

DOYON UTILITIES, LLC
Consulting Agreement

THIS AGREEMENT, effective this ____ day of October, 2009, entered into by and between Doyon Utilities, LLC, with offices located at 714 Fourth Avenue, Suite 201, Fairbanks, AK 99701 (hereinafter, "Client") and Fosdick and Hilmer, Inc., a corporation organized and existing under the laws of the State of Ohio, with offices located at 309 Vine Street, Cincinnati, Ohio 45202 (hereinafter referred to as the "Consultant").

WHEREAS the Client wishes to retain the Consultant to perform certain services required by the Client, and

WHEREAS, the Consultant is willing to undertake the performance of such services in accordance with the terms and conditions hereinafter set forth, and

NOW THEREFORE the parties hereby agree as follows:

ARTICLE I – THE WORK

The project is generally described as providing consulting services for evaluation of utility routing, system design for the selected route, and development of construction documents for installation of the new utility systems. The precise nature and scope of the work is as described in Consultant's proposal, attached and integrated hereto as Attachment A.

The Consultant shall perform the services the Client requests, as agreed to by the Consultant and Client in writing, and to bill at the rates as set forth in Attachment A. The work proposed in Attachment A shall be performed in accordance with this Agreement.

All reports, recommendations, documents, drawings, plans, specifications, technical data and information, copyrights, patents, licenses or other products produced as a result of the services rendered under this Agreement will become the sole property of the Client.

ARTICLE II – CONTRACT DOCUMENTS

This Agreement, scope of work attached as Attachment A, any change orders authorized under Article XI of this Agreement, and Installation Guidelines for Employees attached as Attachment B shall constitute the "Contract Documents" of this Agreement. In the event of any conflict between the terms of this Agreement and Attachment A, the terms of this Agreement control. In the event the terms of this Attachment B conflict with the terms of this Agreement, the terms of Attachment B take precedence.

ARTICLE III – CONTRACT TIME

3.1 Schedule

The Consultant shall complete the work called for by the Contract Documents beginning not earlier than the date of this agreement and completed as listed in Attachment A, or as otherwise terminated or extended as provided herein.

3.2 Delays

Consultant shall not be liable for delays or failure to perform its Services caused directly or indirectly by circumstances beyond Consultant's control, including but not limited to, acts of God, fire, flood, war, sabotage, accident, labor dispute, shortage, government action including regulatory requirements, changed conditions, delays resulting from actions or inactions of Client, its Customer the U.S.

Army, or third parties, site inaccessibility or inability of others to obtain material, labor, equipment, or transportation. Should any of the above occur, then the date for Completion or any other milestone date shall be adjusted for such delay provided the Consultant reports the delay to the Client within a reasonable time, or the time required by the Contract.

ARTICLE IV – CONTRACT PRICE

Consultant will perform the work in exchange for a fee based on **time and materials**. Consultant's work and materials charges are as provided in Attachment A. The costs of completing the project are capped at the charges in Attachment A, unless Client and Consultant agree to a change order authorizing a deviation above the cap.

ARTICLE V – PAYMENT PROVISIONS

5.1 Payment

Consultant will submit detailed invoices to Client monthly. Client recognizes that timely payment is a material part of this Agreement. Each invoice is due and payable within thirty (30) calendar days of the date of the invoice.

5.2 Travel

Local travel will be at Consultant's expense. For purposes of this Agreement, local travel is hereby defined as travel within a 50-mile radius of the Consultant's local office. Any travel to be reimbursed in excess of the current estimate must be preapproved by Client in writing, or if granted orally, must be confirmed by Customer in writing prior to incurring the charge. Approved travel required during the performance of this Agreement will be subject to the terms and conditions and applicable rates as set forth in the Federal Travel Regulations and invoices as an additional cost.

5.3 Invoicing Instructions

Consultant will submit invoices with at least the following information: the invoice date, title of the Agreement, Client Purchase Order Number, name and address of Consultant representative to whom payment is to be sent, description of services performed and costs related thereto. Invoices will be submitted to the Client in duplicate. Invoices will be addressed as follows:

Doyon Utilities, LLC
ATTN: Daniel E. Gavora, President
P.O. Box 74040
Fairbanks, AK 99707

5.4 Taxes

Client agrees to pay all sales and use taxes on goods and services purchased directly by Consultant or its subconsultants and charged directly (if applicable) to Doyon Utilities. Client shall not pay any corporate income, property taxes, state taxes, and Consultant acknowledges and agrees Consultant, not Client, is solely responsible for the compensation of Consultant's personnel assigned to perform services hereunder, and payment of worker's compensation, disability and other similar benefits, unemployment and other similar insurance, withholding income, social security, and other taxes, and paying the related employer contributions for said personnel.

ARTICLE VI - PRELIMINARY MATTERS

6.1 Permits and Licenses

Consultant has or will have, prior to the commencement of any work, all necessary business and professional licenses, permits, and other necessary Federal, State, Borough, Municipal, or other licenses as may be required to enable the Consultant to perform the services required hereunder.

6.2 Agreement Administration

Consultant contacts with the Client regarding prices, terms, financial actions, etc., shall be made with the Client's authorized Representative. All correspondence between Consultant and the Client shall be addressed to the Client's designated Representative.

6.3 Communications with Client's Customer

All of Consultant's written or oral communication with or to the Customer, the U.S. Army, or with Federal, State, or local agencies relative to work under this Agreement must be through or with the authorization of the Client's authorized Representative.

6.4 Reuse of Project Documents

The project documents prepared or furnished to Client by Consultant under this Agreement may be based on information obtained from sources outside Consultant's control. Other than the application of prudent professional care in their evaluation, the Consultant does not warrant, by express or implied warranty, the accuracy thereof. All documentation furnished to the Client is intended for the benefit of the client for the purpose stated herein and is not intended or represented to be suited for reuse by the Client or others. Any reuse without the specific written consent of the Consultant for the Specific purposes intended will be at user's sole risk and without liability and legal exposure to Consultant. Client agrees to indemnify and hold Consultant harmless from any and all liabilities, losses, costs, or expenses suffered by Consultant in connection with Client's unauthorized reuse of project documents.

ARTICLE VII - RISK ALLOCATION

7.1 Insurance

During the period that work is performed under this Agreement, Consultant will maintain, at least, the following insurance: (i) Workers' Compensation coverage in accordance with the laws of the states having jurisdiction over Consultant's employees engaged in the work an Employer's Liability Insurance (limit of \$500,000 each occurrence); (ii) Commercial General Liability with a limit of \$1,000,000 per occurrence and a \$2,000,000 aggregate; (iii) Commercial Automobile Liability with a limit of \$500,000 per occurrence and a \$1,000,000 aggregate; and (iv) Professional Liability coverage with a \$500,000 limit on each claim and a \$1,000,000 aggregate. Consultant agrees to flow down these insurance requirements, as applicable, to all subconsultants and subcontractors that provide any services or work under this Agreement.

7.2 Proof of Insurance/Certificates of Insurance

Prior to beginning services, Certificates of Insurance shall be furnished upon request to the Client evidencing that the coverage will be in effect throughout the performance of the services and will not be canceled or materially changed until at least thirty (30) days prior written notice has been given to the Client.

7.3

Indemnification

The Consultant shall and does hereby agree to indemnify, hold harmless and defend the Client, its affiliates, and respective officers, directors, attorneys, shareholders, employees, agents, successors and assigns, from any and all claims by a third party for losses, damages, costs, or liability, including reasonable expenses and attorneys' fees, arising from, in connection with, or relating to any of negligent acts or omissions or willful misconduct of Consultant, its agents, its personnel, its subcontractors, or its subconsultants in the performance of its obligations under this Agreement, including but not limited to, those that cause bodily injury or death or physical damage to tangible property, all claims for service, labor performed, materials furnished, provisions and supplies, board of men, injuries to persons or damages to property, liens, garnishments, attachments, claims, suits, costs, attorney's fees, disclosure of Confidential Information, and costs of investigation and of defense. It is the intention of this paragraph to hold the Consultant responsible for the payment of and defense against any and all claims, suits, or liens of any nature and character, in any way attributable to or asserted against the Client, or the Client and the Consultant, of which the Client may be required to pay. Consultant will not be responsible for any loss, damage, or liability to the extent they arise from any contributing negligent acts by Client or its Customer, or their subcontractors, agents, staff, or consultants. Neither party will be responsible to the other for consequential damages including, but not limited to, loss of profit, loss of investment or business interruption.

7.4

Underground Structures and/or Utilities

In those instances where Consultant performs underground exploration or ground penetration under this Agreement, Client will furnish Consultant information identifying the type and location of utility lines or any other object(s) beneath the site's surface. Consultant will, prior to penetrating the site's surface, furnish to Client a plan indicating the locations intended for penetrations taking into consideration the information received from the Client and other sources. Consultant shall be entitled to rely on the accuracy and completeness of all information provided to Consultant from Client. Client will approve the location of any penetrations prior to their being made. Consultant shall take all reasonable care and precautions to avoid damage to underground structures and utilities.

Client agrees to indemnify, protect, and hold harmless Consultant from and against all liabilities, claims, demands, losses, expenses, and costs (including reasonable attorney fees) and including damages to or consequential loss from damage to any underground structure or utility, which are not brought to the attention of Consultant or which are not shown on plans furnished to Consultant, except for such damages as are caused by the sole professional negligence of Consultant.

7.5

Jobsite Safety

Unless the specified Services provide otherwise, Consultant is responsible for safety of its own employees within the work zone necessary to perform the Services. This

shall not relieve Client of its responsibility for maintaining a safe jobsite. To the extent required, Consultant shall maintain a Health & Safety Plan that is consistent with that required for activities engaged on a US Military establishment, unless the Consultant agrees to or is able to operate under the Client's Master Health & Safety Plan.

Written notice of all on-the-job accidents shall be submitted within 24 hours to the Owner's designee within one week, Consultant shall issue an accident report with copies of any and all reports, records or investigations of the accident. This provision also applies to any subcontractors of Consultant.

ARTICLE VIII – CONSULTANT'S RESPONSIBILITIES

8.1 Independent Status/Subcontracting

Nothing in this Agreement shall be deemed to create a partnership, joint venture or similar relationship between the Parties and no Party shall be deemed to be the agent of the other Party, it being understood and agreed that neither the method of computing compensation nor any other provision contained herein shall be deemed to create any relationship between the Parties hereto other than the relationship of independent parties contracting for services. Neither Party has or shall hold itself out as having any authority to enter into any contract or create any obligation or liability on behalf of, in the name of, or binding upon the other Party. Consultant's personnel are not Client' agents or employees for federal tax purposes or any other purposes whatsoever, and are not entitled to any Client employee benefits. Consultant assumes sole and full responsibility for employee conduct, and Consultant and its personnel, including its subcontractors, have no authority to make commitments or enter into contracts on behalf of, bind or otherwise obligate Client in any manner whatsoever. Consultant, and not Client, is solely responsible for the compensation of personnel assigned to perform services hereunder, including but not limited to subconsultant or subcontractor fees, and payment of worker's compensation, disability and other similar benefits, unemployment and other similar insurance, withholding income, social security, and other taxes, and paying the related employer contributions as appropriate.

8.2 Proprietary Information

Consultant acknowledges that it has been furnished, may be furnished, may otherwise have received or have had access to, or will receive or have access to reports, data, or information that relates to Client' past, present, or future customers, business, or other related information and data; Client' marketing methods, programs and related data, or other written records used in Client' business, including attorney-client or other privileged information or materials; compensation paid to other independent contractors and other terms of their engagement or contractual relationships; or any other confidential information of, about, or concerning the business of Client, its manner of operations, or other data of any kind, nature or description (the "Confidential Information"). Consultant agrees to preserve and protect the confidentiality of the Confidential Information and all physical forms thereof, whether disclosed to the Consultant before this Agreement is signed or afterward. In addition, except as set forth in this Agreement or as otherwise required by law, Consultant shall not disclose or disseminate the Confidential Information to any third party and shall not use the Confidential Information for its own benefit or for the benefit of any third party without prior written approval of Client's President. Consultant further agrees to implement such

measures as may be necessary to ensure that its staff, employees, and subcontractors shall be bound by the confidentiality provisions contained in this Agreement. The foregoing obligations shall not apply to any information that is publicly known.

8.3 **Publications**

The Consultant shall not publish or publicly disseminate any information or data derived or obtained from or in connection with any services rendered hereunder, without the prior written consent of the Client. Except as may be required by law or authorized in writing by Client, Consultant shall not issue publicity news releases or grant press interviews related to Client or this Agreement during or after the performance of this Agreement.

ARTICLE IX - WORK BY OTHERS

Consultant will cooperate with Client and Customer personnel, contractors and subconsultants who may be working on the site. Particular attention will be paid to such matters as to safety, use and disruption of utilities, the allocation of storage and work space, parking, security and general policing of the work site.

ARTICLE X - CLIENT RESPONSIBILITIES AND AUTHORITY

10.1 **Client's Representative**

Client shall assign a Representative authorized to act on Client's behalf with respect to the project. Client's authorized Representative shall render decisions in a timely manner pertaining to Consultant's Services to avoid unreasonable delay in the orderly and sequential progress of Consultant's services.

10.2 **Inspection**

The Client, through any authorized representatives, shall have the right at all reasonable times to inspect, or otherwise evaluate the quality or any other aspect of the services performed or the safety measured employed in the work being performed hereunder and the premises in which it is being performed. If any inspection or evaluation is made by the Client on the premises of the Consultant or a subconsultant, the consultant shall provide, and shall require his Subconsultants to provide, all reasonable facilities and assistance for the safety and convenience of the Client representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unnecessarily delay the services.

10.3 **Audit**

Upon request of the Client, the accounting records, as well as other records maintained by the Consultant directly related to the performance of the services specified herein, shall be subject, at all reasonable times, to audit by an independent public accounting firm selected by the client and at the Client's expense. In addition, the Client may have such an audit performed at any time within two years following the completion or termination of Services specified herein.

10.4 **Records Retention**

The Consultant will retain all books and records related to the services performed for a period of not less than the greater of any applicable federal law retention requirement or six years following the cessation of work or termination of this Agreement.

ARTICLE XI – CHANGES

The parties may agree to change the Scope of Work as necessitated by Owner needs, Owner's Customer requirements, and/or as otherwise agreed. In that event, any change to the Scope of Work shall be reduced to writing, designated as integrated into this agreement, signed by authorized personnel by the Consultant and Client, and adopted as if fully set forth herein.

ARTICLE XII –SUSPENSION AND TERMINATION

12.1 Suspension

Consultant will, upon written notice from Client, suspend, delay, or interrupt all or part of the performance of services to the extent directed. In such event, Consultant will resume work upon the suspended activities only upon written notice from Client. Where appropriate, an extension of time for completion will be established.

12.2 Termination

This Agreement can be terminated upon thirty (30) days written notice by either party. In the event the Consultant breaches any of the terms or conditions hereof, this Agreement may be terminated by the Client at any time with or without notice. If termination for such a default is effected by the Client, any payments due to Consultant may be adjusted to cover any additional costs to the Client because of Consultant's default. Upon termination the Client may take over the work and may award another party an agreement to complete the work under this Agreement. If after the Client terminates for a default by Consultant it is determined that Consultant was not at fault, then the Consultant shall be paid for eligible services rendered and expenses incurred up to the date of termination.

12.3 Funding

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from Client's Customer for this purpose. If for any reason Client's Customer fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by Client. Termination for any of these reasons is not a default by Client nor does it give rise to a claim against Client.

ARTICLE XIII – MISCELLANEOUS PROVISIONS

13.1 Effective Date

The agreement becomes effective on the latest date of execution indicated below.

13.2 Warranty

It is understood that Consultant makes no warranty, either express or implied, as to the findings, designs, accommodations, specifications, or professional advice or opinion except that Consultant represents that it shall perform its services in accordance with standards of care and due diligence normally practiced by professional consulting firms performing Services of a similar nature in the same locale.

13.3 Controlling Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Alaska. Any lawsuit pertaining to or affecting this Agreement shall be brought in the Fourth Judicial District at Fairbanks, Alaska.

13.4 Severability

In the event any provision of this agreement is held to be unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

13.5 Notice

Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth below. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party:

In the case of Consultant:

Fosdick & Hilmer, Inc.
ATTN: Norm Miller _____
_309 Vine St _____
Cincinnati, Ohio 45202 _____
Facsimile: 513-241-3659 _____

In the case of Client

Doyon Utilities, LLC
ATTN: Norman Sather _____
714 Fourth Avenue, Suite 201
Fairbanks, AK 99701
Facsimile: (907) 455-6788

13.6 Entire Agreement

The parties acknowledge and agree that this Agreement, with Attachments, is the entire Agreement between them and supersedes all prior representations, warranties, agreements, and understandings, oral or written, between them with respect to the subject matter. Unless stated otherwise in this Agreement, this Agreement may not be modified except in writing signed by both parties. The headings are used for convenience and reference purposes only and shall not constitute a part of this Agreement.

Fosdick & Hilmer, Inc.

By:
Its:
Date:

Doyon Utilities, Inc.

By:
Its:
Date:

Attachment A

See attached services proposal

FOSDICK & HILMER, INC.

PRINCIPALS

J. W. PRETZ, P.E.
J. R. GRUBBS, P.E.
R. W. SAUNDERS, LEED

CONSULTING ENGINEERS
309 VINE STREET
CINCINNATI, OHIO 45202
513-241-5640
FAX 513-241-3659

01 October 2009

Norman Sather
Doyon Utilities, LLC
714 Fourth Street
Fairbanks, AK 99701

Re: Professional Consulting Services, Rev. 1
Utility Service Extension for New Aircraft Parts Storage Facility – FTW336A
Fort Wainwright, Alaska

Dear Mr. Sather:

Thank you for thinking of Fosdick & Hilmer for assistance in extending the HDS, WDS and WCS utility systems to new facilities on the Fort Wainwright main cantonment area. Based on the request for proposal from the Army dated 11 August 2009, our subsequent meetings and phone conversations over the past two weeks, we have assembled the following Scope of Engineering Services.

Fosdick & Hilmer shall provide consulting services for evaluation of utility routing, system design for the selected route, and development of construction documents for installation of the new utility systems. Development of this proposal was based on the location and routing sketch attached.

Site drawings developed under the USACE contract for design of the facility shall be provided in AutoCAD format for use by Fosdick & Hilmer as our x-ref base to indicate utility routing and to provide coordination between the two design and construction efforts. In addition, USACE shall provide all design criteria used for initial sizing of the building service laterals for review and approval by DU and F&H.

Fosdick & Hilmer will coordinate our design efforts with the DU engineering staff responsible for design of the electrical distribution system extension to the Aircraft Parts Storage facility.

To provide the design only services described above, Fosdick & Hilmer's proposed lump sum fees are \$37,000 including expenses. Terms are net 30.

If notice to proceed is received by 08 September 2009, we will complete the design effort by *31* October 2009. If NTP is received after this date, we will begin work on the project within one week of receipt of notice and complete the project in 9 weeks. These timelines assume a two day review period at 35% completion level.

Again thank you for this opportunity to submit our proposal. We look forward to providing Utility Consulting to Doyon Utilities.

Respectfully submitted,

FOSDICK & HILMER, INC.



Norman Miller

29 Aug 09

Attachment B

See attached Guidelines for Employees

INSTALLATION REQUIREMENTS FOR EMPLOYEES

The following provisions apply to personnel working on the Installation, but may be changed from time to time by the Installation, command authorities, or the security forces. Contractor agrees to abide by any and all personnel requirements identified by the Installation, command authorities, and security forces.

Employees

The Contractor shall not employ any person for work on this contract if such person is identified by the Installation as a potential threat to the health, safety, security, general well being, or operational mission of the Installation or population. All Contractor and subcontractor employees will comply with Installation security, health and safety conditions.

Where reading, understanding, and discussing environmental, health, and safety warnings are an integral part of an employee's duties, the employee shall be able to understand, read, write, and speak the English language. All employees that interface with customers shall be able to speak and understand the English language. The Contractor will allow the Installation to review on a continuing basis a listing of all employees engaged in Contractor work on the Installation. The listing will provide sufficient information on all employees to allow precise Government identification of each individual.

Personnel Appearance and Identification

The Contractor's personnel shall present a neat appearance to the extent practicable and shall be readily recognized as Contractor employees. If required by the Installation, the Contractor shall ensure each employee obtains from Security Forces an identification card that shall include at a minimum the employee's name, photograph, and Contractor's name. Each Contractor employee shall follow established Installation procedures for displaying their identification card while within the boundaries of the Installation.

Employee Certification

The Contractor shall ensure that employees meet all applicable Federal, state, and local certification, licensing, and health and safety requirements to perform all assigned tasks and functions as defined in this contract.

Installation's Rules Apply to Contractor

Rules, regulations, direction and requirements issued by Installation, or other command authorities, under their responsibility for good order, administration, and security, including Site Specifications, apply to all personnel who enter the Installation or who travel by Government transportation.

National Agency Check

The Contractor shall provide sufficient information to obtain complete and favorable national Agency Check (NAC) investigations for its employees for unescorted entrance into restricted areas on post. Normal access to the Installation shall be in accordance with general Installation requirements. The Contractor shall justify to the Installation Security Forces requests for NAC on Contractor employees requiring unescorted entry into restricted areas. Final approval for unescorted entry into restricted areas rests with the Installation Commander.

Controlled Access Areas

The Contractor shall apply for personnel security clearances required for performance after the contract is awarded. Personnel requiring access to secured areas or restricted areas under the control of the Installation shall comply with applicable regulations. The government reserves the right to terminate the entry of any Contractor employee upon disclosure of information that indicates the individual's continued entry to the Installation is not in the best interests of national security. Additionally, violation of, or deviation from, the established security procedures by the Contractor's employees may result in the confiscation of identification media and the denial of future entry to the Installation.

Conflict of Interest

The Contractor shall not employ for purposes of the Installation utility services contract, any person who is a U.S. Government employee if employing that person would create a conflict of interest. The Contractor shall exercise reasonable diligence to identify and avoid such circumstances.

Contractor Vehicles

All Contractor vehicles shall be readily identifiable. Identification shall include displaying Contractor name in a clear and unobstructed location on the vehicle.

Contractor Radios

Prior to operating two-way, portable, or land-mobile devices on the Installation, the Contractor shall obtain approval of the Installation Communication Group by requesting an available clear frequency. The Contractor shall follow all Installation procedures for operating radios on the Installation.