

# CONSTRUCTION CONTRACT

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

WITNESSETH:

## ARTICLE I – PROPOSAL

The Contractor hereby proposes to construct, with materials furnished by the Owner, the following described Project.

Project Description: \_\_\_New EDS Service for FTW 336A\_\_\_\_\_

General Description of Work: \_\_\_\_\_ Installation of the electrical service at FTW336A including riser assembly, pad mount transformer and service entrance. Also includes parking lot lighting and controller and fire pumps connections and work described on staking sheets and drawings.

Project Lump Sum Bid: \$ 63,490

The Contractor understands and agrees that the work shall consist of the construction described in the project specifications attached hereto and made a part hereof, and that all work shall be in strict accordance with the Owner's specifications as shown in the attached Design Manual or Construction Drawings and Specifications.

If required, the Contractor shall furnish a Contractor's Bond in the attached form, and in an amount described in the Instructions to Bidders, within five days after his proposal is accepted. Sureties on the bond shall be on the approved list of the United States Treasury Department. For contracts of \$250,000, or less a contractor's bond is not required.

The Contractor understands and agrees that all construction required is as set out in the staking sheets attached hereto, and that the proposal is made on a lump sum basis.

The Contractor acknowledges and agrees that upon Owner's written acceptance of the bid contained in this Section, Contractor has entered into and agreed to the terms and conditions of this Contract.

DU and its representatives shall also have free access to all Sites used in performing the Work for the purposes of observing, inspecting, witnessing, photographing, filming, video recording, or otherwise monitoring or recording the performance of the Work.

## **ARTICLE II – CONSTRUCTION SPECIFICATION**

### **A. TIME AND MANNER OF WORK**

The Contractor agrees to complete construction on or before  
Oct 1 2010 after receipt in writing from the Owner of the following:

1. Itemized list of materials required for construction and an authorization to obtain such materials at the Owner's location at Fort Wainwright.
2. Notice to proceed with construction. Prior to the start of construction, the Contractor shall provide the Owner with a work schedule indicating the sequence and time of completion of the work.
- 3.

The Contractor shall be required to sign for all Owner material when picked up by Contractor, and it is the Contractor's responsibility to ensure that it has all the material shown on the Owner's list of materials. If Contractor signs for Owner material, unless a Change Order covers the material, the cost of the material will be borne by the Contractor. If the Contractor does not use or return Owner-issued material, Owner will withhold the value of the unused or unreturned material, as listed on the Contractor-signed Materials Sheet, from the Contractor's payment.

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 Contract price.

Contractor will not be required to perform any construction on such days when in the judgment of the Contractor, snow, rain, or wind, or the results of snow, rain, or wind make is 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 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, at Fairbanks International Airport is -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.

**B. 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.

**C. INSPECTIONS**

Prior to completion of the project, the quality of construction and conformance to specification shall be subject to the Owner's inspection and approval. If, during performance of the project, Owner identifies any deficiencies in specification conformance, Contractor shall remedy such deficiencies at Contractor's cost.

Work that is found defective within one year after completion shall be remedied or replaced, as the case may be, at the expense of Contractor, and as provided in Section VI below. If the Contractor fails to do so, the Owner may remedy such defective work and the Contractor shall pay to the Owner the cost thereof.

**D. SPECIAL CONDITIONS**

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.

- 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 Doyon Utilities' Design and Construction

Standards 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 industry safety codes shall apply, and 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, access roads, and other major items to be constructed shall be placed in locations determined 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. Retired Material

Retirement includes all labor for the removal of existing materials from structures, improvements, and appurtenances, disassembling into material items, and all labor and transportation for the returning of materials to the designated DU location. If the Contractor disposes of material, the Owner must first give permission.

**E. 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.

**F. ARCHEOLOGICAL 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. 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 Army, 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.

**G. 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 (48) 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.

#### **H. 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.

#### **I. COMPLIANCE WITH OTHER ENVIRONMENTAL GUIDELINES**

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

- A. 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 DU Project Manager and, if appropriate, the designated Government Representative.
- B. 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.

- C. 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.

### **ARTICLE III – CONTRACT ADMINISTRATION**

#### **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.

The attachments include the Instructions to Bidders, Doyon Utilities' Design and Construction Standards, Construction Drawings and Specifications, the Owner Furnished Material List, Material Receipt, and the Contractor Bond Form.

The attachments also include Installation Requirements for Employees, although the parties acknowledge that those requirements may be amended by the Installation from time to time, and that the current requirements control.

With the exception of the Installation Requirements for Employees, 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 Installation Requirements as they may be amended and the terms of this Contract, the Installation Requirements 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. CONTRACT SCHEDULE COMPLIANCE**



Contractor shall perform the Work expeditiously, continuously and diligently using adequate, qualified and competent personnel together with adequate and efficient project management resources and shall perform and complete the Work in accordance with the Contract Schedule.

In the event that Contractor's actual progress approaches a behind-schedule condition, Contractor shall immediately advise DU representative and propose corrective measures. Contractor shall promptly implement, at Contractors expense, all reasonable measures to correct any adverse progress trends identified.

Contractor shall not give priority to work for its other clients to the detriment of the Work.

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

### **C. EFFECTIVENESS OF CHANGES**

1. A Change means any alteration to the Project, method of working, completion schedule, or to the type or extent of the Project, which is an amendment, omission or addition thereto (other than any amendment, omission or addition which is necessary for the Contractor to comply with the specification).
2. The Contractor may at any time during performance submit a written proposal for a change or substitution to the Owner. Without prejudice to Contractor's obligations, if the Contractor shall become aware that the Project or related specifications have been incorrectly specified in the Contract, the Contractor shall immediately give notice to the Owner. The Owner and the Contractor shall as soon as possible meet to consider what action and what Change may be needed.
3. The Contractor shall make no Change except as ordered in writing by the Owner. If the Owner decides that the Change should be incorporated into the specifications or the completion schedule, the Owner shall issue a Change Order to that effect. The Contractor shall be bound as if the Change were part of the original Contract. Except as otherwise provided the Contractor or the Owner shall be entitled to an equitable adjustment in the Contract price as a result of a Change.
4. If the Contractor is of the opinion that compliance with any Change Order would prevent him from or hinder him in fulfilling any obligation under the Contract, he shall so notify the Project Manager within seven days giving reasons why he considers he would be so prevented or hindered. Any such objection by the Contractor shall be made in writing to the Owner as soon as reasonably practicable and, in the case of a Change Order not later than seven days.

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 requested by either Party.

**D.     EQUITABLE ADJUSTMENTS**

Contractor or Owner may be entitled to an equitable adjustment in the contract price if performance of the Contract is affected by events outside the reasonable control of the Contractor, including events provided for under the *force majeure* clause or those necessitated by Owner requests made after the Contract is executed. If such an event occurs, the Contractor shall provide evidence that each such event has taken place and the Owner's Project Manager shall, if satisfied with such evidence, thereupon issue a suitable certificate for each event stating the date on which it occurred.

**E.     DELAYS**

If the Contractor is delayed in the performance of any of his obligations under the Contract by any of the matters specified below, or if either party is delayed by Force Majeure in the performance of any of his obligations under the Contract, the relevant party shall forthwith give notice to the Project Manager and as appropriate to the Contractor.

As soon as reasonably possible, the Contractor shall advise the Project Manager of the extension of any date or period specified in the Contract for the completion of such obligations which he considers would be fair and reasonable in the circumstances. The Contractor shall keep contemporaneous records of the circumstances, extent and effect of such delay. The Project Manager shall, without fourteen days of the time that the extent and consequences of any such delay are known, issue a Change Order to the Contractor stating the appropriate extension to the Approved Schedule and to the overall time of completion.

The matters entitling the Contractor to an extension are delays caused by matters covered in a Change Order, or a variation in the character of work, as agreed to in writing between the parties.

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 but not limited to:

- (1) government action or trade embargo;
- (2) war, hostilities or acts of terrorism;
- (3) riot or civil unrest

- (4) epidemic;
- (5) earthquake, flood, fire or other natural physical disaster;
- (6) exceptionally severe weather conditions or the consequences thereof;
- (7) denial of the use of any railway, port, airport, shipping service or other means of public transport; or
- (8) industrial or labor disputes, other than any solely confined to the Contractor and/or his subcontractors or their employees.

Such *Force Majeure* excuse shall extend 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.

In the event 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, pro rata based on unit prices of completed units, and, at Owner's option, seek alternative performance of the remaining portion of the Contract.

#### **F. DAMAGES FOR DELAY**

If the Contractor fails to complete the contract or any specified section thereof or to do any other thing in accordance with the completion schedule, the Contractor shall pay the Owner liquidated damages as prescribed in Article VI Section E below.

The Project Manager may suspend assessment of liquidated damages if it is determined that a Change Order is warranted based on the circumstances, and a Change Order is issued. Owner's entitlement to liquidated damages in respect of that part of the Project shall thereupon be suspended until the Contractor is notified in writing that such further delay has come to an end.

Such suspension shall not invalidate any entitlement to liquidated damages which accrued before the period of further delay started to run and (subject to any final review of the circumstances) any monies already deducted or paid as liquidated damages for delay may be retained by the Owner.

#### **G. 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.

#### **H. COMPLIANCE WITH LAWS**

Contractor shall comply with all applicable governmental laws, ordinances, codes, rules and regulations relating to its duties, obligations and performance under this Contract and shall procure all required permits and licenses and pay all fees and other charges required thereby.

### **ARTICLE IV – EXPECTATIONS AND EMPLOYMENT**

#### **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. INDEPENDENT CONTRACTOR.**

The Parties hereby declare and agree that Contractor is engaged in an independent business, and will perform its obligations under this Contract as an independent contractor, including the hiring and retention of qualified personnel as further identified in the attached Installation Guidelines. As such, Contractor retains the right to exercise full control of, supervision over and responsibility for the performance of Contractor's obligations under this Contract and full control over the employment, direction, working conditions, compensation and discharge of any and all of Contractor's agents, employees, or subcontractors, including compliance with anti-discrimination, drug and alcohol testing, wage and hour, workers' compensation, unemployment, disability insurance, social security, withholding and all other federal, state, and local laws, rules and regulations governing such matters. In addition to its additional indemnification obligations hereunder, Contractor shall indemnify, defend and hold harmless Doyon Utilities, without limitation, against any and all claims or liabilities arising out of or relating to Contractor's employment of personnel and their provision of services to Doyon Utilities, or a breach or alleged breach of such employer obligation. This shall be in addition to the other indemnification provisions of this Contract.

**C. 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.

**D. CONTRACTOR'S 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 including but not limited to 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.

**E. DAVIS BACON WAGES**

Davis Bacon labor rates and requirements shall not apply to this Contract.

**F. 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.

**G. VISITORS**

All Visitors to the Project Site shall first go to the Contractors on site office at which time the Visitor(s) must sign in stating his/her name, company they represent who they are there to see, time in and time out. All Visitors shall wear appropriate safety PPE before they are allowed in the construction area. No children are allowed.

**ARTICLE V – PAYMENT**

Upon completion of the construction project, the Contractor shall submit to the Project Manager for review an invoice showing work completed and amount of payment due. It is recommended that the Contractor submit the invoice both electronically and in hard copy.

Within ten days after receipt of the appropriate invoice, the Project Manager will issue a written recommendation of payment or the Project Manager will return the application to the Contractor indicating in writing the Project Manager's reasons for refusing to recommend payment. In the latter case, the Contractor will make the necessary corrections and resubmit the invoice and the Owner will pay the amount due to the Contractor upon approval.

If the Owner has placed any sections of work on hold, or issued any Change Orders, the Contractor may submit an Application for Progress Payment on the completed portions of the work; otherwise the Contractor shall submit an Application of Final Payment upon 100% completion of the entire project.

Upon written notice of completion the Project Manager and/or Engineer will make a final inspection and will notify the Contractor in writing of all particulars in which this inspection reveals that the work is incomplete or defective. The Contractor shall immediately take such measures as are necessary to remedy such deficiencies.

Due to size and/or length, certain projects may be approved for progress payments. The Contractor may apply for Progress Payments if the project value is greater than \$150,000 and has a duration of 30 days or greater. The following progress payments will be allowed: at 25%, 50%, 75% 90% and 100% Completion.

The Owner reserves the right to withhold 10% of the progress payment until the punch list has been completed and accepted and all Warranties, Manuals, As-Built, Records, Etc and all Training and Commissioning (if necessary) have been completed and received by the Owner.

## **ARTICLE VI – MISCELLANEOUS PROVISIONS**

### **A. CONTRACTOR'S 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.

**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.

**D. 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 so notify Contractor and shall provide copies of such claim or any documents relating to the action. 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 with respect to a claim 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 required. 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.

#### **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 \$\_\_\_\_0\_\_\_\_\_ 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 Article III, Section E above.

#### **F. 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.

#### **G. 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 thereof.

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.

#### **H. RECORDS**

Contractor will maintain records, in accordance with U.S. Generally Accepted Accounting Principles, suitably detailed to substantiate Contractor's work and charges under this Contract. Contractor shall maintain such records for three (3) years from the end of the contract year in which such charges were incurred, at which time Contractor shall return such records to Owner's corporate office. Contractor is urged to retain records in electronic form where practicable. In the event that Owner's Customer requests access to such records for purposes of review, Contractor shall make its records available to the Customer and Owner upon seventy-two hours prior notice to Contractor.

#### **I. NOTICES**

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:**

Fullford Electric, Inc.  
ATTN: Mark Harris  
303 E Van Horn Road  
Fairbanks, AK 99701  
Facsimile: 907-456-7288

**In the case of Owner**

Doyon Utilities, LLC  
ATTN: William Brown Farrell  
714 Fourth Avenue, Ste 201  
Fairbanks, AK 99701  
Facsimile: (907) 455-6788

**J. 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.

**K. 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.

**CONTRACTOR OFFER**

The undersigned hereby tenders the above offer, and agrees to conduct the work described herein at the price referenced in Article I above, and under the terms and conditions of this Contract, if accepted, as provided herein.

DATED this 21<sup>st</sup> day of May, 2010, at Fairbanks,  
Alaska.

Submitted by: Fullford Electric, Inc.  
(Contractor)

By: 

Its: President

The Proposal must be signed with the full name of the Contractor. If the Contractor is a partnership, a partner must sign the Proposal in the partnership name. 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 1<sup>st</sup> day of June, 2010, at 3 P M., in  
Fairbanks, Alaska. (time)

By: [Signature]  
For DOYON UTILITIES, LLC

**OWNER'S ACCEPTANCE AND AGREEMENT TO CONTRACT**

The undersigned hereby accepts the foregoing Proposal of  
Fullford Electric, dated May 21, 2010, for the work described herein, and  
for the payment specified in Article 1 above, and under the terms set forth in this  
Contract.

DATED this 2<sup>nd</sup> day of June, 2010.

**DOYON UTILITIES, LLC**

By:

[Signature]  
Its

714 Fourth Avenue, Suite 201  
Fairbanks, AK 99701