

CITY OF DILLINGHAM, ALASKA

**RESOLUTION NO. 2014-36**

**A RESOLUTION OF THE DILLINGHAM CITY COUNCIL APPROVING THE APPLICATION FOR A HOMELAND SECURITY GRANT TO PURCHASE A BOAT AND MOTOR, POLICE GEAR, ENCRYPTION EQUIPMENT, AND EMERGENCY PREPAREDNESS SUPPLIES**

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WHEREAS, Federal FY 2014 Homeland Security Grant Program (HSGP) State Homeland Security Program (SHSP) is now accepting applications from law enforcement and fire department agencies for prevention-oriented planning, training, exercise and equipment activities; and

WHEREAS, one of the core capabilities of the FFY 2014 HSGP is "Responding quickly to save lives, protect property and the environment, and meet basic human needs in the aftermath of a catastrophic incident"; and

WHEREAS, SHSP allows an applicant to identify five (5) categories that they would like the grant to consider for funding; and

WHEREAS, in 2013 the City of Dillingham's Public Safety department applied for a boat and repair of the cameras in town, of which the cameras were fully funded at \$114,000; and

WHEREAS, the Dillingham Police Department would like to again apply for a boat, for approximately \$105,000, which could be used by the Harbor, Fire and Public Safety; and

WHEREAS, the other categories for which they would like to receive consideration are:

- Police Gear – \$25,000
- New Encryption Technology for Public Safety and Fire - \$35,000
- Emergency Preparedness supplies - \$20,000
- Oil Spill Response Equipment - \$45,000

WHEREAS, we do not anticipate the SHSP to fund all the that we have identified but could fund some of it; and

WHEREAS, the HSGP grant deadline is July 18, 2014; and

WHEREAS, if the grant is funded it will be presented to the City for acceptance.

NOW, THEREFORE, BE IT RESOLVED that the Dillingham City Council approves the application for a homeland security grant to purchase a boat and motor, police gear, new encryption technology, and emergency preparedness equipment for a total grant amount of approximately \$230,000.

PASSED and ADOPTED by the Dillingham City Council on June 19, 2014.

SEAL:

\_\_\_\_\_  
Alice Ruby, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

**Subject:** A RESOLUTION OF THE DILLINGHAM CITY COUNCIL APPROVING THE APPLICATION FOR A HOMELAND SECURITY GRANT TO PURCHASE A BOAT AND MOTOR FOR THE CITY, POLICE GEAR, ENCRYPTION EQUIPMENT, AND EMERGENCY PREPAREDNESS SUPPLIES

Agenda of: June 19, 2014

Council Action:
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Manager: Recommend approval.

City Manager: Rose Loera  
Rose Loera

Route To:	Department / Individual	Initials	Remarks
X	Carol Shade – Finance Director	CS	
X	Chief Dan Pasquariello	DP	

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

**Other Attachment(s):** Resolution 2014 – 36

**Summary Statement.**

The 2014 Federal Homeland Security Grant Program (HSGP) State Homeland Security Program (SHSP) is now accepting applications from law enforcement agencies for prevention-oriented planning, training, exercise and equipment activities and we would like to apply again for these funds. We secured \$114,000 last year, which was used for camera repair.

We are able to apply for up to five categories under one application, they are as follows:

1. Boat to be used by the Police Department, Harbor, and Public Works – approximately \$105,000
2. Police gear such as bullet proof vests, handcuffs, etc. – approximately \$25,000
3. Encryption equipment, replace existing, for Public Safety and Fire - \$24,000
4. Emergency Preparedness Equipment/Supplies - \$20,000
5. Oil Spill Response Equipment - \$40,000

The total to be applied for will be about \$230,000. We do not anticipate receiving funding for all that we are asking, but funding of any of these items would be good.

The grant has a core capabilities that reads “Responding quickly to save lives, protect property and the environment, and meet basic human needs in the aftermath of a

catastrophic incident". Have the above equipment and supplies would assist our staff in responding in emergencies.

If funded the City Council will be presented with a resolution to accept the grant.

CITY OF DILLINGHAM, ALASKA

**RESOLUTION NO. 2014-37**

**A RESOLUTION OF THE DILLINGHAM CITY COUNCIL AUTHORIZING THE CITY MANAGER TO APPLY FOR AN EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG)**

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WHEREAS, the City of Dillingham Police Department has an opportunity to apply for a Edward Byrne Memorial Justice Assistant grant that has a deadline of June 30, 2014 for a Western Alaska Alcohol and Narcotics Team (WAANT) position; and

WHEREAS, the Dillingham Police Department (DPD) has worked with the Alaska State Trooper (AST) WAANT Team in the past, but has not had a position dedicated to it for the past 20 months; and

WHEREAS, the JAG proposal gives preference to a department that is an active participant in the program; and

WHEREAS, the maximum amount that be applied for is \$110,000 to cover wages, overtime and fringe benefits; and

WHEREAS, we already have a vehicle at the DPD that this individual will be able to use; and

WHEREAS, the Kotzebue Police Department has been using the JAG grant in the past to fund a position to work with AST's WAANT in alcohol and narcotic enforcement for many years; and

WHEREAS, the DPD has 8 funded Police Officers, including the Chief, and an additional position is desirable with a focus on alcohol and narcotic enforcement and would provide the department with more efficient operation of everything that is not drug and alcohol related; and

WHEREAS, the position will be funded 100% from the grant, and if the grant is defunded or reduced the position would be eliminated; and

WHEREAS, if the JAG application is approved we would bring forth a resolution to the council for acceptance.

NOW, THEREFORE, BE IT RESOLVED that Dillingham City Council authorizes the City Manager to submit an Edward Byrne Memorial Justice Assistance grant application for adding a Police Officer position dedicated to drug and alcohol enforcement activities.

PASSED and ADOPTED by the Dillingham City Council on June 19, 2014.

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Alice Ruby, Mayor

ATTEST:

[SEAL]

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Janice Williams, City Clerk

**Subject:** A RESOLUTION OF THE DILLINGHAM CITY COUNCIL AUTHORIZING THE CITY MANAGER TO APPLY FOR AN EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG)

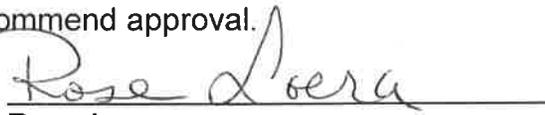
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Agenda of: June 19, 2014

Council Action:

Manager: Recommend approval.

City Manager:

  
Rose Loera

Route To:	Department / Individual	Initials	Remarks
X	Carol Shade – Finance Director		
X	Chief Dan Pasquariello		

**Fiscal Note:** Yes \_\_\_\_\_ No \_\_\_\_\_ Funds Available: Yes \_\_\_\_\_ No \_\_\_\_\_

**Other Attachment(s):** Resolution 2014 – 37

**Summary Statement.**

The Dillingham Police Department (DPD) recommends that the City of Dillingham apply for the Edward Byrne Memorial Justice Assistance Grant (JAG) for funding a full-time police officer to be assigned to the WAANT Team with the Alaska State Troopers (AST). We have assigned a police officer in the past and paid for the position with City funds. We have not participated in the program for about 16 months and have not assigned anyone to the program because of being short staffed over the past few years.

The Kotzebue Police Department has had a position of this nature funded by this grant for many years, and we would like to apply as they did. Kotzebue's position is fully funded by this grant. This grant gives priority to departments that have participated in the program, which we have, and continue to, by providing space to the AST WAANT officer within DPD.

The DPD currently has 8 funded police officers including the Chief. This grant will add an additional position to work directly with the WAANT program. This additional position will result in more efficient operation of everything that is not drug and alcohol related.

It will be made very clear, that if funded, this new position is completely grant funded and will be eliminated if the funds are no longer available or are reduced. If funded, the Council will be asked to accept the grant at the next council meeting.

The deadline for applying for this grant is June 30, 2014. The grant will include wages and fringe benefits for an estimated amount of \$110,000.



CITY OF DILLINGHAM, ALASKA

**RESOLUTION NO. 2014-38**

**A RESOLUTION OF THE DILLINGHAM CITY COUNCIL AUTHORIZING THE CITY MANAGER TO ADVERTISE A REQUEST FOR PROPOSAL FOR THE DEVELOPMENT OF TWO LANDFILL CELLS AND TO AWARD A CONTRACT**

WHEREAS, the City of Dillingham now has to bury all the municipal waste at the landfill except cardboard and untreated wood; and

WHEREAS, there is one active cell that is open for burying the municipal waste; and

WHEREAS, the amount of waste that we receive in the summer nearly doubles, and we estimate that the current cell will be full by the end of the year; and

WHEREAS, we have a site map for the landfill that identifies all the potential cells that can be developed; and

WHEREAS, we will be using Tract C and an area adjacent to Tract G for the two new cells; and

WHEREAS, we need to develop two cells to handle the ash from open burning of wood and cardboard and the ash from the incinerator once in operation; and

WHEREAS, the development of the cells will follow the Department of Environmental Conservation (DEC) guidelines and is a part of the new permit that DEC will be issuing; and

WHEREAS, at the beginning of the landfill adjacent to the pond of water is City property with some potential gravel; and

WHEREAS, we will be mining that area for the gravel to be used for the development of the cell; and

WHEREAS, a Request for Proposal will be advertised in June and awarded in July for the actual building of the cell; and

WHEREAS, we estimate the cost for the project to be about \$250,000 with the use of our own gravel; and

WHEREAS, the funds for this project will be drawn either from the Landfill Legislative grant or the 2014 BBEDC grant as previously approved.

NOW, THEREFORE, BE IT RESOLVED that Dillingham City Council authorizes the City Manager to:

1. Utilize the gravel within the landfill property lines for the landfill cell development;
2. Advertise a Request for Proposal, by following our procurement policy, for the construction of the landfill cells; and
3. Award a contract in July with ratification by the Council in August.

PASSED and ADOPTED by the Dillingham City Council on June 19, 2014.

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Alice Ruby, Mayor

ATTEST:

[SEAL]

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Janice Williams, City Clerk

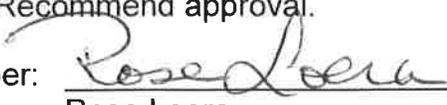
**Subject:** A resolution authorizing the City Manager to advertise a request for proposal for the development of two landfill cells and to award a contract

Agenda of: June 19, 2014

Council Action:

Manager: Recommend approval.

City Manager:

  
Rose Loera

Route To:	Department / Individual	Initials	Remarks
X	Carol Shade – Finance Director	CS	
X	Francisco "Pancho" Garcia, PW	TFA	

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

**Other Attachment(s):** Resolution 2014 – 38 and Landfill Site Map

**Summary Statement.**

We need to build two additional cells to receive municipal waste at the landfill. We have included this into our Landfill Permit application. We plan to mine the gravel that is located next to the pond of water at the beginning of the property to use for the cells and put the construction out to bid. If there is not enough gravel to mine to construct both cells, we will use the current contract we have with Aleknagik Enterprises.

We would like to bid the project in June and award a contract in July, so they can be done by fall.

The potential sites that we will be targeting are shown in red on the attached map.



6/3/14  
yellow current cell  
red new cells

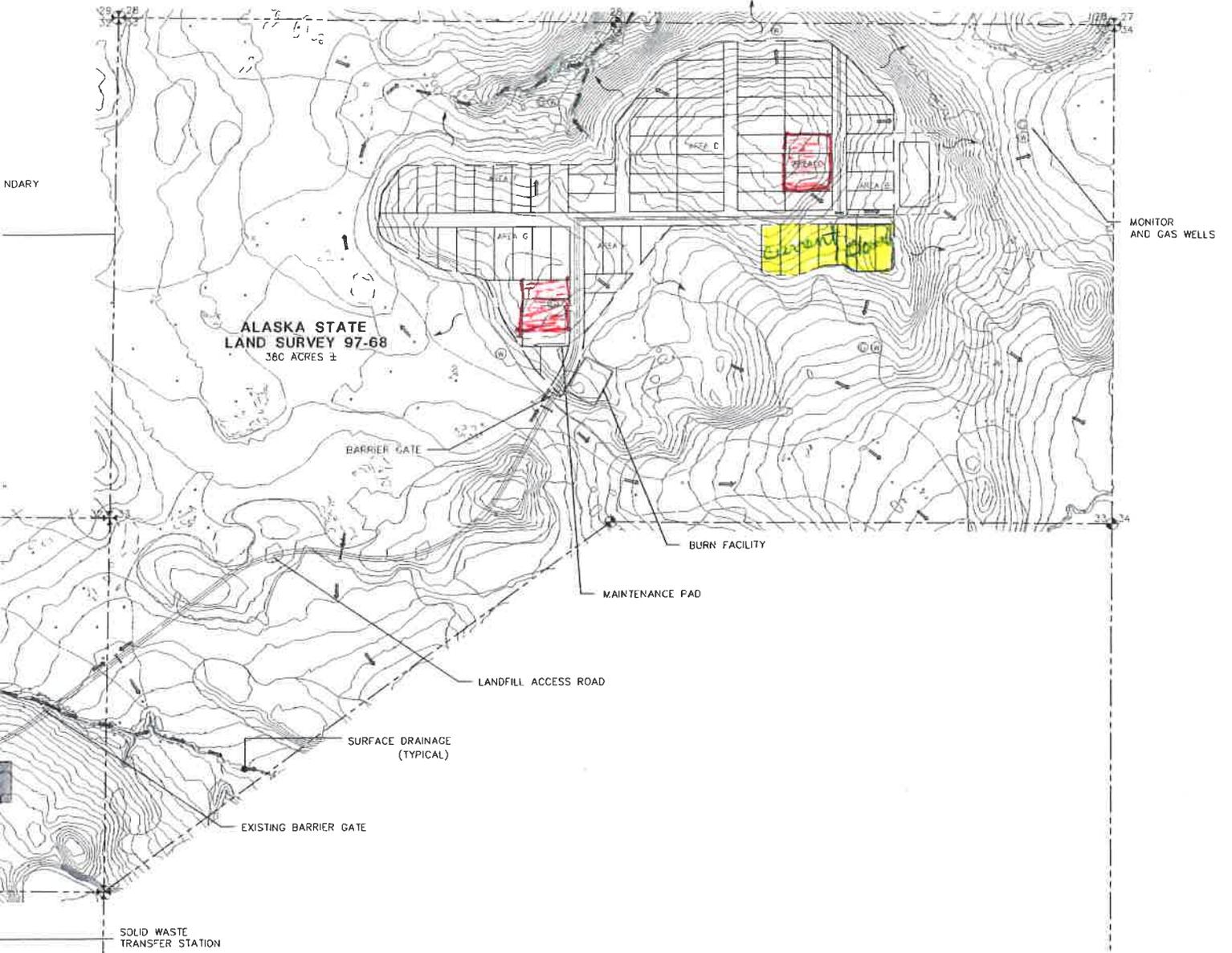


FIGURE 2  
SITE MAP  
DILLINGHAM, ALASKA



**City of Dillingham  
Fiscal Note**

Agenda Date June 19, 2014

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

ORIGINATOR: Carol Shade

FISCAL ACTION (TO BE COMPLETED BY FINANCE)		FISCAL IMPACT <input type="checkbox"/> YES <input type="checkbox"/> NO	
AMOUNT REQUESTED:	\$ 250,000.00	FUNDING SOURCE	<b>BBEDC 2014 CDBG</b>
FROM ACCOUNT 5925 8610 30 81 3811 0	\$ 250,000	Project	Landfill Cells Development
TO ACCOUNT:	VERIFIED BY: Carol Shade	Date:	6/19/2014

**EXPENDITURES**

OPERATING	FY14	FY15	FY16	FY17
Personnel				
Fringe Benefits				
Contract				
Major Equipment				
Land/Buildings				
Miscellaneous				
<b>TOTAL OPERATING</b>	\$ -	\$ -	\$ -	\$ -

Capital		250,000.00		
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REVENUE				
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**FUNDING**

General Fund				
State/Federal Funds				
BBEDC CDBG		250,000.00		
<b>TOTAL FUNDING</b>	-	\$ 250,000.00	\$ -	\$ -

**POSITIONS**

Full-Time				
Part-Time				
Temporary				

ANALYSIS: (Attach a separate page if necessary)

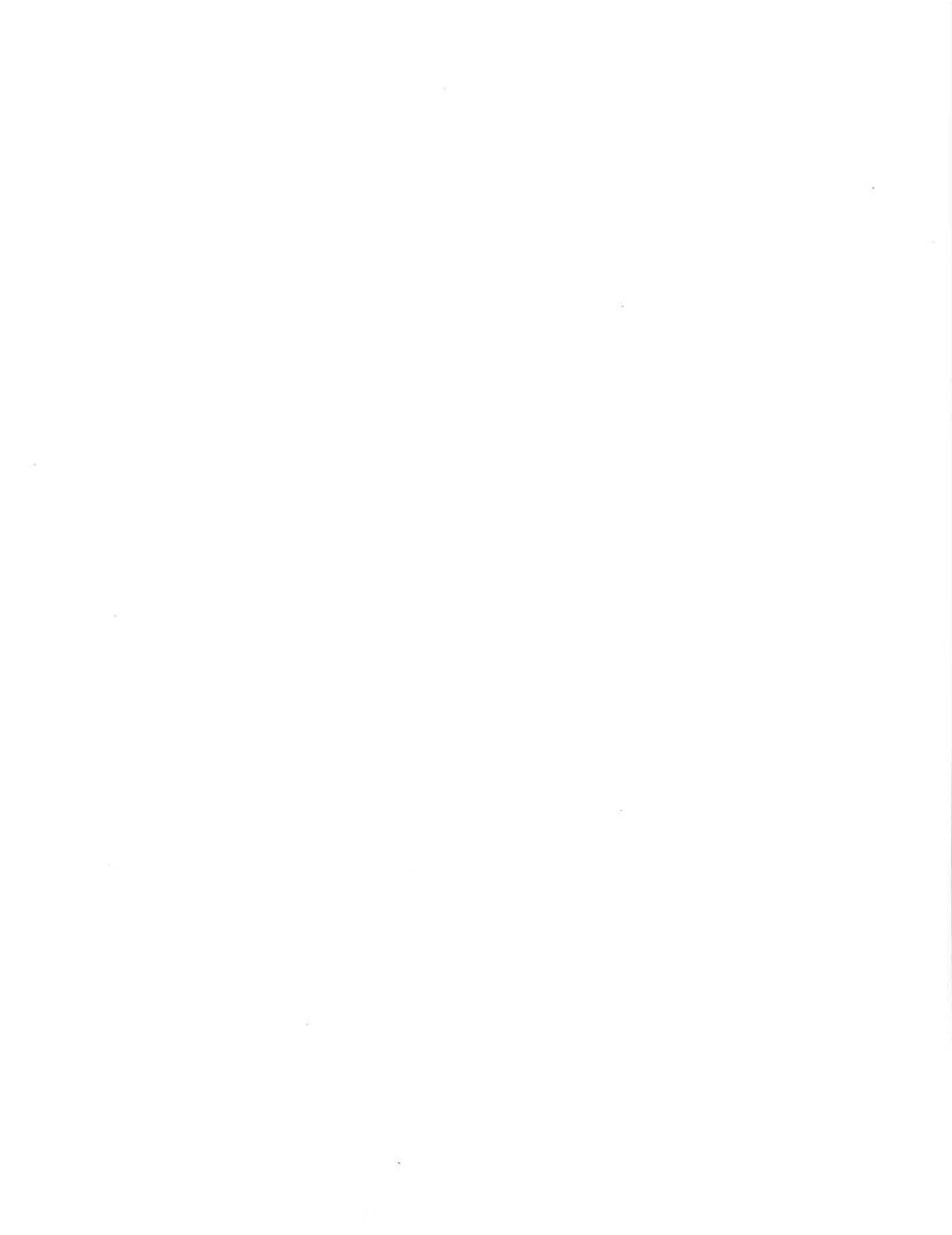
See R 2014-38

PREPARED BY: Carol Shade

June 19, 2014

DEPARTMENT: Finance Department

June 19, 2014



CITY OF DILLINGHAM, ALASKA

**RESOLUTION NO. 2014-39**

**A RESOLUTION OF THE DILLINGHAM CITY COUNCIL AUTHORIZING A LONG TERM ENCROACHMENT INTO EMPEROR WAY SOUTH FOR INSTALLATION OF UTILITIES TO TRACT D MISSION SUBDIVISION FOR A NEW COURTHOUSE**

WHEREAS, according to Dillingham Municipal Code 12.08.010 an encroachment is considered as any object above ground or below belonging to a private owner other than the municipality which has been or caused to be constructed or located within streets, public rights of way, or other property dedicated to a public use; and

WHEREAS, Nushagak Cooperatives wishes to install utilities along Emperor Way South to serve Tract D of Mission Subdivision; and

WHEREAS, the provision of utilities to the lot is considered a long term encroachment in the public right of way; and

WHEREAS, it is in the public interest to provide these utilities for the construction of the proposed new courthouse by Choggiung Limited;

WHEREAS, the proposed encroachment has been reviewed by the City Public Works Department, Public Safety Department, and Fire Department, as well as Nushagak Cooperatives, with no opposition or further requirements; and

WHEREAS, DMC 12.08 requires City Council and Planning Commission approval for any object belonging to a private owner other than the municipality that is placed in streets, public rights-of-way, or other property dedicated to a public use for longer than one year; and

WHEREAS, per Resolution 2014-10 the Dillingham Planning Commission recommends approval of this long term encroachment;

THEREFORE, BE IT RESOLVED that the Dillingham City Council approves the long term encroachment of utilities on Emperor Way South between Airport Spur Road and Tract D Mission Subdivision, with the following conditions:

- That Nushagak Cooperatives notify the City of Dillingham Administration, Public Works Department, and the Public Safety Department 48 hours in advance of any work on public lands or in the public rights of way;
- That a new encroachment permit be obtained before the utilities are moved from this location;
- That Nushagak Cooperatives restore the public land or public right of way to this former condition or better after completing the utility installations; and

- That Nushagak Cooperatives provide documentation in the form of as-builts or GPS coordinates, or other reliable information, of the actual location of the installation within one month after construction.

ADOPTED by the Dillingham City Council June 19, 2014.

SEAL:

\_\_\_\_\_  
Alice Ruby, Mayor

ATTEST:

\_\_\_\_\_  
Janice Williams, City Clerk

**Subject:** A resolution authorizing a Long Term Encroachment Permit to Nushagak Cooperatives for the installation of utilities on Emperor Way South to Tract D Mission Subdivision

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Agenda of: June 19, 2014

Council Action:

Manager: Recommend approval.

City Manager:   
Rose Loera

Route To:	Department / Individual	Initials	Remarks
X	Public Works/ Francisco Garcia		
X	Planning/Jody Seitz		
X	Acting City Clerk / Bernadette Packa	BP	

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

**Other Attachment(s):**

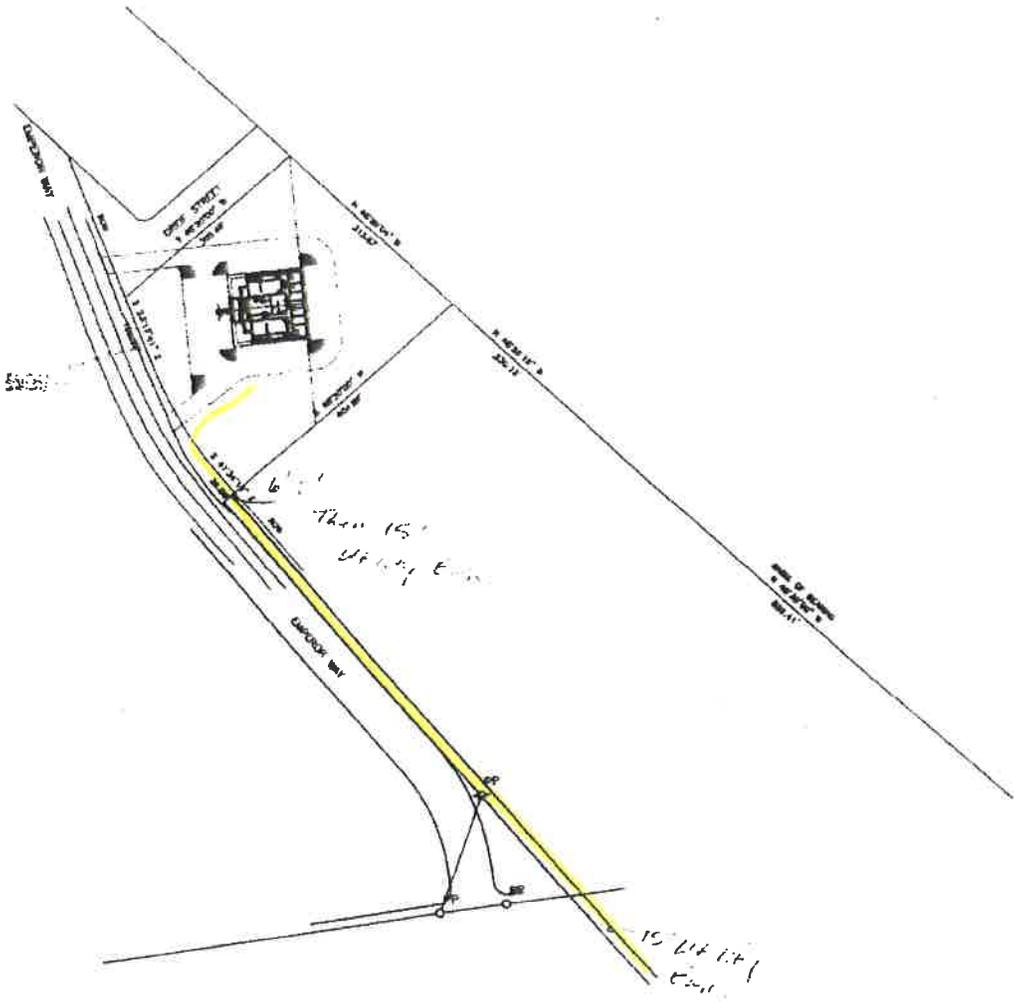
**Summary Statement.**

This resolution is to allow utility installation within the utility easements on Emperor Way South and Tract D Mission Subdivision to serve the proposed new Courthouse building. Emperor Way South overlies Endahl Street for much of the way from Airport Spur Road to Tract D. Endahl St. also had a utility easement that was not constructed and never vacated.













# State of Alaska Local Boundary Commission

550 West Seventh Avenue, Suite 1640, Anchorage, Alaska 99501, 907-269-4501, Fax 907-269-4563

## Resolution No. 14-01

A RESOLUTION BY THE LOCAL BOUNDARY COMMISSION TO ORDER THE CITY OF DILLINGHAM TO REFILE A PETITION TO ANNEX 396 SQUARE MILES OF THE NUSHAGAK BAY TO THE CITY OF DILLINGHAM.

WHEREAS, the Local Boundary Commission (hereafter "LBC") is established under art. X, sec. 12 and may consider any proposed local government boundary change;

WHEREAS, the City of Dillingham (hereafter "City") submitted a petition by local action to annex 396 square miles of the Nushagak Bay to the City of Dillingham;

WHEREAS, the LBC approved the petition, and an election was held regarding the annexation;

WHEREAS, the City conducted the election and the annexation was approved by the voters of the City;

WHEREAS, the Superior Court of the State of Alaska, in its March 27, 2014 Order on Appeal vacated the annexation, and remanded the petition to the Local Boundary Commission to process the petition by legislative review, and ordered the commission to direct the City of Dillingham to refile the petition in accordance with the requirements for legislative review;

WHEREAS, on May 16, 2014, the court denied both the City of Dillingham's and the LBC's motions for reconsideration, and affirmed that the LBC could not submit the current petition to the legislature until the City holds a pre-filing hearing under 3 AAC 110.425;

WHEREAS, assuming the City desires to proceed with its petition to annex territory, and based upon the court's March 27, 2014 Order, the LBC finds that the City must start the petition process anew, and follow the normal steps for a legislative review petition provided for in statute and regulation, including the technical review procedures, opportunity for written public comments, LBC staff reports, and a LBC public hearing;

THEREFORE, LET IT BE RESOLVED, that the LBC directs the City of Dillingham to refile the petition to annex territory to the City of Dillingham in accordance with the requirements for legislative review if the City desires to proceed with its petition.

**PASSED AND APPROVED ON THIS 11TH DAY OF JUNE, 2014 BY THE LOCAL BOUNDARY COMMISSION**

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Lynn Chrystal, LBC Chair

**ATTEST:**

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Brent Williams, LBC staff

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Lynn Chrystal, Chair  
John Harrington, First Judicial District ❖ Robert Harcharek, Second Judicial District  
Darroll Hargraves, Third Judicial District ❖ Lavell Wilson, Fourth Judicial District



**Subject:** Authorize the City Manager to contract with the Alaska Department of Public Safety (Department) for Special Services for FY 2015

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**Agenda of:** June 19, 2014

Council Action:

City Manager: Rose Loera  
Rose Loera

Route To:	Department / Individual	Initials	Remarks
X	Chief of Police / Dan Pasquariello	<i>DP</i>	
X	Finance / Carol Shade	<i>CS</i>	
X	Acting City Clerk / Bernadette Packa	<i>BP</i>	

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

**Other Attachment(s):** Contract

**Summary Statement.** The purpose of this Action Memorandum is to authorize the City Manager to continue a contract with the Department for FY 2015 to provide the following services:

1. Provide full dispatch services 24 hours daily to personnel of the Department;
2. Maintain the State computer "APSIN System", and the City in-house computer system, using these systems to support Department enforcement activities, inclusive of warrant entry and deletion, routine computer information requests, message services, record requests, etc;
3. Provide 24-hour daily telephone answering and message taking service for the Department telephone in Dillingham.
4. Provide prisoner transport and guarding services for prisoners needing to appear in local courts whenever Department personnel are unavailable or unable to perform such duties.

PASSED and ADOPTED by a duly constituted quorum of the Dillingham City Council on June 19, 2014.

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Alice Ruby, Mayor

ATTEST:

[SEAL]

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Janice Williams, City Clerk

**ALASKA DEPARTMENT OF PUBLIC SAFETY  
CONTRACT FOR SPECIAL SERVICES**

**JULY 1, 2014 to JUNE 30, 2015**

**GENERAL PROVISIONS**

The parties. The parties to this contract are the Alaska Department of Public Safety (hereinafter referred to as the "Department") and the City of Dillingham (hereinafter referred to as the "City").

Sole Agreement. The City and the Department undertake this contract under the terms set forth below. This contract is the sole agreement between the parties relating to special services, and there are no other agreements, express or implied.

Effective Date/Termination/Amendments. This contract is effective July 1, 2014, and continues in force until June 30, 2015. Either party may terminate the agreement with thirty (30) days written notice to the other party. This agreement may be amended by written agreement of the parties.

1. The Department will pay the City for services provided in accordance with, and under the terms of, this contract. Payments will be made quarterly in the amount of \$5,000 for a total of \$20,000. Payment for services provided under this contract will be made in four payments in the amount of and covering the period indicated below:

<b>Period Covered</b>	<b>Amount</b>	<b>Payment Process Can Be Initiated</b>
07/01/14 – 09/30/14	\$5,000.00	10/01/14
10/01/14 – 12/31/14	\$5,000.00	01/01/15
01/01/15 – 03/31/15	\$5,000.00	04/01/15
04/01/15 – 06/30/15	\$5,000.00	06/01/15
<b>12 Month Total</b>	<b>\$20,000.00</b>	

2. The City will provide and perform the services specified in this contract to the satisfaction of the Department, in support of Department personnel and operations.

**SPECIFIC PROVISIONS**

3. The City will:
  - a. Provide full dispatch services 24 hours daily to personnel of the Department working in vehicle, vessel, on foot, or in aircraft;
  - b. Maintain the state computer "APSIN System," and the City in-house computer system, using these systems to support Department enforcement activities,

**ALASKA DEPARTMENT OF PUBLIC SAFETY  
CONTRACT FOR SPECIAL SERVICES**

**JULY 1, 2014 to JUNE 30, 2015**

inclusive of warrant entry and deletion, routine computer information requests, message services, record requests, etc;

- c. Provide 24-hour daily telephone answering and message taking service for Department telephones for the Dillingham Post.
- d. Provide prisoner transport and guarding services for prisoners needing to appear in local courts whenever Department personnel are unavailable or unable to perform such duties.

**IN WITNESS OF THIS AGREEMENT**, the undersigned duly authorized officers have subscribed their names on behalf of the City and the Department respectively.

For the City of Dillingham:

For the Department of Public Safety:

By \_\_\_\_\_

By \_\_\_\_\_

Printed Name \_\_\_\_\_

Printed Name \_\_\_\_\_

Official Title \_\_\_\_\_

Official Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

**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  No  Funds Available: Yes  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:		FUNDING SOURCE	
\$	10,000.00	General Fund	
FROM ACCOUNT		Project	
1000 7068 10 11 0000 0	\$ 10,000	Annexation Petition	
TO ACCOUNT:	VERIFIED BY: Carol Shade	Date:	6/19/2014

**EXPENDITURES**

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

Capital				
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REVENUE				
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**FUNDING**

General Fund				
State/Federal Funds				
<b>TOTAL FUNDING</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:

(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

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

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

NOTICE

*Memorandum decisions of this court do not create legal precedent. A party wishing to cite a memorandum decision in a brief or at oral argument should review Appellate Rule 214(d).*

THE SUPREME COURT OF THE STATE OF ALASKA

DAVID GARY GLADDEN,	)	
	)	Supreme Court No. S-14977
Appellant,	)	
	)	Superior Court No. 3DI-11-00118 CI
v.	)	
	)	<u>MEMORANDUM OPINION</u>
CITY OF DILLINGHAM and	)	<u>AND JUDGMENT*</u>
DONALD MOORE,	)	
	)	No. 1500 – June 4, 2014
Appellees.	)	
_____	)	

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Dillingham, Pat L. Douglass, Judge.

Appearances: David Gary Gladden, pro se, Dillingham, Appellant. Patrick W. Munson, Boyd, Chandler & Falconer, LLP, Anchorage, for Appellees.

Before: Fabe, Chief Justice, Winfree, Stowers, Maassen, and Bolger, Justices.

**I. INTRODUCTION**

David Gary Gladden filed a quiet title action to assert his ownership interest in real property scheduled to be sold by the City of Dillingham in foreclosure proceedings to satisfy a property tax delinquency judgment. Gladden’s complaint included a request for a temporary restraining order (TRO) to prevent the sale. The superior court denied the TRO following a hearing and later granted the City’s summary

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\* Entered under Appellate Rule 214.

judgment motion dismissing the quiet title action. Gladden sought reconsideration of the dismissal and challenged the superior court's authority generally, as well as Superior Court Judge Pat L. Douglass's authority specifically, to hear the case. The superior court denied these motions. Gladden renews his arguments on appeal, challenging the superior court's and Judge Douglass's authority over the matter, as well as asserting his superior ownership interest in the property.

Gladden's arguments are meritless. We affirm the superior court's grant of summary judgment to the City and its denial of Gladden's motions.

## **II. FACTS AND PROCEEDINGS**

### **A. Facts**

Gladden owned an apartment building in Dillingham. He failed to pay property taxes for at least six years, from 2002 to 2007. The City began foreclosure proceedings on the property in satisfaction of delinquent real property taxes, penalties, interest, and costs for these taxable years. The superior court issued a judgment and decree of foreclosure against the property for the delinquent amounts. After judgment was entered, the statutory redemption period started, providing Gladden one year to remit the lien amount and redeem the property.<sup>1</sup> When Gladden did not pay the lien amount within the statutory period, the City moved the superior court to issue a clerk's deed that

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<sup>1</sup> This redemption period, codified in AS 29.45.400, provides:

Properties transferred to the municipality are held by the municipality for at least one year. During the redemption period a party having an interest in the property may redeem it by paying the lien amount plus penalties, interest, and costs . . . . Property redeemed is subject to all accrued taxes, assessments, liens, and claims as though it had continued in private ownership. Only the amount applicable under the judgment and decree must be paid in order to redeem the property.

would transfer title to the property to the City. The superior court issued the deed which conveyed “all rights, title, and interest of the former owner of the . . . property . . . to the City of Dillingham.”

The City served Gladden with a 30-day notice to quit on November 5, 2010. After Gladden failed to vacate the property, the City obtained a forcible entry and detainer order from the court on January 5, 2011 to take possession of the property from Gladden. The City scheduled a sale of the property for September 17, 2011. Gladden filed a complaint for quiet title and sought a TRO from the court to halt the sale. The court heard and denied Gladden’s request for a TRO on September 16, 2011. The City sold the property via quitclaim deed on September 21, 2011.

**B. Proceedings**

**1. Prior to the sale of the property**

Gladden filed the underlying complaint and motion for a TRO on September 9, 2011. Gladden’s action for quiet title essentially sought a determination that he was the rightful owner of the property and the City had an inferior claim of title because the City’s taxing ordinance (establishing its authority to foreclose) never existed.

The TRO hearing occurred before Judge John Wolfe. When the court inquired about Gladden’s likelihood of success on the merits, Gladden responded that he believed he would prevail because of “the simple fact that [the City has] admitted that they have no taxing authority . . . and so the City’s only interest is . . . [the] clerk’s deed in 2010.” The court concluded that Gladden had not established a reasonable probability of success on the merits and denied the TRO.

The City filed an answer to Gladden’s complaint, contending that Gladden failed to state a claim upon which relief could be granted and asserting various legal and

equitable defenses. The City sold the property on September 21, 2011, provided a final accounting to Gladden, and filed a satisfaction of judgment with the superior court.

## **2. After the sale of the property**

Following the property sale the City filed a motion for summary judgment seeking dismissal of Gladden's quiet title action. Gladden filed an opposition. In his opposition Gladden argued that he held superior title to the property and the superior court did not have authority to hear his case. The court granted summary judgment in favor of the City, concluding that "the City followed all the statutory requirement[s] by obtaining a clerk's deed and . . . the clerk's deed gave the City clear title, thereby authorizing the City to sell the property."

Gladden filed a second "opposition to summary judgment" that the court treated as a motion for reconsideration. The motion for reconsideration repeated all of Gladden's claims from his original opposition, and also argued that Judge Douglass did not have authority as a judicial officer because she had not been properly appointed as a judge. The court denied Gladden's motion.

Gladden then filed a "motion to recuse" Judge Douglass that again attacked her authority to rule in his action. The court denied this motion.

Gladden appeals, proceeding pro se.

### **III. STANDARD OF REVIEW**

We review de novo a superior court's grant of summary judgment,<sup>2</sup> and must determine "whether any genuine issue of material fact exists and whether on the established facts the moving party is entitled to judgment as a matter of law."<sup>3</sup> We draw

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<sup>2</sup> *Nielson v. Benton*, 903 P.2d 1049, 1052 (Alaska 1995) (citing *Tongass Sport Fishing Ass'n v. State*, 866 P.2d 1314, 1317 n.7 (Alaska 1994)).

<sup>3</sup> *Id.* at 1051-52 (citing *Wright v. State*, 824 P.2d 718, 720 (Alaska 1992)).

all factual inferences in favor of, and view the facts in the light most favorable to, the party against whom summary judgment was granted.<sup>4</sup> We review the constitutional and statutory authority of the superior court, and the authority of a judge appointed to that court, de novo.<sup>5</sup>

#### IV. DISCUSSION

On appeal Gladden argues that the superior court erred in granting summary judgment to the City. Gladden's complaint is based on his belief that the City of Dillingham does not have the authority to tax him; absent this authority, Gladden argues, the City did not validly foreclose on his property and cannot hold superior title. Gladden also challenges the superior court's and Judge Douglass's authority to hear and decide his case.

##### A. The Superior Court Properly Granted Summary Judgment To The City.

Gladden argues that he retains "perfect" legal title because the City had no authority to tax him. He alleges that because the City had no authority to tax him, the City committed fraud and he retains "absolute" title despite the superior court's rulings.

More specifically, Gladden contends that the City previously repealed its sales tax ordinance and has not since reenacted it. Gladden asserts that "Exhibit A" to the City's original repeal of its sales tax ordinance cannot be found, proving the City

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<sup>4</sup> *Rockstad v. Erikson*, 113 P.3d 1215, 1219 (Alaska 2005) (citing *Ellis v. City of Valdez*, 686 P.2d 700, 702 (Alaska 1984)).

<sup>5</sup> *State, Dep't of Revenue v. Deleon*, 103 P.3d 897, 897-98 (Alaska 2004) (concluding that whether superior court has express or inherent authority over a dispute is question of law the court reviews de novo); see also *State, Dep't of Revenue v. Andrade*, 23 P.3d 58, 65 (Alaska 2001) (applying independent judgment standard of review when interpreting Alaska statutes and the Alaska Constitution).

never validly reenacted a sales tax. In effect, Gladden believes that the City has no lawful authority to tax him because the City will not produce “Exhibit A.”

The City characterizes Gladden as a tax protester who prefers to continuously litigate the City’s authority to collect taxes rather than pay his taxes.<sup>6</sup> The City explains that it re-codified its ordinances in 1977, and as part of that effort enacted Ordinance 77-10, which repealed the prior tax ordinances and re-codified them in the new version of the code. According to the City, the text of the new law was set forth in “Exhibit A” to Ordinance 77-10, but the original “Exhibit A” was lost and is not part of the City records. The City explains that the text of “Exhibit A” was codified upon adoption and the sales tax has applied to all taxable sales and services within the City since that time, including Gladden’s apartment rental income from the building that is the subject of this litigation. The City argues that Gladden’s “Exhibit A” argument is not relevant to whether he can challenge the City’s claim of title resulting from a prior tax foreclosure due to his non-payment of real property taxes.

The City is correct. The underlying tax foreclosure concerned Gladden’s non-payment of real property taxes, not his non-payment of a sales tax. As the City correctly argues, we previously ruled that a tax payer cannot rely on the absence of “Exhibit A” to Dillingham Ordinance 77-10 to overcome the presumption that the City lawfully passed its sales tax.<sup>7</sup> Gladden cannot challenge the City’s sales taxing authority

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<sup>6</sup> See, e.g., *Gladden v. City of Dillingham*, Mem. Op. & J. No. 5891, 2012 WL 5075282 (Alaska App., Oct. 17, 2012) (upholding criminal conviction for failure to pay monthly sales tax returns on multi-unit apartment building); *Gladden v. City of Dillingham*, Mem. Op. & J. No. 1253, 2006 WL 1668029 (Alaska, June 14, 2006) (holding that City had authority to collect from Gladden unpaid sales and personal property taxes, outstanding business-licensing fees, and certain penalties and interest).

<sup>7</sup> As we explained in *McCormick v. City of Dillingham*, 16 P.3d 735, 738 & (continued...)

in an effort to collaterally attack the underlying foreclosure action that resulted from his failure to pay real property taxes.

In its order granting summary judgment the superior court concluded that the City followed all the statutory requirements in obtaining a clerk's deed, and the clerk's deed gave the City clear title, thereby authorizing the City to sell the property. The superior court's conclusions are supported by this record, and the court made no legal error in its ruling. As explained above, on March 2, 2009, the superior court issued a decree of foreclosure and judgment conveying the property to the City in consideration

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<sup>7</sup> (...continued)  
n.5 (Alaska 2001):

In 1977 Dillingham undertook an effort to codify its city ordinances. In doing so it passed Ordinance 77-10. Ordinance 77-10 repealed the sales tax ordinance and simultaneously enacted Title 8, which was to be titled "Taxation and Special Assessments." But Ordinance 77-10 did not clearly indicate the ordinances that were to be reenacted as Title 8. Instead, Ordinance 77-10 stated that these would be "more particularly set forth in Exhibit A attached hereto." Although Exhibit A has not survived in Dillingham's records, a sales tax similar to the original sales tax ordinance appeared in Title 4, rather than Title 8, of the codification of the Dillingham municipal code. Although Ordinance 77-10 calls for the "Taxation and Assessment" ordinance to appear in Title 8, Dillingham explain[ed] . . . that the sales tax appears in Title 4 because of a decision of the publisher.

We determined that "Ordinance 77-10 was not a drastic change in policy for the [C]ity of Dillingham. Instead, it was an effort to codify the municipal ordinances, which had included a sales tax for ten years." *Id.* We explained that a presumption of government regularity requires an appellant to present more than "a lost exhibit or [a mislabeled] . . . municipal code" to effectively challenge the legality of Dillingham's sales tax. *Id.* at 738-39.

for delinquent property tax payments, subject to Gladden's statutory redemption rights. From this date, AS 29.45.400 provided Gladden one year to redeem, as "[p]roperties transferred to the municipality are held by the municipality for at least one year" subject to the record holder's payment of the amount applicable under the judgment and decree. Gladden did not redeem the property, and once the statutory redemption period passed, the City obtained a clerk's deed that conveyed title to the City. This "[c]onveyance [gave] the municipality clear title, except for prior recorded tax liens of the United States and the state."<sup>8</sup> Under AS 29.45.460(b), "[t]ax-foreclosed property conveyed to a municipality by tax foreclosure and not required for a public purpose may be sold." "A buyer of the property at the subsequent tax sale receives a new, independent title and not that of the former owner."<sup>9</sup>

Because the superior court correctly ruled that the clerk's deed gave the City clear title to the property prior to its authorized sale, it properly granted summary judgment.

**B. The Superior Court Had Constitutional And Statutory Authority Over This Dispute.**

Gladden asserts that the consolidated seal of the "Trial Courts" demonstrates that the superior court was not a "court of record" authorized to hear his case. Gladden argues that the superior court's use of the consolidated seal makes that court "an administrative and non-constitutional court" and we must therefore invalidate the superior court's summary judgment and post-summary judgment order on this ground.

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<sup>8</sup> AS 29.45.450(b).

<sup>9</sup> *Jefferson v. Metro. Mortg. & Sec. Co. of Alaska, Inc.*, 503 P.2d 1396, 1399 (Alaska 1972) (citing *Teget v. Lambach*, 286 N.W. 522, 526 (Iowa 1939) (decided under former law)).

This is a frivolous argument. The seal of the consolidated trial courts is governed by Alaska Administrative Rule 4(d)<sup>10</sup> and has nothing to do with the authority of the superior court to adjudicate a dispute. The superior court's authority and jurisdiction is established by the Alaska Constitution and state statutes. Article IV, section 1 of the Alaska Constitution provides that "[t]he judicial power of the State is vested in a supreme court, a superior court, and the courts established by the legislature . . . . The courts shall constitute a unified judicial system . . . [with] [j]udicial districts . . . established by law." Alaska Statute 22.10.020 provides that "[t]he superior court is the trial court of general jurisdiction, with original jurisdiction in all civil and criminal matters," and that its jurisdiction "extends over the whole of the state."<sup>11</sup> Under this constitutional and statutory authority, the superior court had authority to hear and decide Gladden's quiet title action.

**C. Judge Douglass Had Constitutional And Statutory Authority Over This Action.**

Gladden also argues that Judge Douglass is not a bona fide judicial officer bound by the federal and state constitutions. Specifically, he challenges whether Governor Sean Parnell properly appointed Judge Douglass to the superior court or whether she received a civil commission.

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<sup>10</sup> That rule provides:

In those court locations where the superior and district courts have been consolidated for administration and when ordered by the presiding judge of the district, the seal for the superior and district courts is a vignette of the official flag of the state with the words "Seal of the Trial Courts of the State of Alaska" and a designation of the district surrounding the vignette.

<sup>11</sup> AS 22.10.020(a) & (b).

Again, this is a frivolous argument. Gladden included in his own excerpt of record a copy of Judge Douglass's Oath of Office, as well as a copy of the letter Governor Parnell sent to Judge Douglass confirming her appointment to the superior court. Judge Douglass was lawfully appointed to the superior court,<sup>12</sup> and Gladden's arguments are wholly without merit.

## V. CONCLUSION

We AFFIRM the superior court's grant of summary judgment to the City on Gladden's quiet title action. We also AFFIRM the superior court's post-summary judgment orders that the superior court generally, and Judge Douglass specifically, had authority to hear and decide the issues in Gladden's case.

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<sup>12</sup> Article IV, section 5 of the Alaska Constitution states: "The governor shall fill any vacancy in an office of . . . superior court judge by appointing one of two or more persons nominated by the judicial council." AS 22.10.110 provides: "Each superior court judge, upon entering office, shall take and subscribe to an oath of office required of all officers under the constitution and any further oath or affirmation as may be prescribed by law."