

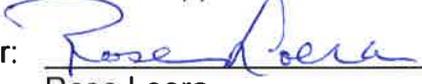
**Subject:** Authorize the City Manager to Contract with Sheinberg Associates to Assist Staff on the Annexation Decision

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Agenda of: **June 19, 2013**

Council Action:
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Manager: Recommend approval.

City Manager:   
Rose Loera

Route To:	Department / Individual	Initials	Remarks
	Finance / Carol Shade		

**Fiscal Note:** Yes  X  No   Funds Available: Yes  X  No

**Other Attachment(s):** Fiscal Note  
Contract

**Summary Statement.**

The purpose of this Action Memorandum is to authorize the Mayor or City Manager to contract with Barbara Sheinberg dba Sheinberg Associates to assist the City of Dillingham in its efforts to address the March 27, 2014, Superior Court appeal of the State of Alaska's affirmative annexation decision.

Barbara will take direction from the City Manager and General Counsel on tasks and assistance as we update our annexation document to be submitted to the Local Boundary Commission, so it can be presented for legislative review.

The contract will have a not-to-exceed amount of \$10,000 with the option to increase if the process requires additional time and funding utilizing a Task Order process to document.



**City of Dillingham  
Fiscal Note**

Agenda Date: June 19, 2014

Request: \_\_\_\_\_

ORIGINATOR: Carol Shade

FISCAL ACTION (TO BE COMPLETED BY FINANCE)		FISCAL IMPACT <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
AMOUNT REQUESTED: \$ 10,000.00		FUNDING SOURCE General Fund	
FROM ACCOUNT 1000 7068 10 11 0000 0 \$ 10,000		Project Annexation Petition	
TO ACCOUNT:	VERIFIED BY: Carol Shade	Date:	6/19/2014

**EXPENDITURES**

OPERATING	FY14	FY15	FY16	FY17
Personnel				
Fringe Benefits				
Annexation Projct		10,000.00		
Major Equipment				
Land/Buildings				
Miscellaneous				
<b>TOTAL OPERATING</b>	<b>\$ -</b>	<b>\$ 10,000.00</b>	<b>\$ -</b>	<b>\$ -</b>

Capital				
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REVENUE				
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**FUNDING**

General Fund				
State/Federal Funds				
<b>TOTAL FUNDING</b>	<b>-</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>

**POSITIONS**

Full-Time				
Part-Time				
Temporary				

ANALYSIS: (Attach a separate page if necessary)

See AM 2014-10

PREPARED BY: Carol Shade

June 19, 2014

DEPARTMENT: Finance Department

June 19, 2014



**CONTRACT FOR CONSULTING SERVICES  
SHEINBERG ASSOCIATES**

This Agreement is entered into this \_\_ day of \_\_ June \_\_\_\_\_, 2014, by and between **Sheinberg Associates (herein referred to as "Consultant")** and the **City of Dillingham ("City")**. For good and valuable consideration, the receipt whereof is hereby acknowledged, Consultant and City agree as follows:

WHEREAS the City is in need of a consulting service to assist in preparing a petition to annex territory into its City; and,

WHEREAS the City is desirous of engaging the services of Consultant as an independent contractor using independent professional judgment to accomplish assigned tasks;

NOW, THEREFORE, the parties hereto do mutually agree as follows:

**1. Employment of Consultant.**

The work to be performed by Consultant pursuant to this Agreement is all tasks assigned by the City Manager or the City of Dillingham General Counsel. A more specific identification of Consultant's professional services to be provided in accordance with the provisions of this Agreement is listed in Appendix A "**Scope of Work**," incorporated herein by reference and such other duties as requested by the City Manager or the City Council.

**2. Term of Agreement.**

The term of this Agreement shall be in place from the date of execution and approval of the Dillingham City Council until the annexation petition has been approved through the legislative process.

**3. Fee.**

The City shall pay Consultant a not-to-exceed fee for this work of \$10,000 at a rate of \$104. If the amount is not adequate to get the annexation petition through the legislative review process it will be increased utilizing a Task Order approved by the City Council.

**4. Payments.**

The City agrees to make payments to Consultant as services are performed and costs are incurred, provided Consultant submit one (1) copy of a proper invoice for each payment, in such form and accompanied by such evidence in support thereof as may be reasonably required by the City.

Billing and expense invoices shall be submitted monthly at the end of each month. Invoices shall be accompanied by a monthly activity report detailing work and accomplishments.

All invoices are otherwise due and payable within thirty (30) days of receipt by the City.

**5. Independent Contractor Status.**

In performing under this Agreement, Consultant acts as an independent contractor and shall have responsibility for and control over the details and means for performing the services required hereunder.

**6. Indemnification.**

To the maximum extent permitted by law, Consultant shall defend, indemnify and save harmless City or any agent, employee, or other representative thereof, from and against losses, damages, liabilities, expenses, claims, and demands of whatever nature, including for death, personal injury, property damage or economic loss, to the extent arising out of any negligent act or negligent omission or willful misconduct of Consultant, its agents or employees while performing under the terms of this Agreement.

**7. Assignment.**

Consultant shall not assign this Agreement or any of the monies due or to become due hereunder without the prior written consent of City.

**8. Subcontracting.**

Consultant may not subcontract its performance under this Agreement without prior written consent of City. Any subcontractor must agree to be bound by the terms of this Agreement applicable to the services to be performed by the subcontractor.

**9. Designation of Representatives.**

The parties agree, for the purposes of this Agreement, that the City shall be represented by and may act only through the City Manager or Mayor or such other person as they may designate in writing or is identified in Appendix A. Consultant shall be represented by and may act only through Sheinberg Associates.

**10. Termination.**

Either party may terminate this Agreement, with or without cause, after first giving thirty (30) days written notice.

**11. Insurance.**

Consultant shall, at all times, at its own expense, keep in force the following described insurance for protection against the claims of employees or other persons, insuring both the Consultant and the City against liability that may accrue against them or either of them in connection with the performance of Consultant under this Agreement:

hereunder, including, without limitation, all such legal provisions pertaining to social security, income tax withholding, medical aid, industrial insurance, worker's compensation, and other employee benefit laws. Consultant also agrees to comply with all contract provisions pertaining to grant or other funding assistance which City may choose to utilize to perform work under this Agreement. Services performed under this Agreement shall be in accordance with sound, generally accepted consulting practices and shall comply with all applicable codes and standards.

**15. Records and Audit.**

Consultant agrees to maintain sufficient and accurate records and books of account, including detailed time records, showing all direct labor hours expended and all reimbursable costs incurred for at least three years after receipt of final payment and closure of all pending matters related to this Agreement. Said books shall be subject to inspection and audit by City.

**16. Notices**

Any official notice that either party hereto desires to give the other shall be delivered through the United States mail by certified mail, return receipt requested, with postage thereon fully prepaid and addressed as follows:

**To City:**

Rose Loera  
City Manager  
City of Dillingham  
P. O. Box 889  
Dillingham, AK 99576

**To Consultant:**

Barbara J. Sheinberg  
Sheinberg Associates  
1107 W. 8<sup>th</sup> Street  
Suite 4  
Juneau, AK 99801

**18. Venue and Applicable Law.**

The venue of any legal action between the parties arising as a result of this Agreement shall exclusively be laid in the Third Judicial District of the Superior Court of the State of Alaska, at Dillingham, Alaska, and this Agreement shall be interpreted in accordance with the laws of the State of Alaska.

**17. Attorney's Fees.**

In the event either party institutes any suit or action to enforce its rights hereunder, the prevailing party shall be entitled to recover from the other party its reasonable attorney's fees and costs in such suit or action and on any appeal there from.

**18. Waiver**

No failure on the party of either City or Consultant to enforce any covenant or provision herein contained, nor any waiver of any right hereunder unless in writing and signed by the parties sought to be bound, shall discharge or invalidate such covenants or provisions or affect the

- (a) Insurance in at least the required statutory amounts covering claims under workers' compensation, disability benefits and other similar employee benefit acts;
- (b) Commercial general liability insurance covering bodily injury, death, and property damage with a combined single limit of not less than \$500,000; and

**12. Insurance Certificate.**

All insurance shall be placed with an insurance carrier or carriers satisfactory to the City, shall have deductibles satisfactory to the City, shall not be subject to cancellation or any material change except after thirty (30) days written notice to the City, and shall provide that no failure of Consultant to comply with any condition or provision of this Agreement or other conduct of Consultant or those for whose conduct it is responsible, shall void or otherwise affect the protection under the policy afforded to the City. A Certificate of Insurance reflecting full compliance with these requirements shall, at all times during the term of this Agreement, be kept on deposit at the general offices of the City. If Consultant fails to comply with these insurance requirements, the City may terminate this Agreement on ten (10) days written notice.

All insurance policies or other contract security required in this Agreement except for professional errors and omissions coverage shall allow claims to be filed based upon the time of an occurrence, and shall not provide for a shorter period in which to make claims than that provided by the applicable statute of limitations. The coverage required by this Agreement shall cover all claims arising in connection with the performance of the Consultant under this Agreement, whether or not such claim is asserted during the term of this Agreement and even though judicial proceedings may not be commenced until after the expiration of this Agreement.

All insurance policies shall be written as primary policies; shall waive subrogation against City, its agents and employees; shall not be contributing with, or in excess of, any insurance coverage that the City may otherwise carry, and shall name the City as an additional insured. All insurance provided under this Agreement must remain fully available to satisfy claims arising out of this Agreement, notwithstanding any other claims that may be filed against that policy.

**13. Claims Recovery.**

Claims by the City resulting from Consultant's failure to comply with the terms of and specifications of this Agreement and/or default hereunder may be recovered by City by withholding the amount of such claims from compensation otherwise due Consultant for work performed or to be performed. City shall notify Consultant of any such failure, default or damage there from as soon as practicable after discovery of such event by written notice. Nothing provided herein shall be deemed as constituting an exclusive remedy on behalf of City, nor a waiver of any other rights hereunder at law or in equity.

**14. Compliance with Applicable Laws.**

Consultant shall, in the performance of this Agreement, comply with all applicable federal, state and local laws, ordinances, orders, rules and regulations applicable to its performance

right of the City or Consultant to enforce the same or any other provision in the event of any subsequent breach or default.

**19. Binding Effect.**

The terms, conditions and covenants contained in this Agreement shall apply to, inure to the benefit of, and bind the parties and their respective successors.

**20. Entire Agreement.**

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and all prior negotiations and understandings are superseded and replaced by this Agreement and shall be of no further force and effect. No modification of this Agreement shall be of any force or effect unless reduced to writing, signed by both parties and expressly made a part of this Agreement.

**21. Miscellaneous Provisions.**

City shall provide Consultant with a motor vehicle for business use when Consultant is in Dillingham.

City shall either provide Consultant housing or shall reimburse Consultant for lodging expenses when Consultant is in Dillingham.

**IN WITNESS WHEREOF**, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement on the respective date indicated below.

**CITY OF DILLINGHAM**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Rose Loera  
City Manager

**SHEINBERG ASSOCIATES**

Dated: \_\_\_\_\_

BY: \_\_\_\_\_  
Barbara J. Sheinberg

## APPENDIX A

### SCOPE OF SERVICES

Consultant shall provide the following services upon request of the City Manager or the City of Dillingham's General Counsel:

- Assist with updating of the June 14, 2010 Petition to the Local Boundary Commission for Annexation of the Nushagak Commercial Salmon District waters and Wood River Sockeye Salmon Special Harvest area waters, together consisting of approximately 396 square miles of water and 3 square miles of land.
- Assist the City of Dillingham in planning the required public hearings around the annexed areas prior to resubmission of the petition to the LBC.
- Work with attorney to assist him in preparing the brief that is part of the petition.

Attachment: Memo from Barb Sheinberg dated June 11, 2014