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**NOME COMMON COUNCIL
BOARD OF EQUALIZATION MEETING AGENDA
MONDAY, MAY 20, 2024 at 5:30 PM
COUNCIL CHAMBERS IN CITY HALL**

102 Division St. ▪ P.O. Box 281 ▪ Nome, Alaska 99762 ▪ Phone (907) 443-6663 ▪ Fax (907) 443-5345

ROLL CALL

APPROVAL OF AGENDA

CITIZEN'S COMMENTS

UNFINISHED BUSINESS

A. NSHC's Proposed Findings of Fact and Conclusions of Law,

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B. Assessor's Proposed Findings of Fact and Conclusions of Law,

PAGE 17

ADJOURNMENT

IN THE MATTER OF

APPEALS FROM THE DECISIONS OF THE CITY OF NOME ASSESSOR DENYING
APPLICATIONS FOR AN EXEMPTION FROM REAL PROPERTY TAX ON: A) BLOCK
91, LOTS 3 & 4; B) MS 1298; C) BLOCK 110, LOTS 1 & 2; AND
D) BLOCK 110, LOT 3A

Appellant: Norton Sound Health Corporation
Appellant's Representative: Steve Osborne & Richard Frye, Hobbs, Straus, Dean & Walker, LLP

Appellee: City of Nome Tax Assessor
Appellee's Representative: Charles Cacciola, Chandler, Falconer, Munson & Cacciola, LLP

Having sat to hear an appeal pursuant to Sections 17.20.050 and 17.20.060 of the Nome Code of Ordinances and held a properly noticed public hearing on the above-referenced appeals on May 1, 2024, considered all the evidence in the record and all of the arguments made at the appeal hearing, and having voted to reverse the decision of the City Assessor the Board of Equalization of the City of Nome, adopts the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

1. The properties involved in this appeal are:
 - A. Tax Parcel 001.221.05A: Block 91, Lots 3 & 4 ("7-Plex Property")
 - B. Tax Parcel 192.1.085: MS 1298 ("20-Plex Property")
 - C. Tax Parcel 001.211.03A: Block 110, Lots 1 & 2 ("BHS Property")
 - D. Tax Parcel 001.211.03B: Block 110, Lot 3A ("HAT Property")

all of which are located within the boundaries of the City of Nome (collectively "the Properties").

2. The Properties are owned by the Norton Sound Health Corporation ("NSHC").
3. On or about January 26, 2024, NSHC submitted applications for exemption from City of Nome 2024 real property tax assessed against each of the Properties.
4. On or about March 20, 2024, the City Assessor issued assessment notices against each of the Properties, providing that the entire assessed value of the Properties is subject to tax. The Notices acted as a denial of NSHC's applications for exemption.
5. The Nome Code of Ordinances (NCO) authorizes the City Assessor to approve exemption applications, including for exemptions required by federal or Alaska State law,

including Alaska Statute (AS) 29.45.030 and NCO § 17.02.020. *See* NCO § 17.02.030.

6. The March 20, 2024 Notices did not provide the City Assessor’s factual or legal bases for denial of NSHC’s applications for exemptions.

7. The March 20, 2024 Notices granted a right of appeal by the deadline of April 19, 2024.

8. NSHC timely appealed the assessment notices.

9. On May 1, 2024, the Board of Equalization (“Board”) held an appeal hearing for the Properties.

10. At the Board hearing on May 1, 2024, NSHC was provided for the first time the “Assessor’s Reason(s) for Decision,” included on the second page of the City of Nome’s Administrative Review and Appeal Forms for each of the Properties. The Forms did not include the City Assessor’s factual or legal basis for denial of NSHC’s applications for exemption. Rather, the City Assessor asserted that the “recognition of exempt status . . . is not under the purview of the assessor’s office.”

11. NSHC did not appeal the valuations of the Properties, but only the determination that this value is taxable.

12. The Board has heard similar appeals filed by NSHC in 2022 and 2023. NSHC appealed the Board’s 2022 decision to the superior court (“2022 Judicial Appeal”).

13. In its decision in the 2022 Judicial Appeal (“2022 Court Decision”), the superior court held that each of NSHC’s non-vacant properties, including the 7-Plex Property, were entitled to exemption from municipal taxation on each of three independent bases: 1) that the taxes were impliedly preempted by federal law; 2) that the properties were used by NSHC exclusively for “hospital purposes” under AS 29.45.030(a)(3); and 3) that the properties were used exclusively by NSHC for “charitable purposes” under AS 29.45.030(a)(3). 2022 Court Decision **16, 19, 23.

14. In the 2022 Court Decision, the superior court held that federal law did not impliedly preempt taxation against any of NSHC’s vacant properties, including the BHS Property which was vacant at that time. 2022 Court Decision **23–24.

15. NSHC did not assert exemption for the vacant properties under the “hospital purposes” or “charitable purposes” exemptions under AS 29.45.030(a)(3) in its 2022 appeals to the Board. 2022 Court Decision **5–6.

16. In the 2022 Court Decision, the superior court did not decide the issue of sovereign immunity as to any of the properties. *25 (stating “there is no need for the Court to rule on whether sovereign immunity bars [taxation]”).

17. The 2022 Court Decision was issued after the Board heard and decided NSHC’s appeals for the 2023 tax year.

18. The City appealed the 2022 Court Decision to Alaska Supreme Court only as to the 7-Plex Property. That appeal is pending.

19. NSHC is a tribally owned and operated, independent, nonprofit health care organization incorporated in Alaska. 2022 Court Decision *1. NSHC operates a regional hospital in Nome, village clinics, and additional facilities that train medical and nonmedical staff and that house doctors, nurses, and patients. 2022 Court Decision *1.

20. NSHC carries out its health care services to the region pursuant to an Indian Self-Determination and Education Assistance Act (ISDEAA) agreement with the federal government through the Indian Health Service. 2022 Court Decision **18, 21.

21. NSHC has been deemed a “tribal organization” for purposes of the ISDEAA.

22. Each year Funding Agreements are negotiated between the IHS and NSHC to fund programs that NSHC performs on behalf of the IHS. 2022 Court Decision *21.

23. The operation of all NSHC programs is subject to the terms and regulations mandated in the Funding Agreements. 2022 Court Decision *21.

24. The City and NSHC have stipulated that NSHC enjoys sovereign immunity for purposes of the instant appeals before the Board under the Alaska Supreme Court’s April 26, 2024 decision in *Ito v. Copper River Native Association*.

25. The Funding Agreement identifies Programs, Functions, Services and Activities (“PFSAs”) for which NSHC receives IHS funding. These PFSAs include direct provision of medical care as well as “[s]upport services . . . including, but not limited to, . . . the provision of staff housing”; “[s]ervices associated with training medical students, residents, physician assistant students, nursing students, and allied health provider students . . .”; “lodging for patients, family members of patients, and/or their escorts, including but not limited to housing at the patient hostel, and elder housing”; a “Maternal and Child Health Program”; and “public health nursing services.” §§ 3.5; 3.2.10; 3.2.14; 3.4.8; 3.4.11.

26. The Funding Agreement “obligates NSHC to be responsible for and to provide [] PFSAs as identified in Section 3 [Tribal Programs and Budget], utilizing the resources transferred under this [Funding Agreement] and other funds as they may become available to NSHC.” § 2.1. Section 3 of the Funding Agreement includes all PFSAs discussed immediately above.

27. Appendix B to the Funding Agreement is a “Facilities List,” which is a “non-exhaustive list of Tribal Facilities and Locations [that] identifies the sites where [NSHC] owns, leases, occupies, or otherwise use[s] real property to carry out its responsibilities under the Alaska Tribal Health Compact and its Funding Agreement.” The Facilities List also includes a list of PFSAs that may be carried out at the listed sites.

28. The assessed value of the 7-Plex Property is \$1,022,400. The assessed value is not affected by exemption.

29. The 7-Plex Property contains seven dwelling units. The building on the 7-Plex Property is used by NSHC to provide housing to medical staff, both contract and employee, who work at the adjacent NSHC hospital. Housing is provided to contract nurses as part of their agency contract. New hires are provided housing rent-free for 30 days. Sometimes, new hires stay on longer than 30 days and are charged nominal rent. Approximately 2% of the 7-Plex is occupied by new hires. Doctors and nurses living here are on call 24 hours for emergencies, and work at the hospital on a rotation of one month on and one month off. The Funding Agreement's Facilities List includes the 7-Plex Property as a site that NSHC may use to provide staff and provider housing.

30. NSHC does not operate the 7-Plex for the purpose of making a profit. In fiscal year (FY) 2023, NSHC derived \$72,639.04 in rental income from use of the 7-Plex Property. It also derived \$58,395.00 in "105(l) Lease Revenue" in 2023. NSHC's financial analysis for the 7-Plex Property for 2023 shows that expenses exceed income by \$27,139.48. The rental income is from use of the property by NSHC to achieve its charitable and hospital purposes and is reported as such on its Form 990.

31. The assessed value of the 20-Plex Property is \$4,707,700. This valuation is not affected by whether or not exemption applies.

32. NSHC does not operate the 20-Plex for the purpose of making a profit. The 20-Plex Property consists of 17.43 acres of land and a 20-unit apartment building adjacent to the hospital. The building on the 20-Plex Property is used by NSHC to provide housing to new hires, medical staff, and a few contract labor personnel who work at the NSHC hospital. Housing is provided to contract medical personnel as part of their agency contract. New hires are provided housing rent-free for 30 days. Approximately 2% of the 20-Plex is occupied by new hires. Doctors and nurses living here are on call 24 hours for emergencies, and work at the hospital on rotation of one month on and one month off. Sometimes, new hires stay on longer than 30 days and are charged nominal rent. The Funding Agreement's Facilities List includes the 20-Plex Property as a site that NSHC may use to provide staff and provider housing.

33. NSHC intends to construct additional housing on the 20-Plex Property. NSHC's acquisition of this property is part of NSHC's plan to offer more hospital services, but the bottleneck has been housing.

34. In FY 2023, NSHC derived \$166,548.73 in rental income from the 20-Plex Property. It also derived \$431,299.00 in "105(l) Lease Revenue" from the 20-Plex Property. NSHC's financial analysis for the 7-Plex Property for 2023 shows that expenses exceed income by \$309,352.24. The rental income is from use of the property by NSHC to achieve its charitable and hospital purposes and is reported as such on its Form 990.

35. Section 105(l) Leases are not traditional leases, as the federal government does not provide the funding so that it can use the 7-Plex Property or the 20-Plex Property or to obtain any possessory or use rights in the 7-Plex Property or the 20-Plex Property. Rather, the 105(l) Lease program is a Congressionally designed funding mechanism to compensate Tribes for facility operational expenses associated with using the facility to administer ISDEAA contracted or compacted services. Congress recognized that if IHS were providing services directly, it

would need a facility in which to do so. When NSHC provides facilities to carry out the ISDEAA, the Alaska Tribal Health Compact, and its Funding Agreement, if IHS did not pay for these facilities, NSHC would be subsidizing a federal responsibility.

36. Uses of the 7-Plex Property and the 20-Plex Property (together, “Housing Properties”) are substantially the same.

37. While NSHC testified, at the Board’s hearing regarding the 2023 assessed taxes, that when NSHC assumed the Housing Properties there were existing non-NSHC tenants, NSHC testified that there are no such tenants currently residing at the Housing Properties.

38. NSHC hires medical personnel on a contract basis from all over the United States due to a shortage in Alaska for qualified medical personnel.

39. The provision of staff housing has been a necessary incentive for NSHC to attract qualified medical personnel to work in the Nome area.

40. There are no efficient or feasible short-term rentals in the Nome area. NSHC conducted a Community Health Needs Assessment in 2020 that found that over 30% of persons reported that they or persons in their household experienced a lack of quality housing. The Assessor provided no contrary evidence.

41. The assessed value of the BHS Property is \$1,904,100. This valuation is not affected by whether or not exemption applies.

42. NSHC is engaging in active reconstruction of the BHS Property for its use to provide temporary housing for maternal health patients and overflow housing for patients when there is no vacancy at the patient hostel.

43. NSHC previously used the BHS Property to provide behavioral health services. During this use, the Assessor found the BHS Property exempt from municipal taxation.

44. The assessed value of the HAT Property is \$759,800. This valuation is not affected by whether or not exemption applies.

45. NSHC leases the HAT Property to the State of Alaska. NSHC’s Funding Agreement includes the provision of public health nursing, which it accomplishes by leasing the HAT Property to the State who uses it for operation of public health nursing.

46. NSHC began leasing the HAT Property to the State of Alaska in November 2021.

47. NSHC is responsible for paying the following costs for the HAT Property: insurance, utilities, heating oil, snow removal, and general maintenance and upkeep.

48. NSHC does not operate the HAT Property for the purpose of making a profit. In FY 2023, NSHC derived \$60,000.00 in lease revenue from the HAT Property. NSHC’s financial analysis for the HAT Property for 2023 shows that expenses exceed income by \$16,479.98.

49. The Assessor did not provide any evidence to controvert NSHC's uses of the Properties.

50. Under federal law, the income and lease revenue from the 7-Plex Property, 20-Plex Property, and HAT Property does not result in unrelated business revenue or any net business taxable income. *See* IRS Form 990, Line 7. NSHC submitted Form 990 with its appeal documents for each of these properties.

51. In 2023, approximately \$15,000,000 in City revenue was used to provide municipal services. Property taxes provided about \$4,200,000 of this total.

52. The total of the assessed taxes for the Properties is \$88,136.80.

53. The superior court in the 2022 Court Decision found that City uses property tax to provide municipal services, including K-12 education, maintenance of roads, and public safety (fire and police services). 2022 Court Decision *23. At the May 1, 2024 hearing, counsel for the City argued that the City uses general fund monies to operate indoor recreation facilities, and provides municipal services, including but not limited to planning, building inspection, and permitting.

CONCLUSIONS OF LAW

1. Collateral estoppel, or issue preclusion, prohibits parties from relitigating issues decided in earlier proceedings where: “(1) [T]he party against whom the preclusion is employed was a party to or in privity with a party to the first action; (2) the issue precluded from relitigation is identical to the issue decided in the first action; (3) the issue was resolved in the first action by a final judgment on the merits; and (4) the determination of the issue was essential to the final judgment.” *State, Dep’t of Rev. v. BP Pipelines (Alaska) Inc.*, 354 P.3d 1053, 1068 (Alaska 2015) (citing *Ahtna, Inc. v. State, Dep’t of Transp. & Pub. Facilities*, 296 P.3d 3, 8 (Alaska 2013)).

2. Collateral estoppel serves “the dual purpose of protecting litigants from the burden of relitigating an identical issue with the same party or his privy and of promoting judicial economy by preventing needless litigation.” *Campion v. State, Dep’t of Cmty. & Reg’l Affs., Hous. Assistance Div.*, 876 P.2d 1096, 1098 (Alaska 1994) (quoting *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 (1979)).

3. NSHC is not collaterally estopped from asserting tribal sovereign immunity as a basis for exemption because that issue was not decided by the superior court in the 2022 Judicial Appeal. 2022 Court Decision *25.

4. Even if the superior court had decided the immunity issue, NSHC has identified intervening doctrinal change governing tribal sovereign immunity in the Alaska Supreme Court’s *Ito* decision, which overturned the Court’s prior decision in *Runyon ex rel. B.R. v. Association of Village Council Presidents*, 84 P.3d 437 (2004), and replaced the *Runyon* test with a multi-factor test common to many federal appellate and state courts that is more favorable to tribal entities.

5. The Parties have stipulated that NSHC enjoys sovereign immunity under the *Ito*

decision. The Board agrees that NSHC enjoys sovereign immunity under the *Ito* decision.

6. The *Ito* Court held that tribal sovereign immunity strips State courts of subject matter jurisdiction over arm-of-the-tribe entities. Further, tribal sovereign immunity, “where justly invoked, properly shields defendants not only from the consequences of litigation’s results *but also from the burden of defending themselves.*” *Price v. Unisea*, 289 P.3d 914, 922–23 (Alaska 2012) (emphasis added) (quoting *Tuck v. Pan Am. Health Org.*, 668 F.2d 547, 549 (D.C. Cir. 1981)).

7. The Board finds that it is without jurisdiction over NSHC to hear the instant appeals, and that tribal sovereign immunity protects NSHC from the burden of defending itself in administrative tax appeals before the Board.

8. The Board finds that all Properties are exempt from taxation on the basis of NSHC’s tribal sovereign immunity.

9. The assessor argues that the U.S. Supreme Court’s decision in *City of Sherrill, N.Y. v. Oneida Indian Nation of New York*, 544 U.S. 197 (2005) holds that tribal sovereign immunity does not affect assessment of municipal property taxes. The assessor’s reliance is misplaced, as the *Oneida* decision dealt with whether the Nation’s *lands*, purchased in fee by the Nation, were exempt from taxation because the lands were within the Nation’s historic reservation. *Id.* at 211 (“*Because the parcels lie within the boundaries of the reservation originally occupied by the Oneidas*, OIN maintained that the properties are exempt from taxation[.]”) (Emphasis added).

10. The *Sherill* case is inapposite because it did not involve the landowner’s assertion of tribal sovereign immunity. Further, the instant appeals do not involve claims that the Properties retain a tribal sovereign character because they are within a tribe’s historic reservation.

11. Even though tribal sovereign immunity is a sufficient, independent barrier of exemption for all Properties, the Board considers the other exemption bases asserted by NSHC alternatively: implied federal preemption and the charitable and hospital purposes exemptions of AS 29.45.030(a)(3).

12. NSHC asserts that the City is collaterally estopped from relitigating whether the Housing Properties are exempt under implied federal preemption and the charitable and hospital purposes exemptions of AS 29.45.030(a)(3).

13. NSHC asserts that the preclusive effect of the 2022 Court Decision extends to the 7-Plex Property because it was directly involved in the appeal and the 20-Plex Property because it is used for the substantially same purposes as the 7-Plex Property.

14. The U.S. Supreme Court has instructed that collateral estoppel is appropriate in tax cases where the same facts and legal issues recur between tax years, assuming no intervening doctrinal change. *Commissioner v. Sunnen*, 331 U.S. 591, 601 (1948).

15. The uses of the 7-Plex Property have not changed between 2022 and 2024, and

thus, the same facts are involved in the instant appeal as were involved in the 2022 Judicial Appeal. The 20-Plex Property is used for the substantially same purposes as the 7-Plex Property.

16. Collateral estoppel applies to preclude relitigation where: “(1) [T]he party against whom the preclusion is employed was a party to or in privity with a party to the first action; (2) the issue precluded from relitigation is identical to the issue decided in the first action; (3) the issue was resolved in the first action by a final judgment on the merits; and (4) the determination of the issue was essential to the final judgment.” *BP Pipelines*, 354 P.3d at 1068 (citing *Ahtna*, 296 P.3d at 8).

17. The Alaska Supreme Court has instructed that a court decision has preclusive effect despite a party’s pending appeal of the decision. *Rapopot v. Tesoro Alaska Petroleum Co.*, 794 P.2d 949, 951–52 (1990); *Lyman v. State*, 824 P.2d 703, 705 (1992).

18. The City’s pending appeal of the 2022 Court Decision to the Alaska Supreme Court as to the 7-Plex Property has no effect on the 2022 Court Decision’s preclusive effect.

19. The Board finds that the 2022 Court Decision has preclusive effect and the City is estopped from relitigating whether the Housing Properties are exempt from municipal tax and finds such properties exempt under implied federal preemption and the charitable purposes and hospital purposes exemptions under AS 29.45.030(a)(3) consistent with the 2022 Court Decision.

20. The Board’s 2023 administrative decisions were subject to appeal to the superior court and were appealed by NSHC with that appeal currently pending. *Compare* NSHC’s appeals *with Johnson v. Alaska State Dept. of Fish & Game*, 836 P.2d 896, 909 (Alaska 1991) (finding that the fact that State did *not* appeal administrative decision to superior court to support affording preclusive effect to administrative decision).

21. The Board’s 2023 administrative decisions irreconcilably conflict with the 2022 Court Decision. The Board denied exemption to the entirety of the 7-Plex Property, the “West Campus” property, and the “Kusqii House” property,” and 21.4% of the “Patient Hostel” property. The superior court held these properties fully exempt in the 2022 Court Decision. Additionally, the Board’s 2023 administrative decisions relied on legal theories explicitly rejected by the superior court in the 2022 Court Decision, including, e.g., the assessor’s overly restrictive definition of “hospital purposes” and the requirement that NSHC satisfy the exception to the exclusive use test, rather than the exclusive use test itself. *Compare* 2023 BOE COLs No. 8–10 *with* 2022 Court Decision *14; *compare* 2023 BOE COLs No. 12 *with* 2022 Court Decision *15. The Board finds that affording preclusive value to administrative decisions with holdings and reasoning rejected by the courts is unfair to parties. *See, e.g., Johnson*, 836 P.2d at 908 (“The preclusive use of prior administrative findings must always be fair.”).

22. In the 2023 appeals, the Board failed to afford due process to NSHC, including by failing to provide NSHC with the assessor’s reasoning for his decisions until the Board’s hearing on the appeals. The assessor’s reasoning was limited to stating that NSHC was not appealing the properties’ valuations but rather contesting the denial of tax exemption, and misstating that the Board “convene[s] to consider valuation issues solely” – a position in direct conflict with NCO § 17.20.050(b), which provides that “[a] denial by the assessor of an application for exemption

from taxation may be appealed to the Board of equalization.” The assessor recommended further that denial was warranted since the properties were “appealed on same grounds in 2022” and were being “addressed in the Court system – without resolution at present.” The assessor erroneously included these two comments as rationale for his reasoning for his decisions for properties that were not at issue in the 2022 Judicial Appeal. This process denied NSHC the opportunity to prepare for opposing argument.

23. The Board finds that its 2023 administrative decisions have no preclusive effect for the above reasons.

24. Even if the City were not collaterally estopped from relitigating exemption for the Housing Properties under the charitable or hospital purposes exemptions, the Board finds that the Housing Properties are used exclusively by NSHC for exempt charitable and hospital purposes.

25. For leased property, the Alaska Supreme Court has instructed that the exemption analysis requires examination of both the owner-lessor’s and the lessee’s use of the property. *Greater Anchorage Area Borough v. Sisters of Charity of the House of Providence*, 553 P.2d 467 (Alaska 1976). In *Sisters of Charity*, the Court held that space leased by a hospital to doctors for the doctor’s private office space associated with the doctor’s *private practice* of medicine, rather than for the doctors’ practice of medicine at the hospital, did not qualify as exclusive use for hospital purposes. Importantly, in *Sisters of Charity*, while the doctors in that case had admitting privileges at the hospital, which benefitted the hospital, the doctors were *not* employed by the hospital.

26. NSHC, the owner-lessor of the Housing Properties, exclusively uses the properties for charitable and hospital purposes in providing staff and provider housing, which is a service required by its Funding Agreement and which promotes its charitable and hospital purposes. The superior court properly held that this is a use by NSHC to fulfill its obligations under ISDEAA and as such qualifies as exclusive use for charitable and hospital purposes. *See also Dena Nena Henash v. Fairbanks N. Star Borough*, 88 P.3d 124, 135 (Alaska 2004) (an entity’s use of a property to fulfill its obligations under an ISDEAA agreement qualifies that property for the charitable purposes exemption).

27. The assessor’s reliance on *Sisters of Charity* is misplaced because, in that case, the doctors used leased office space for their own private practice of medicine and not for providing services at the hospital.

28. Further, the Board finds that AS 29.45.030(c) does not preclude exemption under AS 29.45.030(a)(3) for the Housing Properties. AS 29.45.030(c) provides that property “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.” All income from the Housing Properties is derived from NSHC’s use of the Housing Properties to provide staff and provider housing and NSHC is a “nonprofit charitable [and] hospital ... group[].”

29. Further, the Alaska Supreme Court has instructed that property does not lose exemption under AS 29.45.030(a)(3) even if payment is received for use of the property (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 for the accomplishment of the exempt activity and does not exceed the operating costs of the exempt activity for which payment is received. *City of Nome v. Catholic Bishop of N. Alaska*, 707 P.2d 870, 889 (1985).

30. The Board finds that the three conditions in *Catholic Bishop* are met for the Housing Properties. The Properties are used exclusively for exempt charitable and hospital purposes. The moderate rental fees are not sought as a result of a dominant profit motive, as NSHC does not derive a profit from the Housing Properties. The rental fees are considered a “related activity” of the hospital and are exempt and nontaxable under federal law. *See* IRS Form 990, Line 7. The moderate rental fees are incidental to and reasonably necessary for the accomplishment of NSHC’s charitable and hospital purposes in providing staff and provider housing and the fees do not exceed the operating costs of the Properties.

31. The superior court in the 2022 Judicial Appeal determined that the appropriate standard to evaluate NSHC’s exemption claims under the charitable and hospital purposes exemptions is the exclusive use standard, and not its exception that requires that a property be directly incidental to and vitally necessary for the exempt purposes. 2022 Court Decision **14–15. Even if the “directly incidental to and vitally necessary for” standard applied, however, the Board finds that NSHC’s use of the Housing Properties are directly incidental to and vitally necessary for NSHC’s charitable and hospital exempt purposes to effectuate the delivery of health services to citizens of the City and the Bering Strait Region.

32. NSHC has met its burden to establish entitlement to tax exemption under AS 29.45.030(a)(3) for the Housing Properties.

33. Even if the City were not collaterally estopped from relitigating exemption for the Housing Properties under the implied federal preemption doctrine, the Board finds that the Housing Properties are exempt on this basis, as described in Conclusions of Law Nos. 46–56, *infra*.

34. The Board finds that the HAT Property is used exclusively for exempt charitable and hospital purposes. NSHC uses the HAT Property to provide public health nursing and support, which are required services under NSHC’s Funding Agreement. *See Dena Nena Henash*, 88 P.3d at 135 (use of property to fulfill ISDEAA obligations qualifies under the charitable purposes exemption). The assessor did not controvert the actual use of the HAT Property by the State for public health nursing. NSHC’s leasing of the HAT Property to the State to carry out the public health services on behalf of NSHC (and in the State’s own right as a State service) fulfills NSHC’s federal obligations under the Funding Agreement and constitutes direct and primary use for charitable and hospital purposes.

35. Further, the Board finds that the three conditions in *Catholic Bishop* are met for the HAT Property. The revenue generating use of the HAT Property is for exempt charitable and hospital public health purposes. The lease does not generate a profit and is not leased for for-profit purposes. The rental income is considered a “related activity” of the hospital and are

exempt and nontaxable under federal law. *See* IRS Form 990, Line 7. Rental of the HAT Property to the State of Alaska is reasonably necessary and incidental to NSHC's exempt purposes as a hospital to effectuate delivery of health services to the City and the region.

36. Further, the Board finds that AS 29.45.030(c) does not preclude exemption under AS 29.45.030(a)(3). The lessee State of Alaska is a tax-exempt entity, AS 29.45.030(a)(1), that exclusively uses the HAT Property for charitable purposes in the delivery of public health. To find the HAT Property taxable under subsection (c) strains the meaning of the statute and is contrary to settled law pertaining to properties operated by non-profit entities and exempt entities that generate revenue. *E.g., Matanuska-Susitna Borough v. King's Lake Camp*, 439 P.2d 441 (Alaska 1968); *Catholic Bishop*, 707 P.2d 870.

37. The superior court in the 2022 Judicial Appeal determined that the appropriate standard to evaluate NSHC's exemption claims under the charitable and hospital purposes exemptions is the exclusive use standard, and not its exception that requires that a property be directly incidental to and vitally necessary for the exempt purposes. 2022 Court Decision **14–15. Even if the “directly incidental to and vitally necessary for” standard applied, however, the Board finds that NSHC's use of the HAT Property is directly incidental to and vitally necessary for NSHC's charitable and hospital exempt purposes to effectuate the delivery of health services to citizens of the City and the Bering Strait Region.

38. NSHC has met its burden to establish entitlement to tax exemption under AS 29.45.030(a)(3) for the HAT Property.

39. The Board finds, in the alternative, that federal law impliedly preempts taxation of the HAT Property because it is used by NSHC to provide public health nursing and support, which are services required under NSHC's Funding Agreement, and as provided in Conclusions of Law Nos. 46–56, *infra*. *See* 2022 Court Decision at **20–23.

40. NSHC is not collaterally estopped from asserting that the BHS Property is entitled to exemption under the hospital and charitable purposes exemptions because NSHC did not assert those bases for exemption for the BHS Property, or for any of the other vacant properties or properties with active construction, in the 2022 Judicial Appeal. 2022 Court Decision **5–6.

41. The Board finds that the BHS Property is used exclusively for hospital and charitable purposes. Previously, NSHC used the BHS Property to provide behavioral health services, and the assessor held it exempt during that period. Those services were moved to another location, and the property was slated for reconstruction to accommodate its current use, beginning June 2024, to provide temporary housing for maternal health patients and overflow housing for patients when the patient hostel has no vacancy. These services are required by NSHC's Funding Agreement, and the Facilities List provides that NSHC may provide these services at the BHS Property. *See Dena Nena Henash*, 88 P.3d at 135 (use of property to fulfill ISDEAA obligations qualifies under the charitable purposes exemption).

42. Jurisdictions have recognized that temporary vacancy does not render a property held by a qualifying organization taxable. *Paper Mill Playhouse v. Millburn Tp.*, 7 N.J.Tax 78,

86 (1984); *United Way of the Midlands v. Douglas Cnty. Bd. of Equalization*, 337 N.W.2d 103, 107 (Neb. 1983). The period of the BHS Property's vacancy is temporary due to active construction on the property and the property's use for exempt purposes has been continuous. To hold the BHS Property non-exempt would be to disincentive the improvement of property owned by the only regional health care system and which is used to provide healthcare services.

43. The superior court in the 2022 Judicial Appeal determined that the appropriate standard to evaluate NSHC's exemption claims under the charitable and hospital purposes exemptions is the exclusive use standard, and not its exception that requires that a property be directly incidental to and vitally necessary for the exempt purposes. 2022 Court Decision **14–15. Even if the “directly incidental to and vitally necessary for” standard applied, however, the Board finds that NSHC's use of the BHS Property is directly incidental to and vitally necessary for NSHC's charitable and hospital exempt purposes to effectuate the delivery of health services to citizens of the City and the Bering Strait Region.

44. NSHC has met its burden to establish entitlement to tax exemption under AS 29.45.030(a)(3) for the BHS Property.

45. Further, the Board finds that federal law impliedly preempts taxation of the BHS Property because it was used by NSHC to provide, and will be used by NSHC to provide, services required under NSHC's Funding Agreement—behavioral health services, and patient housing and maternal health patient housing, respectively—and as provided in Conclusions of Law Nos. 46–56, *infra*. See 2022 Court Decision at **20–23.

46. Taxation of all four Properties is preempted by federal law. Preemption is the principle, rooted in the Supremacy Clause of the Constitution, that federal law supersedes any inconsistent state or local laws and regulations.

47. Generally the bar for finding preemption is high: a clear statement from Congress, or an occupying of the field. But in federal Indian law, it is much different: a court must balance tribal/federal interests against the state interests, taking into account the backdrop of tribal sovereignty and federal policies promoting tribal self-determination and economic development. *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980).

48. Under this **implied federal preemption** doctrine, space used to carry out federal programs is generally exempt from state or local taxation when (1) the programs are subject to comprehensive and pervasive federal regulation, and (2) the federal and tribal interests at stake outweigh the state's interest in taxation. *Ketchikan Gateway Borough v. Ketchikan Indian Corporation*, 75 P.3d 1042, 1048 (Alaska 2003).

49. The Alaska Supreme Court has recognized this doctrine and applied in a factual scenario very similar to here, in the *Ketchikan Gateway* case. In that case, the lower court upheld an exemption from borough taxation for “all space in a building that contains a tribally operated clinic,” because the clinic was funded by the federal IHS under the ISDEAA and clinic operations were subject to pervasive federal oversight under the ISDEAA and the IHCIA. The Borough did not appeal this ruling, limiting its challenge to as yet unused spaces. *Id.* at 1048,

incl. n.27.

50. As in *Ketchikan Gateway*, NSHC uses the Properties to carry out IHS-funded health care programs under the ISDEAA. And as in *Ketchikan Gateway*, NSHC's programs and services are subject to comprehensive and pervasive oversight under the ISDEAA and the IHCIA. Under the ISDEAA, NSHC steps into shoes of the United States, but ultimate responsibility remains with IHS. For example:

- Participation in ISDEAA's Self-Governance program requires rigorous planning process and demonstration of "financial stability and financial management capability." 25 U.S.C. § 5383(c) & (d).
- NSHC is considered part of the U.S. Public Health Service for purposes of Federal Tort Claims Act coverage and access to federal sources of supply. *Id.* §§ 5321(d); 5324(k).
- ISDEAA contractors are subject to annual audits, with penalties for non-compliance with applicable OMB cost principles. *Id.* § 5386(c); 42 C.F.R. §§ 137.165–173.
- Program income that NSHC generates through billing Medicare, Medicaid, and private insurance must be "treated as supplemental funding to that negotiated in the funding agreement" and must be used for purposes within the scope of that agreement. 25 U.S.C. § 5388(j).
- Federal statute requires every ISDEAA agreement to include authorization for IHS to reassume—or take back—any program, and the associated funding, if the agency finds gross mismanagement or imminent danger to public health. *Id.* § 5387(a)(2).

51. In short, NSHC uses the Properties to operate **federal** programs, comprehensively regulated, but which support tribal sovereignty and self-determination and advance federal policies to provide the best health care possible for tribes and their citizens. Thus, the weight of the federal and tribal interests in the preemption test is considerable, particularly when the balance is carried out against the backdrop of tribal sovereignty and the federal policy of promoting tribal self-determination.

52. On its side, the City has only its generalized interest in generating revenue. In *Ramah*, the State of New Mexico asserted the same interest, but the Court found it inconsequential compared to the federal and tribal interests, especially given that the State did little for Indian education. "The case would be different," the Court said, if the State were seeking tax revenues to assist in educating Navajo children.

53. Similarly, NSHC provides health care services to the City and the region, saving state and local governments enormous sums of money. The tax revenues the City seeks are not to contribute to the provision of health care, but presumably to provide utilities, police protection, and the like. These interests are important, and in *Ketchikan Gateway* they outweighed the federal and tribal interests **as to the empty spaces** under consideration—but not the spaces housing the health care clinic operated under the ISDEAA. Indeed, the Borough did not even try

to argue that they did, declining to appeal the Superior Court's determination that these spaces were exempt.

54. "Notwithstanding the rule of strict construction [against exemptions], where the question is whether federal law requires the exemption of tribal interests from taxation, ambiguities in federal law should be resolved in favor of the tribe." *Ketchikan Gateway*, 75 P.3d at 1045 (citing *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163, 177 (1989)).

55. The Assessor argues that federal preemption only applies in Indian country, citing a Ninth Circuit case, but the Alaska Supreme Court clearly disagrees. In *Ketchikan Gateway*, the Court took note that the Ninth Circuit has taken the position that federal preemption does not apply outside Indian country, but then immediately proceeded to articulate and apply the preemption test as described above. 75 P.3d at 1047 n.22.

56. The Assessor also argues that *Board of Equalization for the Borough of Ketchikan v. Alaska Native Brotherhood & Sisterhood*, 666 P.2d 1015 (Alaska 1983) supports denial of the exemption because the Court there determined that the Borough had a strong interest in taxation to provide necessary services. But in that much older case, the facts were quite different. The property at issue was not used to carry out an ISDEAA agreement but rather as a community cultural center. Thus the activities carried out there were not subject to comprehensive and pervasive federal regulation, so the federal preemption doctrine did not apply. The analogous case to the NSHC appeal is *Ketchikan Gateway*, which involved a health clinic operated through a contract with IHS under the ISDEAA.

1. The denial of the application for an exemption from 2024 real property tax for the 7-Plex Property is REVERSED.

2. The denial of the application for an exemption from 2024 real property tax for the 20-Plex Property is REVERSED.

3. The denial of the application for an exemption from 2024 real property tax for the BHS Property is REVERSED.

4. The denial of the application for an exemption from 2024 real property tax for HAT Property is REVERSED.

This is the final administrative action of the City of Nome on these appeals. This action may be appealed to superior court. Any such appeal must be filed within 30 days from the date these Findings of Fact and Conclusions of Law are adopted.

Duly adopted this ___th day of May, 2024.

Hon. John Handeland

Chair
City of Nome Board of Equalization

IN THE MATTER OF

APPEALS FROM THE DECISIONS OF THE CITY OF NOME ASSESSOR DENYING
APPLICATIONS FOR AN EXEMPTION FROM REAL PROPERTY TAX ON: A) BLOCK
91, LOTS 3 AND 4; B) MS 1298; C) Block 110, Lots 1 & 2; and D) Block 110, Lot 3A

Appellant: Norton Sound Health Corporation
Appellant's Representative: Wendy Pearson; Steve Osborne

Appellee: City of Nome Tax Assessor
Appellee's Representative: Charles Cacciola,

Having sat to hear an appeal pursuant to Sections 17.20.050 and 17.20.060 of the Nome Code of Ordinances and held a properly noticed public hearing on the above-referenced appeals on May 1, 2024, considered all the evidence in the record and all of the arguments made at the appeal hearing and having voted to affirm the decision of the City Assessor the Board of Equalization of the City of Nome adopts the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

1. The properties involved in this appeal are:
 - A. Tax Parcel 001.221.05A: Block 91, Lots 3 & 4 ("Seven Plex Property")
 - B. Tax Parcel 192.1.085: MS 1298 ("20-Plex Property")
 - C. Tax Parcel 001.211.03A: Block 110, Lots 1 & 2 ("BHS Property")
 - D. Tax Parcel 001.211.03B: Block 110, Lot 3A ("State Lease Property")

all of which are located within the boundaries of the City of Nome (collectively "the Properties").

2. The Properties are owned by the Norton Sound Health Corporation ("NSHC").
3. On or about January 24, 2024, NSHC submitted applications an exemption from City of Nome real property tax assessed against each of the Properties.
4. On or about March 25, 2022, the City Assessor issued assessment notices against each of the Properties. The Notices acted as a denial of the Applications.
5. NSHC timely appealed the assessments, which provide that the entire assessed value of the Properties is subject to tax. NSHC does not appeal the assessed values of the Properties. Rather, it appeals the determination that this value is taxable.
6. The board of equalization has heard similar appeals filed by NSHC in 2022 and

2023. NSHC appealed the board's 2022 decision to the superior court ("2022 Judicial Appeal"). The 7-Plex Property is the only property that was at issue in the 2022 Judicial Appeal. In the 2022 Judicial Appeal, the superior court determined that NSHC uses 7-Plex Property exclusively for NSHC's exempt purposes. The superior court did not consider whether the tenants' use of 7-Plex Property is also use exclusively for exempt purposes. The issue of whether AS 29.45.030(c) precludes exemption of 7-Plex Property (or of any of property from which NSHC derives income) was not presented to the board in 2022 nor was it decided in the 2022 Judicial Appeal. The superior court determined that Nome's tax was preempted as to 7-Plex Property under the doctrine of implied federal preemption. However, in 2022 NSHC did not apply for exemption of 7-Plex Property on the basis of implied federal preemption and the assessor did not specifically present information to the board relevant to the City's interest in the tax, one of the two prongs required for implied federal preemption. Finally, in the 2022 Judicial Appeal, the superior court ruled that tribal sovereign immunity does not preclude the City from assessing property tax on property owned by an entity that enjoys sovereign immunity. The superior court decision in the 2022 Judicial Appeal was issued after the board of equalization heard NSHC's 2023 appeals. The City of Nome appealed to the Alaska Supreme Court the superior court's decision that 7-Plex Property 1 is exempt from 2022 real property taxes. That appeal is pending.

7. In 2023, NSHC appealed the assessor's denial of exemption to for properties that include the Properties at issue in these 2024 appeals. At the time of the 2023 hearing, the board's 2022 decision as to 7-Plex Property had not been reversed by the superior court. At the 2023 hearing, NSHC urged the board to hear NSHC's appeals despite the fact that similar issues had been resolved in 2022. NSHC represented that the 2023 appeals involved different properties, different uses, and different facts from the 2022 appeals. The board heard NSHC's appeals on the merits notwithstanding the board's 2022 decision that was contrary to certain positions NSHC advanced in the 2023 appeals. In 2023, the board of equalization determined that the Properties at issue in these 2024 appeals were not exempt from Nome's 2023 property tax. NSHC appealed the board's 2023 decision to the superior court. That appeal is pending.

8. The Properties have not been acquired by the United States in trust for NSHC.

9. NSHC is an Alaskan non-profit corporation.

10. NSHC is not included on the list of recognized tribal entities published in the Federal Register and does not have a constitution approved by the Bureau of Indian Affairs pursuant to the Indian Reorganization Act.

11. NSHC has been deemed a "tribal organization" for purposes of federal laws related to eligibility to contract with the United States for the provision of health care to Alaskan Natives.

12. Under the Alaska Supreme Court's 2024 decision in *Ito v. Copper River Native Association*, NSHC likely enjoys sovereign immunity.

13. NSHC operates various health care facilities throughout the Bering Straits region including a hospital located within the City and medical clinics located outside the City.

14. The expense of operating the hospital, the medical clinics, and the broad array of

public health programs run by NSHC is funded by the United States under a funding agreement (“the Funding Agreement”).

15. The Funding Agreement indicates provision of staff housing, training of community health aides, emergency medical services training and provision of lodging for patients and their escorts or family members are within the scope of NSHC services eligible for funding under the Funding Agreement. The Funding Agreement also authorizes NSHC to provide a broad array of services to support public health, including services relating to sanitation infrastructure, drinking water, nutrition and specifically programs for childhood nutrition, child education and development programs, housing safety, substance abuse, promoting exercise and development of indoor recreation facilities, any many other services. The Funding Agreement and NSHC take a holistic, broad approach to health that is not limited to medical care provided at a hospital or services furnished by licensed providers.

16. The assessed value of the 7-Plex Property is \$1,022,400. The assessed value is not affected by exemption.

17. The 7-Plex Property contains seven dwelling units. The building on the 7-Plex Property is used by NSHC to provide housing to NSHC staff, both contract and employee. At least some of this staff are doctors, nurses, or other licensed healthcare providers. NSHC did not show that the 7-Plex Property is used exclusively to house licensed healthcare providers. Some employees who reside at the 7-Plex Property pay rent. The rent charged and paid is approximately a market rate. For employees who do not pay rent, the value of the housing provided to the employee constitutes income of the employee for the employees’ personal federal income tax.

18. In FY 2022, NSHC derived \$67,706 in rental income from use of the 7-Plex Property. In FY 2023, NSHC derived \$72,639 from use of the 7-Plex Property. It also derived \$58,395 in “105(l) Lease Revenue” from the 7-Plex Property in 2023. NSHC’s financial analysis for the 7-Plex Property for 2023 shows that expense exceed income by \$27,139.48. NSHC’s expenses include \$10,735.20 for property tax and \$27,467.80 for depreciation. For 2023, NSHC’s 7-Plex Property earnings before interest, tax, and depreciation were \$11,063.52.

19. Based on the record before the board, the \$72,639 in 2023 7-Plex Property rental income was from use of the 7-Plex Property by the tenants.

20. The assessed value of the 20-Plex Property is \$4,707,700. This valuation is not affected by whether or not exemption applies.

21. The 20-Plex Property consists of 17.43 acres of land and a 20-unit apartment building. Most of the land is vacant and unused, though NSHC intends to use it to construct additional housing in the future. NSHC bought Property 11 in 2022 because it was a shrewd business decision, not because of a federal mandate. The building on the 20-Plex Property is used by NSHC to provide housing to NSHC staff, both contract and employee. At least some of this staff are doctors, nurses, or other licensed healthcare providers. NSHC did not show that the 7-Plex Property is used exclusively to house licensed healthcare providers. Before the board in 2023, NSHC acknowledged that two of the twenty units were occupied by lease-paying tenants

who are not NSHC staff and do not work at NSHC facilities. NSHC represents that the facts have not changed since 2023 and did not show that the 20-Plex Property units are leased exclusively to NSHC staff. Some NSHC employees who reside at the 20-Plex Property pay rent. The rent charged and paid is approximately a market rate. For employees who do not pay rent, the value of the housing provided to the employee constitutes income of the employee for the employees' personal federal income tax.

22. In FY 2023, NSHC derived \$166,548.73 in rental income from the 20-Plex Property. It also derived \$431,299.00 in "105(l) Lease Revenue" from the 20-Plex Property. NSHC's financial analysis for the 7-Plex Property for 2023 shows that expense exceed income by \$309,352.24. NSHC's expenses include \$49,430.85 in property tax and \$283,706.25 in depreciation. For 2023, NSHC's 20-Plex Property earnings before interest, tax, and depreciation were \$23,632.59.

23. Based on the record before the board, the \$166,548.73 in 2023 20-Plex Property rental income was from use of the 20-Plex Property by the tenants.

24. The use of the 7-Plex Property and the 20-Plex Property (together, "Housing Properties") is similar.

25. No NSHC employee is required to live at either of the Housing Properties. NSHC also rents units in Nome from third-parties. Nome uses these rented units for additional staff housing. No NSHC employee is required to live in any NSHC-provided housing. For employees who need to report to the hospital for the job duties, NSHC expects a response time of approximately 20 minutes. Nome is relatively compact and virtually all, if not all, housing options in Nome can readily satisfy NSHC's response time. At the 2023 hearing, NSHC's CEO represented that NSHC does not have significant concerns regarding response times. NSHC staff, including licensed providers, can live anywhere in Nome.

26. NSHC enters into rental agreements and leases with some, if not all, of the staff who live at the Housing Properties. NSHC has elected to regulate tenants' pets, alcohol consumption, and smoking, among other tenant conduct, at the Housing Properties. Staff family members may also reside in the staff member's unit at the Housing Properties.

27. NSHC uses its discretion and business judgment to set policies for which staff are offered housing, the location of the housing (whether at one of the Housing Properties or otherwise), the terms upon which the housing is used, and to encourage staff to seek out non-NSHC provided housing.

28. Attracting qualified professionals to off-road system communities, including Nome, can be challenging. The City of Nome has direct knowledge and experience in this matter. Employers in off-road system communities, including Nome, often provide or arrange housing for employees to improve recruiting and retention.

29. NSHC offers housing to staff as an incentive to attract qualified professionals to Nome to work at NSHC's facilities. NSHC has not shown that this incentive is limited to licensed providers who work at the hospital.

30. The assessed value the BHS Property is \$1,904,100. This valuation is not affected by whether or not exemption applies.

31. The improvements on the BHS Property are undergoing construction. The intended future use of the BHS Property is to provide housing for maternity patients. However, no IHS Programs, Functions, Services and Activities (“PFSAs”) are conducted at the BHS Property. Before the board of equalization in 2023, NSHC stated that it anticipated that the BHS Property would be put into service for the intended use in the fall of 2023. NSHC’s 2024 application for exemption and appeal show that this did not occur. Other than intent for future use, NSHC did not identify any potential hospital or charitable use of the BHS property.

32. The assessed value of the State Lease Property is \$759,800. This valuation is not affected by whether or not exemption applies.

33. The State Lease Property is leased by NSHC to the State of Alaska, Department of Transportation and Public Facilities. Under the lease, the state pays at least \$5,000 per month for the use of Property 7. The lease does not require that the tenant use the premises for any particular use. NSHC asserts that the state uses the leased property for office space for public health nurses. Operational costs are 35% of the Base Monthly Lease Rate of \$5,000. The lease is subject to all laws of the State of Alaska and the City of Nome. Under the lease, the lessee is “responsible for interior janitorial services as they may require, parking lot, sidewalk snow and ice removal services.”

34. NSHC’s lease revenue analysis of the State Lease Property shows that NSHC received \$60,000 in rental income from the State Lease Property in 2023. This analysis indicates that NSHC received net lease revenue of -\$16,479.98. This analysis includes \$21,050.60 for snow removal. It also includes \$30,020.29 in depreciation. NSHC’s earnings before interest, tax, and depreciation was \$13,540.31.

35. The \$60,000 in 2023 income NSHC derived from the State Lease Property is from use by the state, as is evident from the lease agreement.

36. The City regulates zoning, platting, building standards, electrical, water, sewer and refuse service, snow removal, animal control, and much more for all real property in Nome.

37. In 2023, City revenue used to provide municipal about \$15,000,000. Property taxes provided about \$4,200,000 of this total. FY 2024 is anticipated to be substantially similar.

38. By value, NSHC owns approximately 1/4 of privately owned property real property in Nome. NSHC cannot successfully provide its ISDEAA programs without extensive operational and logistic support from these Nome-based facilities.

39. All of NSHC’s Nome facilities are on roads maintained by the City. Without the use of a helicopter or snowmachine, NSHC’s out-of-town patients cannot get to NSHC’s Nome facilities without these roads. Effective use of NSHC’s Nome property is possible because of the road, utilities, public safety, planning, and other municipal services the City provides. NSHC

uses the City's building inspector for permitting and plan review for life safety compliance with building, fire, and electrical codes. NSHC makes extensive use of the City's emergency dispatch for public safety services at NSHC's facilities. NSHC argued that it cannot operate its hospital or satisfy its funding agreement without vehicle storage and maintenance. These vehicles would be of little to no use value to NSHC without roads on which to drive them.

40. NSHC extensively uses the City's indoor recreation facilities. In FY 2023, NSHC purchased passes for approximately 6,000 visits to the recreational center. While there is a charge for these passes, pass revenue does not cover the operating costs (much less capital cost) of the rec center, which is covered by the City's general fund.

41. NSHC emphasizes the importance of attracting qualified medical personnel to work in the remote area of Nome, Alaska. A public library, and parks and recreation, Iditarod festivities, building and safety codes, planning and zoning, law enforcement, public education, transportation – all make Nome a more desirable place to work and live. Without the benefits funded by the City's property tax, NSHC recruiting would be vastly more difficult.

42. The City uses property tax to fund K-12 education provided by the Nome Public Schools. Through the Nome Public Schools, City programs promote and include child health, developmental and school screenings, supplemental food and nutrition education to young children, services that promote growth and development of young children, adolescent mental health and suicide prevention; developmental disability programs; programs to help at-risk youth succeed at school, including recreational and activity.

43. The City uses property tax to fund public recreational facilities, including the indoor rec center, and for programs to promote exercise. According to NSHC's *Community Health Needs Assessment Survey Report*, one of NSHC's performance improvement goals is to "[i]ncrease access to indoor workout space region-wide by working with local leaders to develop partnerships for solution." The City has the most extensive public indoor workout spaces in the region.

44. The City uses property tax revenue to fund services that further the public health objectives that are identified in the Funding Agreement as PFSA's that NSHC is authorized to provide.

CONCLUSIONS OF LAW

1. NSHC asserts that the assessor is collaterally estopped from "relitigating" issues that were decided by the superior court in the 2022 Judicial Appeal. When the elements that support collateral estoppel are satisfied, it remains a discretionary determination based on fairness under the circumstances. The only issues before the board that are substantially the same as those decided in the 2022 Judicial Appeal are whether (1) NSHC's use of the 7-Plex is exclusively for exempt purposes, (2) whether the City's taxation of that property is preempted by federal law, and (3) whether sovereign immunity precludes the City's assessment of the 7-Plex Property. Notably, NSHC asks the board to conclude, contrary to the superior court's decision in the 2022 Judicial Appeal, that sovereign immunity precludes assessment of taxes on the 7-Plex.

2. Based on the totality of the circumstances, the board declines to apply collateral estoppel to either the assessor or NSHC and considers the arguments of both. For its findings and conclusions, the board considers the decision in the 2022 Appeal and is of the opinion that nothing in these conclusions conflicts with the superior court's decision in the 2022 Appeal.

3. In *Greater Anchorage Area Borough v. Sisters of Charity of the House of Providence*, 553 P.2d 467 (Alaska 1976), the Alaska Supreme Court determined that exemption analysis requires examination of *both* the owner-lessor's and the lessee's use of the property. The Court confirmed this requirement in the *Catholic Bishop* case. Where the lessee's use of property is not for exempt *purposes*, the property is not used *exclusively* for exempt purposes. If only the uses of the Properties by the NSHC are considered, by definition the NSHC's use is exclusive. "Nothing in the exemption statute indicates that such a limited reading is justified." *Sisters of Charity*, 553 P.2d at 470.

4. The 7-Plex Property is not used exclusively for exempt purposes. While *NSHC's* use of the 7-Plex Property may be for charitable or hospital purposes, the board must also consider the tenants' use. Tenants' use of the 7-Plex Property is for their own personal purposes, which are not exempt. This conclusion is evidenced by the fact, among others, that tenants pay rent to use the property or have the value of their use treated as personal income for tax purposes.

5. Alaska Statute 29.45.030(c) imposes an additional burden on an applicant seeking exemption under AS 29.45.030(a)(3) if the applicant derives income from the property. Property "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."

6. NSHC derives significant rental income from the 7-Plex Property. NSHC failed to prove that the income it derives from the 7-Plex Property "is solely from use of the property by nonprofit religious, charitable, hospital, or educational groups." For this independent reason, NSHC has failed to show that the 7-Plex Property is exempt under AS 29.45.030(a)(3).

7. The 20-Plex Property is not used exclusively for exempt purposes. While *NSHC's* use of the 20-Plex Property to house staff may be for charitable or hospital purposes, the board must also consider the tenants' use. Tenants' use of the 20-Plex Property is for their own personal purposes, which are not exempt. This conclusion is evidenced by the fact, among others, that tenants pay rent to use the property or have the value of their use treated as personal income for tax purposes. Additionally, NSHC failed to prove that it uses the 20-Plex Property *exclusively* to house staff. NSHC also failed to show that the vacant land portion of the 20-Plex Property is used exclusively for exempt purposes.

8. NSHC derives significant rental income from the 20-Plex Property. NSHC failed to prove that the income it derives from the 20-Plex Property "is solely from use of the property by nonprofit religious, charitable, hospital, or educational groups." For this independent reason, NSHC has failed to show that the 20-Plex Property is exempt under AS 29.45.030(a)(3).

9. NSHC has also failed to prove that its use of the Housing Properties is vitally necessary to its nonprofit charitable or hospital purposes. NSHC offers housing to some staff to attract them to Nome. Recruiting to off-road system Alaska is challenging and housing is one of

the reasons. The record shows that NSHC's reason for offering housing to some staff is no different than any other employer who provides this incentive in to recruit staff. If this means that offering housing to employees is vitally necessary to the employer's exempt purposes, virtually all nonprofit religious, charitable, cemetery, hospital, or educational groups in rural Alaska would be entitled to exemption for all employee housing. This cannot be what the legislature intended and it would be in conflict with the numerous times the Alaska Supreme Court determined that housing provided by nonprofit religious, charitable, cemetery, hospital, or educational groups was not exempt.

10. The BHS Property is not used exclusively for exempt purposes. The use of this property is construction that is intended to facilitate exempt use in the future. When the property is actually used for those intended purposes, it may be entitled to exemption. Now, however, the BHS Property is not used exclusively for exempt purposes.

11. The State Lease Property is not used exclusively for exempt purposes. Even if *NSHC's use* of the State Lease Property is for charitable or hospital purposes, the board must also consider the lessee's use. The use of this property is remarkably similar to use of the property that was at issues in *Sisters of Charity*. The Sisters rented office space on a hospital campus to doctors for the doctors' medical practices. The Sisters argued that this use benefited the hospital and medical care and facilities that are common. The Court's concluded "the Sisters have performed a service to doctors and patients alike in constructing the Professional Building, and that health care at Providence has been benefited. In order to qualify for an exemption, however, the taxpayer must show, not benefits, but exclusive use. The use of the Professional Building for nonprofit hospital purposes is not exclusive." *Sisters of Charity*, 553 P.2d at 472. The same conclusion is necessarily reached here. In order to qualify for an exemption, NSHC must show, not benefits, but exclusive use. It fails to show that the State Lease Property is used exclusively for hospital or charitable purposes.

12. Annually, NSHC derives at least \$60,000 in income rental income from leasing this property to the state. The State of Alaska is not a nonprofit religious, charitable, hospital, or educational group. For this independent reason, NSHC has failed to show that the State Lease Property is exempt under AS 29.45.030(a)(3).

13. While the Alaska Supreme Court's recent decision in *Ito v. Copper River Native Association* strongly suggests that NSHC enjoys sovereign immunity, immunity presents not bar to the assessment of real property taxes. In *City of Sherrill, N.Y. v. Oneida Indian Nation of New York*, 544 U.S. 197 (2005), the U.S. Supreme Court conclusively determined that tribal sovereign immunity does not affect assessment of municipal property taxes.

14. NSHC urges the board to find that the City's tax of the Properties is preempted by federal law, relying upon the U.S. Supreme Court's decisions in *White Mountain Apache Tribe v. Bracker* and *Ramah Navajo School Board, Inc., v. New Mexico* and Alaska precent interpreting those decisions. The federal precedent establish a balancing test, referred to as the *Bracker* test, that is used to determine when state action on an Indian reservation is preempted by federal law.

15. Decisions of the Ninth Circuit Court of Appeals recognize that recognize that the implied preemption doctrine does not apply outside of Indian country. *Malabed v. North Slope*

Borough, 335 F.3d 864, 872 (9th Cir. 2003) *Blunk v. Arizona Department of Transportation*, 177 F.3d 879, 882-884 (9th Cir. 1999).

16. The Alaska Supreme Court has never found municipal property taxes to be preempted under this doctrine. Not has the Court ever gone against federal law and held that the doctrine applies outside of Indian country. Rather, it has applied the doctrine in a hypothetical context and concluded that *if it applies outside of Indian country*, the municipal property taxes would not be preempted. *Board of Equalization for the Borough of Ketchikan v. Alaska Native Brotherhood & Sisterhood*, 666 P.2d 1015 (Alaska 1983).

17. In *Board of Equalization*, the Alaska Supreme Court determined that, “The revenues generated from the taxes will be used to provide police and fire protection to the premises, as well as to provide water, electrical and sewer services to the building. Like the state interest identified in Washington, *Ketchikan has a strong interest in raising these revenues by taxing the property because they are for services that must be provided to the property.*” (emphasis added). The Court therefore determined that if the doctrine of implied federal preemption applied outside of Indian country, it still would not preempt the tax given Ketchikan’s strong interest in the tax.

18. The Alaska Supreme Court reach the same basic conclusion in *Ketchikan Gateway Borough v. Ketchikan Indian Corp.*, 75 P.3d 1042 (Alaska 2003). Without specifically holding that the Braker test applied outside of Indian country, the Court determined that Ketchikan’s property tax was not preempted because its “observations in *Board of Equalization* concerning the substantial services that the borough afforded to the building and the tribe are as applicable now as they were in that case.” Those observations are set forth above.

19. Each time the Alaska Supreme Court has been asked to hold that municipal property tax was exempt under the implied federal preemption doctrine, it has determined that the doctrine, even if applicable would not preempt municipal property taxes because “revenues generated from the taxes will be used to provide police and fire protection to the premises, as well as to provide water, electrical and sewer services to the building” and therefore the municipal interest in the tax was *not* relatively inconsequential. The same conclusion applies to Nome’s tax of the Properties.

20. Nevertheless, the *Bracker* test requires “particularized examination of the relevant state, federal, and tribal interests” in the tax and the subject of the tax. To weight the municipal interest against the federal and tribal interests, Courts consider whether the subject to be taxes is part of a “comprehensive and pervasively regulated” federal program. Here, the City of Nome seeks to tax real property.

21. NSHC’s argument that the Properties are comprehensively and pervasively regulated by a federal program relies on the Funding Agreement and the Section 105(l) leases of the Housing Properties.

22. NSHC admits that no PFSA are provided at the BHS Property. NSHC provides no PFSAs at the State Lease Property. Insofar as NSHC alleges that the state is providing PSFAs on NSHC’s behalf, the record does not support any degree of federal oversight of the state’s use of

the State Lease Property. Notably, the lease for the State Lease Property is subject to all state and local laws. Federal regulation of these properties, if any, is minor. The City's interest in the tax is not relatively inconsequential compared to the federal and tribal interests in these properties.

23. NSHC provides staff housing at the Housing Properties. The provision of housing is pursuant to the Funding Agreement, thus NSHC conducts PFSA's at the Housing Properties. NSHC asserts that it holds Section 105(l) leases for the Housing Properties. Of note, NSHC attested under oath that no third-party has a legal or equitable interest in either of the Housing Properties. To the extent NSHC relies upon these leases, it has not show that they represent comprehensive and pervasive regulation of the real property. The record shows a reasonable degree of federal oversight, perhaps even comprehensive and pervasive federal regulation, *of the PSFA's*. However, the City is not seeking to tax PSFA activities. The City is seeking to tax the real property. While some federal regulation *of the real property* arguably exists, the record shows that federal regulation of the real property is far from comprehensive and pervasive. No reasonable interpretation of the record suggests that this is a "context in which the Federal Government has undertaken to regulate the most minute details" *of the real property*. The City's interest in the tax to be assessed against the Housing Properties is not relatively inconsequential compared to the federal and tribal interests in the real property.

24. The board recognizes a strong tribal interest, and an important interest of the region generally, in individual healthcare and public health services NSHC provides. However, the City's tax does not unduly burden these activities, if it burdens them at all. Approximately one-third of NSHC's revenue is from the Funding Agreement. NSHC has not shown that payment of the taxes would require the use of funds that Congress intended for tribal health.

1. The denial of the application for an exemption from real property tax for the 7-Plex Property 1 is AFFIRMED.

2. The denial of the application for an exemption from real property tax for the 20-Plex Property is AFFIRMED

3. The denial of the application for an exemption from real property tax for the BHS Property is AFFIRMED.

4. The denial of the application for an exemption from real property tax for State Lease Property is AFFIRMED

This is the final administrative action of the City of Nome on these appeals. This action may be appealed to superior court. Any such appeal must be filed within 30 days from the date these Findings of Fact and Conclusions of Law are adopted.

Duly adopted this ___th day of May, 2022.

Hon. John Handeland
Chair

City of Nome Board of Equalization