

CITY OF DILLINGHAM
PO Box 889
Dillingham, AK 99576

APR 04 2018



2018 REAL PROPERTY ASSESSMENT NOTICE

Date: March 29, 2018

Vitus Energy, LLC
113 W Northern Lights Blvd
Suite 200
Anchorage, AK 99503

Account #: 102564

Legal Description	Assessed Value		Exemption		Adjusted Assessed Value
	Improvement	Land	Type	Max Amount	
Ahklun Addition III L1	227,000	28,100			255,100
Ahklun Addition III L6	118,100	28,000			146,100
USS 155 L 1N	639,400	0			639,400
				Total Adjusted Assessed Value	1,040,600

THIS IS NOT A BILL

Your property tax bill will be mailed in July. This is your notice of the valuation of your property which will be used to calculate your 2018 property tax bill.

1. All real and personal property not expressly exempt by the Dillingham Municipal Code is subject to annual taxation at its full and true value
2. If you disagree with the assessed value and wish to appeal to the Board of Equalization, a written appeal may be mailed to the City Clerk, City of Dillingham, PO Box 889, Dillingham, AK 99576 or dropped off at City Hall, 141 Main Street.
3. A separate appeal form must be filed for each property in question.
4. Appeal forms are available at City Hall and on the City's website at www.dillinghamak.us under Forms and Permits.
5. The appeal must establish that the assessment is unequal, excessive, and improper or undervalued as required by AS 29.45.21(b).
6. A written appeal must be received or postmarked within 30 days of this notice to be considered by the Board of Equalization.

Please contact the City of Dillingham at 907-842-5211 if you need more information

ASSESSOR'S REVIEW FORM

Case No.# _____ Property Owner _____

Property ID _____

1) Assessor's	Land	Improvements	Total
Decision	FROM \$ _____	\$ _____	\$ _____
	TO \$ _____	\$ _____	\$ _____

Assessor's reason for decision: _____

Date Received	Decision Made By	Date
---------------	------------------	------

2) _____ Date Notified _____

_____ Mail	_____
_____ Telephone	_____
_____ In Person	_____

_____ I ACCEPT the Assessor's decision in Block 1 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 Agent	Date Signed	Print Name
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569 Kenny Wren Road

Account Number GIS LINK ID 2-211-021
 Property Type Possessory Interest Property ID



Legal City* Dillingham
 USS 155 L IN
 Plat
 Location
 Waterfront
 View
 Lot Size
 Zoning

Design
 Quality
 Year Blt
 Eff Age
 Condition
 Rooms
 GLA
 Basement
 Fin Bsmt
 Functional
 Heating
 Energy Efficient
 Garage
 Garage Size
 EP
 CP
 Dk
 Fireplace
 Misc
 Roof
 Siding
 Foundation
 Prior Sales Date
 Prior Sales Price

Owner Vitus Energy LLC
 Street 113 W Northern Lights Blvd
 City/State Anchorage AK

Sales Date
 Sales Price

Current Year	2018	2017	2016
Land	\$0	\$0	\$0
Buildings	\$639,400	\$639,400	\$0
Total	\$639,400	\$639,400	\$0

Previous Owner
 Exempt Type Exempt Amount

[Enlarge Sketch](#)

[Enlarge Plat](#)



[Assessment History](#)

[Sales Letter](#)

[Scan Folder](#)

[Recorded Deed](#)

Dillingham 2017	Vitus Energy
12%	
Annual	
Table	
1	2017-01-01
2	2017-02-01
3	2017-03-01
4	2017-04-01
5	2017-05-01
6	2017-06-01
7	2017-07-01
8	2017-08-01
9	2017-09-01
10	2017-10-01
11	2017-11-01
12	2017-12-01

[Cost Approach](#)

Notes
 Exempt Phone Company renting out tanks for resale.

BOYD, CHANDLER & FALCONER, LLP

Attorneys At Law
Suite 302
911 West Eighth Avenue
Anchorage, Alaska 99501
Telephone: (907) 272-8401
Facsimile: (907) 274-3698
bcf@bcfaklaw.com

April 9, 2018

VIA ELECTRONIC MAIL ONLY

Jon Dawson, Esq.
Davis Wright Tremaine LLP
188 W. Northern Lights Blvd.
Suite 1100
Anchorage, AK 99503-3985

Re: Taxability of Vitus Energy LLC, Dillingham Fuel Storage Property

Dear Jon:

In our role as city attorney we have evaluated the assessor's previously issued determination of taxability of the above-referenced property sent to Vitus Energy LLC ("Vitus") by the Dillingham Finance Director on January 8, 2018¹. We believe the assessor correctly determined Vitus held a taxable interest in the property.

The City's authority to tax any interest in property held by Vitus is based on the Alaska Constitution, Alaska statute, and the Dillingham Municipal code. Article IX, Sec. 1 of the Alaska Constitution states the power of taxation shall never be surrendered "except as provided in this article". The Alaska Supreme Court has frequently noted that exemptions from property tax are to be narrowly construed. Sisters of Providence v. Municipality of Anchorage, 672 P. 2d 446,447(Alaska 1983). This narrow construction is based on a public policy favoring spreading the cost of providing governmental services across a broad base of property owners:

All property is benefited by the security and protection furnished by the State, and it is only just and equitable that expenses incurred in the operation and

¹ The time to appeal the 2017 determination of taxability of the property interest held by Vitus to either the Board of Equalization or directly to Superior Court has long expired. This analysis is provided as a courtesy to allow Vitus to evaluate whether to appeal future tax assessments.

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maintenance of government should be fairly apportioned upon the property of all. An exemption from taxation releases property from this obligation to bear its share of the cost of government and serves to disturb to some extent, that equality in the distribution of this common burden upon all property which is the object and aim of every just system of taxation. While reasonable exemptions based upon various grounds of public policy are permissible, yet taxation is the general rule... It is for this reason that statutes granting exemptions from taxation are strictly construed. A taxpayer is not entitled to an exemption unless he shows that he comes within either the express words or the necessary implication of some statute conferring this privilege upon him.

Animal Rescue League of Boston v. Assessors of Bourne, 310 Mass. 330, 37 N.E.2d 1019, 1021 (1914); cited with approval in: GAAB v. Sisters of Charity, 553 P. 2d 467, 469 (Alaska 1976).

Alaska delegated its taxation authority to the City of Dillingham as contemplated by Art. X, Sec. 2 of the Constitution. AS 29.45.010(b). Dillingham has chosen to exercise the delegation of taxing authority to the broadest extent allowed by law. DMC 4.15.020(a) (“All real and personal property not expressly exempted . . . shall be subject to annual taxation”).

The only constitutional exemptions from property tax pertain to property owned by the state, political subdivisions of the state and property used exclusively for religious, charitable, cemetery or education purposes. Other exemptions are left to the Legislature. Art. IX, Sec. 4. Vitus does not use the fuel storage facility in Dillingham exclusively for religious, charitable or educational purposes so does not qualify for an enumerated constitutional exemption.

A statutory exemption has been provided for an electric or telephone cooperative corporation. AS 10.25.540. Vitus is not an electric or telephone cooperative corporation and does not qualify for this exemption. Only Nushagak Electric and Telephone Cooperative, Inc. (“Nushagak”) qualifies for this exemption. Nushagak leases the property to Vitus for profit. When tax exempt property is used by a non-tax exempt entity for its private business purposes, the property is taxable. GAAB v. Sisters of Charity. And the Supreme Court has explicitly approved of taxing a possessory interest in tax exempt property. Fairbanks North Star Borough v. Golden Heart Util., 13 P. 3d 263, 268-269 (Alaska 2000) (“We join these other states in allowing municipal governments to assess the possessory interest in tax-exempt property”).

Art. IX, Sec. 5 of the Constitution expressly states private “interests” in tax exempt government property “shall be taxable”². The phrase “religious, charitable or educational” was

² It is not accurate to characterize the similar language of AS 29.45.030(a)(1) as an exemption from property tax. Rather, it is an affirmative statement regarding an issue that otherwise might require a judge to decide.

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not included in this article, however, its absence did not prevent the Alaska Supreme Court from deciding private leasehold interests in an office building and medical equipment were taxable in the two Sisters of Providence cases referenced above. And property owned by a religious charitable or educational entity is taxable if it generates income through use by a for profit corporation like Vitus. AS 29.45.030(c).

When the legislature has intended to include private leasehold interests within the scope of an exemption from property tax, it has done so explicitly. See, AS 44.88.140(a)(including “leasehold interests” within AIDEA tax exemption) and AS 29.45.040(p)(establishing optional exemption for leasehold interests in AIDEA property). AS 10.25.540 does not contain similar language to broaden the parties exempted from local property tax to include for profit entities using property owned by a telephone or electric cooperative.

Vitus claims despite the “Fuel Storage Contract” is not a lease and therefore not taxable³. The characterization of a commercial contract by the parties is not determinative of taxability. Regardless of whether the interest in the property is or is not considered a “lease”, it is taxable. Golden Heart, 13 P.3d at 269 (noting that taxation of “other interests” in property in addition to leasehold interests contemplated by Art. IX, Sec. 5); see also, AS 29.71.800(19)(“real property” defined to include “all possessory rights and privileges appurtenant to the property”).

Vitus’ is advancing the notion that a tax exemption of its interest in the Nushagak property should be implied based on the absence of a specific statement such an interest is taxable. This is contrary to established public policy disfavoring exemptions by implication and would treat phone and electric cooperatives differently than churches or charities. It is contrary to DMC 4.15.020(a) which requires taxation of property unless “expressly exempted”. The assessor correctly determined taxability of this property.

Sincerely,
BOYD, CHANDLER & FALCONER, LLP



By:
Brooks W. Chandler

BWC/ms

cc: James Canary(via electronic mail)
Lori Goodell(via electronic mail)

³ Xerox Corp. v. Harris County, 459 US 145(1982) involved the Import-Export clause of the United States Constitution and goods stored in bonded warehouses. It is not relevant to Alaska’s constitutional and statutory exemptions from a local property tax.

Fairbanks North Star Borough Assessor's Office v. Golden Heart Utilities, Inc. (11/17/00)
sp-5334 *Cite as FNSB vs GHU 13 P.3d 263 (Alaska, 2000)*

Notice: This opinion is subject to correction before publication in the Pacific Reporter. Readers are requested to bring errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, phone (907) 264-0608, fax (907) 264-0878.

THE SUPREME COURT OF THE STATE OF ALASKA

FAIRBANKS NORTH STAR BOROUGH)
ASSESSOR'S OFFICE,) Supreme Court Nos. S-9120/9179
)
Appellant/) Superior Court No.
Cross-Appellee,) 4FA-98-1848 CI
)
v.) **O P I N I O N**
)
GOLDEN HEART UTILITIES, INC.,) [No. 5334 - November 17, 2000]
an Alaskan Corporation,)
)
Appellee/)
Cross-Appellant.)
_____)

Appeal from the Superior Court of the State of
Alaska, Fourth Judicial District, Fairbanks,
Charles R. Pengilly, Judge.

Appearances: John R. Messenger, Preston Gates
& Ellis, LLP, Anchorage, for Appellant and Cross-Appellee. Lance
C. Parrish, Parrish Law Office, APC, Fairbanks, for Appellee and
Cross-Appellant.

Before: Matthews, Chief Justice, Eastaugh,
Fabe, Bryner, and Carpeneti, Justices.

FABE, Justice.

I. INTRODUCTION

When the City of Fairbanks sold its sewer and water utility assets to Golden Heart Utilities, Golden Heart entered into a non-exclusive lease of the Fairbanks downtown utilidor system. The Fairbanks North Star Borough Assessor's Office (the assessor) placed the lease on its assessment rolls and assessed the value of Golden Heart's possessory interest at \$223,083. Golden Heart objected, complaining that the assessor used an improper method of valuing its lease. The Board of Equalization disagreed, concluding that the value of Golden Heart's possessory interest in exempt property had been established by a valid method. Golden Heart appealed the board's decision to the superior court, and the court invalidated the assessment. The assessor appeals. Because the assessor used a recognized and appropriate method of valuation to assess Golden Heart's possessory interest in tax-exempt property, we reverse.

II. FACTS AND PROCEEDINGS

In 1997 the City of Fairbanks transferred its sewer and water utilities to a private corporation, Golden Heart Utilities, Inc. In a separate agreement related to the sale, the City granted Golden Heart a non-exclusive lease of the City's downtown utilidor [Fn. 1] system. The utilidor lease was not exclusive and required Golden Heart to pay up to \$20,000 annually for fifty years. The assessor has conceded that this rent was the market rate. The lease, however, does not address the issue of property taxes.

The Fairbanks North Star Borough Assessor added Golden Heart's leasehold interest to the tax rolls as a private possessory interest in publicly owned, non-taxable property and assessed the value of that interest at \$223,083. To arrive at that assessment, the assessor's office employed the "reversionary method." The "reversionary method" estimates the value of a leasehold interest by taking the value of the fee interest of the property and deducting both the value of the burden of use restrictions imposed by the City and the value of the City's reversionary interest in the property. In this case, the assessor estimated the fee simple value to be \$250,000. [Fn. 2] It then deducted ten percent of the fee value, or \$25,000, to account for the decrease in value resulting from the use restrictions placed on the lease. The assessor then estimated the value of the City's reversionary interest at the expiration of the fifty-year lease term at \$1,917 [Fn. 3] and deducted that amount from the fee simple value.

Fee Simple Value:	\$250,000
- 10% Use Restriction Deduction:	\$ 25,000
- Reversionary Interest:	\$ 1,917
Assessed Value:	\$223,083

Golden Heart appealed the assessment to the Borough's Board of Equalization on the grounds that the assessment was improper, unequal, and excessive. The board held a public hearing on Golden Heart's appeal in June 1998. At the hearing Golden Heart presented testimony that the assessor's valuation method was not recognized by the appraisal profession and was fundamentally wrong. An expert for Golden Heart also testified that the only value attributable to a leasehold interest is the value created when the contract rent is lower than the fair market value rent.

The assessor representative admitted that the "reversionary method" was not an appraisal method recognized by the appraisal profession. But the assessor explained that it used that methodology because it had received materials prepared by the Alaska Department of Community and Regional Affairs, Local Government Assistance Division that described the method. Moreover, experts from both sides acknowledged that we have recognized this methodology in our decision in *North Star Alaska Housing Corp. v. Fairbanks North Star Borough Board of Equalization* [Fn. 4] for determining the value of a possessory interest in tax-exempt property. The board found that "[t]he Assessor's possessory interest valuation methodology is valid for determining the taxable value of a private leasehold interest in public, non-taxable property" and upheld the assessment.

Golden Heart appealed the board's decision to the superior court, arguing that the board erred in upholding the assessor's use of the reversionary method. Golden Heart asserted that the reversionary method was fundamentally wrong, and that the assessor had inappropriately shifted "value attributable to the City's tax exempt ownership interest to [Golden Heart's] taxable leasehold interest in an attempt to gain tax revenue" in violation of the law. Instead Golden Heart contends that it should be taxed according to the value it would obtain from selling the lease agreement on the open market, called the "rent-savings method." [Fn. 5] The assessor argued in response that the Alaska Constitution authorizes local governments to tax leaseholds on government property and grants the discretion to choose any recognized method of valuation. The superior court ruled in favor of Golden Heart, concluding that the assessor's valuation method was fundamentally wrong. The assessor appeals.

III. STANDARD OF REVIEW

This case involves a challenge to the merits of an administrative decision. We independently review the merits of such a decision, giving no deference to the superior court's decision. [Fn. 6] In reviewing the same issue presented in this case, whether the "reversionary method" was an appropriate valuation technique, we applied the reasonable basis standard of review. [Fn. 7] This standard is appropriate "[w]here an agency decision as to questions of fact and law involves agency expertise." [Fn. 8] Provided that the assessor has a reasonable basis for a valuation method, that method will be allowed "so long as there was no fraud or clear adoption of a fundamentally wrong principle of valuation." [Fn. 9]

IV. DISCUSSION

The Alaska Constitution allows private interests in land owned by the government to be taxed. [Fn. 10] Accordingly, "a private leasehold, contract, or other interest in the [tax exempt municipal] property is taxable to the extent of the interest." [Fn. 11] The parties in this case dispute how to value private interests in tax exempt property.

A. The Alaska Constitution Does Not Mandate the Use of Any Specific Valuation Method.

Golden Heart asserts that Alaska's constitution and statutes compel local governments to employ appraisal methods that are "recognized by the appraisal community" and that ascertain the property's "full and true value." To support this contention, Golden Heart argues that the authority cited in the case approving the assessor's valuation method, *North Star Alaska Housing*, [Fn. 12] is based on Alaska's pre-statehood taxing scheme. The pre-statehood scheme allowed local taxing authorities to set "the mode and manner of assessment." [Fn. 13] Golden Heart contends that Alaska's constitution and statutes altered that scheme. Article IX, section 3 of the Alaska Constitution states: "Standards for appraisal of all property assessed by the State or its political subdivisions shall be prescribed by law." And the legislature subsequently mandated the following standards for appraisal:

The assessor shall assess property at its full and true value The full and true value is the estimated price that the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer both conversant with the property [Fn. 14]

According to Golden Heart, the word "assessment" was struck from a prior draft of article 9, section 3 of the Alaska Constitution and replaced with "appraisal." Golden Heart argues that local assessors therefore do not have authority to adopt "separate unpublished 'assessment' standards." Golden Heart asserts that this argument has two implications. First, it maintains that because the constitution mandates that the legislature prescribe valuation standards, a deferential standard of review is unwarranted. Second, it contends that when the legislature adopted the "full and true value" standard in AS 29.45.110, it prescribed that assessors use a valuation method recognized by the appraisal profession.

1. A deferential standard of review is appropriate.

Golden Heart argues that because the legislature prescribes the method of valuation, applying a deferential standard of review to the valuation method chosen by the Board of Equalization is inappropriate. We disagree. The Alaska Constitution empowered the legislature to prescribe valuation standards. [Fn. 15] The legislature chose to define those standards broadly, requiring that property be assessed "at its full and true value." [Fn. 16] Accordingly, the precise method for determining the "full and true value" of property is within the assessor's discretion. We recognized that discretion when we applied the reasonable basis standard of review in *North Star Alaska Housing* [Fn. 17] and again in *Cool Homes, Inc. v. Fairbanks North Star Borough*. [Fn. 18]

Although Golden Heart correctly points out that some of the authority cited in *North Star Alaska Housing* is based on the pre-statehood tax scheme, that fact does not diminish the precedential value of our prior application of the deferential standard in light of the legislature's broad direction that property be assessed "at its full and true value." [Fn. 19]

2. Recognized appraisal standards are not mandated by law.

Throughout its brief, Golden Heart contends that the reversionary method is not a recognized appraisal method. Even accepting this argument as true, we conclude that it lacks legal significance. The Alaska Constitution requires that the law prescribe appraisal standards, [Fn. 20] and the implementing law mandates that property be assessed "at its full and true value," in other words, "the estimated price that the property would bring in an open market." [Fn. 21] The relevant inquiry is whether or not

a valuation method selected by the assessor provides some reasonable estimate of the market value of the interest to be taxed, [Fn. 22] not whether the appraisal method has received the imprimatur of acceptance from the appraisal community. If the assessor has a reasonable basis for the valuation method, we will approve that method "so long as there was no fraud or clear adoption of a fundamentally wrong principle of valuation." [Fn. 23] The central question in this case is whether the appraisal method employed by the assessor resulted in an unreasonable valuation.

B. Governments May Tax the Value of the Possessory Interest in the Leased Property.

Golden Heart argues that because it pays market rent on the utilidor property, if it were to assign its interest to an informed buyer the assignee would not be willing to pay anything for the interest because the lease terms reflect the market price. Accordingly, Golden Heart believes that the assessed value should be zero.

The assessor, however, does not argue that the reversionary method accurately values the utilidor lease contract. Instead, the assessor argues that the assessment reflects the value that Golden Heart derives from its ability to use the utilidor property in its operations -- its possessory interest. Even if Golden Heart cannot sell its lease contract for any significant sum, the assessor seeks to tax the benefit Golden Heart derives from its right to use the utilidor. [Fn. 24] This use of the property must have some value, or Golden Heart would not agree that \$20,000 in annual rent is fair market value.

It was appropriate for the assessor to assess Golden Heart's possessory interest. Although our approval of the taxing of a possessory interest in tax-exempt property is not explicit in our decisions in North Star Alaska Housing [Fn. 25] and Cool Homes, [Fn. 26] we implicitly approved of the practice. First, we approved the use of the reversionary method, which begins with the fee value of a property in an attempt to discern the market value of a lease. [Fn. 27] Second, we concluded that the assessments in those cases were valid because the interests to be taxed shared "attributes of a fee interest" in that the leases were long term. [Fn. 28] Even though Golden Heart pays rent, the longevity of the agreement makes Golden Heart's interest analogous to a fee interest. Moreover, the reversionary method accounts for the differences between a leasehold interest and a fee interest in the utilidor by deducting value to reflect the restrictions on the

lease and the fact that the property will eventually revert back to the City.

In several other states, local governments are permitted to tax a private party's possessory interest in tax-exempt property. [Fn. 29] We agree with the assessor and conclude that "[t]he value to be taxed is the value of the right to use the property over the period of the lease." [Fn. 30] We join these other states in allowing municipal governments to assess the possessory interest in tax-exempt property. "[W]hat is being taxed is the value of the leasehold, in the sense of the price for which it can be sold, not the value of the leasehold to the tenant, in the sense of the profit that the tenant can make upon a sale of the lease." [Fn. 31]

Golden Heart argues that the Alaska Constitution specifically requires the assessor to assess the market value of its lease contract rather than the value of its possessory interest. Article IX, section 5 of the Alaska Constitution states that "[p]rivate leaseholds, contracts, or interests in [tax-exempt] land or property . . . shall be taxable to the extent of the interests." (Emphasis added.) Golden Heart argues that because the constitution specifically refers to a "leasehold," the assessor cannot tax its "possessory interest." But the term "leasehold" is not exclusive of the term "possessory interest." A "leasehold" is a "tenant's possessory estate in land or premises." [Fn. 32] Golden Heart provides no additional legal authority for its proposed distinction.

Moreover, the constitution appears to contemplate the taxation of more than leaseholds in tax-exempt property. The constitutional provision includes the more inclusive term "interests" in enumerating what a municipality may assess. [Fn. 33] We therefore reject Golden Heart's argument that by allowing a "leasehold" to be taxed, the Alaska Constitution excluded the possibility that a municipality could tax a "possessory interest" in a lease.

C. The Reversionary Method Is an Appropriate Valuation Method.

We have twice upheld the application of the reversionary method of valuation used in this case. [Fn. 34] In *North Star Alaska Housing*, we reviewed an assessment of property in which the federal government leased land at no cost to a housing developer. [Fn. 35] The developer then built houses on the land and leased

them back to the federal government. [Fn. 36] When Fairbanks assessed the property, the developer challenged the assessment. [Fn. 37] We affirmed the assessment and the valuation method. [Fn. 38]

The valuation method approved in *North Star Alaska Housing* was the same one employed in the instant case. [Fn. 39] As in this case, the developer argued that the leasehold should be assessed according to the value the leaseholder would receive if it sold its interest on the open market, and the value of the interest would be zero. [Fn. 40] But we rejected that argument and concluded that it was appropriate to value the leasehold "based on the land's market value, as if it were owned by [the leaseholder], minus an adjustment based on the fact that [the leaseholder's] interest in land is only for a [fixed] term" [Fn. 41] We again approved of this valuation method in our decision in *Cool Homes, Inc. v. Fairbanks North Star Borough*. [Fn. 42]

Golden Heart, however, believes that the decisions in *North Star Alaska Housing* and *Cool Homes* are distinguishable from the instant case. In those cases, the lessees either paid no rent or nominal rent for their leases. [Fn. 43] Under those circumstances both the reversionary method and the rent savings method would yield approximately equal valuations. According to the rent savings method, one would assess the lease at the market value of the lease, which is the market value of the possessory interest, less the rent actually paid. [Fn. 44] If the lessee pays no rent, the market value of the lease contract is the same as the assessed value of the possessory interest. The reversionary method starts with "the fee simple value, discounted by a factor representing the fact that the property will revert to the owner in the future," [Fn. 45] a figure approximately equal to the market value of the possessory interest in the property.

But when the lessee pays rent, the value assessed by the "rent savings method" goes down, and the value assessed by the "reversionary method" stays the same. [Fn. 46] Golden Heart argues that this result is untenable because there can only be one measure of market value. But this argument begs the question. The issue is which interest the assessor is valuing. We have already concluded that Fairbanks may assess the possessory interest. Therefore, it is not anomalous that the market value of the lease is different from the market value of the possessory interest; the valuations are measures of two completely different interests. [Fn. 47]

Moreover, many states have adopted the rule that when governments tax a lessee's possessory interest in otherwise exempt

property, they should value the interest without regard for the amount of contract rent. [Fn. 48] Many of these courts distinguish between the lessee's equity in the lease and the value of the lessee's right to use the property. [Fn. 49] Although the valuation methods vary, [Fn. 50] these states seek to ascertain the value of the right to possess the property for the contract term, without regard for the contract price, [Fn. 51] just as the assessor has done here.

The California Supreme Court has explained why the assessment of leases of tax-exempt property requires valuation methods different from the assessment of private property that is subject to a lease. In *De Luz Homes v. County of San Diego*, Justice Traynor explained that in a normal lease, no distinction is made between the possessor and the individual holding the reversionary interest when values are assessed. [Fn. 52] Instead, the reversioner and possessor sort out the tax liability in a private arrangement. [Fn. 53] Inquiring into the value of the possessory and reversionary interest is important, however, when the reversionary interest is tax exempt. [Fn. 54] Because the reversion is not taxed, some method of valuing the tenant's possessory interest must be employed to account for the value of the reversion. [Fn. 55]

Golden Heart argues that the extra-jurisdictional authority is not persuasive. Instead, Golden Heart directs us to *Great Northern Railway Co. v. Weeks*. [Fn. 56] Golden Heart asserts that Weeks stands for the proposition that the assessor must use "the same valuation standard for tax and condemnation cases," quoting the following language:

The principles governing the ascertainment of value for the purposes of taxation are the same as those that control in condemnation cases, confiscation cases, and generally in controversies involving the ascertainment of just compensation. [[Fn. 57]]

But other courts have distinguished Weeks and held that different valuation methods for condemnation and taxation purposes may be employed. [Fn. 58] And the Supreme Court has expressly limited the precedential value of Weeks, confining its holding to the specific facts. [Fn. 59]

Contrary to Golden Heart's contention, there are good reasons for employing different methods of valuation for condemnation and taxation purposes. In a condemnation, the interest holder loses its possessory interest. As Justice Traynor

explained:

In eminent domain the full value of the interest must be paid for, but since the taking discharges the obligation to pay future rent, the value of that obligation to the lessor must be awarded to him. Although the lessee is awarded damages equal only to the value of his equity, he receives the full value of his possessory interest, for his obligation to pay rent is discharged. [Fn. 60]]

In a taxation case, the assessor is attempting to ascertain the value of the possessory interest without regard for the obligation to pay rent because the assessment does not extinguish the lessee's obligation to pay that rent. Accordingly, the value of the reversionary interest is deducted from the fee simple value of the property less the decrease in value caused by the lease restrictions.

We conclude that the reversionary method is a valid method for valuation of a possessory interest in tax-exempt property. Both the assessor and Golden Heart agree that the rate of \$20,000 per year is fair market rent. And neither the assessor's use of the eight percent capitalization rate to value the fee interest at \$250,000 [Fn. 61] nor the assessor's estimate that the use restrictions deplete the market value of the lease by ten percent has been challenged.

Golden Heart does, however, point to an error in the assessor's valuation. Golden Heart argues that when calculating the reversionary interest, the assessor improperly calculated the value of the reversion using the \$225,000 value, reached by deducting ten percent of the fee simple value of \$250,000 from the fee value to account for the use restrictions. Golden Heart contends that this deduction is inappropriate because when the property reverts to Fairbanks it will not contain the lease's restrictions. We agree. Once the lease term expires, the utilidor will revert back to Fairbanks, but because Fairbanks is the fee owner, it will not be subject to use restrictions. Factoring the use restrictions into the valuation of Fairbanks's reversion is therefore inappropriate.

Assessor's Reversion Estimate = (fee value -
(.1) fee value) x (present value factor)

The present value factor for a lease expiring in fifty years, assuming 10% annual compound interest, is .008519.

Assessor's Reversion Estimate = (250,000 - 25,000) x (.008519) = \$1,917

Recalculated Reversion Estimate = (250,000 - 0) (.008519) = \$2,130

Accordingly, the new assessed value should be the fee value (\$250,000) less the amount accounting for the use restrictions (\$25,000) less the recalculated value of the reversionary interest (\$2,130), [Fn. 62] equalling \$222,870.

D. The Assessor's Valuation Did Not Violate Equal Protection.

Golden Heart argues that the assessor's valuation of its possessory interest denied it equal protection. Golden Heart asserts that "[t]he Assessor chooses between two valuation standards based solely on the exemption status of the holders of the interest. . . . It is impermissible to change valuation standards based on the tax status of the holders of an interest." It is perfectly acceptable, however, to use different valuation standards for exempt and non-exempt property. The Alaska Constitution expressly calls for property owned by the state or its political subdivisions to be tax exempt, [Fn. 63] and expressly allows privately held interests in exempt lands to be taxed. [Fn. 64] Golden Heart argues that the assessor has denied it equal protection because it does not tax all leases. But this argument mischaracterizes Fairbanks's assessing procedures.

The Board of Equalization found that "private property is taxable to the fee owner based on the full fee value of the property." The tax obligation of a lessee of private property manifests itself in the form of rent paid to the fee holder -- the lessor -- who is responsible for the property tax. In cases such as these where a private party leases property from the government, the fee holder is tax exempt. Because the assessor cannot assess the tax-exempt fee holder, it assesses the interest held by the private lessee "to the extent of the interest" [Fn. 65] and calculates the value of that possessory interest. [Fn. 66] As the California Supreme Court explained:

In practice, assessors usually enter the entire value of land and improvements on the tax roll without distinction between possessory and reversionary interests As between reversioners and possessors payment of the tax is a

private arrangement. When, however, the possessory interest is taxable and the reversion is exempt, only the possessory interest is subject to assessment and taxation. [Fn. 67]

Far from being an equal protection violation, this practice actually levels the field between lessees of private property and those with leases from a tax-exempt entity. [Fn. 68]

Golden Heart makes a second argument that it has been treated differently than other holders of tax-exempt property. Golden Heart points out that leasehold interests for floatplane slips at the airport are not taxed. At the hearing the assessor explained that it did not tax these leases because the value was so low that the cost of doing so would exceed the tax revenue generated. Golden Heart argues that this practice either violates equal protection or is arbitrary and capricious because the assessor lacks standards for determining when the value of the interest was too low to tax.

Both the United States and Alaska Constitution guarantee people equal protection under the law. [Fn. 69] "These clauses, however, require 'equal treatment only for those who are similarly situated.'" [Fn. 70] And Golden Heart has not demonstrated that it has been treated differently from similarly situated parties. Our cases point out that the City of Fairbanks has a decades-old policy of taxing possessory interests in tax-exempt property. [Fn. 71] There are several leases of tax-exempt land in the Fairbanks area which the City has assessed, including the airport and the properties in North Star Alaska Housing and Cool Homes.

Golden Heart claims, however, that the assessor has violated its equal protection rights by failing to tax leases of floatplane slips at the airport. But these interests are not similarly situated to the Golden Heart's utilidor lease. The assessor stated that its reason for not assessing the floatplane leases was their low value in relation to the cost of collection of the tax. And Golden Heart has failed to demonstrate why this was an unjustifiable or arbitrary classification.

To demonstrate that the board acted arbitrarily or capriciously, Golden Heart would have to show that the City of Fairbanks had "no principled basis for distinguishing between" [Fn. 72] the floatplane slip leases and the utilidor lease. The testimony at the hearing noted that the valuation of the floatplane leases was well below that of the utilidor lease. [Fn. 73] The record contains no more information about the values of the floatplane slip leases, but it does demonstrate that valuable

leases at the airport are taxed. Given the record, we see no basis to overturn the board's finding that Golden Heart has not been singled out for unequal treatment.

E. Golden Heart Was Not Denied Due Process.

Golden Heart complains of alleged improprieties during the hearing process, which it argues amount to a violation of due process. The claims of error [Fn. 74] include the assessor's alleged failure to give reasonable notice of its position and the board's refusal to allow Golden Heart to call adverse witnesses during the presentation of its case.

Golden Heart argues that it did not have adequate notice of the assessor's position. The assessor provided its position memorandum to Golden Heart on the Friday before the Monday hearing. Although this notice complied with Fairbanks North Star Borough Ordinance 3.24.001(D), [Fn. 75] Golden Heart argues that this notice was insufficient. Golden Heart claims it was prejudiced because it could not prepare extensively to respond to the assessor's case. But the transcript indicates that Golden Heart adequately understood the assessor's position at the hearing. Because "[t]he crux of due process is opportunity to be heard and the right to adequately represent one's interests," [Fn. 76] the board did not deny Golden Heart due process.

Golden Heart also wanted to call the assessor as part of its case in chief. Golden Heart argued that because it did not have an adequate opportunity to learn the position of the assessor prior to the hearing, the assessor should have been required to testify first so that Golden Heart's expert could respond. The board denied this request. Instead it granted Golden Heart "wide latitude" in presenting rebuttal evidence.

[Golden Heart] will be allowed wide latitude in [its] rebuttal case to present [its] expert testimony that would rely on any of the evidence that is brought forth during either the direct or cross examination of the assessors, which will enable [Golden Heart] to have all of the evidence in the record that [it wishes] to put in. At the same time, we'll retain the order that the Board is used to and feels comfortable with, but [Golden Heart] will not be precluded from the presentation of any of [its] evidence.

By allowing Golden Heart the option of delaying its expert testimony until after the assessor had presented its case, the board afforded Golden Heart the opportunity to cure the problem

about which it now complains. Generally, administrative bodies have discretion with regard to the order of proof and the presentation of evidence. [Fn. 77] Moreover, the Wisconsin Supreme Court has confronted an identical argument and concluded that there was no due process violation. [Fn. 78] In *State ex rel. Gregersen v. Board of Review*, the Board of Review did not allow the taxpayer to call the assessor in his case in chief. [Fn. 79] The Wisconsin Supreme Court affirmed the assessment, concluding that there was no denial of the taxpayer's right to cross-examine, just a postponement. [Fn. 80] Because *Golden Heart* was permitted to rebut the assessor's testimony, the board's decision did not constitute a due process violation.

V. CONCLUSION

Because Alaska's constitution, statutes, and case law authorize local governments to tax a possessory interest in tax-exempt public property, the assessor's valuation was not fundamentally wrong. But because the assessor inappropriately considered the impact of the use restrictions when it valued the City's reversionary interest, the 1998 assessment should be modified from \$223,087 to \$222,870.

FOOTNOTES

Footnote 1:

The "utilidor" contains the pipes and wiring comprising important portions of Fairbanks's public works.

Footnote 2:

The assessor arrived at this figure by capitalizing the annual rent of \$20,000 per year at a rate of eight percent.

Footnote 3:

The assessor arrived at the value of the reversionary interest by starting with the fair market value and deducting the value of the use restrictions, a figure called the "value less restrictions." The assessor determined the value of the reversion by figuring out the present value of the "value less restrictions"

at the end of the 50-year term. The assessor estimated the present value by taking the product of the "value less restrictions" and the present value factor found on a compound interest table that assumed an interest rate of 10%. $(\$250,000 - \$25,000) \times (.008519) = \$1,917$

Footnote 4:

778 P.2d 1140, 1143-45 (Alaska 1989).

Footnote 5:

The assessor refers to this method as the "rent-savings method," but Golden Heart has avoided using that term because this court has explicitly upheld a municipality's decision to value a lease of tax-exempt property by the "reversionary method" instead of the "rent-savings method." See *North Star Alaska Hous.*, 778 P.2d at 1143-45. Because Golden Heart's advocated method so closely resembles the "rent-savings method" we refer to it as such. "The rent savings method arrives at a value based upon the market rental value of the leasehold minus the amount of rent actually paid by the lessee." *Id.* at 1143.

Footnote 6:

See *Robles v. Providence Hosp.*, 988 P.2d 592, 596 (Alaska 1999).

Footnote 7:

See *North Star Alaska Hous.*, 778 P.2d at 1144 n.7.

Footnote 8:

Id. (internal punctuation and citation omitted).

Footnote 9:

Hoblit v. Greater Anchorage Area Borough, 473 P.2d 630, 632 (Alaska 1970) (quoting *Twentieth Century Inv. Co. v. City of*

Juneau, 359 P.2d 783, 788 (Alaska 1961)) (internal punctuation omitted).

Footnote 10:

Alaska Const. art. IX, sec. 5 ("Private leaseholds, contracts, or interests in land or property owned or held by the United States, the State, or its political subdivisions, shall be taxable to the extent of the interests.").

Footnote 11:

AS 29.45.030(a)(1)(A).

Footnote 12:

778 P.2d at 1143-45.

Footnote 13:

Twentieth Century Inv. Co., 359 P.2d at 788 n.13 (internal quotation omitted).

Footnote 14:

AS 29.45.110(a).

Footnote 15:

See Alaska Const. art. IX, sec. 3.

Footnote 16:

AS 29.45.110(a).

Footnote 17:

778 P.2d at 1144 n.7.

Footnote 18:

860 P.2d 1248, 1262-66 (Alaska 1993).

Footnote 19:

AS 29.45.110(a).

Footnote 20:

See Alaska Const. art. IX, sec. 3.

Footnote 21:

AS 29.45.110(a).

Footnote 22:

See North Star Alaska Hous., 778 P.2d at 1144 n.7.

Footnote 23:

Hoblit v. Greater Anchorage Area Borough, 473 P.2d 630, 632 (Alaska 1970) (quoting Twentieth Century Inv. Co. v. City of Juneau, 359 P.2d 783, 788 (Alaska 1961)) (internal punctuation omitted).

Footnote 24:

See Pier 67, Inc. v. King County, 469 P.2d 902, 907 (Wash. 1970).

Footnote 25:

778 P.2d at 1143-45.

Footnote 26:

860 P.2d at 1263-64.

Footnote 27:

See North Star Alaska Hous., 778 P.2d at 1143-45; Cool Homes, 860 P.2d at 1263-64.

Footnote 28:

North Star Alaska Hous., 778 P.2d at 1145; see Cool Homes, 860 P.2d at 1263-64.

Footnote 29:

See De Luz Homes v. County of San Diego, 290 P.2d 544, 554-58 (Cal. 1955); Texas Co. v. County of Los Angeles, 338 P.2d 440, 444 (Cal. 1959); People ex rel. Korzen v. American Airlines, Inc., 233 N.E.2d 568, 572 (Ill. 1968); People ex rel. Kucharski v. Trans World Airlines, Inc., 251 N.E.2d 225, 226-27 (Ill. 1969); Portland Gen. Elec. Co. v. State Tax Comm'n, 437 P.2d 827, 833 (Or. 1968); Shaia v. City of Richmond, 153 S.E.2d 257, 261 (Va. 1967); Pier 67, 469 P.2d at 907.

Footnote 30:

Pier 67, 469 P.2d at 907.

Footnote 31:

Trans World Airlines, Inc., 251 N.E.2d at 226.

Footnote 32:

Black's Law Dictionary 900 (7th ed. 1999); but see Black's Law Dictionary 900 (defining a "leasehold interest," for the purposes of eminent domain, as "the lessee's interest in the lease itself, measured by the difference between the total remaining rent and the

rent the lessee would pay for similar space for the same period"); see also Totemoff v. State, 905 P.2d 954, 966 (Alaska 1995); Dannemiller v. AMFAC Distrib. Corp., 566 P.2d 645, 653 n.10 (Alaska 1977).

Footnote 33:

Alaska Const. art IX, sec. 5.

Footnote 34:

See Cool Homes, Inc. v. Fairbanks N. Star Borough, 860 P.2d 1248, 1262-66 (Alaska 1993); North Star Alaska Hous. Corp. v. Fairbanks N. Star Borough Bd. of Equalization, 778 P.2d 1140, 1143-45 (Alaska 1989).

Footnote 35:

778 P.2d at 1141.

Footnote 36:

See id. at 1141-42.

Footnote 37:

See id. at 1142.

Footnote 38:

See id. at 1145.

Footnote 39:

See id. at 1143-45.

Footnote 40:

See id. at 1143, 1144.

Footnote 41:

Id. at 1144.

Footnote 42:

860 P.2d at 1262-66.

Footnote 43:

See North Star Alaska Hous., 778 P.2d at 1145; Cool Homes, 860 P.2d at 1252.

Footnote 44:

See id.; see also People ex rel. Kucharski v. Trans World Airlines, Inc., 251 N.E.2d 225, 226 (Ill. 1969).

Footnote 45:

North Star Alaska Hous., 778 P.2d at 1143.

Footnote 46:

Rent Savings Method

Possessory Int. Value - Rent Paid = Lease Market Value

Reversionary Method

Fee Simple Value - Reversionary Int. Value = Possessory Int. Value

Therefore, when "Rent Paid" is equal to zero, the market value of the lease would equal the value of the possessory interest.

Footnote 47:

The superior court believed that Golden Heart's payment of rent distinguished this case from our decision in North Star Alaska Housing and Cool Homes. But the payment of rent does not affect the value of Golden Heart's possessory interest.

Footnote 48:

See *Texas Co. v. County of Los Angeles*, 338 P.2d 440, 444 (Cal. 1959); *De Luz Homes v. County of San Diego*, 290 P.2d 544, 554-58 (Cal. 1955); *People ex rel. Kucharski v. Trans World Airlines, Inc.*, 251 N.E.2d 225, 226-27 (Ill. 1969); *People ex rel. Korzen v. American Airlines, Inc.*, 233 N.E.2d 568, 572 (Ill. 1968); *Portland Gen. Elec. Co. v. State Tax Comm'n*, 437 P.2d 827, 833 (Or. 1968); *Shaia v. City of Richmond*, 153 S.E.2d 257, 261 (Va. 1967); *Pier 67, Inc. v. King County*, 469 P.2d 902, 907 (Wash. 1970).

Footnote 49:

See *Trans World Airlines*, 251 N.E. 2d at 226; *Portland Gen. Elec.*, 437 P.2d at 833; *Shaia*, 153 S.E.2d at 264; *Pier 67*, 469 P.2d at 907.

Footnote 50:

Compare *De Luz Homes*, 290 P.2d at 557-58, with *Shaia*, 153 S.E.2d at 262.

Footnote 51:

See *De Luz Homes*, 290 P.2d at 557-58; *Texas Co.*, 338 P.2d at 444; *American Airlines*, 233 N.E.2d at 572; *Trans World Airlines*, 251 N.E. 2d at 226; *Portland Gen. Elec.*, 437 P.2d at 833; *Shaia*, 153 S.E.2d at 264; *Pier 67*, 469 P.2d at 907.

Footnote 52:

290 P.2d at 554-55.

Footnote 53:

See id. at 555.

Footnote 54:

See id.

Footnote 55:

See id.

Footnote 56:

297 U.S. 135 (1936). In *Weeks*, the Supreme Court overturned a state's valuation of a railway system because the valuation method factored in value attributable to the entire rail system, even portions of the system located outside the state. See id. at 142-44.

Footnote 57:

297 U.S. at 139.

Footnote 58:

See, e.g., *Great N. Nekoosa Corp. v. United States*, 544 F. Supp. 511, 514-15 (D. Me. 1982).

Footnote 59:

See *Nashville, C. & St. L. Ry. v. Browning*, 310 U.S. 362, 371 (1940) ("Plainly, therefore, [*Weeks*] must have rested upon considerations peculiar to its own facts.").

Footnote 60:

Texas Co., 338 P.2d at 444.

Footnote 61:

The assessor arrived at the \$250,000 valuation of the fee interest by dividing the annual rent of \$20,000 by a capitalization rate of eight percent. $20,000 \div .08 = \$250,000$

Footnote 62:

Although the disparity between the two valuations may seem de minimis, that disparity will widen as the expiration of the lease term draws closer. The present value factor that Fairbanks uses to calculate the present value of the reversion will increase every year. For example, when the lease term was to expire in 50 years, the factor was .008519. According to the same table that factor should be .022095 when the expiration is 40 years away, .148644 when it is 20 years away, .385543 when it is 10 years away, .620921 when it is 5 years away, and .909091 when it is 1 year away. The reversion gets more valuable as eventual transfer back to Fairbanks becomes imminent. The valuation of Golden Heart's possessory interest in future years should reflect this phenomenon.

Footnote 63:

Alaska Const. art. IX, sec. 4.

Footnote 64:

Alaska Const. art. IX, sec. 5.

Footnote 65:

AS 29.45.030(a)(1)(A).

Footnote 66:

See North Star Alaska Hous., 778 P.2d at 1145.

Footnote 67:

De Luz Homes v. County of San Diego, 290 P.2d 544, 555 (Cal.

1955) (citations omitted).

Footnote 68:

See *Trimble v. City of Seattle*, 231 U.S. 683, 689-90 (1914) ("If these leaseholds are not taxable, they are a favored class of property; for ordinarily leaseholds are taxed even if they are lumped and included in the value of the fee.").

Footnote 69:

See U.S. Const. amend. XIV, sec. 2; Alaska Const. art. I, sec. 2.

Footnote 70:

Rutter v. State, 963 P.2d 1007, 1013 (Alaska 1998) (quoting *Shepherd v. State, Dep't of Fish & Game*, 897 P.2d 33, 44 (Alaska 1995)).

Footnote 71:

See *North Star Alaska Hous., Inc. v. Fairbanks N. Star Borough*, 778 P.2d at 1145; *Cool Homes, Inc. v. Fairbanks N. Star Borough*, 860 P.2d 1248, 1262-66 (Alaska 1993).

Footnote 72:

Noey v. Dep't of Env'tl. Conservation, 737 P.2d 796, 806 (Alaska 1987).

Footnote 73:

No valuations were provided at the hearing, but Golden Heart's counsel did mention that the rent on a floatplane slip was \$360 per year, well below the \$20,000 annual rental rate of the utilidor. If the \$360 figure was close to the market rent, the assessed value of the floatplane slips would be orders of magnitude lower than the valuation of the utilidor, assuming the same eight percent capitalization rate used to value the utilidor.

Footnote 74:

Golden Heart makes eight claims of error in all, but we do not consider all of them because they were not briefed sufficiently for us to consider them on appeal. See *Adamson v. University of Alaska*, 819 P.2d 886, 889 n.3 (Alaska 1991) ("where a point is given only a cursory statement in the argument portion of a brief, the point will not be considered on appeal").

Footnote 75:

FNSBCO 3.24.001(D) requires that information regarding the assessor's position be made available one working day before the hearing.

Footnote 76:

Matanuska Maid, Inc. v. State, 620 P.2d 182, 192 (Alaska 1980).

Footnote 77:

Cf. *Stein v. Kelso*, 846 P.2d 123, 126 (Alaska 1993) (Department of Environmental Conservation hearing officer's evidentiary ruling reviewed for an abuse of discretion).

Footnote 78:

See *State ex rel. Gregersen v. Board of Review of Town of Lincoln*, 92 N.W.2d 236 (Wis. 1958).

Footnote 79:

Id. at 237-38.

Footnote 80:

See *id.* at 239, 241.

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Attorneys for Vitus Energy LLC

THE BOARD OF EQUALIZATION OF DILLINGHAM, ALASKA

VITUS ENERGY LLC,)
)
 Claimant,)
)
 vs.)
)
 CITY OF DILLINGHAM,)
) Case No. RP-18-44
 Respondent.)
)

CONSENT TO REPRESENTATION

The undersigned hereby consents to representation by Davis Wright Tremaine
LLP before the Board of Equalization of Dillingham, Alaska, pursuant to Dillingham
Municipal Code 4.15.125(A).

DATED this 16 day of May, 2018.

Vitus Energy LLC

By: Justin Charon
Justin Charon, President
Vitus Energy LLC

1 Jon S. Dawson, ABA #8406022
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7 Attorneys for Vitus Energy LLC

8 THE BOARD OF EQUALIZATION OF DILLINGHAM, ALASKA

9 VITUS ENERGY LLC,)
10)
11 Claimant,)
12)
13 vs.)
14)
15 CITY OF DILLINGHAM,)
16)
17 Respondent.)

18 Case No. RP-18-44

19 ENTRY OF APPEARANCE

20 Davis Wright Tremaine LLP hereby enters its appearance on behalf of Vitus
21 Energy LLC before the Dillingham Board of Equalization, and requests that copies of all
documents filed in this action be sent to the undersigned attorney at the following
address:

Jon S. Dawson
Davis Wright Tremaine LLP
188 W Northern Lights Blvd., Suite 1100
Anchorage, AK 99503-3985
jondawson@dwt.com

This entry of appearance is approved by Vitus Energy LLC pursuant to Dillingham
Municipal Code 4.15.125(A), as set forth in the attached authorization signed by an

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authorized representative of Vitus Energy LLC.

DATED this 16th day of May, 2018.

DAVIS WRIGHT TREMAINE LLP
Attorneys for Claimant Vitus Energy LLC

By: 
Jon S. Dawson, ABA #8406022
Nicholas Bajwa, ABA#0705015

Certificate of Service

I certify that on the 16th day of May, 2018,
a true and correct copy of the foregoing document was
served on the following via:

- () First Class Mail
- () Facsimile and Mail
- () Email and ~~First Class Mail~~
- () Hand Delivery

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Boyd, Chandler & Falconer LLP
911 W. 8th Ave., Suite 302
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By: 
Janet Eastman

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Attorneys for Vitus Energy LLC

THE BOARD OF EQUALIZATION OF DILLINGHAM, ALASKA

7 VITUS ENERGY LLC,)
8)
9 Claimant,)
10 vs.)
11 CITY OF DILLINGHAM,)
12 Respondent.)

Case No. RP-18-44

NOTICE RE APPEAL

Vitus Energy LLC (“Vitus”) hereby provides notice that the appeal timely filed before the Board on or before April 27, 2018, referenced additional documents to supplement the appeal. Attached are the following documents:

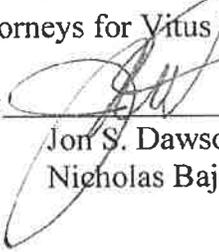
- 17 1) A copy of AS 10.25.540 attached as Exhibit 1;
- 18 2) A copy of AS 10.25.570 attached as Exhibit 2;
- 19 3) A copy of the services agreement between Vitus and Nushagak Electric &
20 Telephone Cooperative, Inc. (“NETC”) as Exhibit 3;
- 21

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- 4) A copy of the Corporation Warranty Deed dated May 10, 1978 conveying the subject property to NETC as Exhibit 4; and
- 5) A copy of the Notice of Assessment is also attached as reference as Exhibit 5.
- 6) A copy of the Certificate of Consolidation for NETC, attached as Exhibit 6.

DATED this 16th day of May, 2018.

DAVIS WRIGHT TREMAINE LLP
Attorneys for Vitus Energy LLC

By: 
Jon S. Dawson, ABA #8406022
Nicholas Bajwa, ABA #0705015

Certificate of Service

I certify that on the 16th day of May, 2018, a true and correct copy of the foregoing document was served on the following via:

- () First Class Mail
- () Facsimile and Mail
- (X) Email and ~~First Class Mail~~
- () Hand Delivery

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

By: 
Janet Eastman

NOTICE RE APPEAL
Vitus Energy LLC v. City of Dillingham, Case No. RP-18-44
4838-6325-8213v.1 0090817-000003

§ 10.25.540. Business license and taxation of cooperatives, AK ST § 10.25.540

West's Alaska Statutes Annotated
Title 10. Corporations and Associations
Chapter 25. Electric and Telephone Cooperative Act
Article 4. Miscellaneous Provisions

AS § 10.25.540

§ 10.25.540. Business license and taxation of cooperatives

Currentness

(a) Cooperatives under this chapter shall apply for a business license and pay the initial license fee as provided by the Alaska Business License Act (AS 43.70), as amended.

(b) Before March 1 of each year,

(1) each telephone cooperative shall pay to the state, instead of state and local ad valorem, income, and excise taxes that may be assessed or levied, a percentage of its gross revenue earned during the preceding calendar year;

(2) each electric cooperative shall pay to the state, instead of state and local ad valorem, income, and excise taxes that may be assessed or levied, a tax on the number of kilowatt hours of electricity sold at retail by the cooperative during the preceding calendar year.

Credits

SLA 1959, ch. 93, § 33; SLA 1960, ch. 66, § 1; SLA 1980, ch. 74, § 1.

AS § 10.25.540, AK ST § 10.25.540

Current with emergency effective legislation through April 18, 2018 of the 2018 Second Regular Session of the 30th Legislature.

End of Document

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Exhibit 1, Page 1 of 1

West's ALASKA Statutes Annotated. No claim to original U.S. Government Works.

§ 10.25.570. Refund to local governments, AK ST § 10.25.570

West's Alaska Statutes Annotated
Title 10. Corporations and Associations
Chapter 25. Electric and Telephone Cooperative Act
Article 4. Miscellaneous Provisions

AS § 10.25.570

§ 10.25.570. Refund to local governments

Currentness

The proceeds of the telephone cooperative gross revenue tax and the electric cooperative tax, less the amount expended by the state in their collection, shall be refunded to an organized borough or a city of any class incorporated under state law, in the proportion that the revenue was earned within the city or the borough area outside the city. However, taxes collected on gross revenue earned by a telephone cooperative or on the sale of electricity by an electric cooperative outside a city or organized borough shall be retained by the state and deposited into its general fund.

Credits

SLA 1959, ch. 93, § 33; SLA 1970, ch. 241, § 1; SLA 1980, ch. 74, § 5.

AS § 10.25.570, AK ST § 10.25.570

Current with emergency effective legislation through April 18, 2018 of the 2018 Second Regular Session of the 30th Legislature.

End of Document

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Exhibit 2, Page 1 of 1

WESTLAW © 2018 Thomson Reuters. No claim to original U.S. Government Works

FUEL STORAGE AGREEMENT

THIS FUEL STORAGE AGREEMENT ("Agreement") is entered into effective as of the 1st day of May, 2014 (the "Effective Date") by and between Nushagak Electric & Telephone Cooperative, Inc. ("NETC") and Vitus Energy LLC ("Vitus").

In consideration of the mutual covenants contained herein, the parties agree as follows:

1. Term. The term of this Agreement is from the Effective Date until May 31, 2024.

2. Fuel Storage and Handling Services.

(a) Subject to Section 8, NETC shall provide Vitus fuel storage services at NETC's terminal facility in Dillingham, Alaska (the "Terminal") on an as-needed basis, for the following types of fuel (collectively, "Fuel") subject to the following maximum storage capacity:

	ULSD No. 1 or No 2	UNL Gasoline
Maximum Storage Capacity (in US gallons)	436,909	436,827

NETC shall dedicate a separate storage tank for each type of Fuel being stored for Vitus (those storage tanks being hereinafter referred to collectively as the "Storage Tanks"). The tank or tanks comprising the Storage Tanks for Vitus's fuel are identified on the attached Exhibit A. NETC shall not be obligated to store fuel for Vitus in any other tanks. In the event that the useable capacity of either tank is reduced below the above-listed maximum storage capacities on account of regulatory or other legal requirements, the maximum storage capacity available to Vitus will be similarly reduced. NETC shall not commingle Fuel being stored for Vitus with fuel or fuel products belonging to NETC or any other entity.

(b) **Marine Deliveries Into/Out of Terminal.** NETC shall be responsible for operating all valves within the NETC tank farm during deliveries of fuel to Vitus. Vitus shall be responsible for the operation of the delivery vessel, header watch, hose watch and coordinating communications. Other than operation of valves in the NETC tank farm, Vitus shall be responsible for handling the Fuel into and out of the Storage Tanks via the marine header and pipeline. All receipts for any Fuel received for Vitus from marine vessels shall be arranged for and provided by Vitus. No more than four (4) marine deliveries of fuel into the Storage Tanks or eight (8) marine deliveries out of the Storage Tanks shall be made in any one calendar year.

(c) **Truck Rack Dispensing.** Vitus shall handle Vitus's Fuel out of the Storage Tanks using the Truck Rack (defined below). NETC shall provide Vitus with access to information relating to totalizers at the Truck Rack and all other delivery information.

(d) The Storage Tanks shall be operated to provide the storage and handling services herein agreed twenty-four (24) hours per day, seven (7) days per week; provided, however, that Vitus shall notify NETC at least forty-eight (48) hours in advance of the arrival of any marine

MM MS

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tanker or barge. Vitus shall be solely responsible for the operation and maintenance of the Truck Rack. Except in an emergency, Vitus shall notify NETC in advance of any maintenance or repair activities on the Truck Rack.

(e) In the event of a conflict, NETC utility operations shall have priority for the use of facilities serving both the Storage Tanks and the remainder of the Terminal.

3. Charges. As compensation for NETC's services under this Agreement, Vitus shall pay the following charges:

(a) Throughput Charges.

(1) **Truck Rack.** Vitus shall pay NETC [REDACTED] per gallon for each and every gallon of Fuel that Vitus removes from the Storage Tanks via the Truck Rack (defined below).

(2) **Header at City Dock.** Vitus shall pay NETC [REDACTED] per gallon for each and every gallon of Fuel that Vitus removes from the Storage Tanks via NETC's permanent shoreside pipeline header at the city dock (the "Header") to a tank barge vessel.

(3) **No Ingress Charges.** There shall be no charge for the handling of Fuel into the Storage Tanks except as provided in subsection (c).

(4) **Minimum Throughput Charges.** In the event that the sum of the throughput charges described in subsections (1) and (2) (the "Throughput Charges") above are less than [REDACTED] (the "Minimum Throughput Charge") in any calendar year, Vitus shall provide a true up payment equal to the difference between the Minimum Throughput Charge and the amount of Throughput Charges paid that year. In the event the maximum storage capacity of the Storage Tanks is reduced pursuant to Section 2(a), then the Minimum Throughput Charge shall be reduced on a pro rata basis according to the percentage reduction in such maximum storage capacity.

(b) **No Storage Charges.** Except as provided in the following subsection (d), there shall be no charge for the storage of Fuel for Vitus.

(c) **Time Charges.** Vitus shall pay for NETC employee time spent assisting with loading or unloading fuel from the Storage Tanks according to the following schedule based on the amount of time spent during business hours and outside business hours:

Position	Rate for Business Hours	Rate for Outside Business
Hours	(8:00 am to 5:00 pm)	(5:00 pm to 8:00 am)
Plant Supervisor	\$115.00	\$172.50
Plant Operator	\$105.00	\$157.50

(d) **Holdover Charges.** Should any Fuel being stored for Vitus remain in the Storage Tanks beyond the expiration or termination of this Agreement, other than a termination on account of NETC's default, Vitus shall pay a holdover storage charge of \$500 per day, in

addition to the charges in subsection (a) above, until all Fuel is removed. The parties agree that this subsection (d) shall survive the expiration or termination of this Agreement.

(e) **Taxes.** Vitus shall be responsible and pay for any and all existing or future property taxes levied or assessed on Fuel stored for Vitus, including but not limited to any sales tax, inventory tax, or use tax. Vitus shall reimburse NETC on a timely basis for any such taxes that NETC may be required to pay with regard to Fuel stored for Vitus.

(f) **Other Fees.** Vitus shall be responsible and pay for any and all wharfage, dockage and related charges assessed by any local, state or federal government, agency or port authority for any vessel delivering Fuel to the Storage Tanks for Vitus.

(g) **Price Adjustments.** The prices in Section 3(a) shall be adjusted annually on June 1 of each year of this Agreement. The adjustment shall be equal to the prior calendar year rate of change in the Consumer Price Index (CPI-U) for Anchorage, Alaska. The prices in Section 3(c) shall be adjusted annually on June 1 of each year of this Agreement to reflect actual changes in NETC's loaded cost of labor during the preceding year as established by NETC.

4. **Payment.** Invoicing will be done at the time Fuel is removed from the Storage Tanks. Payment is due within thirty (30) days after presentation of invoice. Vitus may pay by check, cash, ACH or EFT.

5. **No Lien.** NETC waives and shall not assert any right to claim a lien or to retain possession of the Fuel, including without limitation any rights under AS 34.35.220, for amounts owing under this Agreement.

6. **Potential Egress Via Header.** The parties recognize that NETC must evaluate the safety and liability risks associated with removing the pipeline check valves that would permit the flow of fuel from the Storage Tanks back to a marine vessel. NETC may, but is not required, to modify the pipeline to allow the removal of Fuel from the Storage Tanks to a tank barge vessel via the Header. Vitus shall have no right to handle Fuel out of the Storage Tanks to a marine vessel via the Header unless NETC elects to make such modifications. Vitus shall repay NETC for the cost of making any modifications to the check valves and pipeline up to a maximum of Seventy-Five Thousand Dollars (\$75,000). Vitus will repay those costs plus interest at the annual rate of eight percent (8%) in twenty-four (24) equal monthly payments commencing the first day of the month after NETC provides notice that the modifications are completed.

7. **Construction & Ownership of Truck Rack.**

(a) **Truck Rack.** Any time after the Effective Date of this Agreement, Vitus may construct a Truck Rack at the NETC tank farm at a specific location subject to NETC's written approval (the Truck Rack includes the containment area). The cost of designing and constructing the Truck Rack shall be paid for by NETC up to a maximum of Two Hundred Thousand Dollars (\$200,000). NETC will make payments directly to Vitus's contractors upon presentation of adequate invoices.

(b) **Repayment of Cost of Construction.** Vitus will repay all costs paid by NETC for design and construction of the Truck Rack plus interest at the annual rate of eight percent (8%) in twenty-four (24) equal monthly payments commencing the earlier of the first day of the month after the Truck Rack is commissioned or August 1, 2014.

(c) **Ownership and Use.** The Truck Rack shall be the property of NETC but Vitus shall have the exclusive right to use the Truck Rack for the term of this Agreement, and NETC shall prevent third parties from making use of the Truck Rack. Vitus shall have the right to come onto the Terminal property, and to bring persons, trucks, equipment, and materials onto the Terminal property, for the purpose of using the Truck Rack. Vitus shall also be solely responsible for operating and maintaining the Truck Rack at its expense. Vitus shall prepare a fully engineered plan for the construction of the Truck Rack. Construction shall not proceed until the plan has been approved by NETC, which approval shall not be unreasonably withheld. The Truck Rack shall be constructed in accordance with the approved plans and no material changes to the design or construction shall be made without the written consent of both parties.

8. Potential Unleaded Gasoline Storage. In addition to handling diesel fuel, at NETC's option, Vitus may also store gasoline in the Storage Tanks. In the event NETC elects to allow storage of gasoline, the amount of gasoline stored shall be no more than 436,827 gallons and will be limited to the Storage Tank depicted in a revised Exhibit A to be provided by NETC. Handling and storage of gasoline shall be on the same terms and conditions as diesel fuel except as provided in this Section. If NETC gives Vitus permission to proceed with gasoline storage, Vitus may only proceed under the following circumstances:

(a) **C-Plan & Spill Response.** Vitus must prepare for NETC a revised C-Plan that must be approved by the appropriate government agencies permitting the use of NETC's emergency fuel storage tank as ordinary fuel storage. Vitus shall also reimburse NETC for the cost for acquiring any additional fuel spill response/prevention equipment (including fuel bladders) and/or joining spill response organizations necessary under the revised C-Plan.

(b) **Regulatory Approvals.** Vitus must prepare documents for any other necessary regulatory approvals, including the Fire Marshall, and such approvals must be obtained without additional cost to NETC or material change in NETC's utility operations.

(c) **Pipeline Purge.** Vitus must prepare a plan, which is subject to approval by NETC, to purge the fuel pipeline of gasoline after utilizing it to load or unload gasoline from the Storage Tanks. Vitus must follow the approved plan to purge the pipeline following any delivery or removal of gasoline involving the pipeline. Vitus shall document the results of the purge and provide reasonably satisfactory evidence to NETC that the pipeline has been purged after each such delivery or removal of gasoline via the pipeline.

(d) **Additional Tank.** To the extent necessary, Vitus may place an additional Ten Thousand Gallon (10,000) tank in the area marked on the revised Exhibit A for the purpose of holding gasoline-contaminated diesel fuel resulting from purging of the pipeline. Vitus is solely responsible for the safe and legal disposal of this contaminated fuel, whether by sale or otherwise. Vitus is solely responsible for operating and maintaining any such tank.

(e) Tank Modifications. To the extent that any modifications are needed to the gasoline Storage Tank to safely and legally hold gasoline, Vitus is responsible for the cost of any such modifications.

(f) Tank Inspection. Vitus acknowledges that before June 1, 2023, the unleaded gasoline tank must be completely drained and inspected. NETC will be responsible for the costs of the inspection/repairs/maintenance. Vitus is responsible for removing its inventory from the gasoline Storage Tank prior to May 1, 2023, and shall not be permitted to store fuel in the tank from May 1, 2023, until the earlier of the completion of the inspection/repairs/maintenance or June 1, 2023.

9. Measurement and Quantity. The parties agree that the volume of Fuel received by NETC into the Storage Tanks will be measured by hand dipping the Storage Tanks. The parties agree that the volume of Fuel removed by Vitus via the Truck Rack will be measured using the Truck Rack fuel meters. In the event Fuel is removed by Vitus via the Header, the volume of Fuel removed by Vitus will be measured by hand dipping the Storage Tanks. Volumes received and removed will be adjusted to 60 degrees Fahrenheit (the "net gallons") based on a U.S. gallon of 231 cubic inches and 42 gallons to the barrel, in accordance with the latest supplement or amendments to the ASTM-IP petroleum measurement tables (ASTM designation D1250) Table 6.

10. Quality. Vitus agrees not to deliver to the Storage Tanks under this Agreement any diesel with a sulfur content in excess of 15 ppm. Vitus further agrees not to deliver to the Storage Tanks under this Agreement any Fuel which would render the Storage Tanks unfit, after cleaning, for the proper storage of fuel or fuel products, or which would otherwise be injurious to the Storage Tank. Prior to any delivery of fuel to the Storage Tanks, Vitus shall provide written documentation to NETC reasonably demonstrating compliance with the requirements of this Section. NETC will have the opportunity and the right to take representative samples of each shipment and test it in any way NETC deems appropriate, at NETC's expense, before accepting the Fuel into the Storage Tanks, but NETC's failure to make such additional tests shall not limit NETC's remedies under this Agreement. Should Vitus deliver fuel to the Storage Tanks that violates this Section, Vitus will replace any fuel owned by NETC that is contaminated or damaged as a result of the violation.

11. Title and Custody. Title to Fuel stored for Vitus shall always remain with Vitus. NETC will be deemed to have custody of Fuel delivered by a vessel from the time it enters the Header, and NETC will no longer have custody of Fuel after it leaves the Header or Truck Rack. In no event shall NETC be responsible for any loss or damage of any kind to Fuel until the Fuel enters, or after the Fuel leaves, the Header. Responsibility for loss or damage to Vitus Fuel while it is in NETC's custody shall be determined in accordance with Section 14 of this Agreement.

12. Damage to or Reduction in Capacity of Storage Tanks. If any Storage Tanks are damaged or destroyed by fire or other casualty, NETC's requirement to handle the volume of Vitus's Fuel as set forth herein shall be reduced by an amount equal to the percentage of total capacity furnished hereunder that any such Tanks constitute, or in a manner otherwise specified herein. This abatement shall continue for so long as such damaged or destroyed Storage Tanks are not repaired and ready for service. NETC may, but shall not be required to, repair or replace

such damaged or destroyed Storage Tanks. Legal or regulatory changes that reduce the useable capacity of the Storage Tanks shall reduce the maximum capacity available to Vitus under this Agreement.

13. Insurance. NETC does not insure the Fuel stored for Vitus, but NETC shall maintain at its own expense property insurance on the Storage Tanks and any legally required spill liability insurance on the Storage Tanks. Vitus shall maintain at its own expense insurance covering the full replacement cost of the Fuel. In addition, Vitus shall maintain the following insurance:

Employer's Liability Insurance of not less than \$1,000,000 and full insurance under any Workers' Compensation State and/or Federal laws covering all persons employed by and working for Vitus;

Comprehensive General Liability Insurance (Bodily Injury and Property Damage) of not less than \$1,000,000 combined single limit per occurrence, such insurance to include explosion, hazard, personal injury, premises-operation, products, completed operations, blanket written contractual and independent contractor's liability

Business Auto Liability Insurance (Bodily Injury and Property Damage) of not less than \$1,000,000 combined single limit per occurrence, on all owned, hired and non-owned vehicles. Prior to the Effective Date, Vitus shall furnish certificates satisfactory to NETC as evidence of such insurance. Such insurance shall contain provisions that no cancellation or reduction in the policy shall become effective without notice to NETC.

Excess Liability Coverage of not less than \$24,000,000.

Excepting Workers Compensation and Business Auto Liability, each policy shall name NETC as an additional insured and The General Liability and Workers' Compensation policies shall waive all rights of subrogation against NETC. The General Liability policy shall also contain an endorsement that coverage provided thereunder shall be primary and underlying to any insurance coverage carried by NETC. The insurance companies shall have no recourse against NETC for payment of any premiums or assessments under any insurance policy.

14. Liability Limitation. NETC shall have no liability to Vitus for loss or damage to Vitus's Fuel except for loss or damage caused by NETC's gross negligence or intentional misconduct, which gross negligence or fault shall not be presumed but must be established by affirmative evidence.

15. Force Majeure. Performance by either party hereunder shall be excused if and to the extent it is prevented or delayed by act of God, war, restraint, or interference by governmental authorities, strike, lockout, or other labor disturbance, riot, civil insurrection, or any other circumstance beyond such party's control.

16. Information/Documentation. Vitus agrees to execute in its name, pay for and furnish to NETC at the Terminal all information, material safety data sheets, certificates of analysis, documents, labels, placards, containers and other materials and data which may be required by statutes, ordinances, rules or regulations (collectively, "Regulations") of any public or

governmental authority relating to the describing, packaging, receiving, storing, handling, blending, shipping or disposing of any Fuel being stored for Vitus under this Agreement. Vitus agrees that NETC may report to any governmental or regulatory body as required by the Regulations, with regard to the Fuel and activities of Vitus, and Vitus agrees to provide such information to NETC as may be reasonably necessary for NETC to comply with the Regulations. NETC may have an obligation to furnish Fuel name and constituents of Fuel to governmental authorities and employees or others handling or exposed to the Fuel in connection with "right to know" laws or worker exposure Regulations. NETC may also have an obligation under applicable laws and Regulations to furnish this information to the general public. Vitus agrees to furnish the common or chemical name of all Fuel and constituents of Fuel to NETC prior to Vitus's Fuel entering the Terminal so that NETC can comply with such laws and Regulations. Vitus shall have the responsibility for filing and pursuing any exemption from disclosure pursuant to such laws and Regulations which Vitus may desire.

17. No Assignment. Vitus shall not assign its rights under this Agreement or sublet to any entity any of Vitus's storage space under this Agreement without the written consent of NETC. Any attempted assignment or subletting in violation of this section shall be void, and shall constitute a breach of this Agreement. A change in ownership of Vitus shall not constitute an assignment for purposes of this section.

18. Default. A party shall be in default under this Agreement if the party fails to perform or observe of any of the terms and conditions of this Agreement, and such failure continues for more than seven (7) days after written notice thereof. In the event of default, the nondefaulting party may terminate this agreement and, except as otherwise provided in this Agreement, shall have all of the rights and remedies available at law or in equity on account of such default. A party's remedies set forth herein shall not be exclusive, but shall be cumulative.

19. Removal of Fuel on Expiration or Termination. Upon expiration or other termination of this Agreement for any reason whatsoever, including termination for breach, Vitus shall be entitled to remove and shall remove, as soon as practicable, all Fuel being stored for Vitus (for Storage Tanks storing any product other than No. 2 diesel, this shall include the responsibility to thoroughly clean the tank to ensure complete removal of all residue); provided, that Vitus shall be responsible for Holdover Charges to the extent provided for in Section 3(d).

20. No Consequential Damages. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL A PARTY BE LIABLE FOR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF USE, LOST PROFITS, OR LOST BUSINESS OPPORTUNITIES, AND REGARDLESS OF WHETHER SUCH LOSS IS A RESULT OF BREACH OF THIS AGREEMENT, NEGLIGENCE, OR OTHERWISE BY THE PARTY, AND EVEN IF THE POSSIBILITY OF SUCH DAMAGES WAS KNOWN TO OR FORESEEABLE BY THE PARTY. It is expressly agreed that the actual direct cost of purchasing replacement fuel for NETC fuel which is lost or contaminated is considered to be direct damage and not consequential damage.

21. Indemnity. Vitus hereby agrees to indemnify, defend and hold harmless NETC and NETC's members, officers, managers, directors, employees, agents, parent, subsidiary and affiliate companies, past, present and future, harmless from and against any third party claims for

injury to or death of persons or damage to property (including attorney fees and expenses to defend against such claims) to the extent such claims arise out of or relate to this Agreement; provided, that Vitus shall have no obligation under this section to the extent such claims arise out of the negligence or willful misconduct of NETC. NETC hereby agrees to indemnify, defend and hold harmless Vitus and Vitus's members, officers, managers, directors, employees, agents, parent, subsidiary and affiliate companies, past, present and future, harmless from and against any third party claims for injury to or death of persons or damage to property (including attorney fees and expenses to defend against such claims) to the extent such claims arise out of the negligence or willful misconduct of NETC in performing this Agreement; provided, that NETC shall have no obligation under this section to the extent such claims arise out of the negligence or willful misconduct of Vitus.

22. Compliance with Law. Each party agrees that it will comply with all municipal, county, state, and federal ordinances, statutes, rules, and regulations governing or pertaining to its performance hereunder.

23. Notice. Any notice under this Agreement shall be delivered by (1) certified mail, return receipt requested (or the equivalent), (2) hand delivery with receipt acknowledged, or (3) overnight courier service that provides a delivery receipt. Notices shall be delivered to the following addresses or to such other address or person as a party may specify by notice given in accordance with this section:

If to NETC: Nushagak Electric & Telephone Cooperative, Inc.
P.O. Box 350
Dillingham, AK 99576
Attn: Mike Megli, CEO

With a copy to: John Andrew Leman
Kemppe, Huffman & Ellis, P.C.
255 E. Fireweed Lane, Suite
Anchorage, AK 99503

If to Vitus: Vitus Energy LLC
113 W. Northern Lights Blvd., #200
Anchorage, Alaska 99503
Attn: Justin Charon

With a copy to: Jon S. Dawson
Davis Wright Tremaine LLP
188 W. Northern Lights Blvd., Suite 1100
Anchorage, Alaska 99503

Notice shall be deemed effective upon receipt.

24. Resolutions. Simultaneously with the execution of this Agreement by NETC, NETC shall deliver to Vitus a board resolution, in form reasonably acceptable to Vitus, authorizing NETC to enter into and perform this Agreement, and authorizing its execution by the person signing this

Agreement on behalf of NETC. Simultaneously with the execution of this Agreement by Vitus, Vitus shall deliver to NETC a member resolution, in form reasonably acceptable to NETC, authorizing Vitus to enter into and perform this Agreement, and authorizing its execution by the person signing this Agreement on behalf of Vitus.

25. Miscellaneous.

(a) **Governing Law, Venue, and Attorney Fees.** This Agreement and the rights of the parties under it shall be governed by and construed in all respects in accordance with the laws of the State of Alaska without giving effect to principles or provisions thereof relating to choice of law or conflict of laws. Jurisdiction and venue for any action shall be exclusively in the courts of the State of Alaska, Third Judicial District at Anchorage. The prevailing party in any such action shall be entitled to recover all of its reasonable attorneys' fees, court costs, and other expenses relating thereto.

(b) **Successors and Assigns.** Without limiting Section 17, this Agreement shall be binding upon, and inure to the benefit of, the parties, and their respective successors and permitted assigns.

(c) **Waiver.** No delay on the part of the parties in the exercise of any right, power, or remedy shall operate as a waiver thereof, nor shall any single or partial exercise or waiver by the parties of any right, power, or remedy preclude other or further exercise thereof or the exercise of any other right, power, or remedy.

(d) **Independent Contractor.** The relationship of Vitus to NETC is that of an independent contractor. Nothing contained in this Agreement shall be construed as creating any employment relationship or agency relationship between Vitus and NETC. Vitus shall be solely liable and responsible for any federal or state income taxes, social security taxes, unemployment taxes or other taxes or similar payments, and NETC shall have no liability or responsibility for payment of any such amounts. Nothing in this Agreement shall be intended or deemed to create a partnership, joint venture, association or other similar relationship between the parties.

(e) **No Third Party Beneficiaries.** This Agreement does not create, and shall not be construed as creating, any rights enforceable by any person not a party to this Agreement.

(f) **Entire Agreement, Modification, Severability.** The Agreement (including this Exhibit A) represents the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous, express or implied, written or oral agreements, representations and conditions between the parties with respect thereto. No amendment, modification, waiver of, or consent with respect to any provision of this Agreement shall be effective unless it shall be in writing and signed by both parties. If any clause or term of this Agreement shall be deemed invalid by any court of law, the validity and enforcement of the other clauses and terms of the Agreement shall be unaffected.

Nushagak Electric & Telephone Cooperative, Inc.

By *Michael Megli*
Its *CEO/SA*

Vitus Energy LLC

By *MSA*
Its *CEO*

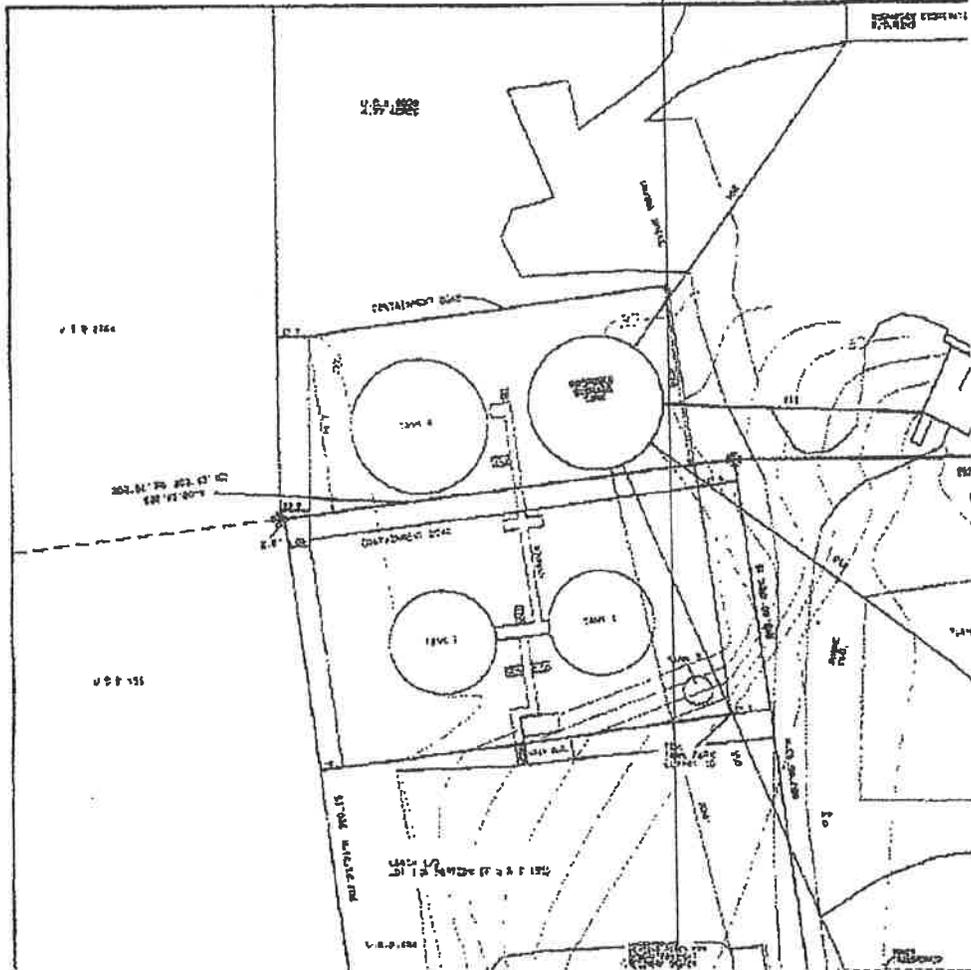
FUEL STORAGE AGREEMENT
4-3-14 Execution Draft

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MSA
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Exhibit A

Tank 1 and Tank 2



FUEL STORAGE AGREEMENT
4-3-14 Execution Draft

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CORPORATION WARRANTY DEED

21 PAGE 532

THE GRANTOR PETER PAN SEAFOODS, INC., a Washington corporation, for and in consideration of Thirteen thousand, five hundred and no/100 and other good and valuable consideration (13,500) DOLLARS in hand paid, conveys and warrants to NUSHAGAK ELECTRIC COOPERATIVE, INC., GRANTEE, the following described real estate, located in the State of Alaska, to wit:

That part of the United States Survey No. 155 of the Territory of Alaska beginning at the S.E. corner at a point on the E. boundary (3-4 line) of U.S. Survey No. 155, 300 feet from COR. No. 3 thereof; thence S. 82°45' W 200 feet to the SW corner; thence N. 7°15' W 300 feet to the N.W. corner; thence N. 82°45' E. 200 feet to the N.E. corner (being corner number 3); thence S. 7°15' E. 300 feet along the E. boundary (3-4 line) of U. S. Survey No. 155 to the point of beginning containing 1.37 acres. Located in the 2nd Judicial District, State of Alaska. As a part of the consideration for this conveyance, Grantee covenants and agrees to permit no act or omission on or in connection with the above described property or other property owned by the Grantee which may result in adversely affecting in any way, the quality of the water in the pond lying westerly of the above described property and other property owned by the Grantee and shall indemnify and hold Grantor harmless therefrom.

DATED THIS 10th day of May, 1978.

ATTEST:

PETER PAN SEAFOODS, INC. (Corporate Name) By: [Signature] (President)

[Signature] (Secretary)



CORPORATE ACKNOWLEDGEMENT

STATE OF WASHINGTON

COUNTY OF KING

On this 10th day of May, 1978, before me, the undersigned, a Notary Public in and for the said State, personally appeared J. S. Gage, President, and R. L. Puddicombe Secretary of Peter Pan Seafoods, Inc. a company, known to me to be the identical individuals who executed the foregoing instrument and they acknowledged to me that they executed the same as the free and voluntary act of said company, with full authority so to do and with full knowledge of its contents, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

My Commission Expires: [Signature] Notary Public

CERTIFICATE OF ACCEPTANCE

THIS IS TO CERTIFY that NUSHAGAK ELECTRIC COOPERATIVE, INC., Grantee herein, hereby accepts for public purposes the real property, or interest therein, described in this instrument and consents to the conditions and to recordation thereof:

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of June, 1978.

NUSHAGAK ELECTRIC COOPERATIVE, INC.

BY [Signature] John M. Pearson, President

RECORDED - \$ 5.00 Bristol Bay, Alaska DIST. DATE: June 21, 1978 TIME: 3:00 P.M. Nushagak Electric Cooperative, Inc. Box 1971 Dillingham, AK 99576

CITY OF DILLINGHAM
PO Box 889
Dillingham, AK 99576

APR 04 2018



2018 REAL PROPERTY ASSESSMENT NOTICE

Date: March 29, 2018

Vitus Energy, LLC
113 W Northern Lights Blvd
Suite 200
Anchorage, AK 99503

Account #: 102564

Legal Description	Assessed Value		Exemption		Adjusted Assessed Value
	Improvement	Land	Type	Max Amount	
Ahklun Addition III L1	227,000	28,100			255,100
Ahklun Addition III L6	118,100	28,000			146,100
USS 155 L 1N	639,400	0			639,400
			Total Adjusted Assessed Value		1,040,600

THIS IS NOT A BILL

Your property tax bill will be mailed in July. This is your notice of the valuation of your property which will be used to calculate your 2018 property tax bill.

1. All real and personal property not expressly exempt by the Dillingham Municipal Code is subject to annual taxation at its full and true value
2. If you disagree with the assessed value and wish to appeal to the Board of Equalization, a written appeal may be mailed to the City Clerk, City of Dillingham, PO Box 889, Dillingham, AK 99576 or dropped off at City Hall, 141 Main Street.
3. A separate appeal form must be filed for each property in question.
4. Appeal forms are available at City Hall and on the City's website at www.dillinghamak.us under Forms and Permits.
5. The appeal must establish that the assessment is unequal, excessive, and improper or undervalued as required by AS 29.45.21(b).
6. A written appeal must be received or postmarked within 30 days of this notice to be considered by the Board of Equalization.

Please contact the City of Dillingham at 907-842-5211 if you need more information

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State of Alaska
Department of Community and Economic Development
Division of Banking, Securities and Corporations

CERTIFICATE
OF
CONSOLIDATION
Electric and Telephone Cooperative Corporation

The undersigned, as Commissioner of Community and Economic Development of the State of Alaska, hereby certifies that Articles of Consolidation, duly signed and verified pursuant to the provisions of the Alaska Electric and Telephone Cooperative Corporation Act, have been received in this office and have been found to conform to law.

ACCORDINGLY, the undersigned, as Commissioner of Community and Economic Development, and by virtue of the authority vested in me by law, hereby issues this Certificate of Consolidation of

NUSHAGAK ELECTRIC COOPERATIVE, INCORPORATED
and
NUSHAGAK TELEPHONE COOPERATIVE, INC.

and attaches hereto the original copy of the Articles of Consolidation of

NUSHAGAK ELECTRIC & TELEPHONE COOPERATIVE, INC.

IN TESTIMONY WHEREOF, I execute this certificate and affix the Great Seal of the State of Alaska on
May 7, 2001.

Deborah B. Sedwick

Deborah B. Sedwick
Commissioner of Community
and Economic Development

ARTICLES OF CONSOLIDATION

Filed for Record
State of Alaska

MAY 07 2001

Department of Community
and Economic Development

OF

NUSHAGAK ELECTRIC & TELEPHONE COOPERATIVE, INC.

These Articles of Consolidation are executed pursuant to Alaska Statutes, Title 10, Chapter 25 (AS 10.25), in order to consolidate Nushagak Electric Cooperative, Inc., and Nushagak Telephone Cooperative, Inc., into, and to create a new cooperative, Nushagak Electric & Telephone Cooperative, Inc., herein referred to as the Cooperative.

ARTICLE I

The consolidating cooperatives are Nushagak Electric Cooperative, Inc., the principal office of which is in Dillingham, Alaska, and Nushagak Telephone Cooperative, Inc., the principal office of which is in Dillingham, Alaska.

ARTICLE II

The name of the new Cooperative shall be Nushagak Electric & Telephone Cooperative, Inc.

ARTICLE III

The address of the principal office of Nushagak Electric & Telephone Cooperative, Inc., shall be P.O. Box 350, Dillingham, Alaska 99576. The registered agent shall be KH&G Service Company, Inc., 255 E. Fireweed Lane, Suite 200, Anchorage, Alaska 99503.

NEC-NTC/15-02-011

ARTICLE IV

The period of duration of this Cooperative shall be perpetual.

ARTICLE V

This Cooperative is formed for all lawful purposes as may be permitted by the Act under which it is formed, including, but not limited to, providing electric and telecommunications equipment and services to its members, and it may have and exercise any or all powers as may be necessary or convenient to accomplish any or all of the foregoing purposes, or as may be permitted by the Act under which the Cooperative is formed.

ARTICLE VI

The number of directors of the Cooperative shall be nine (9), except that the number of initial directors shall be twelve (12). The bylaws shall provide for the transition from twelve (12) to nine (9) directors. Directors shall be elected by and from the members of the Cooperative for a term not to exceed three (3) years or until their successors shall have been elected and shall have qualified. The bylaws shall provide for the terms of the directors to be staggered so that, to the greatest extent possible, one-third (1/3) of the directors shall be elected each year. The names and addresses of the initial directors are as follows:

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<u>Name</u>	<u>Address</u>
Henry J. Strub	P.O. Box 493, Dillingham, Alaska 99576
Nick Wahl	P.O. Box 17, Dillingham, Alaska 99576
Gordon R. Isaacs	P.O. Box 563, Dillingham, Alaska 99576
Dorothy Wilson	P.O. Box 142, Dillingham, Alaska 99576
Mike Ribich	P.O. Box 755, Dillingham, Alaska 99576
Pete Andrew	P.O. Box 1475, Dillingham, Alaska 99576
David Bouker	P.O. Box 241, Dillingham, Alaska 99576
Rae Belle S. Whitcomb	P.O. Box 548, Dillingham, Alaska 99576
James Timmerman	P.O. Box 475, Dillingham, Alaska 99576
Mary Ford	P.O. Box 846, Dillingham, Alaska 99576
Christine O'Connor	P.O. Box 852, Dillingham, Alaska 99576
Norman Heyano	P.O. Box 243, Dillingham, Alaska 99576

ARTICLE VII

The members of Nushagak Electric Cooperative, Inc., and Nushagak Telephone Cooperative, Inc., shall automatically become members of Nushagak Electric & Telephone Cooperative, Inc., except that no person shall hold more than one membership in the Cooperative irrespective of the number or class of services provided by the Cooperative.

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