

0-5385

**ON-CALL REPAIR SERVICES AGREEMENT
WITH A.C. POZOS ELECTRIC CORPORATION
FOR ELECTRICAL REPAIR SERVICES**

THIS ON-CALL REPAIR SERVICES AGREEMENT ("Agreement") is made and entered into as of this 20th day of July, 2012 ("Effective Date") by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and A.C. POZOS ELECTRIC CORPORATION, a California corporation ("Contractor"), whose principal place of business is 2948 Royal Palm Dr, Costa Mesa, CA 92626 and is made with reference to the following:

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. City desires to engage Contractor to perform on-call electrical repair services for City facilities ("Project").
- C. Contractor has examined the location of all proposed work, carefully reviewed and evaluated the specifications set forth by the City for the Project, and is familiar with all conditions relevant to the performance of services and has committed to perform all work required for the price specified in this Agreement.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on June 30, 2014, unless terminated earlier as set forth herein.

2. SCOPE OF WORK

2.1 City and Contractor acknowledge that the above Recitals are true and correct and are hereby incorporated by reference. Contractor shall provide "On-Call" services as described in the Scope of Work attached hereto as Exhibit A and incorporated herein by reference ("Services" or "Work"). Upon written request from the Project Administrator (as defined below in Section 6), Contractor shall provide a letter proposal for Services requested by the City (hereinafter referred to as the "Letter Proposal"). The Letter Proposal shall include the following:

2.1.1 A detailed description of the Services to be provided;

2.1.2 The position of each person to be assigned to perform the Services, and the name of the individuals to be assigned, if available;

2.1.3 The estimated number of hours and cost to complete the Services;
and

2.1.4 The time needed to finish the specific project.

2.2 No Services shall be provided until the Project Administrator has provided written acceptance of the Letter Proposal. Once authorized to proceed, Contractor shall diligently perform the duties in the approved Letter Proposal and shall provide and furnish all the labor, materials, necessary tools, expendable equipment and all utility and transportation services necessary for the Project.

3. TIME OF PERFORMANCE

3.1 Time is of the essence in the performance of Services under this Agreement and Contractor shall perform the Services in accordance with the schedule included in Exhibit A. The failure by Contractor to strictly adhere to the schedule may result in termination of this Agreement by City.

3.1.1 Notwithstanding the foregoing, Contractor shall not be responsible for delays due to causes beyond Contractor's reasonable control. However, in the case of any such delay in the Services to be provided for the Project, each party hereby agrees to provide notice to the other party within two (2) calendar days of the occurrence of the delay so that all delays can be addressed.

3.2 Contractor shall submit all requests for extensions of time for performance in writing to the Project Administrator (as defined in Section 6 below) not later than two (2) calendar days after the start of the condition that purportedly causes a delay. The Project Administrator shall review all such requests and may grant reasonable time extensions for unforeseeable delays that are beyond Contractor's control.

3.3 For all time periods not specifically set forth herein, Contractor shall respond in the most expedient and appropriate manner under the circumstances, by fax, hand-delivery or mail.

4. COMPENSATION

4.1 City shall pay Contractor for the Services on a time and expense not-to-exceed basis, in accordance with the provisions of this Section and the Schedule of Rates attached hereto as Exhibit B and incorporated herein by reference. No rate changes shall be made during the term of this Agreement without the prior written approval of the City. Contractor's total compensation for Services performed in accordance with this Agreement, including all reimbursable items, shall not exceed **Seventy Five Thousand Dollars and 00/100 (\$75,000.00)** without written amendment to the Agreement.

4.2 Contractor shall submit monthly invoices to City describing the Work performed the preceding month. Contractor's bills shall include the name of the person and/or classification of employee who performed the Work, a brief description of the Services performed and/or the specific task from the Scope of Work attached hereto to which it relates, the date the Services were performed, the number of hours spent on all

Work billed on an hourly basis, and a description of any reimbursable expenditures. City shall pay Contractor no later than thirty (30) days after approval of the monthly invoice by City staff.

4.3 City shall reimburse Contractor only for those costs or expenses specifically approved in the Scope of Work and Schedule of Rates attached hereto. Unless otherwise approved, such costs shall be limited and include nothing more than the actual costs and/or other costs and/or payments specifically authorized in advance in writing and incurred by Contractor in the performance of this Agreement.

4.4 Contractor shall not receive any compensation for Extra Work without the prior written authorization of City. As used herein, "Extra Work" means any work that is determined by the Project Administrator to be necessary for the proper completion of the Project, but which is not included within the Scope of Work and which the City and Contractor did not reasonably anticipate would be necessary. Compensation for any authorized Extra Work shall be paid in accordance with the Schedule of Rates set forth in Exhibit B.

5. PROJECT MANAGER

5.1 Contractor shall designate a Project Manager, who shall coordinate all phases of the Project. This Project Manager shall be available to City at all reasonable times during the Agreement term. Contractor has designated Anthony Pozos to be its Project Manager. Contractor shall not remove or reassign the Project Manager or any key personnel listed in Exhibit A or assign any new or replacement personnel to the Project without the prior written consent of City. City's approval shall not be unreasonably withheld with respect to the removal or assignment of non-key personnel.

5.2 Contractor, at the sole discretion of City, shall remove from the Project any of its personnel assigned to the performance of Services upon written request of City. Contractor warrants this it will continuously furnish the necessary personnel to complete the Project on a timely basis as contemplated by this Agreement.

6. ADMINISTRATION

This Agreement will be administered by the Office of Management and Budget. The Purchasing Agent, or his/her designee shall be the Project Administrator and shall have the authority to act for City under this Agreement. The Project Administrator or his/her designee shall represent City in all matters pertaining to the Services to be rendered pursuant to this Agreement.

7. TYPE AND INSTALLATION OF MATERIALS/STANDARD OF CARE

7.1 Contractor shall use only the standard materials described in Exhibit A in performing Services under this Agreement. Any deviation from the materials described in Exhibit A shall not be installed or utilized unless approved in advance and in writing by the Project Administrator.

7.2 All of the Services shall be performed by Contractor or under Contractor's supervision. Contractor represents that it possesses the personnel required to perform

the Services required by this Agreement, and that it will perform all Services in a manner commensurate with highest industry standards. All Services shall be performed by qualified and experienced personnel who are not employed by City. By delivery of completed Work, Contractor certifies that the Work conforms to the requirements of this Agreement and all applicable federal, state and local laws and the industry standard.

7.3 Contractor represents and warrants to City that it has, shall obtain and shall keep in full force and effect during the term hereof, at its sole cost and expense, all licenses, permits, qualifications, insurance and approvals of whatsoever nature that is legally required of Contractor to practice its profession. Contractor shall maintain a City of Newport Beach business license during the term of this Agreement.

7.4 Contractor shall not be responsible for delay, nor shall Contractor be responsible for damages or be in default or deemed to be in default by reason of strikes, lockouts, accidents, or acts of God, or the failure of City to furnish timely information or to approve or disapprove Contractor's Work promptly, or delay or faulty performance by City, contractors, or governmental agencies.

8. RESPONSIBILITY FOR DAMAGES OR INJURY

8.1 City and all officers, employees and representatives thereof shall not be responsible in any manner for any loss or damage to any of the materials or other things used or employed in performing the Project or for injury to or death of any person as a result of Contractor's performance of the Services required hereunder; or for damage to property from any cause arising from the performance of the Project by Contractor, or its subcontractors, or its workers, or anyone employed by either of them.

8.2 Contractor shall be responsible for any liability imposed by law and for injuries to or death of any person or damage to property resulting from defects, obstructions or from any cause arising from Contractor's Work on the Project, or the Work of any subcontractor or supplier selected by the Contractor.

8.3 To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, and employees (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to any breach of the terms and conditions of this Agreement, any Work performed or Services provided under this Agreement including, without limitation, defects in workmanship or materials or Contractor's presence or activities conducted on the Project (including the negligent and/or willful acts, errors and/or omissions of Contractor, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them).

8.4 Notwithstanding the foregoing, nothing herein shall be construed to require Contractor to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorney's fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Contractor.

8.5 Contractor shall perform all Work in a manner to minimize public inconvenience and possible hazard, to restore other work areas to their original condition and former usefulness as soon as possible, and to protect public and private property. Contractor shall be liable for any private or public property damaged during the performance of the Work by Contractor or its agents.

8.6 To the extent authorized by law, as much of the money due Contractor under and by virtue of the Agreement as shall be considered necessary by City may be retained by it until disposition has been made of such suits or claims for damages as aforesaid.

8.7 The rights and obligations set forth in this Section shall survive the termination of this Agreement.

9. INDEPENDENT CONTRACTOR

It is understood that City has retained Contractor as an independent contractor and neither Contractor nor its employees are to be considered employees or agents of the City. The manner and means of conducting the Work are under the control of Contractor, except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service status or other right of employment shall accrue to Contractor or its employees. Nothing in this Agreement shall be deemed to constitute approval for Contractor or any of Contractor's employees or agents, to be the agents or employees of the City. Contractor shall have the responsibility for and control over the means of performing the Work, provided that Contractor is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Contractor as to the details of the performance of the Work or to exercise a measure of control over Contractor shall mean only that Contractor shall follow the desires of City with respect to the results of the Services.

10. COOPERATION

Contractor agrees to work closely and cooperate fully with City's designated Project Administrator and any other agencies that may have jurisdiction or interest in the Work to be performed. City agrees to cooperate with the Contractor on the Project.

11. CITY POLICY

Contractor shall discuss and review all matters relating to policy and Project direction with the Project Administrator in advance of all critical decision points in order to ensure the Project proceeds in a manner consistent with City goals and policies.

12. PROGRESS

Contractor is responsible for keeping the Project Administrator and/or his/her duly authorized designee informed on a regular basis regarding the status and progress of the Project, activities performed and planned, and any meetings that have been scheduled or are desired.

13. INSURANCE

Without limiting Contractor's indemnification of City, and prior to commencement of Work, Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement or for other periods as specified in this Agreement, policies of insurance of the type, amounts, terms and conditions described in the Insurance Requirements attached hereto as Exhibit C, and incorporated herein by reference.

14. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS

Except as specifically authorized under this Agreement, the Services to be provided under this Agreement shall not be assigned, transferred contracted or subcontracted out without the prior written approval of City. Any of the following shall be construed as an assignment: The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Contractor, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Contractor is a partnership or joint-venture or syndicate or cotenancy, which shall result in changing the control of Contractor. Control means fifty percent (50%) or more of the voting power, or twenty-five percent (25%) or more of the assets of the corporation, partnership or joint-venture.

15. SUBCONTRACTING

The subcontractors authorized by City, if any, to perform Work on this Project are identified in Exhibit A. Contractor shall be fully responsible to City for all acts and omissions of any subcontractors. Nothing in this Agreement shall create any contractual relationship between City and any subcontractor nor shall it create any obligation on the part of City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise required by law. The City is an intended beneficiary of any Work performed by the subcontractor for purposes of establishing a duty of care between the subcontractor and the City. Except as specifically authorized herein, the Services to be provided under this Agreement shall not be otherwise assigned, transferred, contracted or subcontracted out without the prior written approval of City.

16. OWNERSHIP OF DOCUMENTS

Each and every report, draft, record, plan, document and other writing produced (hereinafter "Documents"), prepared or caused to be prepared by Contractor, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Contractor or

any other party. Contractor shall, at Contractor's expense, provide such Documents to City upon prior written request.

17. CONFIDENTIALITY

All Documents, including drafts, notes and communications that result from the Services in this Agreement, shall be kept confidential unless City expressly authorizes in writing the release of information.

18. RECORDS

Contractor shall keep records and invoices in connection with the Services to be performed under this Agreement. Contractor shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any Services, expenditures and disbursements charged to City, for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Contractor under this Agreement. All such records and invoices shall be clearly identifiable. Contractor shall allow a representative of City to examine, audit and make transcripts or copies of such records and invoices during regular business hours. Contractor shall allow inspection of all Work, data, Documents, proceedings and activities related to the Agreement for a period of three (3) years from the date of final payment to Contractor under this Agreement.

19. WITHHOLDINGS

City may withhold payment to Contractor of any disputed sums until satisfaction of the dispute with respect to such payment. Such withholding shall not be deemed to constitute a failure to pay according to the terms of this Agreement. Contractor shall not discontinue Work as a result of such withholding. Contractor shall have an immediate right to appeal to the City Manager or his/her designee with respect to such disputed sums. Contractor shall be entitled to receive interest on any withheld sums at the rate of return that City earned on its investments during the time period, from the date of withholding of any amounts found to have been improperly withheld.

20. CITY'S RIGHT TO EMPLOY OTHER CONTRACTORS

City reserves the right to employ other Contractors in connection with the Project.

21. CONFLICTS OF INTEREST

21.1 The Contractor or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act"), which (1) requires such persons to disclose any financial interest that may foreseeably be materially affected by the Work performed under this Agreement, and (2) prohibits such persons from making, or participating in making, decisions that will foreseeably financially affect such interest.

21.2 If subject to the Act, Contractor shall conform to all requirements of the Act. Failure to do so constitutes a material breach and is grounds for immediate termination of this Agreement by City. Contractor shall indemnify and hold harmless

City for any and all claims for damages resulting from Contractor's violation of this Section.

22. NOTICES

22.1 All notices, demands, requests or approvals, including any change in mailing address, to be given under the terms of this Agreement shall be given in writing, to City by Contractor and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided. All notices, demands, requests or approvals from Contractor to City shall be addressed to City at:

Attn: Anthony Nguyen, Purchasing Agent
Office of Management and Budget
City of Newport Beach
3300 Newport Blvd.
PO Box 1768
Newport Beach, CA 92658
Phone: 949-644-3080

22.2 All notices, demands, requests or approvals from City to Contractor shall be addressed to Contractor at:

Attn: Anthony Pozos
A.C. Pozos Electric Corporation
2948 Royal Palm Dr.
Costa Mesa, CA 92626
Phone: 949-254-6017
Fax: 714-546-0376

23. NOTICE OF CLAIMS

Unless a shorter time is specified elsewhere in this Agreement, before making its final request for payment under the Agreement, Contractor shall submit to City, in writing, all claims for compensation under or arising out of this Agreement. Contractor's acceptance of the final payment shall constitute a waiver of all claims for compensation under or arising out of this Agreement except those previously made in writing and identified by Contractor in writing as unsettled at the time of its final request for payment. The Contractor and the City expressly agree that in addition to all claims filing requirements set forth in the Agreement, the Contractor shall be required to file any claim the Contractor may have against the City in strict conformance with the Tort Claims Act (Govt. Code §§ 900 *et seq.*).

24. TERMINATION

24.1 In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) calendar days, or if more than two (2) calendar days are

reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within two (2) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

24.2 Notwithstanding the above provisions, City shall have the right, at its sole and absolute discretion and without cause, of terminating this Agreement at any time by giving no less than thirty (30) calendar days prior written notice to Contractor. In the event of termination under this Section, City shall pay Contractor for Services satisfactorily performed and costs incurred up to the effective date of termination for which Contractor has not been previously paid. On the effective date of termination, Contractor shall deliver to City all materials purchased and Documents created in performance of this Agreement.

25. LABOR

25.1 Contractor shall conform with all applicable provisions of State and Federal law including, but not limited to, applicable provisions of the Federal Fair Labor Standards Act ("FLSA") (29 USCA § 201, *et seq.*).

25.2 Whenever Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Agreement, Contractor shall immediately give written notice to City, and provide all relevant information.

25.3 Contractor represents that all persons working under this Agreement are verified to be U.S. citizens or persons legally authorized to work in the United States.

25.4 To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the City, its City Council, boards and commissions, officers, agents, volunteers, and employees from loss or damage, including but not limited to attorney's fees, and other costs of defense by reason of actual or alleged violations of any applicable Federal, State and local labor laws or law, rules, and/or regulations. This obligation shall survive the expiration and/or termination of the Agreement.

26. STANDARD PROVISIONS

26.1 Compliance with all Laws. Contractor shall at its own cost and expense comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted.

26.2 Waiver. A waiver by City of any term, covenant, or condition in the Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition.

26.3 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and Agreements of whatsoever kind or nature are merged

herein. No verbal Contract or implied covenant shall be held to vary the provisions herein.

26.4 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Exhibits attached hereto, the terms of this Agreement shall govern.

26.5 Amendments. This Agreement may be modified or amended only by a written document executed by both Contractor and City and approved as to form by the City Attorney.

26.6 Effect of Contractor's Execution. Execution of this Agreement by Contractor is a representation that Contractor has visited the Project Site, has become familiar with the local conditions under which the Work is to be performed, and has taken into consideration these factors in submitting its Project proposal and Scope of Work.

26.7 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

26.8 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, age or any other impermissible basis under law.

26.9 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

26.10 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

26.11 No Attorney's Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorney's fees.

26.12 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Date: 1/15/13

By: [Signature]
Aaron C. Harp
City Attorney

100A
1/14

CITY OF NEWPORT BEACH,
A California municipal corporation

Date: _____

By: [Signature]
Tracy McGraner DANMAGUSIEWICZ
Fiscal Services Director AM 2-13-13
FINANCE

ATTEST:
Date: 2.14.13

By: [Signature]
Leilani I. Brown
City Clerk

CONTRACTOR: A.C. Pozos Electric Corporation, a California corporation
Date: 8/2/2012

By: [Signature]
Anthony C. Pozos
President/Secretary



[END OF SIGNATURES]

- Attachments: Exhibit A – Scope of Work
Exhibit B – Schedule of Rates
Exhibit C – Insurance Requirements

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EXHIBIT A SCOPE OF WORK

On an as-needed basis, Contractor shall be contacted for as-needed electrical repair service requests at City facilities with the exception of the Police Department Headquarters. The primary point of contact for these types of service requests shall be Anthony Nguyen, Purchasing Agent, or his designee. For these service requests, Contractor shall follow the protocol established in this Agreement in regards to service deployment, including issuing Letter Proposals for each request and not commencing work until authorized by the Project Administrator or his designee. Any and all services performed for the City shall be charged at the rates indicated in Exhibit B.

Such services shall include, but not be limited to:

- Ballast repair;
- Motor replacement;
- Disconnect replacement/installation;
- Breaker replacement;
- Switch replacement;
- Cable replacement/relocation;
- Conduit installation;
- Lamp repair; and
- General electrical troubleshooting.

GENERAL REQUIREMENTS

Contractor shall be available for same-day response, including weekends.

Unless otherwise stated, Contractor shall be responsible to provide all labor and materials to allow for successful Project completion.

Projects of a larger scale will require the City to reimburse Contractor for materials that need to be procured. These instances shall be analyzed on a case-by-case basis and reimbursement for materials will need to be agreed upon in the Contractor's letter proposal prior to the commencement of work.

Contractor shall be responsible for removing and cleaning any and all debris that occurs as a result of its operations under this Agreement.

Contractor shall be in clear communication with Project Administrator and/or all relevant staff, and shall coordinate and respond in the most expedient and appropriate manner under the circumstances.

**EXHIBIT B
SCHEDULE OF BILLING RATES**

<u>As-Needed electrical Services</u>	<u>Rate</u>	<u>Notes</u>
Normal Hours (7:00AM-5:00PM Mon-Fri)	\$95.00	Per Hour Per Man
All Other Hours	\$125.00	Per Hour Per Man
Minimum Call Out, Regular Business Hours 2 Hours		Normal charge for 1 st hour - \$125.00, additional hours \$95.00
Minimum Call Out, After Hours 4 Hours		Normal charge for 1 st hour - \$125.00, additional hours \$95.00

EXHIBIT C

1. INSURANCE REQUIREMENTS – MAINTENANCE AND REPAIR

1.1 Provision of Insurance. Without limiting Contractor's indemnification of City, and prior to commencement of Work, Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City. Contractor agrees to provide insurance in accordance with requirements set forth here. If Contractor uses existing coverage to comply and that coverage does not meet these requirements, Contractor agrees to amend, supplement or endorse the existing coverage.

1.2 Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

1.3 Coverage Requirements.

1.3.1 Workers' Compensation Insurance. Contractor shall maintain Workers' Compensation Insurance, statutory limits, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California, Section 3700 of the Labor Code.

1.3.1.1 Contractor shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, officials, employees and agents.

1.3.2 General Liability Insurance. Contractor shall maintain commercial general liability insurance, and if necessary umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate and two million dollars (\$2,000,000) completed operations aggregate. The policy shall cover liability arising from premises, operations, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) with no endorsement or modification limiting the scope of coverage for liability assumed under a contract.

1.3.3 Automobile Liability Insurance. Contractor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Contractor arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each accident.

1.4 Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:

1.4.1 Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Contractor or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subcontractors.

1.4.2 Additional Insured Status. All liability policies including general liability, excess liability, pollution liability, and automobile liability, but not including professional liability (if required), shall provide or be endorsed to provide that City and its officers, officials, employees, and agents shall be included as insureds under such policies.

1.4.3 Primary and Non Contributory. All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.

1.4.4 Notice of Cancellation. All policies shall provide City with thirty (30) days notice of cancellation (except for nonpayment for which ten (10) days notice is required) or nonrenewal of coverage for each required coverage.

1.5 Additional Agreements Between the Parties. The parties hereby agree to the following:

1.5.1 Evidence of Insurance. Contractor shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this contract. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

1.5.2 City's Right to Revise Requirements. The City reserves the right at any time during the term of this Agreement to change the amounts and types of insurance required by giving the Contractor ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Contractor, the City and Contractor may renegotiate Contractor's compensation.

1.5.3 Right to Review Subcontracts. Contractor agrees that upon request, all contracts with subcontractors or others with whom Contractor enters into contracts with on behalf of City will be submitted to City for review. Failure of City to request copies of such contracts will not impose any liability on City, or its employees.

1.5.4 Enforcement of Contract Provisions. Contractor acknowledges and agrees that any actual or alleged failure on the part of the City to inform Contractor of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

1.5.5 Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage,

limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

1.5.6 Self-insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these requirements unless approved by City.

1.5.7 City Remedies for Non Compliance If Contractor or any subcontractor fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this agreement, or to suspend Contractor's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Contractor or reimbursed by Contractor upon demand.

1.5.8 Timely Notice of Claims. Contractor shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Contractor's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

1.5.9 Contractor's Insurance. Contractor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.

**CERTIFICATE OF INSURANCE
CHECKLIST**

City of Newport Beach

This checklist is comprised of requirements as outlined by the City of Newport Beach. *

Date Received: 9/24/12 Dept./Contact Received From: Raymund Reyes
Date Completed: 12/5/12 Sent to: Raymund By: Renee
Company/Person required to have certificate: AC Pozos Electric Corp
Type of contract: All Other

I. GENERAL LIABILITY

- EFFECTIVE/EXPIRATION DATE: 9/20/12 to 9/20/13
- A. INSURANCE COMPANY: Colony Specialty Insurance Company
- B. AM BEST RATING (A- : VII or greater): A; XII
- C. ADMITTED Company (Must be California Admitted):
Is Company admitted in California? Yes No
- D. LIMITS (Must be \$1M or greater): What is limit provided? \$1,000,000 / \$2,000,000
- E. ADDITIONAL INSURED ENDORSEMENT – please attach Yes No
- F. PRODUCTS AND COMPLETED OPERATIONS (Must include): Is it included? (completed Operations status does not apply to Waste Haulers or Recreation) Yes No
- G. ADDITIONAL INSURED FOR PRODUCTS AND COMPLETED OPERATIONS ENDORSEMENT (completed Operations status does not apply to Waste Haulers) Yes No
- H. ADDITIONAL INSURED WORDING TO INCLUDE (The City its officers, officials, employees and volunteers): Is it included? Yes No
- I. PRIMARY & NON-CONTRIBUTORY WORDING (Must be included): Is it included? Yes No
- J. CAUTION! (Confirm that loss or liability of the named insured is not limited solely by their negligence) Does endorsement include "solely by negligence" wording? Yes No
- K. ELECTED SCMAF COVERAGE (RECREATION ONLY): N/A Yes No
- L. NOTICE OF CANCELLATION: N/A Yes No

II. AUTOMOBILE LIABILITY

- EFFECTIVE/EXPIRATION DATE: 9/24/12 to 9/24/13
- A. INSURANCE COMPANY: Mercury Casualty Company
- B. AM BEST RATING (A- : VII or greater) A+ XIII
- C. ADMITTED COMPANY (Must be California Admitted):
Is Company admitted in California? Yes No
- D. LIMITS - If Employees (Must be \$1M min. BI & PD and \$500,000 UM, \$2M min for Waste Haulers): What is limits provided? \$1,000,000
- E. LIMITS Waiver of Auto Insurance / Proof of coverage (if individual) (What is limits provided?) N/A
- F. PRIMARY & NON-CONTRIBUTORY WORDING (For Waste Haulers only): N/A Yes No
- G. HIRED AND NON-OWNED AUTO ONLY: N/A Yes No
- H. NOTICE OF CANCELLATION: N/A Yes No

III. WORKERS' COMPENSATION

EFFECTIVE/EXPIRATION DATE: 7/4/12 to 7/4/13

- A. INSURANCE COMPANY: State Fund
- B. AM BEST RATING (A- : VII or greater): Not Rated
- C. ADMITTED Company (Must be California Admitted): Yes No
- D. WORKERS' COMPENSATION LIMIT: Statutory Yes No
- E. EMPLOYERS' LIABILITY LIMIT (Must be \$1M or greater) 1,000,000
- F. WAIVER OF SUBROGATION (To include): Is it included? Yes No
- G. SIGNED WORKERS' COMPENSATION EXEMPTION FORM: N/A Yes No
- H. NOTICE OF CANCELLATION: N/A Yes No

ADDITIONAL COVERAGE'S THAT MAYBE REQUIRED

IV. PROFESSIONAL LIABILITY

N/A Yes No

V POLLUTION LIABILITY

N/A Yes No

V BUILDERS RISK

N/A Yes No

**HAVE ALL ABOVE REQUIREMENTS BEEN MET?
IF NO, WHICH ITEMS NEED TO BE COMPLETED?**

Yes No

Approved:



12/5/12

Agent of Alliant Insurance Services
Broker of record for the City of Newport Beach

Date

RISK MANAGEMENT APPROVAL REQUIRED (Non-admitted carrier rated less than ____;

Self Insured Retention or Deductible greater than \$ _____) N/A Yes No

Reason for Risk Management approval/exception/waiver:

Approved:

Risk Management

Date

* Subject to the terms of the contract.