

CONSTRUCTION CONTRACT

THIS CONTRACT is made and entered into between Doyon Utilities, LLC ("Owner") and _____ ("Contractor"), on the day the Contract is signed as accepted by Owner, Doyon Utilities, LLC.

CONTRACTOR'S PROPOSAL

ARTICLE I – GENERAL PROVISIONS

A. OFFER TO CONSTRUCT.

The applicable project is to be known as **FORT Wainwright** and generally is described as follows:

Install new water, wastewater and heat distribution systems to the FTW 336A Aircraft Storage facility as shown per drawings and specification in the DU IFC package for FTW 336A.

The undersigned Contractor hereby proposes to receive and install such materials and equipment as may hereinafter be specified to be furnished by the Owner, and to furnish all other materials and equipment, all machinery, tools, labor, transportation and other means required to construct the project **FORT Wainwright** in strict accordance with the Plans, Specifications, and Construction Drawings for the prices hereinafter stated in the Bid Tab and integrated into this contract .

B. OWNER-FURNISHED MATERIALS.

Contractor understands and agrees that, if this Proposal is accepted, the Owner will furnish to the Contractor the material set forth in the attached "list of Furnished Owner's Material" and the Contractor will give a written receipt for Material Received. Contractor will, on behalf of the Owner, accept delivery of such of the material as may be subsequently delivered and will promptly forward to the Owner the Contractor's receipt in writing for such materials. The materials referred to are on hand at, or will be delivered to, the locations specified in the Lists and the Contractor will use such materials in constructing the Project.

Owner shall not be obligated to furnish materials in excess of the quantities, size, kind and type set forth in the attached Lists. If the Owner furnishes, and the Contractor accepts, materials in excess thereof, the values of such excess materials shall be their actual cost as stated by the Owner. Information on the shipping schedules of materials not on hand at the start of the project will be furnished to the Contractor as necessary during progress of the work. Upon delivery, Contractor promptly shall receive, unload, transport and handle all materials and equipment delivered after the Notice to Proceed (NTP) at its expense, and shall be responsible for demurrage, if any.

All retired materials must be returned to the Owner. Contractor's failure to return retired materials will result in Owner retaining a portion of the payment otherwise due under the Contract.

C. PURCHASE OF MATERIALS NOT FURNISHED BY OWNER.

Contractor will purchase all materials and equipment (other than owner-furnished materials) outright and not subject to any conditional sales agreements, bailment, lease or other agreement reserving unto the seller any right, title, or interest therein. All such materials and equipment shall become the property of the Owner when erected in place.

D. PROPOSAL ON UNIT BASIS.

Contractor understands and agrees that the various Construction Units on which bids are made are defined by numbers, symbols, and descriptions in this Proposal, that all said bids are on a unit basis, and that the Owner may specify any number or combination of Construction Units that the Owner may deem necessary for the construction of the Project. Separate Construction Units are designated for each different arrangement that may be used in the construction of the Project. This Proposal is based on a consideration of each unit in place and includes only the materials listed on the corresponding Construction Drawings or description of unit where no drawing exists.

E. FAMILIARITY WITH CONDITIONS.

The Contractor has made a careful examination of the site of the Project to be constructed and of the Plans, Specifications, Construction Drawings, and form of Contractor's Bond attached hereto, and has become informed as to the location and nature of the proposed construction, the transportation facilities, the kind and character of soil and terrain to be encountered, and the kind of facilities required before and during the construction of the Project, and has become acquainted with the labor conditions, state and local laws and regulations which would affect work on the proposed construction.

F. CONTRACTOR LICENSING.

A Contractor's License is required for this Project. Contractor holds License # _____ in the State of Alaska, and the license expires _____.

G. CONTRACTOR WARRANTY.

1. Contractor warrants that this Proposal is made in good faith and without collusion or connection with any person or persons bidding for the same work.
2. Contractor warrants that in the event this Proposal is accepted it will make available for use in connection with the proposed construction all necessary tools and equipment and qualified superintendents and foremen.
3. Contractor warrants that each and all of the covenants and agreements herein contained shall extend to and be binding upon the successors and assigns of the parties hereto.
4. Contractor warrants that it possesses adequate financial resources and agrees that in the event this Proposal is accepted it will furnish a Contractor's Bond

with a surety in the form attached hereto, in a penal sum not less than the maximum Contractor price.

In the event that the surety or sureties on the performance bond delivered to the Owner contemporaneously with the execution of the Contract or on any bond or bonds delivered in substitution thereof or in addition thereto shall at any time become unsatisfactory to the Owner the Contractor agrees to deliver to the Owner another or an additional bond.

H. TAXES.

The unit prices for Construction Units in this Proposal include provisions for the payment of all monies which will be payable by the Contractor or the Owner in connection with the construction of the Project due to taxes imposed by any taxing authority upon the sale, purchase or use of materials, supplies and equipment, or services or labor of installation thereof, to be incorporated in the Project as part of such Construction Units. The Contractor agrees to pay all such taxes, except taxes upon the sale, purchase or use of owner-furnished materials. As to owner-furnished materials, the values stated in the attached "Owner Supplied Material" include taxes upon the sale, purchase or use of owner-furnished materials, if applicable. Upon consent of Owner, the Contractor will furnish to the appropriate taxing authorities all required information and reports pertaining to the Project, **except as to the owner-furnished materials.**

I. CHANGES IN QUANTITIES.

The Contractor understands and agrees that the quantities called for in this Proposal, if any, are subject to change, and that the total number of units upon which payment shall be made shall be as set forth in the final agreed inventory. If the Owner changes the quantity by more than 15% of any Assembly Unit or Assembly Units specified in this Proposal, and the materials cost to the Contractor is increased thereby to an extent which would not be adequately compensated by application of the unit prices in this Proposal to the revised quantity of such unit or units, such change, to the extent of the quantities of such units in excess of such 15%, shall be regarded as a change in the construction within.

ARTICLE II -- CONSTRUCTION

A. TIME AND MANNER OF CONSTRUCTION

1. Commencement Date.

The Contractor agrees to commence construction of the Project on a date (hereinafter called the "Commencement Date") which shall be determined by the Owner after (a) notice in writing of approval of the Contract by the Owner and (b) notice in writing from the Contractor that the Contractor has sufficient materials to warrant commencement and continuation of construction, **but in no event will the Commencement Date be later than five (5) calendar days after date of approval of the Contract by the Owner.** The Contractor further agrees to prosecute diligently and to complete construction in strict accordance

with the Plans, Specifications and Construction Drawings within the preceding prescribed Date.

2. Time for Completion

a. General Requirements.

Subject to delay provisions, the Contractor shall complete the work herein on or before the date, or within the time period, specified in the attachments. Contractor shall also complete any other thing in the performance of the Contract on or before the dates, or within the periods, specified in the approved schedule.

Prior to commencement of work, the Contractor shall prepare and submit to the Project Manager for approval a program of work setting out in such manner as the Project Manager may reasonably require the sequence in which and dates by which the Contractor proposes to perform his obligations under the Contract. If the program submitted by the Contractor accords with any dates and periods specified in the Contract and is otherwise reasonable, the Project Manager shall approve it and it shall be the Approved Program.

The Contractor shall use all reasonable efforts to perform obligations under the Contract in accordance with the provisions of the Approved Program. If at any time the performance of the Contract falls behind the approved Program, or it becomes clear that it will so fall behind, then the Project Manager may require the Contractor either to take such steps as may be practicable in order to achieve the Approved Program or to revise the approved Program in the light of the circumstances and to re-submit it for approval. If the Project Manager approves the revised program it shall thereafter be the Approved Program.

If the Project Manager decides that the rate of progress by the Contractor in performing the Contract is likely to prejudice the Contractor's ability to complete the work, and this is due to a cause for which the Contractor is responsible, the Project Manager may give notice to that effect to the Contractor. Following such notice the Contractor shall use best efforts to remedy the potential delay at its own cost.

If when the Project Manager requires the Contractor to revise the Approved Program, the Contractor fails to submit such revised program within a reasonable time, or if the Contractor submits a revised program which the Project Manager is unable to approve for good reason, the Project Manager may instruct the Contractor in writing to make reasonable revisions to the program and the Contractor shall forthwith make such revisions and the revised program shall thereafter be the Approved Program.

The exercise of this Section by the Project Manager or Owner shall not affect any of the Contractor's obligations to perform the Contract.

b. Extension of Time for Completion for Force Majeure

The Time for Completion of construction shall be extended for the period of any reasonable delay which is due exclusively to causes beyond the control and without the fault of the Contractor, including Acts of God, fires, floods, inability to obtain materials and acts or omissions of the Owner with respect to matters for which the Owner is solely responsible. Provided, however, that **no such extension of time for completion shall be granted unless within ten (10) days after the happening of any event relied upon by the Contractor for such an extension of time the Contractor shall have made a request therefore in writing to the Owner**, that no delay in such time of completion or in the progress of the work which results from any of the above causes except acts or omissions of the Owner, shall result in any liability on the part of the Owner, and if this provision conflicts with Owner's remedies under Article IV below, Article IV controls.

c. Extension of time for Completion for Weather

The Time for Completion of construction may be extended when, in the judgment of the Contractor, snow, rain, or wind, or the results of snow, rain, or wind make it impracticable or unsafe to perform any required operation or construction. If lost time arising from such weather conditions effects the ability to meet the construction deadline, the Contractor may make a written request for an extension of the construction deadline, and the Owner will issue a written approval to the extent necessary. Such requests may not be granted when, in the judgment of the Owner, the request is not reasonably related to weather conditions, but is related to avoidable delays or other work stoppages within the control of the Contractor. The criteria used to determine whether an automatic one-day extension of time shall be allowed by the Owner for completion of the contract because of cold weather conditions are as follows:

- (1) When the temperature at 7:00 A.M. on a working day is reported at Fairbanks International Airport to be -25 degrees Fahrenheit or colder, or
- (2) When blizzard conditions, excessive rain, or high wind exist in the work area, on a working day, such that it would be unsafe for the Contractor's workers to perform any required operations or construction under those conditions.

3. Sequence of Construction.

The sequence of construction shall be as set forth in Appendix 2, the numbers or names being the designations of extensions or areas (hereinafter called the "Sections") corresponding to the numbers or names shown on the maps attached hereto, or if no Sections are set forth in Appendix 2, the sequence of construction shall be as determined by the Contractor, subject to the approval of the Owner.

4. Changes in General

All changes with respect to performance of this Contract or the Contract price must be requested and accepted by both Parties, and will only be effective when changed by a written amendment specifically referring to the provision of the Contract to be modified, and upon signing of the written amendment by the Contractor and Owner. This provision applies to changes in work schedule, changes in scope of work, changes in contract price, and any and all other equitable adjustments request by either party.

5. Changes, Additions, or Subtractions from Plans.

The Owner may from time to time during the progress of the construction of the Project make such changes, additions to or subtractions from the Plans, Specifications, Construction Drawings, List of Materials and sequence of construction provided for in the previous paragraph that are part of the Contractor's Proposal as conditions may warrant. Provided, however, that if any change in the construction to be done shall require an extension of time, a reasonable extension will be granted **if the Contractor shall make a written request therefore to the Owner within ten (10) days after any such change is made.** And provided further, that if the cost to the Contractor of construction of the Project shall be materially increased by any such change or addition, the Owner shall pay the Contractor for the reasonable cost thereof in accordance with a Construction Contract Amendment signed by the Owner and the Contractor, but no claim for additional compensation for any such change or addition will be considered unless the Contractor shall have made a written request therefore to the Owner prior to the commencement of work in connection with such change or addition.

6. Changes in Construction Previously Installed.

The Contractor agrees to make such changes in construction previously installed in the Project by the Contractor as required by the Owner for prices arrived at as follows:

- a. Where only a portion of the complete unit is affected by the change, the compensation for such change shall be as agreed upon in writing by the Contractor and the Owner prior to the commencement of work in connection with such change.
- b. For all other units, the compensation for such change shall be the reasonable cost thereof as agreed upon by the Contractor and the Owner, but in no event shall it exceed two (2) times the labor price quoted in the Proposal for the installation of the unit to be changed.

No payment shall be made to the Contractor for materials or labor involved in correcting errors or omissions on the part of the Contractor that result in construction not in accordance with the Plans and Specifications.

7. Construction Not in Proposal.

The Contractor also agrees that when it is necessary to construct units not shown in the Proposal it will construct such units for a price arrived after considering the cost of materials reflected on vendor invoices, and a reasonable cost of labor.

8. Contractor Claims

If the Contractor intends to claim any additional payment or equitable adjustment to the Contract Price which cannot be submitted as a Change, he shall notify the Owner of such intention at the earliest practicable opportunity and in any event not later than fourteen days after the occurrence of the event which gives rise to the claim, and shall establish and maintain contemporary records pertaining to it, together with such additional recourse as the Owner may direct. All such records shall be open to inspection by the Owner.

The Contractor shall as soon as possible thereafter submit his claim in the form of a written statement of grounds under the Contract and a summary of material facts upon which he relies to the Owner together with copies of contemporary records. The Owner may request any reasonable additional information that he considers necessary to evaluate the claim and the contractor shall provide such information as soon as reasonably practicable. The Owner shall consider such a claim in relation to all the relevant circumstances and provisions of the Contract and shall notify the Contractor within a reasonable time of his conclusion and the reasons for it.

It shall be a condition precedent to the validity of the claim that the Contractor shall give notice of the claim as provided in the Contract and if the Contractor fails to do so he shall forfeit any right to additional payment or equitable adjustment with respect to the claim. Having given a notice of claim in accordance with the Contract, the Contractor's right to any additional payment or adjustment shall apply only to the extent it has (1) established, maintained and submitted adequate records in accordance with the Contract; and (2) submitted that claim with such other details as may be required in accordance with the Contract.

B. MATERIALS, STANDARDS, AND LOCATION

1. Materials and Access

- a. Storage of materials shall be within the easement limits or previously agreed upon lay down areas. Equipment and materials shall be stored and maintained in a manner as to not obstruct roads, driveways or trails. Any material stored on site shall be at the sole risk of the contractor, and any damaged material shall be replaced at no cost to the Owner.

- b. Substitutions of Owner-furnished materials are not allowed without Owner's prior approval. For projects funded, in whole or in part, by funds granted under the American Recovery and Reinvestment Act of 2009 ("ARRA"), all of the iron, steel, and manufactured goods used in the project must be produced or manufactured in the United States, unless an appropriate waiver is obtained per 2 C.F.R. 176.10 *et seq.*
- c. The Contractor shall exercise care in the handling of all material. The Contractor shall not install any material found to be defective or damaged.
- d. The Contractor shall exercise care in handling factory subassemblies to prevent loss of components for which he is responsible.
- e. If materials are damaged due to Contractor's mishandling or faulty equipment, the Contractor shall replace the damaged sections, including furnishing of necessary materials, in a manner satisfactory and at no additional cost to the Owner. All sections of wire that are damaged by the application of grips shall be replaced.
- f. Equipment access to the right-of-way shall be from public right-of-ways and by the use of the adjacent easements only. Additional access may be gained by requesting authorization through Owner and/or the proper Army personnel.
- g. Equipment shall not be operated in such fashion as to cause rutting or undue disturbance to the ground cover over which it is operated, except as approved in writing by the Engineer.
- h. Additional arrangements for equipment access along other existing cleared paths may be made by the Contractor with concurrence with the Project Manager and the proper Government officials.
- i. When Contractor is working around survey monuments, lot corners or section corners, care shall be taken to protect these facilities from damage. If damage should occur during clearing or construction, the Contractor shall, at his own expense, re-establish the damaged survey monument using a Professional Land Surveyor registered in the State of Alaska.
- j. The Contractor shall provide a Safety Plan acceptable to Owner before work commences on the project.
- k. The Contractor shall provide a Quality Control (QC) plan acceptable to Owner before work commences on the project.

2. Standards of Work

- a. Contractor will perform the Contract in a workmanlike manner in accordance with the practices, professional standards of, and using no less than industry standard resources used in well-managed operations performing similar work to this Contract. The work shall be performed in accordance with the plans, specifications, and construction drawings. Contractor will use adequate numbers of qualified personnel with suitable training, education, experience and skill to perform the Contract.
- b. The requirements of the latest pertinent OSHA Regulations shall be followed wherever applicable to the work, except where local regulations or specification requirements are more stringent, in which case the more stringent requirement shall govern.

3. Location of Structures and Appurtenances

Structures, anchors, access roads, and other major items to be constructed shall be placed in locations determined and staked by the Owner and shown on the drawing provided. The Contractor shall be responsible for checking the location of structures and appurtenances to be installed. The Contractor shall direct any questions regarding the location of these items prior to installation.

4. Locates and Dig Permits

Contractor shall coordinate with Owner's Site Manager, and notify and obtain a permit from the Installation before any drilling, digging, or excavation is undertaken by Contractor. Permits will identify all underground utilities within two feet of the designated area. Since utility marking is an inherently imprecise process, excavation in close proximity to marked utilities will be done by hand in compliance with the Installation digging permit. Contractor shall be responsible for all repairs, costs, and damages due to excavations performed by Contractor that fail to comply with the Installation digging permit process and the requirements listed herein; this includes excavations extending beyond areas that have been cleared for excavation.

C. ACCIDENT REPORTING

Written notice of all on-the-job accidents shall be submitted within 24 hours to the Owner's Contract Administrator or Project Manager. Within one week, Contractor 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 Contractor.

D. SUPERVISION AND INSPECTION

1. The Contractors shall cause the construction work on the Project to receive constant supervision by a competent Foreman (supervisor) who shall be present at all times during working hours where construction is being carried on. The Contractor shall also employ, in connection with the construction of the Project, capable, experienced and reliable foremen and such skilled workmen as may be required for the various classes of work to be performed.
2. The Owner reserves the right to require the removal from the Project of any employee of the Contractor if in the judgment of the Owner such removal shall be necessary in order to protect the interest of the Owner. The Owner or the Supervisor, if any, shall have the right to require the Contractor to increase the number of its employees and to increase or change the amount or kind of tools and equipment if at any time the progress of the work shall be unsatisfactory to the Owner or Supervisor; but the failure of the Owner or Supervisor to give any such directions shall not relieve the Contractor of its obligations to complete the work within the time and in the manner specified in this Proposal.
3. The manner of construction of the Project, and all materials and equipment used therein, shall be subject to the inspection, tests and approval of the Owner and the Contractor shall furnish all information required by the Owner concerning the nature or source of any materials incorporated or to be incorporated in the Project. The Owner shall have the right to inspect all payrolls, invoices of materials, and other data and records of the Contractor and of any subcontractor, relevant to the construction of the Project. The Contractor shall have an authorized agent accompany the Engineer or Project Manager when final inspection is made and, if requested by the Owner, when any other inspection is made.
4. In the event that the Owner shall determine that the construction contains or may contain numerous defects, it shall be the duty of the Contractor and the Contractor's surety or sureties to have an inspection made by an engineer approved by the Owner, at the cost of the Contractor or surety, for the purpose of determining the exact nature, extent and location of such defects.
5. The Engineer may recommend to the Owner that the Contractor suspend the work wholly or in part for such period or periods as the Engineer may deem necessary due to unsuitable weather or such other conditions as are considered unfavorable for the satisfactory prosecution of the work or because of the failure of the Contractor to comply with any of the provisions of the Contract. Provided, however, that the Contractor shall not suspend work pursuant to this provision without written authority from the Owner so to do. The time of completion hereinabove set forth shall be increased by the number of days of any such suspension, except when such suspension is due to the failure of the Contractor to comply with any of the provisions of this Contract. In the event that Contractor suspends work with consent of Owner, before resuming work, the

Contractor shall give the Owner at least twenty-four (24) hours notice thereof in writing.

E. DEFECTIVE MATERIALS AND WORKMANSHIP.

1. The acceptance of any materials, equipment (except owner-furnished materials) or any workmanship by the Owner or the Engineer shall not preclude the subsequent rejection thereof if such materials, equipment, or workmanship shall be found to be defective after delivery or installation, and any such materials, equipment or workmanship found defective before final acceptance of the construction shall be replaced or remedied, as the case may be, by and at the expense of the Contractor. Any such condemned material or equipment shall be immediately removed from the site of the Project by the Contractor at the Contractor's expense. The Contractor shall not be entitled to any payment hereunder so long as any defective materials, equipment or workmanship in respect to the Project, of which the Contractor shall have had notice, shall not have been replaced or remedied, as the case may be.
2. Construction Guarantee/Warranty.
Notwithstanding any certificate which may have been given by the Owner or the Engineer, if any equipment, materials, or workmanship which does not comply with the requirements of this Contract shall be discovered within one (1) year after completion of the Project, the Contractor shall replace such defective equipment or materials or remedy any such defective workmanship within thirty (30) days after Owner provides written notice of the existence thereof. In the event of failure by the contractor so to do, the Owner may replace such defective equipment or materials or remedy such defective workmanship, as the case may be, and in such event the Contractor shall pay to the Owner the actual cost of remedying such condition. This provision does not apply to Owner-provided material.

ARTICLE III -- SPECIAL CONDITIONS

A. TRAFFIC CONTROL ALONG ROADWAYS.

1. The Contractor will be responsible for traffic maintenance along the project route. This work shall consist of the necessary measures to protect and maintain traffic during the life of the Contract, including the furnishing of such personnel, equipment, and devices as may be required to insure the safety of the traveling public.
2. If the construction of the Project will affect traffic flow or safety along roadways, the Contractor will be required to provide all applicable information to Owner Site Manager, Project Manager and/or Department of Public Works (DPW); including the formulation and submittal of traffic control plan. The traffic control plan shall be submitted in writing to the

Project Manager for approval within 1 day of the Notice to Proceed. Changes in the traffic control plan resulting from unforeseen circumstances may be allowed by DPW construction provided forty-eight (24) hours are allowed for DPW review.

3. All Traffic control devices required in the traffic control plan, including construction signs and barricades shall be furnished by the Contractor. All such devices shall conform to the design, materials, color and fabrication requirements of the Alaska Traffic Manual. The construction signs and barricades shall be high intensity reflective sheeting as provided in DOTPF Standard Specifications Section 615.
4. The Contractor shall maintain the work during construction and until construction is complete on that portion of the Project. This maintenance shall be a continuous and effective effort, executed on a day by day basis, with adequate equipment and personnel to the end that the roadway and structures are maintained in a safe and satisfactory condition for the traveling public at all times.
5. Construction shall be conducted so as to cause as little inconvenience as possible to abutting property owners. The Contractor shall provide and maintain in a safe passable condition temporary crossing, and intersection with trails, streets, businesses, parking lots, residences, garages, and farms.
6. When, in the opinion of DPW, conditions are such that the safety and/or convenience of the traveling public are adversely affected, the Contractor and Owner shall be immediately notified in writing. The notice shall state the defect(s) and the corrective action(s) required. In the event the Contractor neglects to take immediate corrective action, the Owner may suspend all work on the project until satisfactory action is performed.
7. Contractor shall furnish and effect, move and remove, as required and directed, the required construction signs, construction barricades and/or temporary guide markers and pavement marking required to adequately and safely inform and direct the traveling public and satisfy requirements.
8. All construction signs shall be kept clean, mounted at the required height, and placed to be effective day and night.

The cost of all signage, road closures, barricades, formulation of the traffic control plan, negotiations, meeting, and permit fees for this shall Project be the responsibility of the Contractor.

B. ENVIRONMENTAL PROTECTION.

The Contractor shall perform work in such a manner as to maximize preservation of beauty, conservation of natural resources and minimize marring and scarring of the

landscape and silting of streams. The Contractor shall not deposit trash in streams or waterways, and shall not deposit herbicides or other chemicals or their containers in or near streams, waterways or pastures. The Contractor shall follow, under the general direction of the Project Manager, the criteria relating to environmental protection as specified herein by the Engineer.

If required, special Installation instructions will be attached as Appendix 3.

C. INSTALLATION ENVIRONMENTAL AND SAFETY GUIDELINES.

Services under this Contract require Contractor's knowledge of and compliance with Installation environmental and safety guidelines. Such compliance may be modified by the Installation from time to time, and includes but is not limited to:

1. Contractor shall comply with Installation procedures and standards for work in and around environmentally sensitive or contaminated property. Prior to accessing any environmentally sensitive areas, Contractor shall coordinate with the Project Manager and, if appropriate, the designated Government Representative.
2. Hazardous materials used in construction shall be handled in accordance with applicable laws and regulations. Appropriate Material Safety Data Sheets (MSDS) shall accompany all hazardous materials used on the Installation. Contractor shall submit copies of MSDS to Owner for provision to the Government, and Owner shall retain a copy of each MSDS on-site. Contractor shall maintain a viable hazardous waste minimization program that includes making every effort to identify non-hazardous or less hazardous materials than those currently in use and recycling versus disposing of consumable wastes.
3. Contractor shall be responsible for accomplishing at no cost environmental response required as a result of Contractor's activities. Contractor shall not be responsible for remediating preexisting environmental conditions. Unexploded ordnance and any biological, nuclear, or chemical warfare material shall be considered a preexisting environmental condition. Existing contamination due to spills or discharge of distillate, oil or other contaminants or toxic material shall also be considered a preexisting environmental condition.

D. ARCHAEOLOGICAL FINDING.

Cultural resources on Federal property are protected and managed by the Archaeological Resources Protection Act of 1979 and other applicable laws. Contractor shall exercise care so as not to disturb or damage artifacts or fossils should any be uncovered during Contractor activities. Should Contractor or its subcontractors discover evidence of possible scientific, prehistoric, historic or archaeological finds within the work limit lines or adjacent to the work area, Contractor shall immediately cease work at that location and notify Owner so Owner may notify the appropriate Contracting Officer. Contractor shall

provide Owner with complete information as to the specific location and nature of the findings. Contractor shall continue work in other areas. Where appropriate by reason of discovery and pursuant to direction by the Government, Owner may order delays in time of performance or changes in the work or both. Should any temporary suspension of the work at the site result in delays or additional work for the Contractor, the Contractor will be compensated by an equitable adjustment under the General Provisions of the Contract.

ARTICLE IV - PAYMENTS AND RELEASE OF LIENS

A. PAYMENTS TO CONTRACTOR.

1. Progress payments may be made at 30%, 60%, and 90% completion. Contractor shall provide a schedule of values for progress payments along with the Proposal. Notwithstanding any schedule of values, Owner will withhold 10% of the contract price pending final Completion and acceptance of the work. To receive a Progress Payment, Contractor must submit an Owner-provided Pay Request Form, and attach the appropriate supporting documentation that reflects a Progress Payment is warranted under the approved schedule of values.
2. Notwithstanding the provisions of Section 1 above, the Contractor may, by giving written notice thereof to the Owner, elect to receive payment in full for any Section of the Project upon:
 - a. completion of construction of such Section as certified by the Engineer and approved by the Owner;
 - b. submission to the Owner of the releases of lien and the certificate referred to in Article IV, Section B hereof;
 - c. approval by the Owner of the inventory in respect of such Section; **and**
 - d. submission to the Owner of the consent in writing by the Surety or Sureties on the Contractor's Bond to payment in full for such Section prior to Completion of the Project.

The term "Section" shall mean that as set forth in Article II, Section A(3) and Appendix 2 hereof, but for purposes of this Section only, no payment under this Section may be required unless the Section represents at least twenty-five percent (25%) of the maximum Contract price, and which is capable of being operated by the Owner.

3. No payment shall be due while the Contractor is in default in respect of any of the provisions of this Contract and the Owner may withhold from the Contractor the amount of any claim by a third party against either the Contractor or the Owner based upon an alleged failure of the Contractor to perform the work hereunder in accordance with the provisions of this Contract.

B. RELEASE OF LIENS AND CERTIFICATE OF CONTRACTOR

Upon the completion by the Contractor of the construction of the Project (or any Section thereof if the Contractor shall elect to receive payment in full for any Section when completed as provided above) but prior to final payment to the Contractor, the Contractor shall deliver to the Owner releases of all liens and of rights to claim any lien, in the form attached hereto from all manufacturers, materialmen, and subcontractors furnishing services or materials for the Project or such Section and a certificate in the form attached hereto to the effect that all labor used on or for the Project or such Section has been paid and that all such releases have been submitted to the Owner.

C. PAYMENTS TO MATERIALMEN AND SUBCONTRACTORS

The Contractor shall pay each materialman, and each subcontractor, if any, within five (5) days after receipt of any payment from the Owner, the amount thereof allowed the Contractor for and on account of materials furnished or construction performed by each materialman or each subcontractor.

ARTICLE V -- PARTICULAR UNDERTAKINGS OF THE CONTRACTOR

A. PROTECTION OF PERSONS AND PROPERTY.

Contractor shall at all times take all reasonable precautions for the safety of its employees and of the public, and shall comply with all applicable provisions of Federal, State and local safety laws, building and construction codes, Installation guidelines, and Owner safety rules and requirements. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America unless such instructions are incompatible with Federal, State, or local laws or regulations.

In addition to the above requirements, Owner expects and Contractor agrees to abide by the following requirements:

1. The Contractor shall so conduct the construction of the Project as to cause the least possible obstruction of all Roadways.
2. The Contractor shall provide and maintain all such guard lights and other protection for the public as may be required by applicable statutes, ordinances and regulations or by local conditions.
3. The Contractor shall do all things necessary or expedient to properly protect any and all highways and any and all property of others from damage, and in the event that any such highways or other property are damaged in the course of the construction of the Project the Contractor shall at its own expense restore any or all such damaged property immediately to as good a state as before such damage occurred.

4. The Project, from the commencement of work to completion, or to such earlier date or dates when the Owner may take possession and control in whole or in part as hereinafter provided, shall be under the charge and control of the Contractor and during such period of control by the Contractor all risks in connection with the construction of the Project and the materials to be used therein shall be borne by the Contractor. The Contractor shall make good and fully repair all injuries and damages to the Project or any portion thereof under the control of the Contractor by reason of any Act of God or other casualty or cause whether or not the same shall have occurred by reason of the Contractor's negligence. The Contractor shall hold the Owner harmless from any and all claims for injuries to persons or for damage to property happening by reason of any negligence on the part of the Contractor or any of the Contractor's agents or employees during the control by the Contractor of the Project or any part thereof.
5. Any and all excess earth, rock, debris, underbrush and other useless material shall be removed by the Contractor from the site of the Project as rapidly as practicable as the work progresses.
6. Upon violation by the Contractor of any of the provisions of this Section, after written notice of such violation given to the Contractor by the Engineer or the Owner, the Contractor shall immediately correct such violation. Upon failure of the Contractor so to do the Owner may correct such violation at the Contractor's expense: Provided, however, that the Owner may, if it deems it necessary or advisable, correct such violation at the Contractor's expense without such prior notice to the Contractor.
7. The Contractor shall submit to the Owner monthly reports in duplicate of all accidents, giving such data as may be prescribed by the Owner.
8. The Contractor shall not proceed with the cutting of trees or clearing of right-of-way without written notification from the Owner that proper authorization has been obtained.

B. INSURANCE.

Contractor must furnish a certificate of insurance within the (10) days of receipt of the Notice-of-Intent to Award and must provide for a sixty (60) day prior notice of cancellation, non-renewal or material change of the policies. Failure to furnish satisfactory evidence of insurance or lapse of policy is a material breach of the contract and grounds for termination of this agreement. Each policy shall be endorsed with a waiver of subrogation in favor of the Owner. All other insurance policies required of the Contractor by this agreement shall be endorsed to provide that such insurance shall apply as primary insurance and that any insurance or self-insurance carried by the Owner will be excess only and will not contribute with the insurance required by this agreement. All other insurance policies required of the Contractor and subcontractors by this Agreement shall be endorsed

to name the Owner as additional insured. All insurance shall be on an occurrence from acceptable to the Owner and having an A.M. Best rating of "A" or better.

1. **Commercial General Liability Insurance or Excess Liability Insurance**

Contractor is required to provide Commercial General Liability (CGL) insurance with limits not less than \$5,000,000 combined single limit per occurrence and \$5,000,000 in the aggregate not excluding premises operations, independent contractors, products, and completed operations, broad form property damage, blanket contractual, explosion, collapse and underground hazards. Limits may be a combination of primary and excess (umbrella) policy forms. Contractor shall name Doyon Utilities as an additional insured on Contractor's umbrella policy.

2. **Worker's Compensation**

Contractor will provide Workers' Compensation Insurance as required by AS 23.30.045. The coverage shall be in the amount no less than \$500,000 each accident for bodily injury, \$500,000 policy limit for bodily injury by disease and \$500,000 each employee for bodily injury by disease. The Contractor shall be responsible for Workers' Compensation Insurance for any subcontractor who directly or indirectly provides services under this contract. This coverage must include statutory coverage for states in which employees are engaging work. If there is an exposure of injury to Contractor's employees under the U.S. Longshoremen's Harbor Workers' Compensation Act, the Jones Act, or under laws, regulations or statutes applicable to maritime employee, coverage shall be included for such injuries or claims.

3. **Automobile Liability Insurance**

Contractor shall obtain and maintain Automobile Liability Insurance, covering owned, hired, and non-owned vehicles, for all self-propelled vehicles to be used in connection with the contract. The minimum combined single limit must be at least One Million dollars (\$1,000,000) per accident for bodily harm (including death) and property damage.

4. **Property Insurance**

If applicable, the Contractor shall submit to Doyon Utilities evidence of All Risk Builder's Risk Insurance for all physical loss, including earthquake and flood (100% completed value basis) upon the entire work naming the Doyon Utilities, the Contractor and the subcontractors as additional insured parties and as their interests may appear to the full contract sum thereof, until the project is completed by the Contractor and accepted by Doyon Utilities. The policy, by endorsement, shall specifically permit partial or beneficial occupancy at or prior to substantial completion or final acceptance of the entire work.

5. **PROOF OF INSURANCE/CERTIFICATES OF INSURANCE**

The Contractor shall furnish Doyon Utilities with a Certificate of Insurance or where requested by Doyon Utilities, the policy declaration page with required endorsements attached thereto showing the type, amount, effective dates and dates of expiration of all policies. All endorsements shall reference policy number and the project name and project number. The Owner is Doyon Utilities, LLC and is to be identified on all certificates and endorsements.

Without limiting its indemnification, the Contractor shall maintain, until acceptance of the project by the Owner, occurrence type coverage of the kinds and minimum amounts set forth above. All insurance limits are minimum. If the Contractor's policy contains higher limits, the Owner shall be entitled to coverage to the extent of such higher limits. The Owner, at its sole discretion, may rise or lower the limit.

C. DELIVERY OF POSSESSION AND CONTROL TO OWNER.

1. Upon written request of the Owner the Contractor shall deliver to the Owner full possession and control of any portion of the Project provided the Contractor shall have been paid at least ninety percent (90%) of the cost of construction of such portion. Upon such delivery of the possession and control of any portion of the Project to the Owner, the risk and obligations of the Contractor as set forth in Article V, Section A(5) hereof with respect to such portion of the Project so delivered to the Owner shall be terminated. Provided, however, that nothing herein contained shall relieve the Contractor of any liability with respect to defective materials and workmanship as contained in Article II, Section E hereof.
2. Where the construction of a Section as defined in Article II, Section A(3) and Appendix 2 shall have been completed by the Contractor, the Owner agrees, after receipt of a written request from the Contractor, to accept delivery of possession and control of such Section upon the issuance of a written statement that the Section has been inspected and found acceptable by the Owner. Upon such delivery of the possession and control of any such Section to the Owner, the risk and obligations of the Contractor as set forth in Article V, Section A(5) hereof with respect to such Section so delivered to the Owner shall be terminated: Provided, however, that nothing herein contained shall relieve the Contractor of any liability with respect to defective materials or workmanship as contained in Article II, Section E hereof.

D. TESTING THE PROJECT.

1. Prior to Completion of the Project the Owner, upon written notice to the Contractor, may test the construction thereof on a temporary basis. During the period of such test the portion or portions of the Project so tested shall be considered as within the possession and control of the Owner and governed by the provisions of Section C of this Article. Upon written notice to the Contractor

by the Owner of the completion of such test and upon terminating temporary use of the construction involved therein said portion or portions of the Project shall be considered as returned to the possession and control of the Contractor unless the Owner shall elect to continue possession and control in the manner provided in Section C of this Article.

2. The Owner shall have the right to use permanently any portion or portions of the Project delivered to its possession and control pursuant to the provisions of Section C of this Article.

E. ASSIGNMENT OF GUARANTEES.

All guarantees of materials and workmanship running in favor of the Contractor shall be transferred and assigned to the Owner prior to the time the Contractor receives final payment.

ARTICLE VI – REMEDIES

A. COMPLETION ON CONTRACTOR'S DEFAULT.

If default shall be made by the Contractor or by any subcontractor in the performance of any of the terms of this Proposal, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Contractor and the Surety or Sureties upon the Contractor's Bond or Bonds a written notice requiring the Contractor to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Contractor such default shall be corrected or arrangements for the correction thereof satisfactory to both the Owner and the Administrator shall be made by the Contractor or its Surety or Sureties, the Owner may take over the construction of the Project and prosecute the same to completion by Contract or otherwise for the account and at the expense of the Contractor, and the Contractor and its Surety or Sureties shall be liable to the Owner for any cost or expense in excess of the Contract price occasioned thereby. In such event the Owner may take possession of and utilize, in completing the construction of the Project, any materials, tools, supplies, equipment, appliances, and plant belonging to the Contractor or any of its subcontractors, which may be situated at the site of the Project. The Owner in such contingency may exercise any rights, claims or demands which the Contractor may have against third persons in connection with this Contract and for such purpose the Contractor does hereby assign, transfer and set over unto the Owner all such rights, claims and demands.

B. CUMULATIVE REMEDIES.

Every right or remedy herein conferred upon or reserved to the Owner shall be cumulative, shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute and the pursuit of any right or remedy shall not be construed as an election:

C. INDEMNIFICATION.

The Contractor shall and does hereby agree to indemnify, hold harmless and defend the Owner, 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 Contractor, its agents, its personnel, or its subcontractors in the performance of its obligations under this Contract, 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 Contractor 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 Owner, or the Owner and the Contractor, of which the Owner may be required to pay. In the event the liability of the Contractor shall arise by reason of the sole negligence or willful misconduct of the Owner or the Owner's agents, or independent contractors other than the Contractor who are directly responsible to the Owner, then and only then shall the Contractor not be liable to the Owner under the provisions of this paragraph.

Promptly after receipt by Owner of any written claim or notice of action giving rise to a claim for indemnification, Owner shall notify Contractor and provide copies of the claim or any related documents. No failure to notify Contractor shall relieve Contractor of its obligation under this Contract except to the extent that the failure or delay is materially prejudicial to the Contractor's defense of such claim. Within thirty (30) days following receipt of such written notice, but in any event no later than ten (10) days before the deadline for any responsive pleading, Contractor shall notify Owner in writing (a "Notice of Assumption of Defense") if Contractor elects to assume control of the defense and settlement of such claim or action.

If Contractor delivers a Notice of Assumption of Defense within the required period, Contractor shall have sole control over the defense and settlement of such claim; provided, however, that Owner shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim and Contractor shall obtain the prior written approval of Owner before entering into any settlement of such claim or ceasing to defend against such claim. After Contractor has delivered a timely Notice of Assumption of Defense, Contractor shall not be liable to Owner for any legal expenses incurred by Owner in connection with the defense, provided that Contractor shall pay for separate counsel for Owner to the extent that conflicts or potential conflicts of interest between the Parties so require. In addition, Contractor shall not be required to indemnify Owner for any amount paid by Owner in the settlement of any claim for which Contractor has delivered a timely Notice of Assumption of Defense if such amount was agreed to without prior written consent of Contractor, which shall not be unreasonably withheld or delayed in the case of monetary claims.

If Contractor does not deliver a Notice of Assumption of Defense within the required notice period, Owner shall have the right to defend the claim in such a manner as it may deem appropriate, at the cost and expense of the Contractor. Contractor shall promptly reimburse Owner for all such costs and expenses upon written request therefore.

D. FORCE MAJEURE

Either Party will be excused from delay in performing or from its failure to perform to the extent such delays result from causes beyond the reasonable control of such Party, including war, strike, riot, crime, or act of God (e.g. flooding, earthquake, or volcano), to the extent such delays or failures result from causes beyond the reasonable control of such Party, and provided that such failure could not have been prevented by reasonable precautions. The excuse does not apply to negligence or other malfeasance of a Party, or where non-performance is caused by the usual and natural consequences of external forces, or where the intervening circumstances are specifically contemplated. The Party whose performance has been delayed or prevented will act diligently to resume performance as soon as reasonably possible.

If the Contract is delayed or interrupted because of a force majeure event for more than thirty (30) consecutive days and Contractor cannot provide a temporary alternative acceptable to Owner, Owner may, at its option, terminate the affected portion of the Contract without liability by providing Contractor with a written notice of termination and paying Contractor for the portion of the Contract performed, and, at Owner's option, seek alternative performance of the remaining portion of the Contract.

E. LIQUIDATED DAMAGES

Should the Contractor neglect, refuse or fail to complete the construction within the time agreed upon, the Owner shall have the right to deduct from and retain out of such monies which may be then due, or which may become due, the sum of One Thousand Dollars for each calendar day such construction is delayed in its completion beyond the specified time, as liquidated damages and not as a penalty. This provision does not apply to written deadline extensions permitted pursuant to Article II, Section A above, or to extensions that are necessitated by *Force Majeure* as set forth in Section D above.

ARTICLE VII -- EMPLOYMENT AND RELATIONSHIP OF THE PARTIES

A. RELATIONSHIP OF THE PARTIES.

Nothing in this Contract 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 no 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. Contractor's personnel are not Owner's agents or employees for federal tax purposes or any other purposes whatsoever, and are not entitled to any Owner employee benefits. Contractor assumes sole and full responsibility for employee conduct, and Contractor and its personnel have no authority to make commitments or enter into contracts on behalf of, bind or otherwise obligate Owner in any manner whatsoever. Contractor, and not Owner, is solely responsible for the compensation of 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.

B. EQUAL OPPORTUNITY

The Contractor hereby certifies that it is familiar with and will comply with all provisions of Executive Order 11246, dated September 24, 1965 as amended by Executive Order 11375 dated October 13, 1967, and with the rules, regulations and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

C. EMPLOYEES AND SUBCONTRACTORS

Contractor and its personnel shall observe and comply with Installation security procedures and regulations, including but not limited to the general employee requirements for personnel working on the Installation in the attached Guidelines and as those requirements may be amended by the Installation from time to time, and requiring personnel to carry appropriate identification. If any Contractor personnel are found to be unacceptable to the Installation for any reason, or to Owner for reasonable cause, Contractor shall immediately take appropriate corrective action, including but not limited to termination of any assignment of Contractor work at the installation. Prior to Contractor's assignment of any personnel to perform work hereunder, Contractor agrees to take appropriate preventive steps that it reasonably believes shall insure that such personnel shall not engage in inappropriate conduct while on federal government property. Inappropriate conduct shall include, but is not limited to: being under the influence of alcohol, illegal drugs or any other controlled substances, except for approved medical purposes; the possession of a weapon of any sort, harassment, and/or threats of violent behavior.

D. DRUG ABUSE POLICY

Contractor shall comply with requirements for testing for the presence of alcohol and controlled substances required by Federal Department of Transportation and any federal, state or local laws, as applicable.

E. PROJECTS REQUIRING ELECTRICAL WORK

[Insert language from CBA with FGA IBEW]

Contractors, or any subcontractors to whom such work is subcontracted, performing any electrical work, including, but not limited to work performed on transmission lines, distribution lines, generation systems, substations, and inside wiring (excluding work currently performed by CHPP personnel) will either have or become signatory to a current collective bargaining agreement with Local Union 1547 of the International Brotherhood of Electrical Workers. This section will not prohibit the Contractor from subcontracting the clearing of rights of way to non-signatory contractors; however, the parties agree that the trimming of trees in dangerous proximity to energized circuits is electrical work traditionally performed by bargaining unit employees.

F. DAVIS BACON WAGES

[IF THIS IS NOT AN ARRA/STIMULUS CONTRACT, INSERT THE FOLLOWING]
Davis Bacon labor rates and requirements shall not apply to this Contract.

[IF THIS IS AN ARRA/STIMULUS CONTRACT, INSERT THE FOLLOWING]

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in Sec. 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met: (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and (2) The classification is utilized in the area by the construction industry; and (3) The

proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld

from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the U.S. Army if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the U.S. Army. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually

identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following: (1) That the payroll for the payroll period contains the information required to be provided under Sec. 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under Sec. 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete; (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3; (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code. (iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor,

and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR

5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

G. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each

calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

(5) Payroll Records. Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the U.S. Army and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

ARTICLE VIII -- MISCELLANEOUS

A. DESCRIPTION OF THE CONTRACT

This Contract, including the attached materials, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous representations, understandings or agreements, whether oral or written, relating to the subject matter thereof. The attachments to this Contract are incorporated into and are an integral part of this Contract, and include:

- (1) The Instructions for Proposals;
- (2) The "Bid Tab";
- (3) Doyon Utilities' System Design Manual (if provided);
- (4) Construction Unit Drawings and Specifications;

- (5) Owner Furnished Material List and form Material Receipt;
- (6) The Contractor Bond Form;
- (7) Contractor's price schedule (Appendix 1);
- (8) Contractor's construction schedule (Appendix 2);
- (9) Installation Requirements for Employees, and as those requirements may be changed by the installation from time to time (Appendix 3);
- (10) Organizational Conflict of Interest (Appendix 4); and
- (11) The ARRA Reporting Form (Appendix 5).

With the exception of the Installation Requirements for Employees, the Organizational Conflict of Interest form, and the ARRA Reporting Form, in the event of any conflict between the attachments and the terms of this Contract, the terms of the Contract shall control. In the event of any conflict between the terms of the contract and the Installation Requirements as they may be amended, the Organizational Conflict of Interest form, and/or the ARRA Reporting requirements, and the terms of those attachments take precedence.

No amendment, supplement or waiver of this Contract shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Contract shall be deemed or shall constitute a waiver of any other provisions (whether or not similar) nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

B. GOVERNING LAW

All questions concerning the validity, interpretation and performance of this Contract shall be governed by and decided in accordance with the laws of the State of Alaska, exclusive of its conflicts of laws principles. Any disputes arising from this Contract shall be brought in the state court of Alaska, Fourth Judicial District at Fairbanks.

C. CONTRACT COORDINATORS

Upon acceptance of the bid and execution of this Contract, each Party will notify the other Party of the name, business address, and telephone number of the person who will have primary responsibility for interfacing on its behalf with the other Party (the "Contract Coordinator"). The Contract Coordinators will be responsible for arranging all meetings, visits, and consultations between the Parties that are of a non-technical nature and monitoring all administrative matters arising under this Contract, including but not limited to change orders, equitable adjustments, and indemnification.

Either Party may replace its Contract coordinator by delivery of written notice of such change, signed by the Contract Coordinator of each Party. The notice will set forth the name, business address and telephone number of such replacement. Whenever under this Contract one Party is required or permitted to give notice to the other, such notice will be deemed given when delivered in hand; three (3) business days after the date mailed by the United States certified mail, return receipt requested, postage prepaid; or when transmitted via facsimile, and addressed as follows:

In the case of Contractor:

In the case of Owner

TAR/TBI
ATTN: Kris Manke
PO BOX 35050
Ft. Wainwright, AK 99703
Facsimile: (907) 356-0037

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

D. CONFIDENTIAL INFORMATION

Contractor 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 Owner's past, present, or future customers, business, or other related information and data; Owner's marketing methods, programs and related data, or other written records used in Owner's 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 Owner, its manner of operations, or other data of any kind, nature or description (the "Confidential Information"). Contractor agrees to preserve and protect the confidentiality of the Confidential Information and all physical forms thereof, whether disclosed to the Contractor before this Contract is signed or afterward. In addition, except as set forth in this Contract or as otherwise required by law, Contractor 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 Owners' President. Contractor 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 Contract. The foregoing obligations shall not apply to any information that is publicly known. Except as may be required by law or authorized in writing by Owner, Contractor shall not issue news releases or grant press interviews related to Owner or this Contract during or after performance of this Agreement.

E. TITLE TO MATERIALS

Title to all materials, equipment, supplies, consumables, spare parts and other items purchased or obtained by Contractor for or on behalf of Owner shall pass immediately to and vest in Owner free and clear of all liens or encumbrances upon passage of title from the vendor or Contractor therefrom. All materials, data and documents prepared or developed by Contractor or its employees, representatives, or subcontractors for performance of this Contract, including all designs, drawings, plans, specifications, reports and accounts shall belong to Owner. All such materials in whatever form, including electronic copies, shall be provided promptly to Owner upon completion of this Contract, or at such other times as Owner may direct.

F. SEVERABILITY

In the event any provision of this Contract is held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions of this Contract will not be affected and, in lieu of such invalid or unenforceable provision, there will be added automatically as part of this Contract one or more provisions as similar in terms as may be valid and enforceable under applicable law.

G. DEFINITIONS

1. The term "Engineer" applies to the Engineer, its assistants, and representatives, employed by Owner to provide engineering services for the Project.
2. The term "Project" shall mean the system, unit, or improvement, or portion thereof, described in the Plans and Specifications, Construction Drawings.
3. The term "Completion of Construction" or "Time of Completion" shall mean full performance by the Contractor of Contract obligations and amendments and revisions thereof except the Contractor's obligations in respect of (1) Releases of Liens and Certificate of Contractor under Article IV, Section B hereof, and (2) other final documents. The Certificate of Completion, signed by the Engineer and approved in writing by the Owner shall be the sole and conclusive evidence as to the date and fact of completion of the Project.
4. The term "Contractor" as applied before Owner's acceptance of this agreement pertains to a party submitting a proposal; as applied after acceptance of a proposal, the term applies to the Contractor with whom the Owner contracts.

H. INTERPRETATION OF HEADINGS.

The headings used herein are for ease of reference and are not dispositive or exclusive of the meaning intended in the associated sections.

I. PATENT INFRINGEMENT

The Contractor shall save harmless and indemnify the Owner from any and all claims, suits and proceedings for the infringement of any patent or patents covering any materials or equipment used in construction of the Project.

J. COMPLIANCE WITH STATUTES AND REGULATIONS

The Contractor shall comply with all applicable statutes, ordinances, rules, and regulations pertaining to the work.

K. FRANCHISES AND RIGHTS-OF-WAY

The Contractor shall be under no obligation to obtain or assist in obtaining any franchises, authorizations, permits or approvals required, except to the extent Contractor retains documents or information supporting Owner's attempt to secure same.

/ / /

CONTRACTOR OFFER

The undersigned hereby tenders the above proposal, attaching and incorporating by reference **Appendix 1** (Contractor price schedule), **Appendix 2** (Contractor construction schedule), and the remaining attachments and appendices identified in Article VIII Section A above, and agrees to conduct the work described herein under the terms and conditions of this Contract, if accepted, as provided herein.

DATED this _____ day of _____, 20____, at _____, Alaska.

Submitted by: _____
(Contractor)

By: _____

Its: _____

ATTEST: _____

_____ (Secretary)

_____ (address)

Date _____

[corporate seal]

The Proposal must be signed with the full name of the Contractor. If the Contractor is a partnership, the Proposal must be signed in the partnership name by a partner. If the Contractor is a corporation, the Proposal must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the Corporation.

RECEIPT OF OFFER ACKNOWLEDGED

Received this _____ day of _____, 20____, at _____ M., in Fairbanks, Alaska.
(time)

By: _____
For DOYON UTILITIES, LLC

OWNER'S ACCEPTANCE AND AGREEMENT TO CONTRACT

The undersigned hereby accepts the foregoing Proposal of _____, dated _____, for the work described herein, and for the payment specified in Appendix 1 attached hereto, with the time of completion specified in Appendix 2 attached hereto, and under the terms set forth in this Contract.

DATED this ____ day of _____, 20____.

DOYON UTILITIES, LLC

By: _____
Its

714 Fourth Avenue, Suite 201
Fairbanks, AK 99701

ATTEST:

(Secretary)

[corporate seal]

Date_____