BRAN Emergency Restoration Services Contract

SUBCONTRACT AGREEMENT ("Agreement") made this 15th day of June, 2009 by and between City of Boulder ("Owner") and Sturgeon Electric Company, Inc. located at 12150 E. 112th Ave., Henderson, CO 80640 ("Contractor"). WHEREAS the Contractor has heretofore entered into a contract with OWNER, to perform emergency restoration services of fiber-optic cable on the BRAN network on an as needed basis ("work"). The OWNER and CONTRACTOR agree as follows:

ARTICLE 1 – CONTRACT DOCUMENTS

1.1 The contract documents consist of this Agreement, the Drawings, the Specifications, all Addenda issued prior to the execution of this Agreement, and all Modifications issued after execution of the Contract such as Change Orders, written interpretations, and written orders for minor changes in the Work. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complimentary, and what is required by one shall be as binding as if required by all. Work not covered in the Contract Documents shall not be required unless it is consistent with and reasonably inferable there from as being necessary to produce the intended results.

ARTICLE 2 – THE WORK

2.1 The Contractor shall furnish all labor, material (where applicable), skill and equipment necessary or required to perform the Work required by Contract documents.

The WORK is defined as Emergency Fiber-Optic Restoration of the BRAN network. The locations of the restorations will be identified by the Owner. A representative of the Contractor shall arrive at worksite within two hours of the Owner notification. Each location will be surveyed by the Owner and/or the Contractor and a cost estimate will be provided to the Owner for approval. Cost estimates must include:

- Itemized per unit pricing for all equipment.
- If the materials are to be provided by the Contractor, the Contractor will provide the material list to the Owner, meeting the Owner’s specifications.
- Itemized price for cable, hardware, and connectors.
- Labor price for labor necessary to install all equipment, cable, hardware, and connectors.
- Labor price for labor necessary to inspect and test all cable installed to the Owner’s specifications.

Cost estimates must include a one year material and labor warranty. The warranty shall include all material and labor necessary to replace defective equipment. Materials and/or labor provided by the Contractor will be repaired on a Time basis with equipment provided by the Contractor. All labor necessary to correct defects in the Contractors workmanship will be provided by the Contractor.

To insure compliance with the quality and installation standards established by the Owner, cable to be installed must be furnished by the Owner. At the Owner’s discretion,
if the Contractor can provide material that meets the Owner’s specifications at or below the cost that the Owner would normally pay, the Contractor would then be allowed to purchase the products using their vendors.

2.2 The Contractor acknowledges that it has no right, title, or interest in the hardware or other materials supplied by the Owner for installation by the Contractor.

2.3 The Contractor agrees to perform all work in accordance with and consistent with the installation standards set forth by the Owner. Any work deemed to be substandard or inconsistent with the quality standards set forth by the Owner, shall be corrected and brought into compliance at the Contractor’s expense.

ARTICLE 3 – TERM

3.1 The City agrees to use the Contractor’s services in connection with emergency BRAN restoration needed and required by it during the period from June 15, 2009 to June 15, 2010, inclusive, and the Contractor covenants and agrees to provide said services as required and requested by the City during said period.

3.2 The Work to be performed under the Contract shall be completed on an individual project basis. The completion of each project will be based on the Owners requirements and a mutually accepted baseline schedule.

ARTICLE 4 – CONTRACT SUM

4.1 The contract sum will be determined by the scope of work at each site. The Owner will provide written notice to proceed and/or a written purchase order for each site.

If the installation is deemed by the Owner to be based on time and material basis, the Contractor will provide a monthly summary sheet and daily signed field orders. The field orders will include the hours worked, materials, and equipment for work performed and the site location.

4.2 Fixed price contract: The sum of the contract will be determined by the scope of work at each site. The contractor will provide a quote. The Owner will provide written notice and/or a PO for each site.

4.3 No sums in the addition to the above amount shall be paid by the Owner to Contractor absent a written Change Order duly executed by the Owner.

4.4 The cost for Sturgeon Electric Company, Inc. to be on-call 24 hours per day, seven days per week shall be an annual cost of $2,400.00. Please refer to “call-out” list for escalation procedures.

ARTICLE 5 – PAYMENTS
5.1 The Contract Sum for each site shall be paid in accordance with the following schedule if the site is based on a per site bid basis:

35% upon written acceptance of the quote by the Contractor.
55% Upon Substantial Completion of the installation.
10% Final payment within 30 days of acceptance by the Owner.

If the site is T & M, the following schedule will be paid:

A straight time labor rate of $65.00 per hour; a time and one half labor rate of $84.75 per hour for all hours worked before or after the normal workday and on Saturdays; and a double-time rate of $103.45 per hour for all hours worked on Sundays and holidays will be paid for each man hour provided by the Contractor for installation and/or service paid in accordance with the signed work order, per the current collective bargaining agreement in each applicable jurisdiction, and 0% retention will be withheld by the Owner.

Payments for T & M will be paid once a month off the time sheets provided by the Contractor upon approval from the Owner authorized representative. Time sheets and materials invoices will be submitted to the Owner by the 25th of each month and payment will be mailed by the 30th of the following month.

For bid projects final payment by the Owner to the Contractor will be made 30 days after the Work has been completed, the Contract fully performed, Final Acceptance has been issued by the Owner, and, if requested by the Owner, duly executed mechanics lien waivers have been supplied.

ARTICLE 6 – ENUMERATION OF CONTRACT DOCUMENTS

6.1 The following Contract documents constitute part of this Agreement and are incorporated herein by reference:

- All drawings, specifications, plans and scheduling provided by the Owner to the Contractor. The Contractor shall provide input to a mutually agreed baseline schedule.

ARTICLE 7 – INSURANCE

7.1 The Contractor shall obtain, maintain, and pay for such insurance as may protect the Owner, including its employees, agents, and representatives against claims for bodily injury or death, or for damage to property, with coverage written on an “occurrence” basis. All insurance shall be issued by a financially responsible company or companies acceptable to the Owner.

7.2 Such insurance shall include, but not be limited to, Workers Compensation as may be required by the Contract Documents, or by law; Comprehensive General
Liability, including Premises/Operations, Products/Completed Operations, Blanket Contractual to insure Indemnity Agreements specified herein, Broad Form Property Damage (including completed operations), Personal Injury (waive employment related exclusion), Independent Contractors, Comprehensive Automobile, including Owned, Hired, Non-owned Autos; Umbrella/Excess Liability with limits at least equal to the greater of those specified in the Contact Documents or those specified below:

- Workers Compensation/Employers Liability $1,000,000
- Comprehensive General Liability 
- Personal Injury 
- General Aggregate $2,000,000
- Products – Comp Op. $1,000,000
- Comprehensive Automobile

7.3 The Owner, its employees, agents, and affiliates to be named Primary Additional Insured’s. The Contractors insurance required by this Agreement shall be primary coverage, unless otherwise specified, and shall specify that in the event of payment for any loss under the coverage provided, the insurance company shall have no right of recovery against the Owner or its insurers. The Owner does not represent that the above limits and coverage’s are adequate to protect the Contractor’s interests or the Contractor’s obligations to The Owner under this Agreement and assumes no responsibility therefore. The Contractor shall furnish the Owner with satisfactory evidence (Certificate of Insurance) that it has complied with these requirements and shall obtain and furnish to the Owner evidence that the coverage’s specified above will not be canceled except after (30) days of notice to the Owner of its intention to do so.

**ARTICLE 8 – PROJECT MANAGER**

8.1 The Contractor shall assign a Project Manager dedicated to the Work to manage and oversee the Work (“Project Manager”). The Project Manager shall be responsible for overseeing all aspects of the Installation.

8.2 The Contractor’s Project Manager and one (1) additional technician will work directly with the Owner to learn the best practices for the installation of the equipment.

**ARTICLE 9 – WARRANTY, INDEMNIFICATION, AND BACKGROUND CHECKS**

9.1 The Contractor agrees to warrant defects, in the Contractors workmanship of the Work for a period of one year from the completion of the Installation. The Contractor shall repair any defects in the Contractor’s workmanship without charge or cost to the Owner within ten (10) days of written notification by the Owner to the Contractor of a defect. This warranty will apply only to materials and labor furnished after the date of the Agreement and under the direction of the Owner.
9.2 The Contractor shall defend and indemnify the Owner and their respective agents and employees from and against all claims, damages, losses, and expenses (including without limitation legal fees and related expenses) relating to the labor and installation provided and performed by the Contractor, its agents, and employees, arising from the Contractor's sole negligence in performing the Work.

9.3 The Contractor, its agents, employees, and representatives who are or may perform any part of the Work shall satisfy all background check requirements as required by the Owner. These background checks may be performed from time to time, at the discretion of the Owner, and may include criminal and driving record checks. The Contractor agrees to fully comply with all required documentation and procedures necessary to complete the background checks including making its employees, agents, and representatives available for all background check procedures.

ARTICLE 10 – OTHER CONDITIONS

10.1 The Contractor shall check all materials, equipments, and labor entering into the Work and shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement.

10.2 The Contractor shall not assign this Contract without the written consent of the Owner, nor sub-contract the whole or any portion of this Contract without the written consent of the Owner, the Contractor shall not assign any amount due or to become due under this Contract without written notice to the Owner.

10.3 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the Work under this Contract. The Contractor shall secure and pay for all permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work.

10.4 The Contractor shall comply with Federal, State, and local tax laws, Social Security Acts, unemployment compensation acts and workers compensation acts insofar as applicable to the performance of this Contract. In addition, the Contractor, its agents, employees, and representatives shall comply with all rules and regulations as specified by the Owner.

10.5 The Contractor shall take all reasonable safety precautions with respect to the Work, shall comply with all safety measures initiated by the Owner with all applicable laws, ordinances, rules, regulations, and orders of any public authority for the safety of persons or property. The Contractor shall report within three (3) days to the Owner any injury to any of the Contractors' employees at the site.

10.6 The Contractor shall, at all times, keep the premises free from accumulation of waste materials or rubbish arising out of the operations of this Contract. The Contractor
shall not be held responsible for unclean conditions caused by other The Contractors of subcontractors.

10.7 The Contractor warrants to the Owner that all materials furnished under this Contract shall be new unless otherwise specified, and that all Work under this Contract shall be of good quality and free from faults and defects.

10.8 Provisions for traffic control will either be by the Owner or subcontracted by Sturgeon Electric Company, Inc. on an as needed basis compliant with a certified traffic control planner.

10.9 Monitoring and competent person for confined space entry will be provided on an as needed basis in compliance with applicable OSHA regulations.

ARTICLE 11 – GENERAL PROVISIONS

11.1 This Agreement shall be governed by the laws of the State of Colorado; the parties hereby waive any defense or claim based upon improper venue or forum.

11.2 All notices required or permitted to be given under this Agreement shall be in writing and shall be deemed delivered when delivered in person or on the third day after being deposited in the United States mail, postage prepaid, addressed as follows:

If to the Contractor:
Sturgeon Electric Company, Inc.
12150 E. 112th Ave.
Henderson, CO 80640
Attn: Mr. Emir Makic

If to the Owner:
City of Boulder, IT Department
1300 Canyon Blvd.
Boulder, CO 80301
Attn: Mr. John Reilly

11.3 This Agreement is binding upon the parties hereto, as well as their heirs, representatives, successors, and assigns.

11.4 If a court finds any provision of the Agreement invalid or unenforceable in its entirety for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds any provisions of the Agreement invalid or unenforceable, but that be limiting such provision it would become valid or enforceable, the such provision shall be deemed written, construed, and enforced as so limited.

11.5 The Owner’s financial obligations under this Agreement in future fiscal years are subject to annual appropriation in accordance with Colorado law.
11.6 The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's rights to subsequently enforce and compel strict compliance with every provision of the Agreement.

11.7 The Contractor certifies that the Contractor shall comply with the provisions of section 8-17.5-101 et seq., C.R.S. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract.

The Contractor represents, warrants, and agrees (i) that it has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this contract through participation in either the E-Verify or the Department Program; (ii) that the Contractor is prohibited from using either the E-Verify Program or the Department Program procedures to undertake preemployment screening of job applicants while the public contract for services is being performed; and (iii) if the Contractor obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, the contractor shall be required to:

a) Notify the subcontractor and the Owner within three days that the contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

b) Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to 8-17.5-102(2)(b)(III)(A) the subcontractor does not stop employing or contracting with the illegal alien; except that the contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

The Contractor further agrees that it shall comply with all reasonable requests made in the course of an investigation under section 8-17.5-102(5), C.R.S. by the Colorado Department of Labor and Employment. If the Contractor fails to comply with any requirement of this provision or section 8-17.5-101 et seq., C.R.S. the City may terminate this contract for breach and the Contractor shall be liable for actual and consequential damages to the City.
IN WITNESS WHEREOF, the Parties hereto have signed this Contract effective as of the day and year first written.

CONTRACTOR:
Sturgeon Electric Company, Inc.

By: ___________________________
Title: Francis Marcotte, District Manager

STATE OF COLORADO    )
) ss.
COUNTY OF BOULDER    )

The foregoing instrument was acknowledged before me, a notary public, this _____ day of ______________, 20__, by __________________, as __________________.

Witness my hand and official seal.

(SEAL) Notary Public

CITY OF BOULDER

ATTEST:

Susan Kohl
City Clerk on behalf of the Director of Finance and Record

APPROVED AS TO FORM:

City Attorney’s Office

EMERGENCY CALL-OUT NUMBERS

*SEE ATTACHED CALL-OUT PERSONNEL LIST*
CITY OF BOULDER “BRAN FIBER-OPTIC NETWORK”
EMERGENCY CALL-OUT PERSONNEL LIST

Zarlene DeRuiter
Cell: 303-435-6175

James Milleur
Cell: 303-210-4802
Home: 720-422-3652

Sturgeon emergency and after business hours phone number: 303-286-8000

Emir Makic
Cell: 303-944-4869
Home: 303-403-8781
# ACORD Certificate of Liability Insurance

**PRODUCER:** 1-630-773-3800

**Arthur J. Gallagher Risk Management Services, Inc.**

**1250 E. 112th Avenue**

**Itasca, IL 60143**

**Rate: 92919 (25%) 624-5167**

**INSURED:**

**Sturgeon Electric Company, Inc.**

**1250 E. 112th Avenue**

**Henderson, CO 80640**

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### COVERAGES

The policies of insurance listed below have been issued to the insured named above for the policy period indicated. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies. Aggregate limits shown may have been reduced by paid claims.

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### DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

Desc. of Job: B - BRAN Emergency Restoration Services Contract

City of Boulder is shown as an additional insured solely with respect to General Liability and Automobile Liability coverage as evidenced herein on a primary/non-contributory basis as required by written contract with respect to the work performed by the named insured.

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### CERTIFICATE HOLDER

**1541**

City of Boulder

**Attn: Paul Williams**

**1300 Canyon Blvd.**

**Boulder, CO 80302**

**USA**

**ACORD 25 (2001/08) JEREMIAN; 11747882**

*© ACORD CORPORATION 1988*

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### CANCELLATION

**SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SMALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.**

**AUTHORIZED REPRESENTATIVE**

**Michael Z. Beech**
IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.
**ACORD CERTIFICATE OF PROPERTY INSURANCE**

**PRODUCER**
1-630-773-3800
Arthur J. Gallagher Risk Management Services, Inc.

**Two Pierce Place**

**Itasca, IL 60143**
Kara Ackert (630) 694-5167

**INSURED**

Sturgis Electric Company, Inc.

12150 S. 122th Avenue

Henderson, CO 80640

**COVERAGES**

This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated, notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain. The insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies. Limits shown may have been reduced by paid claims.

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**LOCATION OF PREMISE/DESCRIPTION OF PROPERTY**

**SPECIAL CONDITIONS/OTHER COVERAGES**

Covered Property - Materials of Others in the Care, Custody and Control of the Named Insured

Desc. of Job: BRAN Emergency Restoration Services Contract

**CERTIFICATE HOLDER**

1542
City of Boulder
Ann: Paul Williams
1300 Canyon Blvd.
Boulder, CO 80301

**CANCELLATION**

Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail, 30 days written notice to the certificate holder named to the left, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.

Authorized Representative

Michael B. Pech

**ACORD 24(135)-signature**

11/9/999