

CITY OF DILLINGHAM, ALASKA

RESOLUTION NO. 2015-25

A RESOLUTION OF THE DILLINGHAM CITY COUNCIL APPROVING A TASK ORDER WITH BARBARA SHEINBERG TO FURTHER WORK ON THE ANNEXATION PETITION

WHEREAS, the City of Dillingham contracted with Barbara Sheinberg dba Sheinberg Associates to assist the City in its efforts to address the March 27, 2014, Superior Court appeal of the State of Alaska's affirmative annexation decision; and

WHEREAS, the City has since sent a new petition to the Local Boundary Commission which proposes to annex the Nushagak Commercial Salmon District waters and Wood River Sockeye Salmon Special Harvest area waters; and

WHEREAS, when and if the petition is found satisfactory by the Local Boundary Commission it will be submitted for Legislative review; and

WHEREAS, the Local Boundary Commission has completed its first review of the new petition and has asked for further clarification; and

WHEREAS, Barbara Sheinberg has assisted the City in its past efforts and it is beneficial to the City to continue to use her services;

NOW, THEREFORE, BE IT RESOLVED that Dillingham City Council authorizes the City Manager to execute Task Order No. 1 to continue contracting with Sheinberg Associates for an additional cost of \$10,000.

PASSED and ADOPTED by the Dillingham City Council on May 14, 2015.


Alice Ruby, Mayor

ATTEST:

[SEAL]


Janice Williams, City Clerk

Subject:

A RESOLUTION OF THE DILLINGHAM CITY COUNCIL APPROVING A TASK ORDER WITH BARBARA SHEINBERG TO FURTHER WORK ON THE ANNEXATION PETITION

City Manager: Recommend Approval

Signature: Rose Roera

Route to	Department Head	Signature	Date
	Finance Director	<i>Janita M Fuller</i>	5/4/15
X	City Clerk	<i>J. Williams</i>	5/4/15

Fiscal Note: Yes No

Funds Available: Yes No

Other Attachments:

- Letter from Local Boundary Commission
- Task Order No. 1
- Page 1 of Contract for Consulting Services - June 24, 2014

Summary Statement:

On January 22, 2015, the City submitted a new annexation petition to annex the Nushagak Commercial Salmon District waters and Wood River Sockeye Salmon Special Harvest area waters. The Local Boundary Commission has completed its review. The City contracted with Barb Sheinberg in June 24, 2014 to assist in preparing a petition to annex territory into its city. The contract stipulated should there be a need for additional funds this would be done through a Task Order. The City Council is being asked to approve Task Order No. 1, which will add another \$10,000 for her services and will continue until the petition has been approved.



Ordinance No. _____ / Resolution No. 2015-25

Summary Statement continued:

City of Dillingham
Fiscal Note

Agenda Date: May 14, 2015

Request: _____

ORIGINATOR: Anita Fuller

FISCAL ACTION (TO BE COMPLETED BY FINANCE)		FISCAL IMPACT <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
AMOUNT :	\$10,000	FUNDING SOURCE	
FROM ACCOUNT		General Fund, City Council	
1000 7068 10 11 0000 0	\$ 10,000.00	Project Anexation Project	
		General Fund Revenue	
TO ACCOUNT:	VERIFIED BY: Anita Fuller	Date:	5/6/2015

EXPENDITURES

OPERATING	FY14	FY15	FY16	FY17
Personnel				
Fringe Benefits				
Anexation Project			10,000.00	
Road Maintenance Products				
Land/Buildings				
Miscellaneous				
TOTAL OPERATING	\$ -	\$ -	\$ 10,000.00	\$ -

CAPITAL				
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REVENUE				
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FUNDING

General Fund			\$ 10,000.00	
State/Federal Funds				
Other				
TOTAL FUNDING	\$ -	\$ -	\$ 10,000.00	\$ -

POSITIONS

Full-Time				
Part-Time				
Temporary				

ANALYSIS: (Attach a separate page if necessary)

See Attached Action Memorandum #2015-06

PREPARED BY: Anita Fuller

May 6, 2015

DEPARTMENT: Finance Department

May 6, 2015



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

**Department of Commerce, Community,
and Economic Development**

DIVISION OF COMMUNITY AND REGIONAL AFFAIRS

550 West Seventh Avenue, Suite 1640
Anchorage, AK 99501
Main: 907.269.4501 / 907.269.4581
Programs fax: 907.269.4539

April 3, 2015

Alice Ruby, Mayor
P.O. Box 889
Dillingham, AK 99576

Dear Mayor Ruby,

The Alaska Department of Commerce, Community, and Economic Development ("Commerce") has completed its technical review of the City of Dillingham's ("City" or "Dillingham") annexation petition per 3 AAC 110.440.

The details of the technical review are below, but we would first like to bring to your attention to statements made on pages 47 and 82 of the petition, and in the petition summary. Those documents state that the commission is bound by its earlier decision and cannot change it. As Mr. Robert Heyano pointed out in his February 24, 2015 letter, it is incorrect that to say that the Local Boundary Commission ("LBC" or "commission") is bound by its earlier decision and cannot reverse or change its findings. This is a remanded petition. The LBC is not bound by its earlier decision, nor is it bound by its previous findings for the individual standards. Circumstances might have changed since the earlier decision. The composition of the commission has changed since the decision. The commission will examine the petition and the submitted comments and briefs, listen to the testimony, arguments, and public comments given at the hearing, and determine anew whether the petition meets the standards.

Regarding the technical review, Commerce has found some deficiencies in the form and content of the petition and supporting materials. Commerce is returning the petition for correction or completion with concurrence of the commission's chair per 3 AAC 110.440(c). This is a common occurrence with petitions. For your convenience, we have listed our suggestions below.

1. On page 18 Section 13, please state whether the school bond debt listed is the only long-term debt, and whether the interest is at a fixed rate.
2. On page 23, Exhibit A-1, number eight, the last five words should read "the western [~~eastern~~] shore of Nushagak Bay" according to our cartographer.
3. On page 26, Exhibit A-3, number eight, the last five words should read "the west [~~east~~] shore of Nushagak Bay" according to our cartographer.

4. On page 28, in Exhibit A-4, the petition refers to maps in Exhibit A-4 on page 28, but does not include any actual maps or plats of the existing city, or the territory proposed for annexation as required by 3 AAC 110.420(b)(7). Please include the relevant materials.
5. On page 34, Exhibit B, please add to the list of places that you will post the notice. We suggest the list should be the same as the list of the places that you posted the notice of the pre-submission hearing. This will increase the number of places that the public notice is posted.
6. On pages 38-41, in Exhibit C-1 and C-2: Under 3 AAC 110.420(b)(13), a petition is required to include “projections of revenue, operating expenditures, and capital expenditures through the period extending one full fiscal year beyond the reasonably anticipated date (B) for completion of any transition set out in AS 29.05.180...” The figures in Exhibit C relating to projected revenues, projected expenditures, and projected capital expenditures provide information about fiscal years 2012-2015. Even though Dillingham submitted a petition in 2010 that was initially approved, simply submitting the budget information from that year forward through 2015 does not satisfy the standards for a new petition. The City must provide information about projected numbers after fiscal year 2015 (which ends in the same calendar year that the petition was submitted). Commerce determines that financial data are needed through FY18.
7. On page 41, in Exhibit C-3, please list all of the City’s capital expenditures, not just any associated with the proposed annexation.
8. On pages 42-46, in Exhibit D, the petition needs to address 3 AAC 110.900(a), which concerns the capacity of the municipal government to extend essential municipal services. The petition also needs to address 3 AAC 110.900(c), which concerns the transfer and integration of assets and liabilities.
9. On pages 66-70, in Exhibit E, please explain how the petition meets the standards of 3 AAC 110.110, rather than quote from the commission’s 2011 decision.
10. On pages 73-74, in Exhibit E, please explain how the petition meets the standards of 3 AAC 110.130(a), rather than quote from the commission’s 2011 decision.
11. On pages 74-76, in Exhibit E, please explain how the petition meets the standards of 3 AAC 110.130(c)(1) and (2), rather than quote from the commission’s 2011 decision.
12. On pages 76-78, in Exhibit E, please explain how the petition meets the best interests of the state standard under 3 AAC 110.135, rather than quote from the commission’s 2011 decision.
13. On page 80, in Exhibit E, if the petition is contending that the petition meets the standard of 3 AAC 110.140(8)), it is necessary to explain how the petition meets 3 AAC 110.005 (and 3 AAC 110.920 and 3 AAC 110.990(5)).

14. On page 81, in Exhibit E, 3 AAC 110.010(c) does not apply because it pertains to cities in an organized borough; rather, 3 AAC 110(b) does apply because Dillingham is in the unorganized borough.
15. On page 81, in Exhibit E, a petitioner must address 3 AAC 110.140 for legislative review annexation petitions. To do so, a petition must meet at least one of the eight specified circumstances. It is not necessary to meet all eight. If a petitioner chooses to address 3 AAC 110.140(8), the petition must address the city incorporation standards. AS 29.011(a)(3) and 3 AAC 110.020 are among those standards. The petition states that 3 AAC 110.020 “is not materially different from 3 AAC 110.110.” 3 AAC 110.020 focuses on whether the proposed city has the necessary resources. It lists factors which the commission *will* consider. By contrast, 3 AAC 110.110 lists factors which the commission *may* consider. Many of those factors consider only the territory proposed for annexation. For that reason, the two regulations are different, and a petition that addresses 3 AAC 110.140(8) must separately address 3 AAC 110.020.
16. On page 82, in Exhibit E, for 3 AAC 110.040(b) the petition must show that the proposed city does not include entire geographical regions or large unpopulated areas, except if those boundaries are justified by the application of the standards in 3 AAC 110.005-3 AAC 110.042 and are otherwise suitable for city government.
17. On page 82, in Exhibit E, the petition must address 3 AAC 110.040(c).
18. Please address 3 AAC 110.982(6).
19. On page 83, in Exhibit E, please explain how the petition meets 3 AAC 110.970(c).
20. Please remove all references to “page ___ of this brief” and put in the page number of the petition. The brief is not separately paginated.
21. Please include the petition summary.
22. Per 3 AAC 110.425(h), please include an audio recording of the pre-submission hearing, and evidence of a request that a public service announcement be aired.

We respectfully return the petition for correction or completion. Please don't hesitate to contact us with any questions or concerns.

Sincerely,

R. Brent Williams

Brent Williams
Local Government Specialist V

TASK ORDER

TASK ORDER NUMBER: 1

PROJECT NAME: FILE ANNEXATION PETITION

This Task Order pertains to an Agreement by and between the City of Dillingham ("OWNER") and Sheinberg Associates ("CONSULTANT") dated June 24, 2014 ("the AGREEMENT"). Consultant shall perform services on the project described below as provided herein and in the Agreement. This Task Order shall not be binding until it has been properly signed by both parties. Upon execution, this Task Order shall supplement the Agreement as it pertains to the project described below.

PART 1.0 PROJECT DESCRIPTION

Assist the City 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.

PART 2.0 SCOPE OF SERVICES TO BE PERFORMED BY CONSULTANT

1. Take the lead to address LBC's letter of April 3, 2015 asking for clarification on several issues in the City's petition that was filed with the LBC January 22, 2015, with input from the City's attorney and staff.
2. Continue with other assistance as needed as directed by the City Manager and General Counsel.

PART 3.0 OWNER'S RESPONSIBILITIES

The City shall provide office space when the consultant is in town working on City project, unless otherwise agreed by both parties.

PART 4.0 PAYMENT TO CONSULTANT

This task order will approve an additional amount of \$10,000 to get the annexation petition through the legislative review process.

This Task Order is executed this _____ day of _____, 2015.

City of Dillingham
"OWNER"

Sheinberg Associates
"CONSULTANT"

By: Rose Loera

By:

Signature: _____
Title: City Manager

Signature: _____
Consultant

**CONTRACT FOR CONSULTING SERVICES
SHEINBERG ASSOCIATES**

This Agreement is entered into this 24th 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.