessity* of the properties—the school building, storage building, and welding shop—when determining if the Trust Fund property qualified for exemption.⁷⁷

Applying *McKee*’s framework to interpret the term “hospital purposes” is appropriate since there are substantive similarities. Neither “education purposes” nor “hospital purposes” are defined within the exemption statute. Distinguished from the exemption term “religious purposes” which the legislature has defined within the exemption statute.⁷⁸ And similar to “educational purposes,” which has no limiting language to qualify its definitional boundaries, the term “hospital purposes” is likewise not delimited by statutory language. Both are plain, unconditioned terms within the exemption statute. Therefore, the definition of the exemption term “hospital purposes,” like “educational purposes,” should derive from its “ordinary meaning.”⁷⁹ And property qualifying for exemption under its ordinary meaning will not be excluded by applying strict construction.

With *McKee* in mind, the Board of Equalization’s approach to statutory interpretation is fundamentally misconceived. First, the Board of Equalization determined that the term “hospital

⁷⁵ See *id.* at 1231. See also *id.* at 1231 n.20 for cases giving ordinary meaning to plain terms and comparing them to the Alaska case *Harmon v. Pacific Union Conference Association of Seventh Day Adventists*, 462 P.2d 432 (Alaska 1969), where the court “narrowly construed statutory language particularizing the ‘religious purposes’ exemption” because the legislature had modified the plain term by specifying which property uses come within its definition. In other words, in *McKee* the court had to interpret the plain term “educational purposes,” but in *Harmon* the court had to determine what the legislature intended when it *modified* “religious purposes” by specifying which property uses come within the term.

⁷⁶ *McKee*, 490 P.2d at 1231; See also *id.* at 1228 (finding the “facilities” were not used for any other purpose than training electricians).

⁷⁷ Under the court’s analysis, the “facilities ha[d] not been used for any other purpose” than training, which had a twofold effect. First, because the use of the property came within the ordinary meaning of “education purposes,” there was no reason to employ strict construction. Second, since the property was used “exclusively” for training, the court did not have to employ the narrow exception to the “exclusive use” rule e.g., that the use of that property was “directly incidental to and vitally necessary” for the exempt use of the other property. *Catholic Bishop*, 707 P.2d at 881.

⁷⁸ AS 29.45.030(b) (defining “property used exclusively for religious purposes”).

⁷⁹ See *McKee*, 490 P.2d at 1230 (stating that, because there is no limiting language in the exemption statute, “we see no justification for this court to give to that term anything other than its ordinary meaning”).

purposes" should be narrowly construed.⁸⁰ While this is a general consideration when interpreting the exemption statute in the presence of qualifying terms of limitation or extension, it is not the correct approach when interpreting a plain exemption term. As *McKee* demonstrates, a plain term in the exemption statute should be given its ordinary meaning. Second, the Board of Equalization defined only the term "hospital" when instead the exemption statute utilizes the broader term "hospital purposes."⁸¹ Third, the Board of Equalization did not consider the substantial public benefit Norton Sound properties provide by delivering health services to Nome and the surrounding villages.

Under the Board of Equalization's approach, it determined that none of the Norton Sound properties were used "exclusively" to provide "medical... treatment."⁸² In other words, none of Norton Sound's properties were "hospitals." This meant to qualify for exemption, Norton Sound properties had to satisfy the exception to the "exclusive use" requirement. (Because no Norton Sound properties were hospitals, they were not used "exclusively" for this exempt purpose.) The Board of Equalization cites *City of Nome v. Catholic Bishop of Northern Alaska* for this test.⁸³ In that case property not exclusively used for exempt purposes could still qualify for exemption if its use was both "incidental to and vitally necessary" for the exempt purpose.⁸⁴ However, the Board of Equalization found no Norton Sound properties satisfied this test either.⁸⁵

The critical problem plaguing the Board of Equalization's method of interpreting the statute is that it used only part of the exempt purpose. By interpreting only the term "hospital" instead of the fuller term "hospital purposes," the full exemption term was not interpreted for meaning or applied to determine if Norton Sound properties came within its bounds. This is because Norton Sound properties were not strictly used as "hospitals." Properties that naturally come within the ordinary meaning of the term "hospital purposes" were not determined. This was fundamentally inadequate, since the Board of Equalization did not interpret the term "hospital purposes." The practical result of this approach is that it prematurely shifted exemption analysis

⁸⁰ Appellant's Excerpt R. 281 of 284.

⁸¹ See Appellant's Excerpt R. 281 of 284. The Board of Equalization defined "hospital" as "an institution providing medical and surgical treatment and nursing care for sick or injured people."

⁸² Appellant's Excerpt R. 281 of 284.

⁸³ 707 P.2d 870, 880 (Alaska 1985).

⁸⁴ *Id.* Because the central issues presented in the instant case are primarily determinations of whether the subject properties qualify for exemption as either "hospital purposes" or "charitable purposes" after deciding what meaning to give those terms—as will be discussed in this opinion—"exclusivity" is not at issue. Therefore, the City of Nome's arguments and citations of cases outlining "exclusive use," though correct statements of law, are not analyzed.

⁸⁵ See Appellant's Excerpt R. 281 of 284.

away from determining whether a property came within the ordinary meaning of "hospital purposes" and instead pushed exemption analysis to an exception to the "exclusive use" requirement as a secondary avenue for exemption. By not interpreting "hospital purposes," the Board of Equalization only superficially considered its statutory interpretation task.⁸⁶ This was mistaken.

However, the Board of Equalization's definition of "hospital" is serviceable when joined with the term "purpose" as the exemption statute contemplates. The Board of Equalization defined "hospital" as "an institution providing medical and surgical treatment and nursing care for sick or injured people." The term "purposes" is defined as "something set up as an object or end to be attained: intention."⁸⁷ Combining the term "purpose" with "hospital" is necessary to interpreting the exemption statute. 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.⁸⁸

The ordinary meaning of "hospital purposes" coincides with the nature of Norton Sound's Nome hospital, village-based clinics, and how Properties 1, 2, 3, and 4 are used.⁸⁹ Norton Sound properties were established to give Norton Sound the ability to deliver "medical and surgical treatment and nursing care for sick and injured people."⁹⁰ It can hardly be said their use is for any

⁸⁶ Norton Sound argues the Board of Equalization's definition of "hospital" is "overly restrictive and does not reflect the legislative intent of AS 29.45.030(a)(3) . . . which would be unduly thwarted by the [Board of Equalization's] unsubstantiated and narrow construction of the term hospital." See Appellant's Opening Br. 12.

⁸⁷ *Webster's Seventh New Collegiate Dictionary* 694 (G. & C. Merriam Company, 1963). This dictionary was published near the time the Alaska Legislature added "hospital purposes" to the exemption statute. City of Nome's Suppl. Br. 7-8.

⁸⁸ *McKee*, 490 P.2d at 1230-31.

⁸⁹ See *Cedars of Lebanon Hospital v. Los Angeles County*, 221 P.2d 31, 35 (Cal. 1950), for an aged, though surprisingly relevant, view of how a hospital operates as an assembly of people, functions, and facilities:

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 and equipment now available through the advances of medical science. Essential to the administration of these techniques is the corps of highly-trained nurses and student nurses who are on duty twenty-four hours per day. In the large hospitals there are the interns and residents whose presence makes it possible for the hospital to do a better job. In addition, the hospital...must have administration to see that its services function properly and are coordinated, and that patients are received and cared for regardless of the hour or the patient's condition. Nothing can be left to chance because a slip may mean a life or many lives. These facilities also stand ready to serve the community in times of epidemic or disaster.

⁹⁰ Though not necessary to deciding this case, the alternative definitions for "hospital" offered by Norton Sound, if analyzed, would also likely qualify properties 1 through 4 for exemption. See Appellant's Opening Br. 13, 14.

other purpose. Norton Sound operates the only health care system serving the Bering Strait Region, that includes Nome and surrounding villages.⁹¹ Norton Sound doctors and nurses are on call twenty-four hours for emergencies and must be within a few minutes of the hospital.⁹² Housing is provided to doctors and nurses as a necessary incentive to attract qualified medical personal to work in this rural location.⁹³ No profit is generated from any of the provided housing.⁹⁴ Administratively, Norton Sound stores medical, accounting, and personnel records in addition to medical equipment, maintenance supplies and equipment on these properties.⁹⁵ Norton Sound also conducts a wide variety of trainings both to medical staff (health aids and EMTs) and nonmedical staff who are responsible to keep the facilities up and running, and provides housing for trainees traveling to Nome from villages.⁹⁶ During the COVID-19 pandemic, Norton Sound also used its properties for isolation and quarantine patients and patients traveling to Nome from out of town.⁹⁷

Norton Sound is involved in a substantial undertaking with its mission to provide health care services to the Bering Strait Region. Properties 1 through 4 are integral to Norton Sound providing health care services to the Bering Straits Region. Especially during a time of an ongoing global pandemic, Norton Sound's ability to deliver health care services in Nome and the surrounding villages is critical to protect the health of the region's residents. Certainly, the residents of the Bering Strait Region benefit from Norton Sound's use of these properties.

Norton Sound's properties 1 through 4 qualify for exemption as property used exclusively for "hospital purposes." There is no evidence the properties are used other than exclusively for this purpose. The City of Nome does not dispute that Norton Sound is a nonprofit corporation.⁹⁸ And since Norton Sound is an "institution falling within the broad terms of the constitution and the statute, there is no occasion for employing the canon of strict construction."⁹⁹ Norton Sound properties provide critical housing for doctors, nurses and patients, training facilities for medical staff and nonmedical staff and records and maintenance equipment storage. The purpose of each property, the "end to be attained," being to allow Norton Sound to deliver health care services to

⁹¹ Appellant's Excerpt R. 28 of 284; Appellant's Opening Br. 6.

⁹² Appellant's Excerpt R. 29 of 284.

⁹³ *Id.*

⁹⁴ *Id.* at 29, 43 of 284.

⁹⁵ *Id.* at 175 of 284.

⁹⁶ *Id.* at 194-95 of 284.

⁹⁷ *Id.* at 220 of 284.

⁹⁸ *Id.* at 278 of 284.

⁹⁹ *McKee*, 490 P.2d at 1231.

the region's residents; or, using the Board of Equalization's formulation of "hospital," "to provid[e] medical and surgical treatment and nursing care."¹⁰⁰

B. "CHARITABLE PURPOSES"

To be exempt from local taxation, property must be used exclusively for "nonprofit...charitable...purposes."¹⁰¹ The primary inquiry is whether Norton Sound's property is being "exclusively used for [a charitable purpose]."¹⁰² Neither the Alaska Constitution nor Alaska statutes define the term. However, the Alaska Supreme Court has quoted the following statement to explain the 'broad scope' given to this 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.¹⁰³

Norton Sound included "charitable purposes" as a basis for property exemption when it filed its original exemption applications to the city assessor. Norton Sound also included "charitable purposes" as a basis when it appealed the city assessor's denial of its exemption application to the Board of Equalization. Despite this inclusion, neither the City of Nome Assessor, nor the Board of Equalization considered whether any of Norton Sound's properties qualified for exemption as property used "for exclusively nonprofit charitable purposes." Norton Sound's claim for exemption on this point was simply ignored or forgotten.

But since both the city assessor and the Board of Equalization denied exemption of Norton Sound's properties 1 through 4, the Court will determine whether the record establishes if Norton Sound met its burden showing the properties qualify for exemption as "charitable purposes."

¹⁰⁰ Appellant's Excerpt R. 281 of 284.

¹⁰¹ Alaska Const. art. IX, § 4; AS 29.45.030(a)(3).

¹⁰² *Fairbanks N. Star Borough v. Denā Nenā Henash*, 88 P.3d 124, 130 (Alaska 2004). Cases interpreting the exemption statute use a two-part test: 1) whether there is a nonprofit, charitable purpose, and 2) whether the property is being exclusively used for an exempt purpose. *Id.* Since the City of Nome does not contest whether Norton Sound's properties 1 through 4 are exclusively used for nonprofit purposes, the primary inquiry then is whether the use is for "charitable purposes."

¹⁰³ *Matanuska-Susitna Borough v. King's Lake Camp*, 439 P.2d 441, 445 (Alaska 1968) (quoting *Old Colony Trust Co. v. Welch*, 25 F.Supp. 45, 48 (D. Mass. 1938)).

Recall that Norton Sound carries out its health care services to the region pursuant to an Indian Self-Determination and Education Assistance Act (ISDEAA) agreement.¹⁰⁴ This agreement requires Norton Sound to provide health programs, hospital and clinic services, behavioral health services, dental services, village health services, health aide training, public health nursing, home care and other community-based services, support services, and many other services.¹⁰⁵

As discussed in the previous section analyzing “hospital purposes,” the Court found that Norton Sound is a nonprofit organization that operates a hospital and community clinics and properties 1 through 4 are used for exclusively nonprofit “hospital purposes.” These properties are not used for any other purpose than nonprofit exempt purposes. Norton Sound operates these properties as a part of its effort to provide health services to the Bering Straits Region. Housing is provided to doctors, nurses, employees at a loss to Norton Sound, but to facilitate patient care. Training is provided at no cost to medical and nonmedical employees to increase skills for those involved in giving care to patients or those responsible for keeping the hospital facilities open to the public. The city assessor recognized at least this much: that housing patients close to the hospital was very beneficial to the region.¹⁰⁶

The supreme court has recognized that the Indian Self-Determination and Education Assistance Act is a unique relationship between Indian tribes and the federal government to provide “support to tribes for health, education, employment, irrigation, administration, and real estate services.”¹⁰⁷ And that ISDEEA contracts “permit tribes to ‘improve the moral, mental, and physical welfare’ of individuals and the group.”¹⁰⁸ Based on this, our supreme court has concluded that satisfying these contracts “are motivated by purposes that are properly characterized as charitable” and that this “satisfies the charitable-purposes criterion for exemption in Alaska.”¹⁰⁹ A property use that provides a “public benefit” indicates that the property is being used for a charitable purpose.”¹¹⁰

¹⁰⁴ See Appellant's Opening Br. 2 (citing Appellant's Excerpt R. 28 of 284).

¹⁰⁵ Appellant's Excerpt R. 67–142 of 184.

¹⁰⁶ See Nome City Council Meeting Hr'g Tr. 35, May 6, 2022.

¹⁰⁷ *Fairbanks N. Star Borough v. Dená Nená Henash*, 88 P.3d 124, 134 n.54 (Alaska 2004).

¹⁰⁸ *Id.* at 135 n.58.

¹⁰⁹ *Id.* at 135.

¹¹⁰ *Id.* at 136.

On the record before this Court, Norton Sound has met its burden. Properties 1 through 4 are exclusively used for nonprofit “charitable purposes” since they are “done out of good will and a desire to add to the improvement of the moral, mental and physical welfare of the public.”¹¹¹

II. TAX EXEMPTION UNDER FEDERAL LAW

A. IMPLIED FEDERAL PREEMPTION DOCTRINE

Norton Sound did not include “federal law” as a basis for exemption in its initial application for tax exemption. This basis was included for the first time when Norton Sound appealed the city assessor’s decision to the City of Nome, sitting as a board of equalization.¹¹² Norton Sound appeared at the hearings held in May of 2022 before the Board of Equalization, and argued that its properties should be exempt under the federal preemption doctrine. Norton Sound thoroughly briefed the federal preemption doctrine and argued that its properties were used to carry out federal programs that were subject to comprehensive and pervasive federal oversight. Despite these presentations, the city assessor argued that the “federal instrumentality” doctrine (a doctrine Norton Sound never argued) did not apply.

The City of Nome’s argument that Norton Sound’s preemption claim was not preserved

Before this Court can address Norton Sound’s federal preemption argument, it must first address the City of Nome’s argument that this issue was not preserved for appeal. The City of Nome argues that federal preemption is not properly before this Court because Norton Sound did not include it as a basis for exemption in its initial exemption application to the city assessor. The City of Nome argues that since Norton Sound did not include federal preemption in its initial application, the city assessor could not have erred in failing to grant exemption on that basis. Since Norton Sound’s federal preemption argument was not on the initial application, and the city assessor did not make any decisions on this basis, the City of Nome argues this issue is not properly before this Court.¹¹³

¹¹¹ *King’s Lake Camp*, 439 P.2d at 445.

¹¹² Not only was “federal law” listed as a basis, but both the Federal Preemption Doctrine and the Sovereign Immunity claim were thoroughly briefed in the Attachment to Administrative Review and Appeal Form, Appellant’s Excerpt R. 28–36 of 284.

¹¹³ Appellee’s Br. 44.

Despite the City of Nome's argument, the Board of Equalization allowed argument from *both* Norton Sound *and* the city assessor regarding the doctrine of federal preemption in hearings it held. The city assessor argued about the applicability of federal preemption as a basis for exemption. The Board of Equalization did not object to the inclusion of this argument in either Norton Sound's written appeal application or oral argument. The Board of Equalization never told Norton Sound that the issue of federal preemption was not properly before them. Instead, after hearing argument the Board of Equalization issued a written decision which considered and made conclusions of law as to whether federal preemption applied to Norton Sound properties.

Despite these clear actions, the City of Nome urges the Court to only focus on Norton Sound's initial application to the assessor which did not include federal preemption as an argument and therefore did not preserve the issue. However, federal preemption was an issue prior to, during, and after hearings held before the Board of Equalization. Ignoring these realities, the City of Nome does little to persuade this Court that federal preemption was not preserved. By not objecting during hearings held before the Board of Equalization, the City of Nome has waived the right to appeal procedural errors. In other words, the City of Nome's silence marks a procedural death knell. "Failure to make the appropriate objection during [an administrative] hearing waives the right to appeal procedural errors."¹¹⁴

The City of Nome is preempted as a matter of federal law

Properties used to carry out federal programs are exempt from taxation under the implied federal preemption doctrine if (1) they are subject to comprehensive and pervasive federal oversight, and (2) the state's interest in taxation is relatively inconsequential.¹¹⁵

As previously noted, Norton Sound is a tribally owned and operated, independent, not-for-profit healthcare organization.¹¹⁶ Norton Sound is governed by a twenty-two-member board of directors who represent all communities and areas of the Bering Strait Region.¹¹⁷ The Norton Sound healthcare system includes a tribally owned regional hospital, the property at issue here, which is operated pursuant to an ISDEAA agreement.¹¹⁸ Norton Sound operates its health facilities

¹¹⁴ *Radebaugh v. State*, 397 P.3d 285, 291–92 (Alaska 2017).

¹¹⁵ *Ketchikan Gateway Borough v. Ketchikan Indian Corp.*, 75 P.3d 1042, 1048 (Alaska 2003).

¹¹⁶ Appellant's Opening Br. 2.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

and provides healthcare services to Alaska natives pursuant to a multi-tribe self-governance compact with the Indian Health Service (IHS) under Title V of the ISDEAA.¹¹⁹ Each year Funding Agreements are negotiated between the IHS and Norton Sound to fund programs that Norton Sound performs on behalf of IHS.¹²⁰ This means that the operation of all Norton Sound programs are subject to the terms and regulations mandated in the Funding Agreement negotiated with the IHS.

Through its Funding Agreements then, the IHS retains pervasive oversight over Norton Sound.¹²¹ One of the terms that gives IHS oversight in the Funding Agreement, for example, is that Norton Sound is subject to annual audits with penalties for noncompliance with applicable Office of Management and Budget cost principles.¹²² Another term is that all revenue that Norton Sound generates, even from third parties such as Medicare or Medicaid, is treated as supplemental funding to the Funding Agreement and must be used for purposes within the scope of that agreement.¹²³

Norton Sound provided a written description of each property for which they sought exemption, including a detailed summary of the property use at each location. Because the City of Nome has not objected to these descriptions, and since the Board of Equalization's brief findings of fact for each property were consistent with these descriptions, the Court will rely on them as well. Property 1 houses hospital employees, including doctors and nurses.¹²⁴ Property 2 is used to store essential equipment, supplies, and medical records for the hospital.¹²⁵ Property 3 houses village-based clinic employees including health aid trainees who are in Nome to receive medical training.¹²⁶ Property 4 houses pre-admission maternity patients and other pre-admission patients travelling to Nome to receive medical services at the hospital.¹²⁷

Section 2 of the Funding Agreement obligates and authorizes funds for Norton Sound to provide the Tribal health programs described in Section 3.¹²⁸ Section 3.5 of the Funding Agreement obligates Norton Sound to provide "Support Services" such as buildings needed for

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.* at 30-31.

¹²² *Id.* at 31.

¹²³ *Id.*

¹²⁴ Appellant's Excerpt R. 280 of 284.

¹²⁵ *Id.*

¹²⁶ *Id.* at 280-81 of 284.

¹²⁷ *Id.* at 281 of 284.

¹²⁸ *Id.* at 70 of 284.

medical records and the provision of staff housing.¹²⁹ Clearly, Properties 1 and 2 are being used to provide a required service under the Funding Agreement and are subject to pervasive oversight through the Funding Agreement. Section 3.4.4 of the Funding Agreement obligates Norton Sound to provide “Village Health Services” including training, supervision, and other services to Community Health Aides. Section 3.4.5 specifically obligates Norton Sound to provide Community Health Aide Program training to trainees from throughout Alaska.¹³⁰ Therefore, Property 3 is being used to provide a required service under the Funding Agreement and is subject to pervasive oversight through the Funding Agreement. Section 3.4.8 of the Funding Agreement obligates Norton Sound to provide a “Maternal and Child Health Program” which includes providing prematernal home care for village women awaiting delivery in Norton Sound Regional Hospital.¹³¹ Section 3.2.14 of the Funding Agreement obligates Norton Sound to 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.¹³² Property 4 is being used to provide a required service under the Funding Agreement and is subject to pervasive oversight through the Funding Agreement.

Because Norton Sound and its four properties are clearly subject to comprehensive and pervasive federal oversight, this Court must now conduct a “particularized examination of the relevant state, federal, and tribal interests.”¹³³ Examining the federal and tribal interests, the United States Supreme Court has looked to “traditional notions of tribal sovereignty, and the recognition and encouragement of this sovereignty in congressional Acts promoting tribal independence and economic development.”¹³⁴ Congress has also expressed its intention in the ISDEAA that those operating under self-determination contracts (like Norton Sound) receive the same amount of funding as would the federal government if one of its departments was providing the services in question.¹³⁵ Local property taxes could impede the federal interest in promoting Indian healthcare and economic development by reducing the funds available to Norton Sound to provide healthcare

¹²⁹ *Id.* at 75 of 284.

¹³⁰ *Id.* at 73 of 284.

¹³¹ *Id.* at 74 of 284.

¹³² *Id.* at 72 of 284.

¹³³ *Ketchikan Gateway Borough v. Ketchikan Indian Corp.*, 75 P.3d 1042, 1046 (Alaska 2003) (citing *Ramah Navajo Sch. Bd., Inc. v. Bureau of Revenue of New Mexico*, 458 U.S. 832, 838 (1982)).

¹³⁴ *Ramah*, 458 U.S. at 838.

¹³⁵ *Ketchikan Gateway*, 75 P.3d at 1049 (Fabe, C.J., dissenting) (citing 25 U.S.C. § 450j-1(a)(1) (2001)).

to the Bering Strait Region.¹³⁶ This reduction of funds also seems incompatible with Congress's intent to see that those operating under self-determination contracts would receive the same amount of funding as would the federal government.¹³⁷

The City of Nome's interest in collecting tax, according to the Board of Equalization's findings of fact, is to fund: K-12 education, maintenance of roads used to go to and from the properties, and fire and police services that may be needed at the properties.¹³⁸ Although these are important services¹³⁹ that provide some benefit to Norton Sound, when weighed against the Congressional desire for Indian tribes to have equal funding and the federal and tribal interest in tribal sovereignty, independence, and economic development, the city's interest in taxation is relatively inconsequential.¹⁴⁰ Additionally, this Court notes that the City has made no effort to provide healthcare services to the Bering Strait Region, and as such, should be precluded from imposing an additional burden on the tribally owned and operated organization that was created to provide this healthcare.¹⁴¹ Given these considerations, because properties 1 through 4 are subject to comprehensive and pervasive federal oversight, and by comparison the City of Nome's interest in taxation is relatively inconsequential, the City of Nome is federally preempted from taxing these properties. In other words, properties 1 through 4 are exempt from the City of Nome's property tax.

The City of Nome is not preempted from taxing vacant Properties 5 and 6

Norton Sound conceded in its tax exemption application and in its opening brief that Properties 5 and 6 were vacant and were, therefore, not being used for hospital purposes.¹⁴² However, Norton Sound argues that the City of Nome is still federally preempted from taxing these properties.¹⁴³

¹³⁶ *Id.*; see also *Ramah*, 458 U.S. at 842 (finding that the burden imposed by the state's taxation impeded educational opportunities for Indians by depleting the funds available for the construction of Indian Schools).

¹³⁷ *Id.* at 1049 n.6.

¹³⁸ Appellant's Excerpt R. 281 of 284.

¹³⁹ With the exception of funding K-12 education, which does not provide any service to the properties at issue.

¹⁴⁰ See *Ketchikan Gateway*, 75 P.3d at 1050 (Fabe, C.J. dissenting) (similarly weighing the federal and tribal interests against the city's interest in taxation and finding that the city's interest was relatively inconsequential).

¹⁴¹ See *Ramah*, 458 U.S. at 843 (Finding that because the State had "declined to take any responsibility for the education of these Indian children, the State is precluded from imposing an additional burden on the comprehensive federal scheme intended to provide this education").

¹⁴² Appellant's Opening Br. 22.

¹⁴³ *Id.* at 22, 34-36.

Because these properties are vacant, they are not being used for any program mandated under the Funding Agreement. Therefore, they are not subject to the comprehensive and pervasive federal oversight that other Norton Sound properties are subject to. Norton Sound argues that, although it is not currently using the properties, it is obligated to operate these properties (in the future) for health care purposes only. While this may be true under Norton Sound's Funding Agreement, the possible future use of these properties is not at issue. Instead, the question is whether these properties were subject to comprehensive and pervasive federal oversight as of January 1, 2022.¹⁴⁴ As of January 1, 2022, these properties were not being used for any program mandated under the Funding Agreement and, therefore, were not subject to the comprehensive and pervasive federal oversight afforded by Funding Agreement s.¹⁴⁵ Because properties 5 and 6 were not subject to such oversight, they are not federally preempted from taxation.

Summary of the Court's preemption analysis

Properties 1 through 4 are used to carry out programs specified in the Funding Agreement between the IHS and Norton Sound. Because the Funding Agreement obligates Norton Sound to provide programs that properties 1 through 4 are being used to implement, they are subject to comprehensive and pervasive federal oversight. Also, because the city's interest in taxation is relatively inconsequential when weighed against the Congressional desire for Indian tribes to have equal funding and the federal and tribal interests in tribal sovereignty, independence, and economic development, properties 1 through 4 are federally preempted from taxation by the City of Nome. Because properties 5 through 6 are vacant and, therefore, not subject to such comprehensive and pervasive federal oversight, they are not federally preempted from taxation.

B. FEDERAL SOVEREIGN IMMUNITY

Norton Sound argues that it enjoys "sovereign immunity from suits to collect taxes."¹⁴⁶ The City of Nome responds by stating the matter before this Court is not a suit to collect taxes.¹⁴⁷

¹⁴⁴ Because the City Assessor must assess the property at its full value as of January 1 of the assessment year, AS 29.45.110(a), the use of the property as of January 1 is determinative of the tax exemption for that year. *See Ketchikan Gateway*, 75 P.3d at 1044, 1048.

¹⁴⁵ *See Ketchikan Gateway*, 75 P.3d at 1048 (finding that vacant properties were not subject to pervasive federal oversight).

¹⁴⁶ Appellant's Opening Br. 36.

¹⁴⁷ Appellee's Br. 47.

On this latter point, the Court agrees. This is not a suit to collect taxes. Norton Sound also argues tribal sovereign immunity is a “jurisdictional bar that may be asserted at any time” and that it “deprives [state] courts of jurisdiction when properly asserted.”¹⁴⁸ However, this argument is a defense properly invoked in motion practice under federal rule 12(b)(1)¹⁴⁹ and remains only a “proper vehicle for invoking sovereign immunity *from suit*.”¹⁵⁰ Given these considerations, there is no need for the Court to rule on whether sovereign immunity bars the City of Nome from taxing Norton Sound properties.

CONCLUSION

For the reasons set forth in this opinion, the Court holds the ordinary meaning of the term “hospital purposes” encompasses a broad range of activities that typify a modern hospital, using our supreme court’s approach from *McKee v. Evans*.¹⁵¹ Because Norton Sound is a nonprofit hospital and exclusively uses properties 1 through 4 for hospital purposes, the exemption applies. Additionally, since Norton Sound’s exclusive use of the questioned properties “is done out of good will and a desire to add to the improvement of the...mental, and physical welfare of the public” this use qualifies for “charitable purposes” exemption as well.¹⁵² Finally, because Norton Sound operates the properties as part of its contractual obligation to operate a hospital and provide a broad range of health care services pursuant to a Funding Agreement with the IHS on behalf of the region’s villages, this arrangement subjects Norton Sound to comprehensive and pervasive federal oversight. On balance, the interest Norton Sound has in providing a wide range of health care services to the region through these properties located in Nome, which are not provided by the City of Nome, outweigh the City of Nome’s interest in taxing the properties. The implied federal preemption doctrine applies, precluding the City of Nome, as a matter of federal law, from exerting taxing authority on Norton Sound’s properties. However, Norton Sound’s sovereign immunity claim is not a bar to City of Nome taxation.

¹⁴⁸ Appellant’s Opening Br. 19.

¹⁴⁹ See *Douglas Indian Ass’n v. Cent. Council of Tlingit and Haida Indian Tribes of Alaska*, 403 P.3d 1172, 1177–78 (Alaska 2017).

¹⁵⁰ *Id.* at 1179 (emphasis added).

¹⁵¹ *McKee v. Evans*, 490 P.2d 1226 (Alaska 1971).

¹⁵² See *Matanuska-Susitna Borough v. King’s Lake Camp*, 439 P.2d 441, 445 (1968) (quoting *Old Colony Trust Co. v. Welch*, 25 F.Supp. 45, 48 (D. Mass. 1938)).

Having made these determinations, Norton Sound's appeal seeking tax exemptions for properties 1 through 4 is GRANTED. Because vacant, unused properties would not qualify either as property used for "charitable" or "hospital purposes," and because the City of Nome's interest in taxation would not be inconsequential, under implied federal preemption analysis, Norton Sound's appeal of the City of Nome's denial of tax exemptions for properties 5 and 6 is DENIED.

IT IS SO ORDERED.

Dated at Kotzebue, Alaska July 18, 2023.

PA R
PAUL A. ROETMAN
Superior Court Judge



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CLERK Charles Cacciola, Brooks Chandler
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
SECOND JUDICIAL DISTRICT AT NOME

NORTON SOUND HEALTH CORP.,	)	
	)	
Appellant,	)	
	)	
v.	)	Case No. 2NO-23-156CI
	)	
CITY OF NOME EQUALIZATION BOARD,	)	
	)	
Appellee.	)	
_____	)	

MEMORANDUM AND DECISION

Before the Court is Norton Sound Health Corp.'s (Norton Sound) appeal of the City of Nome Board of Equalization's (City of Nome) 2023 decision denying tax exemptions for eleven hospital properties. The Court is determining whether five¹ of these properties are tax exempt under alternative theories: property used exclusively for hospital purposes, charitable purposes, federal preemption, and collateral estoppel. The parties briefed the Court and oral argument was held on August 15, 2024. For the reasons below, the Court finds four of the properties are exempt. Regarding property 11, the Court remands to the Board of Equalization (BOE) to determine the apportioned value of the vacant property.

FACTS AND PROCEDURAL HISTORY

This appeal is the second in consecutive years concerning properties owned and operated by Norton Sound. In July 2023, this Court issued a decision concerning Norton Sound's appeal of properties taxed in 2022 (*Norton Sound I*).² Based on the briefing, the City of Nome has failed to acknowledge the Court's decision in *Norton Sound I*. In *Norton Sound I*, the Court made several rulings that are controlling in Norton Sound's current appeal before this Court (for tax Year 2023) which are incorporated by reference:

- 1) The standard of review this Court applies to appeals from decisions of administrative agencies, like the Nome Board of Equalization;³

¹ Prior to this decision, since the Court previously granted an exemption the parties stipulated to dismissing properties 2, 3, 4, 8, 9, and 10.

² Memorandum Decision issued July 18, 2023 (hereinafter *Norton Sound I Decision*).

³ *Id.* at 6-7.

- 2) principles to consider when interpreting tax exemption statutes;⁴
- 3) how “hospital purposes” is defined under the exemption statute AS 29.45.030(a)(3);
- 4) that property used exclusively for “charitable purposes” includes Indian Self-Determination and Education Assistance Act (ISDEAA) contracts that “permit tribes to ‘improve the moral, mental, and physical welfare’ of individuals and the group” and that these contracts “are motivated by purposes that are properly characterized as charitable” and that this “satisfies the charitable-purposes criterion for exemption in Alaska.”⁵
- 5) Principles and rules of federal preemption, including the holding that vacant land is not federally preempted.⁶

Norton Sound appealed the denial of exemption for eleven properties. However, the parties stipulated to dismissing properties 2, 3, 4, 8, 9, and 10.⁷ As a result, the remaining properties are on appeal before the Court:

- Property 1 “7-Plex” – housing for on-call doctors and nurses.
- Property 5 “Main Hospital” – cafeteria space that is open to the public.
- Property 6 “BHS Building” – under renovation for maternal housing.
- Property 7 “HAT Building” – leased to the State for public nursing.
- Property 11 “20-Plex” – housing for on-call doctors and nurses, also 17 acres vacant.

The underlying facts concerning the nature of the properties and their uses are not in dispute. The Court provides brief descriptions later when analyzing the individual properties.

STANDARD OF REVIEW⁸

Factual findings of the BOE will be upheld if there is “substantial evidence” for the finding.⁹ “Substantial evidence” exists if there is “enough relevant evidence” for a reasonable

⁴ *Id.* at 7.

⁵ *Id.* at 18.

⁶ *Id.* at 19-24.

⁷ Norton Sound chose not to pursue the appeal for properties 8, 9, and 10; and the City of Nome granted exemption for properties 2, 3, and 4. Appellant’s Br., 2; Appellee’s Br., 3.

⁸ The Court goes into greater depth on this standard of review in *Norton Sound I Decision*, 6-7. The City of Nome made similar arguments to apply a different standard of review.

⁹ *Fairbanks North Star Borough v. Dena Nena Henash*, 88 P.3d 124, 128 (Alaska 2004).

person to adequately support the finding.¹⁰ Whereas BOE's legal findings are not given any deference, instead "we apply our independent judgment and adopt the rule of law that is most persuasive in light of precedent, reason, and policy."¹¹ The taxpayer carries the burden to show a property fits an exemption.¹²

LAW AND DISCUSSION

Collateral Estoppel

Collateral estoppel or issue preclusion prohibits relitigating an issue that was already decided. For collateral estoppel to apply the issue in the prior action must have 1) involved the same parties (or parties in privity); 2) involve the identical issue; 3) been resolved in a final judgment on the merits; and 4) been an issue essential to the final judgment.¹³ The Superior Court has discretion to apply collateral estoppel even if all the elements are met.¹⁴ In tax cases, the Alaska Supreme Court has held that collateral estoppel applies as set forth in *Sunnen*, a U.S. Supreme Court case.¹⁵ However, in tax cases, collateral estoppel should be used cautiously "so as to avoid injustice" and without blind adherence.¹⁶ Even if the case involves identical facts, if separable in form, the Court should not apply collateral estoppel.¹⁷

Statutory Exemption

Alaska Constitution Article IX, Section 4, states in part: "All, or any portion of, property used exclusively for non-profit religious, charitable, cemetery, or educational purposes, as defined by law, *shall be exempt from taxation.*"¹⁸ AS 29.10.336(a)(3) uses similar language but includes

¹⁰ *Pacifica Marine, Inc. v. Solomon Gold, Inc.*, 356 P.3d 780, 788 (Alaska 2015) (quoting *Haar v. State*, 349 P.3d 173, 177 (Alaska 2015)).

¹¹ *Id.* (quoting *State Dep't of Transp. & Pub. Facilities v. Sanders*, 944 P.2d 453, 456 (Alaska 1997)).

¹² *City of Nome v. Catholic Bishop*, 707 P.2d 870, 879 (Alaska 1985).

¹³ *State, Dep't of Revenue v. BP Pipelines (Alaska) Inc.*, 354 P.3d 1053, 1068 (Alaska 2015).

¹⁴ *Id.* (stating that while the Court has discretion, the discretion must still be fair and dependent on the circumstances of the individual case).

¹⁵ *State v. Baker*, 393 P.2d 893, 898 (Alaska 1964).

¹⁶ *Comm'r v. Sunnen*, 333 U.S. 591, 599-600 (1948).

¹⁷ *Id.* at 601 ("if the very same facts and no others are involved in the second case, a case relating to a different tax year, the prior judgment will be conclusive as to the same legal issues which appear, assuming no intervening doctrinal change. But if the relevant facts in the two cases are separable, even though they be similar or identical, collateral estoppel does not govern the legal issues which recur in the second case. Thus the second proceeding may involve an instrument or transaction identical with, but in a form separable from, the one dealt with in the first proceeding.").

¹⁸ ALASKA CONST. art. IX, § 4 (emphasis added).

“hospital” in the exemptions: “ (A)ll property used exclusively for nonprofit religious, charitable, cemetery, *hospital*, or educational purposes... *(is) exempt from taxation.*”¹⁹

While Alaska law permits a tax exemption for hospital purposes, the burden is on the taxpayer to prove the property qualifies.²⁰ And, if those exemptions do not fall within the plain meaning of the exemption then they are to be “narrowly construed” because of the policy underlying taxation.²¹ This policy is that since all property is benefitted by the State it is just and equitable to apportion the burden “upon the property of all.”²² But, the canon of strict construction “is an aid to, not a substitute for, statutory interpretation; the interpretation must still be a reasonable one.”²³ As emphasized in *Norton Sound I*, if the property “is clearly being used exclusively for” hospital purposes there is no need for the canon of strict construction.²⁴

Alaska Courts apply a two-part inquiry to determine if property is statutorily tax-exempt: 1) is there a hospital, religious, or charitable purpose, and 2) is the property used exclusively for the exempt purpose.²⁵

For the first prong of the inquiry, a Court must determine the “ordinary meaning” of the exemption.²⁶ When a term falls “within the broad terms of the constitution and statute, there is no occasion for employing the canon of strict construction.”²⁷

The Court will apply “hospital purposes” and “charitable purposes” as defined in *Norton Sound I*.²⁸ The Court defined the term “hospital” as “an institution providing medical and surgical treatment and nursing care for sick or injured people.”²⁹ And, the Court defined “purposes” as “something set up as an object or end to be attained: intention.”³⁰ The Court defined “charitable purposes” by quoting the Alaska Supreme Court which adopted the common law definition of charitable purposes 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

¹⁹ AS 29.10.336(a)(3) (emphasis added).

²⁰ *Fairbanks North Star Borough v. Dena Nena Henash*, 88 P.3d 124, 130 (Alaska 2004).

²¹ *The City of Nome v. Catholic Bishop*, 707 P.2d 870, 879 (Alaska 1985).

²² *Greater Anchorage Area Borough v. Sisters of Charity of the House of Providence*, 553 P.2d 467 (Alaska 1976).

²³ *Sister of Providence v. Mun. of Anchorage*, 672 P.2d 446, 447 (Alaska 1983).

²⁴ *Norton Sound I Decision*, 15-16; *McKee v. Evans*, 490 P.2d 1226, 1230.

²⁵ *Dena Nena Henash*, 88 P.3d at 130.

²⁶ *McKee*, 490 P.2d at 1230.

²⁷ *Id.* at 1231.

²⁸ *Norton Sound I Decision*, 15.

²⁹ *Id.* (quoting Nome Board of Equalization’s definition for “hospital”).

³⁰ *Id.*

comes within this meaning of the word 'charity.' To crowd out coarseness, cruelty, brutality from social man undoubtedly results in this betterment.³¹

The second prong of the inquiry determines whether there is "exclusive use" of the property. Whether a property is exclusively used for an exempt purpose depends whether it is used for the "direct and primary" purpose.³² But, the property need not be anemically devoted to "a single exempt purpose" but could be used for a combination of charitable, religious, or hospital purposes.³³ Exclusive use does not focus on the owner solely but rather the "purpose of the use."³⁴ Nor is the focus on the owner's use but the "actual use."³⁵ No exemption exists if the property is used by "non-exempt parties" for private business purposes.³⁶ Although a profit motive may be important, a property that generates operational surplus does not, by itself, prevent exemption status.³⁷

One controlling case that applies "exclusive use" is *Greater Anchorage Area Borough v. Sisters of Charity of the House of Providence*.³⁸ In that case, our Supreme Court found that office space rented, at market rates, to private doctors for their private practices was not exempt. Applying the limitation in AS 09.45.030(c), our Supreme Court noted that if the analysis looked solely from the "owner's use" instead of the "actual use" the exemption would extend "to everything owned and used in some way by an exempt institution."³⁹ The Court emphasized that if the "actual use" includes partial use for "private business purposes," there is no exemption.⁴⁰ In other words, if there is a separate "commercial use" the exemption is disallowed.⁴¹

³¹ *Id.* at 17 (quoting *Matanuska-Susitna Borough v. King's Lake Camp*, 439 P.2d 441 (Alaska 1968) (quoting *Old Colony Trust Co. v. Welch*, 25 F.Supp. 45, 48 (D. Mass. 1938)).

³² *Catholic Bishop*, 707 P.2d at 881.

³³ *Catholic Bishop*, 707 P.2d at 880.

³⁴ *Fairbanks North Star Borough*, 88 P.3d at 130.

³⁵ *Greater Anchorage Area Borough v. Sisters of Charity of the House of Providence*, 553 P.2d 467, 470 (Alaska 1976).

³⁶ *Id.* at 471.

³⁷ *Fairbanks North Star Borough v. Dena Nena Henash*, 88 P.3d 124, 131 (Alaska 2004).

³⁸ 553 P.2d 467 (Alaska 1976).

³⁹ *Id.* at 470.

⁴⁰ *Id.* at 471.

⁴¹ *Id.*

There are two minor exceptions that apply when a property is not "exclusively used for the exempt purpose: 1) if the use is directly incidental and vitally necessary, or 2) if the use is *de minimus*.⁴²

The first exception to "exclusive use" is if the property is incidental and vitally necessary to effectuate the exempt purpose. Typically, this requires three elements to be met: 1) payment is not sought as a result of a dominant profit motive; 2) payment is both incidental and vitally necessary for the exempt purpose, and 3) payment does not exceed operating costs.⁴³ Under this test, all circumstances must be considered.⁴⁴ Although, an exemption will not be lost where there is no dominant profit motive even when income exceed operating costs.⁴⁵ Therefore, whether there is a "dominant profit motive" is the most important element.⁴⁶

The second exception is if the use is *de minimus*. Under this exception "an occasional 'use of true minor import'" will be exempt.⁴⁷ Otherwise, the application of exclusivity would be "so literal and narrow that it defeats the exemption's settled purpose."⁴⁸ For example, the Alaska Supreme Court has found that heat or electricity supplied to nonexempt parts of a building and letting another organization use limited storage space was *de minimus*.⁴⁹

New to this second appeal is the City of Nome's argument that AS 09.45.030(c) bars an exemption from properties that receive rental "income." AS 09.45.030(c) puts a limitation on income derived from properties:

Property [that are used for religious purposes, hospital purposes, or educational purposes] from which income is derived is exempt only if that income is solely from use of the property by nonprofit religious, charitable, hospital, or educational groups.

⁴² There used to be three exceptions. *Catholic Bishop*, 707 P.2d at 874. The third exception applied to support properties that were "necessary to the convenient use of exempt property" based on AS 29.53.020(b)(3). *Id.* at 874, 892-93. However, the statute has been amended by the legislature and no longer contains that exception. *See* AS 29.45.030.

⁴³ *Dena Nena Henash*, 88 P.3d at 138-39. Note, *Dena Nena Henash* uses the language "vitally necessary" and "reasonably necessary." The Court is unsure if it mistakenly included "reasonably" instead of "vitally" which was the standard adopted previously. However, the Court finds that this does not change its analysis.

⁴⁴ *See, Greater Anchorage Area Borough v. Sisters of Charity of the House of Providence*, 553 P.2d 467, 468 (Alaska 1976).

⁴⁵ *Dena Nena Henash*, 88 P.3d at 138-39.

⁴⁶ *Matanuska-Susitna Borough v. King's Lake Camp*, 439 P.2d 441, 445 (Alaska 1968); *Sisters of Charity*, 553 P.2d at 468, 471-72.

⁴⁷ *The City of Nome v. Catholic Bishop*, 707 P.2d 870, 880 (Alaska 1985).

⁴⁸ *Id.* (quoting *Ass'n of the Bar of City of New York v. Lewisohn*, 34 N.Y.2d 143, 153 (N.Y. 1974)).

⁴⁹ *Catholic Bishop*, 707 P.2d at 893-94 (The Court held that heat or electricity supplied to nonexempt parts of a building was *de minimus*. The Court commented that the storage could potentially be *de minimus* but needed to be remanded for evidentiary findings.).

Our Supreme Court has interpreted “income” under this subsection to mean “payment for a service” for an otherwise exempt charitable activity.⁵⁰ Further, the court held that a property will still be exempt when receiving “income” if the property is (1) exclusively used for the exempt purpose; (2) there is no dominant profit motive; and (3) the payment is both incidental and *reasonably necessary* for the exempt activity.⁵¹

Property 1 “7-Plex” and Property 11 “20 plex”

Property 1 is a 7-Plex and property 11 is a 20-plex. The 7-plex houses 98% doctors and nurses who work at the hospital, 2% are new hires. The 20-plex similarly houses doctors, nurses, and new hires but, one or two of the 20 units have holdover tenants.⁵² The 20-plex also has 17 acres of unused land on the parcel.⁵³ In both properties the doctors and nurses are on 24-hour call and must be within walking distance of the hospital. The doctors are on rotations, on one-month, off one-month. And free housing is a necessary incentive for doctors. Similarly, nurses on-contract are provided free housing and the provision of housing is required by the funding agreement.⁵⁴ For new hires, the first 30 days are provided rent-free, afterwards a nominal rent is charged until permanent housing is found.⁵⁵ Since the hospital staff are on 24-hour call, the proximity to the hospital is important.⁵⁶ The property does not generate a profit after accounting for depreciation.⁵⁷

⁵⁰ *Catholic Bishop*, 77 P.2d at 888; *King’s Lake Camp*, 439 P.2d at 444.

⁵¹ *Catholic Bishop*, 77 P.2d at 889; *see also*, *King’s Lake Camp*, 439 P.2d at 444-45. The Court emphasized “reasonably” because the exception to the exclusive use requirement often uses the terminology “vitality” necessary (although the Court has also found that they use reasonably, but less often, *see note 43*).

⁵² Based on the testimony it appears there is one leftover tenant, although it looks like the speaker was interrupted and was not completely sure. Tr. (June 1, 2023) 94:14–95:17.

⁵³ Findings of Fact and Conclusions of Law, Nome Board of Equalization, June 7, 2023; Attachment to Administrative Review and Appeal Form for Property 11, at “2. Specific Use of 20-Plex.”

⁵⁴ Attachment to Administrative Review and Appeal Form for Property 1 and 11, at “2. Specific Use of 20-Plex,” “2. Specific Use of 7-Plex.”

⁵⁵ Attachment to Administrative Review and Appeal Form for Property 1 and 11, at “2. Specific Use of 7-Plex,” “2. Specific Use of 20-Plex.”

⁵⁶ The BOE heard testimony that there was not a proximity requirement *per se* but rather staff must be at the hospital within 20 minutes. Tr. (June 1, 2023) 80:14–25. The City of Nome argues that this is an important distinction that means there is no proximity requirement since most property in Nome is near the hospital. The Court gives this distinction little weight as there is still a compelling reason for proximity for Norton Sound’s hospital purpose.

⁵⁷ Attachment to Administrative Review and Appeal Form for Property 1, at “NSHC 7-Plex Financial Analysis;” “Norton Sound Corporate Housing Analysis for 20-Plex.”

The BOE determined that temporary staff, doctors, and contract nurses are provided the housing free of charge, while new hires are charged "full actual cost" after 30 days.⁵⁸

In *Norton Sound I*, the Court found property 1, the 7-plex, qualified for exemption as property used for "hospital purposes" and "charitable purposes," and also taxation of property was federally preempted through the ISDEAA.⁵⁹ The property meets all the elements for collateral estoppel: 1) involved the same parties; 2) involved the identical issue; 3) was resolved in a final judgment on the merits; and 4) been an issue essential to the final judgment.⁶⁰ However, in tax cases, collateral estoppel should be used cautiously "so as to avoid injustice" and without blind adherence.⁶¹ As a result, the Court will review property 1 in light of the City of Nome's new arguments in turn.

In this current appeal, the Court finds that property 1 and the occupied building for property 11 (excluding the unused land and the holdover tenants) are exclusively used for hospital purposes for the following reasons:

1. There is a housing shortage in the City of Nome
2. It is a necessary incentive to attract nurses and doctors
3. There is no dominant profit motive
 - a. After depreciation, Norton Sound makes no profit
 - b. New Hires are not charged rent for the first month and charged "full actual cost" afterwards
 - c. No rent is charged to on-rotation doctors and hires from the temporary staffing agency
4. Proximity of housing to hospital for doctors and nurses on-call since they must be at the hospital within 20 minutes
5. The housing provision is part of the funding agreement
6. Free housing is required to be provided by the temporary staffing agency

The Court finds property 1 falls squarely within the definition of hospital purposes. Consequently, the Court finds it unnecessary to look at the exceptions to the exclusive use requirement nor to employ the canon of strict construction.⁶² Additionally, property 1 qualifies

⁵⁸ Findings of Fact and Conclusions of Law, Nome Board of Equalization, at para. 20, 23, June 7, 2023.

⁵⁹ *Norton Sound I Decision*, 15.

⁶⁰ *State, Dep't of Revenue v. BP Pipelines (Alaska) Inc.*, 354 P.3d 1053, 1068 (Alaska 2015).

⁶¹ *Comm'r v. Sunnen*, 333 U.S. 591, 599-600 (1948). In tax cases, the Alaska Supreme Court has held that collateral estoppel applies as set forth in *Sonnen*. *State v. Baker*, 393 P.2d 893, 898 (Alaska 1964).

⁶² Notably, the Court finds that the City of Nome devoted many words arguing that Norton Sound's use of the property is not "necessary" for hospital purposes. However, this argument focuses on the *exception* to the general rule that allows property that is not exclusively used for hospital purposes to be included when it is vitally necessary and incidental to hospital purposes. *Norton Sound I Decision*, 13-15.

under the charitable purposes exemption, as explained in *Norton Sound I*, ISDEAA contracts provide a “public benefit” and are charitable.⁶³

Regarding property 11, the 20-plex, the Court addresses the addition of the one or two non-exempt holdover tenants. The Court finds that holdover tenants would cause the property to fail the exclusive use requirement. The holdover tenants are not Norton Sound employed, nor do they fulfill any hospital purpose. Ordinarily, the Court would remand the apportionment of property 11 to exclude the space used by the holdover tenants. However, as explained later in this opinion, the occupied building is federally preempted, so the Court does not order remand for this purpose.⁶⁴

The Court finds the vacant land included with property 11 is not used for hospital purposes, since the land does not have a current hospital purpose, nor is the vacant land federally preempted. However, no specific value is identified for the unused land, therefore, property 11 must be remanded to determine the value of the vacant land in proportion to the rest of the property.⁶⁵

The City of Nome argues that property 1 and property 11 are not exclusively used for hospital purposes because the “actual use” is for the private tenant’s use and not for hospital purposes.⁶⁶ This argument, worded differently, or in different contexts, figures prominently in

⁶³ *Norton Sound I Decision*, 18; see also, *Fairbanks N. Star Borough v. Dena Nena Henash*, 88 P.3d 124, 134-35 (Alaska 2004) (stating that activities covered under ISDEAA “is essentially charitable, i.e., is motivated by ‘good will and a desire to add to the improvement of the moral, mental, and physical welfare of the public generally....’ We conclude that [tribal organization’s] activities in satisfying its Self-Determination Act contracts with the government are motivated by purposes that are properly characterized as charitable. This satisfies the charitable-purposes criterion for exemption in Alaska.”).

⁶⁴ The Court notes, that one may argue that the ISDEAA and federal preemption does not cover the holdover tenants. However, as a matter of law, Norton Sound is a “successor landlord” and assumes the conditions of the prior lease and must allow the holdover tenants to remain until their leases expire. Therefore, the Court deems it likely would impede Norton Sound to complete their federal obligations to divert funds for relatively inconsequential taxes. See, *DLI Properties LLC v. Hill*, 240 Cal. Rptr. 3d 306, 312 (Cal. App. Dep’t Super. Ct. 2018) (“After a property is sold or transferred, the transferee takes subject to the existing lease; this new owner steps into the landlord’s shoes and becomes the successor landlord, assuming the terms and conditions of the lease the tenant had with the prior owner.”).

⁶⁵ The tax assessor valued the land at \$192,300 and the building at \$4,515,400, but neglected to apportion the land and curtilage surrounding the building from the 17 acres of unused land. Attachment to Administrative Review and Appeal Form for Property 11, at “Administrative Review and Appeal Form.”

⁶⁶ Appellee’s Br. 19-20, 25. In the same way, the City of Nome argues that because the tenants must report the benefit as income for taxes, the “actual use” is personal income.

many of the City of Nome's arguments.⁶⁷ The City of Nome's argument fails because it takes an unreasonably literal approach to the term "actual use."

The City of Nome's interpretation of "actual use" fails to distinguish a personal use (or any other use) from a commercial use.⁶⁸ While the City of Nome's argument is creative, if the "actual use" vs. "owner's use" distinction were taken so literally it completely swallows the exemption.⁶⁹ Neither Norton Sound nor any third-party, is running a side-business, instead their "actual use" is to provide housing for new hires, on-rotation doctors, and contract nurses – a necessary incentive in the funding agreement for hiring hospital staff in remote Alaska. Most importantly, this "actual use" fits within the plain meaning of a hospital purpose and provides a public benefit to the region.

The City of Nome attempts to buttress their argument that property is not exclusively used for hospital purposes by relying primarily on *Harmon*,⁷⁰ *Sisters of Charity*,⁷¹ and *Catholic Bishop*.⁷² However, other than *Sisters of Charity* which was already discussed,⁷³ these cases are easily distinguished as they involve religious properties which are subject to specified statutory limitations governing exemptions for religious residences.⁷⁴ Further, regarding *Catholic Bishop*, the City of Nome's argument is misleading ignoring its factual and legal context.⁷⁵

The City of Nome also argues facts to show the housing is not "necessary" for a hospital purpose.⁷⁶ By making these arguments the City of Nome prematurely shifts the analysis away from

⁶⁷ For example, the City of Nome argues that when the 7-plex was bought by Norton Sound and title changed the actual use did not change. In their words, "the actual use... did not change when title was conveyed" to Norton Sound. Appellee's Br. 25. However, this argument conveniently ignores that the prior owner of the property was running a for-profit rental business. By eliminating the middleman and changing ownership, the property is now exclusively used for non-profit hospital purposes and the "actual use" has changed.

⁶⁸ See discussion about *Greater Anchorage Area Borough v. Sisters of Charity of the House of Providence* on page 5 of this order.

⁶⁹ If this logic were applied, as the City of Nome suggests, the main hospital would be ineligible for an exemption because their employees receive "income" from the wages that Norton Sound pays. In addition, a mortgage on a building or insurance payments would cause the property to be ineligible for the exemption.

⁷⁰ *Harmon v. N. Pac. Union Conf. Ass'n of Seventh Day Adventists*, 462 P.2d 432 (Alaska 1969).

⁷¹ *Greater Anchorage Area Borough v. Sisters of Charity of the House of Providence*, 553 P.2d 467 (Alaska 1976).

⁷² *The City of Nome v. Catholic Bishop*, 707 P.2d 870, 880 (Alaska 1985).

⁷³ See discussion about *Greater Anchorage Area Borough v. Sisters of Charity of the House of Providence* on page 5 of this order.

⁷⁴ See AS 09.29.45.030(b). *Catholic Bishop*, 707 p.2d at 885, 894 (holding that nurses staying on church property were not tax exempt for religious purposes).

⁷⁵ The Alaska Supreme Court held that nurses staying on property owned by Catholic Bishop was not tax exempt for religious purposes. The Supreme Court has never held as Norton Sound argues that nurses' residences are not exempt for hospital purposes; if the Court had there would be little reason for this current dispute. *Catholic Bishop*, 707 P.2d at 885 (stating that Norton Sound nurses staying on catholic church property and donating part of their paycheck is not a religious purpose); Appellee's Br. 20-22.

⁷⁶ Norton Sound argued that (1) since there is alternative housing available in Nome there is no hospital purpose; (2) IRS' categorization of housing as "income" this is not a hospital purpose; (3) the hospital staff are not required to

“hospital purposes” to the “incidental but vitally necessary” exception to exclusive use.⁷⁷ This is the same flawed reasoning the Court rejected in *Norton Sound I*.⁷⁸ In this case, Norton Sound has presented ample evidence showing there is a hospital purpose.⁷⁹ Because Norton Sound needs to prove hospital *purpose* not that a hospital purpose is *necessary* the City of Nome’s many similar arguments fail.⁸⁰

Based on the above, the Court finds property 1 and the occupied parts of the building of property 11 qualify for tax exemption. However, the Court remands apportionment for property 11 to determine the value of the 17 acres of unused property in proportion to the occupied land.⁸¹ The Court also finds that since the use of the occupied building on property 11 is federally preempted, no remand is needed to apportion the space used by the holdover tenants.

Property 5 “Main Hospital - Cafeteria” Analysis

Property 5 is the main hospital and the tax assessor initially denied the main hospital any exemption. It appears the tax assessor did not give notice as to why the hospital was denied the tax exemption until the administrative hearing.⁸² Later, the BOE found the main hospital was 99.24%

stay at the housing and is therefore not a hospital purpose;” and (4) that Norton Sound was charging “market rates” contradicting the BOE finding that they charged “full actual cost.” See Findings of Fact and Conclusions of Law, Nome Board of Equalization, at para. 20, 22, 23, June 7, 2023.

⁷⁷ *Norton Sound I Decision*, 13-15.

⁷⁸ *Id.* (“[The City of Nome] prematurely shifted exemption analysis away from determining whether a property came within the ordinary meaning of ‘hospital purpose’ and instead pushed exemption to an exception to the ‘exclusive use’ requirement as a secondary avenue for exemption.”).

⁷⁹ Norton Sound presented evidence that the housing is required by the FA, the staffing contract, and for on-call 24-7 response times. Likewise, Norton Sound attests there “are no efficient or feasible short-term rentals” and has conducted a housing survey showing the housing shortage in the city. See, Attachment to Administrative Review and Appeal Form for Property 11, at “2. Specific Use of 20-Plex.”

⁸⁰ Among the various arguments the City of Nome made based on “hospital necessity,” they argued that (1) since there is alternative housing available in Nome there is no hospital purpose; (2) IRS’ categorization of housing as “income” causes the housing to lose its hospital purpose; (3) the hospital staff are not required to stay at the housing and is therefore not a hospital purpose;” and (4) that Norton Sound was charging “market rates” contradicting the BOE finding that they charged “full actual cost.” These arguments fail because they use the wrong test, requiring hospital necessity, but also because they lack evidentiary relevance. Whether the IRS categorizes an employee benefit as income or whether alternative housing may be “available” does not change whether the properties may fulfill a hospital purpose. In this case, Norton Sound has provided ample evidence of the importance of the housing for hospital purposes and the difficulty of finding housing. By relying on “available housing,” it seems that Norton Sound would be in a precarious situation if a necessary doctor were unable to find housing in a timely manner.

⁸¹ The tax assessor valued the land at \$192,300 and the building at \$4,515,400, but neglected to apportion the land and curtilage surrounding the building from the 17 acres of unused land. Attachment to Administrative Review and Appeal Form for Property 11, at “Administrative Review and Appeal Form.”

⁸² It appears from the transcript that the assessor did not give the reason why the tax exemption was denied but did ask for space apportionment of the cafeteria and Norton Sound provided that in 10 days. Tr. (June 1, 2023) 49-52.

exempt.⁸³ And the BOE found the public cafeteria was not exempt because it was not exclusively used for hospital purposes.

The Court finds that providing meals to patients, their visitors, escorts, and medical staff are all hospital purposes. However, it is unlikely that the food and drink sold to the “general” public is considered a hospital purpose. The extent to which the general public uses the cafeteria was not established before the BOE. Under strict construction the cafeteria then would arguably no longer be *exclusively* used for hospital purposes.

There are two minor exceptions to the “exclusive use” doctrine: 1) if the use is incidental and vitally necessary; or 2) if the use is *de minimus*. A key factor in determining whether a use is incidental and vitally necessary is if there is a “dominant profit motive.” The Court finds there is not enough information to determine whether there is a “dominant profit motive.” Nor is there enough information to determine whether a *de minimus* percentage of patrons are public at large or hospital staff, patients, escorts, patients’ family, or visitors. It may also be a charitable or hospital purpose if the food is offered below market rate for the benefit of patient’s visitors.

While it is the taxpayer’s burden to prove whether a tax exemption applies, it appears that that Norton Sound was not given notice of the reason for denial before the BOE hearing. Typically, the Court would remand to the BOE to determine what percentage of what type of patrons use the cafeteria. However, since the Court will find (later in this order) that federal preemption applies to the cafeteria, no remand on this point is necessary. Also, because Norton Sound did not receive proper notice, the Court cannot find that Norton Sound waived the argument for the *de minimus* exception as the City of Nome argues.⁸⁴

Property 6 “BHS Building” Analysis

Property 6, the “BHS Building,” is currently under renovation to serve as maternal and patient housing. Previously, the BHS building was used for behavioral health services. The City of Nome argues that the “actual use” of the property is construction. The BHS building is currently

⁸³ Findings of Fact and Conclusions of Law, Nome Board of Equalization, at para. 46 in conclusions of fact, June 7, 2023.

⁸⁴ Also, the City of Nome’s argument that Norton Sound “waived” the *de minimus* argument ignores that the broader issue of statutory exemption was argued by Norton Sound. While it is the taxpayer who has the burden to produce evidence to prove an exemption it seems the BOE has a duty to apply the statute to see if the property meets a “hospital purpose.” See *City of Nome v. Catholic Bishop*, 707 P.2d 870, 880 (Alaska 1985). (applying the *de minimus* and the incidental and vitally necessary exceptions for the first time on appeal without addressing whether it was “waived.”).

part of the funding agreement, but has no specific federal activity.⁸⁵ Although, the funding agreement says that NSHC is to provide these services at this location.⁸⁶

Generally, unused property is not exempt.⁸⁷ In addition, the Alaska Supreme Court has found that property that was still under construction (having never received an exemption) was not exempt until completed.⁸⁸ Further, in *Cedars*, a California case, the court found that since the exemption is based on "use" there is no exemption for future use because of strict construction.⁸⁹

However, whether a *temporarily vacant* property under renovation that was previously granted an exemption may continue to have a tax-exempt purpose is an issue of first impression.⁹⁰ There are suggestions that our Supreme Court would find an exemption under these circumstances. In *Ketchikan Gateway*, our Supreme Court found that federal preemption did not apply to unused property since it was not under pervasive federal oversight.⁹¹ Since the court's decision was found on other grounds, the majority did not consider the issue of whether temporary unused property qualified for tax exemption, but mentioned it in a footnote indicating approval.⁹²

Based on *Ketchikan Gateway* this Court finds that the BHS building, property 6, is exempt for hospital purposes and charitable purposes as part of ISDEAA.⁹³ The City of Nome's counterarguments that the "actual use" is construction is superficial in light of the property's past use and NSHC's obligations under the funding agreement.⁹⁴ Further, unlike *Ketchikan Gateway*

⁸⁵ See, Appellant's Br., 25; Appellee's Br., 27..Under the ISDEAA any federal program, function, service, or activity is called a PFSA.

⁸⁶ Exc. 156.

⁸⁷ *Henash v. Fairbanks North Star Borough*, 265 P.3d 302, 307 (Alaska 2011). Also, while it is unclear in *King's Lake Camp* whether the Court is saying vacant property would not be exempt, it is a reasonable interpretation. See *Matanuska-Susitna Borough v. King's Lake Camp*, 439 P.2d 447 (Alaska 1968).

⁸⁸ *City of Nome v. Catholic Bishop*, 707 P.2d 870, 895, 895 n.51 (Alaska 1985).

⁸⁹ *Cedars of Lebanon Hosp. v. Los Angeles Cnty.*, 35 Cal.2d 729, 742-43 (1950).

⁹⁰ Specifically, the issue is for a property that was granted an exemption and is only temporarily unused while undergoing renovations or repurposing. While this issue is mentioned in *Ketchikan Gateway* it is resolved on different grounds. See *infra* notes 73-76.

⁹¹ *Ketchikan Gateway Borough v. Ketchikan Indian Corp.*, 75 P.3d 1042, 1048 (Alaska 2003).

⁹² *Id.* at n. 27. The footnote cites favorably the dissenting opinion's argument that the exemption would apply if the issue was before the Court. See also, *Id.* at n.18 (Fabe J. with Carpentieri j. dissenting).

⁹³ ISDEAA contracts provide a "public benefit" and are charitable. *Norton Sound I Decision*, 18; *Fairbanks N. Star Borough v. Dena Nena Henash*, 88 P.3d 124, 134-35 (Alaska 2004).

⁹⁴ The City of Nome also makes a philosophical argument that any intended future use is speculative and not really a "use" at all. In this way, the City of Nome argues that there is no amount of evidence that can prove a future use. The Court notes that the City of Nome's position is extreme and untenable, no party bears a burden of proof with absolute certainty. In this case, Norton Sound has contractual obligations and presented strong evidence of the intended use. Further, a health care facility that is operating under the ISDEAA should be "granted reasonable flexibility in extending its tax exemption to temporarily unused spaces in the building – a situation not uncommon in such facilities." *Ketchikan Gateway Borough*, 75 P.3d at 1049 (Fabe J. and Carpentieri J. dissenting).

where the future use was “unknown,” Norton Sound has plans currently underway.⁹⁵ And because the property is listed in the ISDEAA funding agreement the identified future use lends weight to this determination.

Property 7 “HAT Building” Analysis

The HAT building was first denied exemption in this year’s appeal. In previous years the property has been leased by the State of Alaska for public health nursing and support. Public health nursing and support is part of NSHC’s responsibility under the funding agreement. Under the lease terms NSHC is responsible for insurance, utilities, heating oil, general maintenance, and snow removal.⁹⁶ The property operates at a loss when depreciation is included.⁹⁷ The HAT building lease does not have terms restricting the State’s use of the premises.

Public health nursing is directly related to treating the sick or injured and is for the “improvement of the physical welfare of the public.”⁹⁸ Therefore, the Court finds that the HAT building qualifies for exemption under both charitable purpose and hospital purpose. Additionally, the Court finds the HAT building is exclusively used for those exempt purposes. There is no need to employ the canon of strict construction since it clearly is being used exclusively for hospital purposes.

The City of Nome argues that under *Sisters of Charity*, doctor’s rented space was not exempt.⁹⁹ But, the City of Nome fails to mention that in *Sisters of Charity* the doctors were for-profit, the space was leased at market rates, they served different patients, and the doctors were not employed with the hospital.¹⁰⁰ The BHS building is easily distinguished as there is no dominant profit motive and the property is not used for “private business purposes.”¹⁰¹

The City of Nome also argues AS 29.45.030(c) would disqualify Norton Sound from qualifying for an exemption. AS 29.45.030(c) allows an exemption for property that receives “income” only if income is derived “solely from use of the property by nonprofit religious,

⁹⁵ *Id.* at 1044.

⁹⁶ Attachment to Administrative Review and Appeal Form for Property 7, at “2. Specific Use of HAT.”

⁹⁷ HAT Building Net Lease Revenue Analysis FY22.

⁹⁸ *Matanuska-Susitna Borough v. King’s Lake Camp*, 439 P.2d 441, 445-46 (Alaska 1968).

⁹⁹ Appellee’s Brief at 19; *Greater Anchorage Area Borough v. Sisters of Charity of the House of Providence*, 553 P.2d 467, 471 (Alaska 1976).

¹⁰⁰ *Sisters of Charity*, 553 P.2d at 468, 470-1 (“These doctors, although enjoying staff privileges, are not employed by Providence Hospital, and their patients are not necessarily patients of the hospital. Thus, the actual use... [is] for [the] office space by doctors [sic.] engaged in the private practice of medicine.”).

¹⁰¹ *Id.* at 471.

charitable, hospital, or educational groups.”¹⁰² The City of Nome argues that since “government” or “state” entities are omitted from this list, the property would lose its exemption status. However, this restrictive reading goes against precedent holding that property will not be “disqualified” if there is no “dominant profit motive” and the use is incidental and reasonably necessary to fulfill the organization’s charitable purpose.¹⁰³ The Court finds that the partnership with the State to provide public health nursing in the BHS building is reasonably necessary to fulfill Norton Sound’s hospital purpose, and there is no dominant profit motive.

Federal Preemption Analysis

Federal preemption analysis in a case involving taxation of a tribal organization is unique and does not involve the same standards of preemption developed elsewhere.¹⁰⁴ The Court must apply a flexible analysis “sensitive to the particular facts and legislation involved.”¹⁰⁵ The Court weighs “a particularized examination of the relevant state, federal, and tribal interests” in light of the “broad policies” undergirding the tribal “notions of sovereignty.”¹⁰⁶ In Alaska the controlling case applying federal preemption involving taxation of an Indian organization is *Ketchikan*

¹⁰² AS 29.45.030(c).

¹⁰³ *King’s Lake Camp*, 439 P.2d at 444-45 (Alaska 1968), reads in part:

In short, property which is used exclusively for nonprofit charitable purposes does not thereby become disqualified for a charitable tax exemption solely because rents or income are derived therefrom. If it appears that the rentals or income are not derived as a result of a dominant profit motive on the charity’s part, but are incidental to and reasonably necessary for the accomplishment of its charitable purposes, then such rentals or income are not within the ambit of AS 29.45.030(c)’s] limitation upon properties which qualify for a charitable exemption.

The Court also finds that the fact that “state entity” was omitted does not show an intent to preclude nonprofits from partnering with state entities to fulfill their tax-exempt purpose. More likely, “state entities” were left out because it would be redundant since state entities are already tax exempt.

AS 29.45.030(a)(1) (stating in part: “(a) The following property is exempt from general taxation: ... (1) municipal property, including property held by a public corporation of a municipality, *state property*...” (emphasis added)).

¹⁰⁴ *Ketchikan Gateway*, 75 P.3d 1042, 1046 (Alaska 2003) (“Implied federal preemption in Indian tax cases is distinct from federal preemption in other areas of the law.”); *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163, 176-77 (1989) (“[Q]uestions of pre-emption in this area are not resolved by reference to standards of pre-emption that have developed in other areas of the law, and are not controlled by ‘mechanical or absolute conceptions of state or tribal sovereignty.’”).

¹⁰⁵ *Id.* at 176.

¹⁰⁶ *Ramah Navajo Sch. Bd., Inc. v. Bureau of Revenue of New Mexico*, 458 U.S. 832, 838 (1982).

*Gateway*¹⁰⁷ which in turn relies on the U.S. Supreme Court cases *White Mountain Apache Tribe v. Bracker*¹⁰⁸ and *Ramah Navajo Sch. Bd., Inc. v. Bureau of Revenue of New Mexico*.¹⁰⁹

The principal test contains two elements: (1) are the properties subject to comprehensive and pervasive federal oversight, and (2) is the state's interest in taxation of the properties relatively inconsequential.¹¹⁰ Taxpayer exemptions are strictly construed in favor of the taxing authority and against the taxpayer.¹¹¹ But, when federal law necessitates an exemption "ambiguities in federal law should be resolved in favor of the tribe" and "construed generously."¹¹³

Because this case involves an almost identical implied federal preemption analysis as found in *Norton Sound I*, ordinarily collateral estoppel would prevent re-litigation over this issue. However, in tax cases, collateral estoppel should be used cautiously "so as to avoid injustice" and without blind adherence.¹¹⁴ Consequently, the Court will reassess federal preemption in part by looking at the new facts and arguments that the parties raise. However, the Court does not readdress the identical arguments raised from *Norton Sound I* and reincorporates its decision by reference.

The Court finds, as explained in *Norton Sound I*, that all occupied buildings (including temporary space for holdover tenants and cafeteria space) are federally preempted since the ISDEAA regulation governing Indian Health Services and Norton Sound is comprehensive and pervasive.¹¹⁵ In addition, the Court finds that the City of Nome's taxation interest in these buildings is relatively inconsequential. Regarding property 11, the Court finds:

- The unused vacant land is not federally preempted. As explained in *Norton Sound I*, the unused land is not comprehensively and pervasively regulated and therefore is not federally preempted.¹¹⁶
- Remand to the City of Nome Board of Equalization is necessary to determine and apportion the value of the unused land (as opposed to the occupied land).

The Court next addresses the City of Nome's new argument related to the first element, whether the properties are subject to comprehensive and pervasive federal oversight. The City of

¹⁰⁷ *Ketchikan Gateway v. Ketchikan Indian Corp.*, 75 P.3d 1042 (Alaska 2003).

¹⁰⁸ 448 U.S. 136 (1980).

¹⁰⁹ 458 U.S. 832 (1982).

¹¹⁰ *Ketchikan Gateway*, 75 P.3d at 1048.

¹¹¹ *Id.* at 1045.

¹¹³ *Id.*; *Ramah Navajo Sch. Bd.*, 458 U.S. at 838.

¹¹⁴ *Comm'r v. Sunnen*, 333 U.S. 591, 599-600 (1948). In tax cases, the Alaska Supreme Court has held that collateral estoppel applies as set forth in *Sonnen*, a U.S. Supreme Court case. *State v. Baker*, 393 P.2d 893, 898 (Alaska 1964).

¹¹⁵ *Norton Sound I Decision*, 20-24.

¹¹⁶ *Id.* at 23-24.

Nome argues that under *Ketchikan Gateway*, even if federal law comprehensively and pervasively regulates Norton Sound, the individual properties are not *individually* pervasively regulated¹¹⁷ because the federal law must “regulate the most minute details”¹¹⁸ of the individual properties.

The Court rejects this argument for at least two reasons. First, *Ketchikan Gateway* is easily distinguished because the property in *Ketchikan Gateway* was unused with no future known purpose.¹¹⁹ Second, the City of Nome’s argument confuses contextual details of *Bracker* with the court’s holding. In that case, the Court found that contextually “the most minute details” were regulated – not that federal preemption required regulation of the most minute details.¹²⁰ There is no rule, as the City of Nome suggests, that requires finding that the most minute detail must be comprehensively and pervasively regulated for federal preemption to apply. Therefore, the City of Nome’s argument that Norton Sound must regulate the “most minute detail” is incorrect.

The Court next addresses arguments raised by the City of Nome that their taxation interest is not relatively inconsequential. In *Norton Sound I*, the City of Nome argued the tax was for K-12 education, road maintenance, firefighters, and police.¹²² In this current appeal, the City of Nome argues the municipality’s tax is not “inconsequential”¹²³ for different reasons: (1) Nome’s tax funded services are essential to Norton Sound’s hospital purposes, and (2) the goals of ISDEAA are advanced by the services of the City of Nome.

First, the City of Nome argues their services are essential to Norton Sound. They argue that unless Norton Sound uses only snowmobiles and helicopters, they must use roads maintained by the City of Nome. Similarly, electricity, water, sewage, law enforcement, and regulations all are

¹¹⁷ Appellee’s Br., 34. The Court also notes that the dissenting opinion in *Ramah* makes this *exact* argument, arguing that the specific activity “school construction” was not pervasively regulated. This argument failed in that case which similarly involves ISDEAA. *Ramah*, 458 U.S. at 851 (J. Rehnquist, White, and Stevens dissenting) (“But the regulations on which the Court relies do not regulate school construction, which is the activity taxed. They merely detail procedures by which tribes may apply for federal funds in order to carry out school construction.”).

¹¹⁸ The City of Nome took the “most minute detail” language from *Ketchikan Gateway*, 75 P.3d at 1047, which was quoting *Cotton Petroleum*, 490 U.S. at 184, which in turn was quoting *White Mountain Apache Tribe*, 448 U.S. at 149.

¹¹⁹ *Ketchikan Gateway* nor any other case suggests individual property, or rooms need to be pervasively regulated as the City of Nome suggests. For example, no case looks at a storage room and cites the lack of regulations governing their storage practices to conclude the room is not individually pervasively regulated.

¹²⁰ *White Mountain Apache Tribe*, 448 U.S. at 149 (“the taxes at issue would undermine that policy in a context in which the Federal Government has undertaken to regulate the *most minute details* of timber production.” (emphasis added)). This was quoted in part in *Ketchikan Gateway*, 75 P.3d at 1047 (quoting *Cotton Petroleum*, 490 U.S. at 184).

¹²² Appellee’s Br., 44, Nov. 10, 2022.

¹²³ The rule requires the Court to assess whether the tax is *relatively* inconsequential something the City of Nome did not address.

required to be provided to the property and are necessary to operate the buildings. And, without the education, recreation opportunities, and city-wide regulations Norton Sound would have more difficulty attracting qualified medical personnel.

This argument is unavailing. The Court finds Nome's taxation is relatively inconsequential. This is so since the Court must weigh the City of Nome's interest against the broad policies of tribal sovereignty, economic development, and providing health services to the *entire region*. While the City of Nome certainly maintains the municipal roads and provides some essential (and non-essential) services to Norton Sound these are *relatively* inconsequential to providing health services to a region comprising over 40,000 square miles. This is not unlike *Bracker*, where the taxpayer timber company used Arizona-funded State highways.¹²⁴ In that case, the Court characterized this "essential" tax as a "generalized interest in raising revenue."¹²⁵ Most importantly, providing essential services is different than "actively seeking tax revenues for the purpose of constructing, or assisting in the effort to provide" health services to the Bering Strait region.¹²⁶ The City of Nome's generalized interest in taxation cannot be said to be actively assisting Norton Sound's health services. Therefore, "having declined to take any responsibility" for the health services for the Bering Strait region (including within the municipality), the City of Nome is "precluded from imposing an additional burden" on Norton Sound.¹²⁷

Second, the City of Nome argues that the broader ISDEAA goals are advanced by the city services of the City of Nome. Specifically, the City of Nome argues they are supporting the broader goals of the ISDEAA since Norton Sound is authorized in the funding agreement to pursue many different health programs that *overlap* with some of the City of Nome's city services.¹²⁸ For example, under the ISDEAA funding agreement Norton Sound *may pursue* programs to assist in water sanitation and preventing substance abuse. The City of Nome argument presents a broad philosophical approach that would result in nearly any government service that tangentially benefit the public health to be active assistance. However, while the City of Nome's services may benefit

¹²⁴ In *Bracker*, where a state tax is in dispute, the dissent points out that the taxpayer used state highways. *Bracker*, 448 U.S. 136, 154 (1980) ("[the taxpayer's] use of the Arizona state highways within the reservation is extremely limited,[but] it does not dispute its tax liability for such use.").

¹²⁵ *Id.* at 151.

¹²⁶ *Keetchikan Gateway Borough*, 75 P.3d at 1047 (quoting *Ramah* 458 U.S. at 843 n.7).

¹²⁷ *Ramah*, 458 U.S. at 843. The Court finds it instructive that if Norton Sound were not in the region, the City of Nome would likely need to build or fund a hospital. Norton Sound has filled a gap in governmental services that the City of Nome does not need to provide.

¹²⁸ Appellee's Br. 41-42.

public health (generally), they are not particularly relevant to Norton Sound fulfilling their contractual obligations under the funding agreement.¹²⁹

Summary

The Court finds that all of the occupied buildings (excluding holdover tenants) qualify for tax exemption as property used exclusively for hospital purposes and charitable purposes under AS 29.10.336(a)(3). In addition, the Court finds that all occupied buildings in this appeal are federally preempted from taxation.

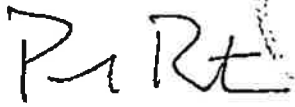
Based on the above, IT IS ORDERED, that:

1. The decision of the City of Nome Board of Equalization denying tax exemption for property 1, 5, 6, and 7 is REVERSED since the Court finds these properties qualify for tax exemption.
2. As to property 11, the decision of the City of Nome Board of Equalization is REVERSED in part:
 - a. The occupied building, the land on which it sits, and its curtilage qualifies for tax exemption;
 - b. The vacant land on the property does not qualify for tax exemption; and
 - c. The Court REMANDS to the City of Nome Board of Equalization to determine the value of the unused land in proportion to the occupied building.

IT IS SO ORDERED.

Dated at Kotzebue, Alaska, this 16th day of January, 2025.

I certify that on January 16, 2025
copies of this document were sent to: Geoffrey Strommer
CLERK 16 13 Charles Cacciola


PAUL A. ROETMAN
Superior Court Judge

¹²⁹ To put this in perspective, the City of Nome argues that the Nome schools educate students on substance abuse, therefore the City of Nome assists Norton Sound by benefitting "public health." This is not a case where the tax revenues are "for the purpose of constructing, or assisting in the effort to provide" health services to the region. *Ketchikan Gateway Borough*, 75 P.3d at 1047 (quoting *Ramah* 458 U.S. at 843 n.7).

