

Pro-Cal Lighting Inc. CONTRACTOR AGREEMENT # PCLCN-1096

This Agreement (the “Agreement”) is made and effective as of the date of execution (“Effective Date”) by and between Pro-Cal Lighting, Inc. (the “Contractor”) and East Village Association (the “Owner”). The Contractor and the Owner may be referred to individually as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, the Owner is a tenant/owner/or legal representative of the Property (as defined below); and

WHEREAS, the Owner wishes to engage the Contractor as a prime contractor to perform certain work (as defined below) on the Property for the Owner in accordance with the drawings and/or specifications attached as Exhibit A hereto (the “Scope”) and on the terms and conditions set forth below; and

WHEREAS, the Contractor is registered with the state as a contractor, and has a registration number of 1002601, expiring on 30 April 2025 and

WHEREAS, the Contractor wishes to perform the work on the Property in accordance with (the “Scope”) attached as Exhibit A hereto and with the terms of this Agreement; and

WHEREAS, each Party is duly authorized and capable of entering into this Agreement.

NOW THEREFORE, in consideration of the above recitals and the mutual promises and benefits contained herein, the Parties hereby agree as follows:

1. SCOPE OF WORK.

The Contractor shall furnish all of the necessary materials, tools, machinery, and supervision to perform all of the work described in Exhibit A hereto (the “Scope”), all in accordance with the terms of this Agreement. The work shall be performed on that certain property located on **Market Street, 7th to 17th, North and South Sides in East Village San Diego** (the “Property”), and as more specifically described in Exhibit A. The Contractor agrees that it will perform the services and provide the materials for which it is responsible, will accomplish this Work in the manner and in the time stated herein and in accordance with (the “Scope”) attached as Exhibit A hereto, and will provide the deliverable items as required.

If during the execution of the Scope, the Contractor discovers previously unknown conditions including, but not limited to, faulty wiring, master/slave fixtures requiring additional wiring to be provided to the fixtures, damaged fixtures, inability to operate a minimum of six consecutive hours during normal business hours that would result in unsafe working conditions and/or the inability to complete the Scope, Contractor shall stop work in effected areas and notify Owner of condition(s) and provide a quote for repair/replacement where possible. Contractor will continue execution of the Scope in non-effected areas. If the Owner elects not to remedy these conditions the Contractor shall:

- (a) Terminate the remainder of this agreement associated with effected areas as notified per Article 9 (Termination) below.

2. CONTRACT PRICE.

The Owner shall pay to the Contractor, as full payment for the Scope and materials to be provided under this Agreement, the sum of **\$235,278.04** (the “Contract Price”). The Contract Price shall be subject to certain additions and deductions that may be made pursuant to mutually agreed upon change orders, in writing, authorized under this Agreement.

3. PROGRESS PAYMENTS.

- (a) Payments. The Contract Price shall be paid as follows:
 - (1) \$142,456.97 paid upon signing.
 - (2) Remaining balance due July 1, 2023.
- (b) Progress Payments: Contractor will invoice Owner monthly for work completed and payment is due within 30 days of receipt by Owner.
- (c) Final Payment. Final payment shall be due immediately upon completion after the request for payment by the Contractor and functional test of scope.
- (d) Waiver of Owner’s Claims. The making of final payment shall constitute a waiver of all claims by the Owner except those arising from:
 - (1) unsettled liens;
 - (2) faulty or defective work appearing after substantial completion;
 - (3) failure of the Work to comply with the requirements of Exhibit A.
- (e) Waiver of Contractor’s Claims. The acceptance of the final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the final payment.
- (f) Payment Failure. If the Owner shall fail to make any payment due, the Contractor may cease work; provided, however, the Contractor shall resume performance of the Scope and other obligations after payment or other resolution of the dispute.

4. LICENSES AND PERMITS.

The Contractor shall comply with all state and local licensing and registration requirements for the type of work performed. The Contractor will obtain any permits to accomplish any Work required in connection with this agreement.

5. REPRESENTATIONS AND WARRANTIES.

(a) The Parties each hereby represent and warrant as follows:

- (1) Each Party has full power, authority, and right to perform its obligations under the Agreement.
- (2) This Agreement is a legal, valid, and binding obligation of each Party, enforceable against it in accordance with its terms (except as may be limited by bankruptcy, insolvency, moratorium, or similar laws affecting creditors' rights generally and equitable remedies).
- (3) Entering into this Agreement will not violate the charter or bylaws of either Party or any material contract to which that Party is also a party.
- (4) The drawings and/or specifications attached to this Agreement as Exhibit A are the final drawings and/or specifications of the Scope, and form an integral part of this Agreement. Neither Party may add or otherwise make modifications to said drawings and specifications without the prior written consent of the other Party.
- (5) The Contractor may, in its discretion, engage licensed subcontractors to perform the Scope; provided, however, that the Contractor must fully pay any such subcontractor and, in all instances, will remain responsible for the completion of this Agreement and the Scope.

(b) The Contractor hereby represents and warrants as follows:

- (1) The Scope shall be performed in a workman-like manner, according to standard industry practices and in compliance with all building codes and other applicable laws.
- (2) The Scope shall be performed by individuals duly licensed and authorized by law to perform said work, to the extent required by law.
- (3) The Contractor shall provide the Owner with appropriate releases or waivers of liens at the time of payment for any work performed.
- (4) The Contractor shall remove any debris or other garbage from the Property as a result of performing the Scope.

- (5) The Contractor is responsible for paying all ordinary and necessary expenses of its staff.
- (6) The Contractor warrants that it is adequately insured for injury to its employees and others incurring loss or injury as a result of the acts of the Contractor or its employees or subcontractors and shall provide the Owner with proper certificates of insurance. The Contractor acknowledges that it is solely responsible for providing insurance coverage for itself and its staff.
- (7) The Contractor shall obtain insurance to protect itself against claims for property damage, bodily injury, or death due to its performance under this Agreement.

(c) The Owner hereby represents and warrants as follows:

- (1) The Owner is a tenant or owner of the Property.
- (2) The Owner will make timely payments of amounts earned by the Contractor under this Agreement.
- (3) The Owner shall notify the Contractor of any changes to its procedures affecting the Contractor's obligations under this Agreement at least 14 days prior to implementing such changes.
- (4) The Owner shall provide such other assistance to the Contractor as it deems reasonable and appropriate.

6. WAIVER OF LIABILITY.

If the Contractor is injured while performing the work specified under this Agreement, the Owner shall be exempt from liability for those injuries to the fullest extent allowed by law, except for any injury occurred as a result of the Owner's gross negligence or unsafe working environment.

7. INDEMNIFICATION.

The Contractor shall indemnify and hold harmless the Owner from and against any and all damages, liabilities, costs, expenses, claims, and/or judgments, including, without limitation, reasonable attorneys' fees and disbursements that any of them may suffer from or incur and that arise or result primarily from (i) any gross negligence or willful misconduct of the Contractor arising from or connected with Contractor's carrying out of its duties under this Agreement, or (ii) the Contractor's breach of any of its obligations, agreements, or duties under this Agreement.

8. WARRANTY.

For a period of **One (1) year (the “Warranty Period”)** commencing on the date of Substantial Completion as specified on this letter, Pro-Cal Lighting Inc. warrants that if equipment installed from Pro-Cal Lighting fails in normal use because of a defect in workmanship within the Warranty Period, Pro-Cal Lighting will repair or replace (at our option) the equipment or part with new, reconditioned, or remanufactured equipment or parts without charge. For purposes of clarity, workmanship is as defined in NEC 110.12.

You must notify Pro-Cal Lighting promptly, and in writing within the Warranty period. Assuming Pro-Cal Lighting concurs the complaint is valid, Pro-Cal will repair or replace the defective equipment provided the repair or replacement is due to a cause covered by this warranty.

Defects in material will be handled in accordance with the Original Equipment Manufacturers warranty which is provided as a pass through from Pro-Cal Lighting.

If any defects in the equipment cause power outages or delay of operations, then Pro-Cal Lighting, Inc. shall use best efforts to have equipment repaired or replaced as soon as possible.

WHAT IS NOT COVERED -Pro-Cal Lighting, Inc regrets that we cannot be responsible for:

- The defects or failures that are caused by buyer or user abuse or misuse, set-up or adjustment
 - Units that have been misused, neglected, or damaged by accident
 - Normal wear and tear, cosmetic damage, or damage caused by acts of nature
 - Lack of routine maintenance
- Defects or failures caused by unauthorized attempts to repair or alter the equipment in any way by persons other than Pro-Cal Lighting
 - Includes units that have been disassembled
- Consequential damages incurred by a buyer or user from any cause whatsoever, including, but not limited to non-Pro-Cal Lighting repair or service costs, downtime costs, costs for substituting equipment or loss of anticipated profits or revenue.
- The performance of the equipment when used in combination with equipment not purchased/installed by Pro-Cal Lighting that was not identified as the intended use/function of the equipment provided by Pro-Cal Lighting
- Service calls for replacement or repair of equipment deemed buyer or user replaceable is not covered under this warranty. This includes:
 - The troubleshooting, replacement, and repair of equipment due to a manufacture defect.
- PRO-CAL LIGHTING MAKES NO OTHER WARRANTIES BEYOND THE

EXPRESS WARRANTY AS CONTAINED HEREIN. ALL EXPRESS OR IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY ARE EXCLUDED.

9. TERMINATION.

This Agreement may be terminated:

- (a) By either Party for a material breach of any provision of this Agreement by the other Party, if the other Party's material breach is not cured within Thirty (30) days of receipt of written notice thereof.

In the event of termination not the fault of the Contractor, the Owner shall promptly pay the Contractor for services and materials rendered before the effective date of the termination, including complete material and labor cost of the entire project. The Contractor acknowledges and agrees that no other compensation, of any nature or type, shall be payable hereunder following the termination of this Agreement.

10. ACCESS TO WORK.

The Owner, the Owner's representatives, and public authorities shall at all times have access to the work as defined in the Scope.

11. ADDITIONAL AGREEMENT TERMS.

The Owner and the Contractor hereby agree to the following additional terms:

Any open driveways that are deemed unsafe for strand installation by Procal or any other entity will require additional controllers and equipment. This is subject to an additive change order.

12. ASSIGNMENT.

The rights and the duties of the Contractor under this Agreement are personal, and may not be assigned or delegated without the prior written consent of the Owner. The Owner may assign its rights and duties under this Agreement with the prior written consent of the Contractor.

13. SUCCESSORS AND ASSIGNS.

All references in this Agreement to the Parties shall be deemed to include, as applicable, a reference to their respective successors and assigns. The provisions of this Agreement shall be binding on and shall inure to the benefit of the successors and assigns of the Parties.

14. NO IMPLIED WAIVER.

The failure of either Party to insist on strict performance of any covenant or obligation under this Agreement, regardless of the length of time for which such failure continues, shall not be deemed a waiver of such Party's right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation under this Agreement shall constitute a consent or waiver to or of any other breach or default in the performance of the same or any other obligation.

15. NATURE OF RELATIONSHIP.

The Contractor is not an employee of the Owner; the Contractor is working in its capacity as an independent contractor. The Contractor agrees to hold the Owner harmless and indemnify the Owner for any claims, including (but not limited to) liability insurance, workers' compensation, and tax withholding for the Contractor's employees.

16. NOTICE.

Any notice or other communication provided for herein or given hereunder to a party hereto shall be in writing and shall be given in person, by overnight courier, or by mail (registered or certified mail, postage prepaid, return receipt requested) to the respective party as follows:

If to the Owner:

East Village Association
1041 Market Street #200
San Diego, CA 92101

If to the Contractor:

Pro-Cal Lighting Inc.
1155 S Santa Fe Ave Ste. A
Vista, CA 92083

17. CHANGE ORDERS.

All changes and/or deviations in the Scope ordered by the Owner must be in writing as a change order, a form of which is attached as Exhibit B hereto and made part hereof. The Contract Price and time of completion, if applicable, will be increased or decreased accordingly by the Parties' mutual agreement. Any claims that the Contract Price or time of completion should be increased based on changes and/or deviations in the Scope must be presented to the Owner by the Contractor in writing. The Owner's written approval of such Contract Price or time of completion increase must be obtained by the Contractor before any change and/or deviation in the Scope is started. The valuation of the Contract Price change will be assessed on the basis of the valuation of similar work included in this Agreement.

18. TYPES OF MATERIALS.

All materials used by the Contractor in performing the work shall be new, in compliance with all applicable laws and codes, and covered by the specified manufacturer's warranty, excluding labor [except as follows: N/A].

19. OWNERSHIP OF MATERIALS.

Any materials that are unfixated and required to perform the Scope and that are delivered to the Property under this Agreement shall remain the property of the Contractor until they have been paid for by the Owner.

20. MATERIALS IN SHORT SUPPLY.

If any of the materials set out in Exhibit A hereto are in short supply or are unavailable for an unreasonable amount of time, the Owner shall select alternative material of similar quality from alternative (and readily available) materials proposed by the Contractor. The responsibility for paying any difference in price between the original materials and the alternative materials shall lie with the Owner.

21. MODIFICATION.

No amendment, addendum, change, or modification of this Agreement shall be valid unless in writing and signed by both Parties.

22. GOVERNING LAW.

This Agreement shall be governed by the laws of the state of California. In the event that litigation results from or arises out of this Agreement or the performance thereof, the Parties agree to reimburse the prevailing party's reasonable attorneys' fees, court costs, and all other expenses, whether or not taxable by the court as costs, in addition to any other relief to which the prevailing party may be entitled.

23. COUNTERPARTS/ELECTRONIC SIGNATURES.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. For purposes of this Agreement, use of a facsimile, e-mail, or other electronic medium shall have the same force and effect as an original signature.

24. SEVERABILITY.

Whenever possible, each provision of this Agreement, will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed, and enforced in such jurisdiction as if such invalid, illegal, or unenforceable provisions had never been contained herein.

25. ENTIRE AGREEMENT.

This Agreement, constitutes the final, complete, and exclusive statement of the agreement of the Parties with respect to the subject matter hereof, and supersedes any and all other prior and contemporaneous agreements and understandings, both written and oral, between the Parties.

26. HEADINGS.

Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.


27. General Provisions.

See Exhibit A.

[SIGNATURE PAGE FOLLOWS]


IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

OWNER

By  _____ Date: 5/23/2023
Name: Terry McCleary
Title: President

CONTRACTOR

Pro-Cal Lighting, Inc

By  _____ Date: 5/23/2023
Name: Brian Morales
Title: President



Estimate: 2020418 East Village Association - 7th to 17th_Bid

Brendan McCartney

From	To
Brendan McCartney Pro-Cal Lighting Inc. 1155 S. Santa Fe Ave Vista, CA, 92083	Chris Gomez East Village Association Inc. 1041 Market St San Diego, CA 92101

1155 S Santa Fe Ave. Suite A, Vista CA 92083 | o: 760.994.6959 f: 760.560.1670 | ProCalLighting.com
 CSLB #C-10 1002601 8(a) Certified (MBE) Certified Minority Owned Business (SB) Small Business
 (DBE) Disadvantaged Business Enterprise CAGE CODE: 7CR52 CS DGS Supplier #1795967
 NAICS: 237130, 238210, 541490, 561790, 711510. DIR #1000019052 DUNS #079708930

Scope of Work

We propose to furnish the material and labor on the above referenced project for the amount shown below. This proposal is based on the scope of work as detailed below and the following clarifications / exclusions listed below.

Narrative

- **PHASE 1:** Permitting, observation, and inspection of prospective lighting system.
- **PHASE 2:** Procurement and Installation of GFCI electrical outlets at midblock poles from 7th Ave to 17th on North and South sides of Market Street.
- **PHASE 3:** Procurement and Installation of dynamic RGB Lighting Strands from 7th Ave to 17th on the North and South Sides of Market Street
- The design set forth is not wireless, and includes a single controller per side of block.

Estimate Table

Description	
Phase I	
Electrical Engineering	
Structural Engineering	
Permits	
Observation and Inspection	
Prefab	
- Phase I Total Estimate	\$17,725.02
Phase II	
18x16x9 Nema 3R	

Description	
1/8" X 500', 7x19, Vinyl Coated Galvanized Cable Reel - PROSTRAND	
SPECIAL, FLEX LMX, GEN2, 50 NODES, 24IN/610MM OC, BLACKNODE/CABLE, CLEAR FLAT LENS, 3FT WHIP (999-008113-04)	
Programming / IP Addressing / Software Commissioning Time	
Additional Materials	
SPECIAL, MARQUEE BULB, SEMI-FROSTED/BLACK, BOX OF 50 (999-007997-05)	
Meanwell HLG-320H-24	
Photocell EK4436SM Nightfox	
- Phase II Total Estimate	\$124,731.95
Phase II	
Tamper/Weather Resistant GFCI Receptacle, 15A, 125V, White	
CM-150 CA, 4 WIRE DIFFERENTIAL OUT, 4A, 24V, IP00, DIN (109-000033-00)	
Pharos Xpert	
#12 THHN Stranded Copper Wire	
In-Use Cover, 1-Gang, Weatherproof (MM420C)	
Mobilization	
(T) Sunbelt 25-27' RT Scissor (WEEKLY RATE)	
8 Port Dlink POE Switch (DGS-1008P)	
Project Manager	
- Phase II Total Estimate	\$92,821.07
Total Estimate	\$235,278.04

Qualifications

1. Pricing is based on acceptance entire scope. Pricing may change if a scope needs to be changed or removed.
2. It is presumed that the existing electrical service/equipment can accept any/all of the added electrical equipment/ demand, and that all existing equipment is in good working conditions to accept the alterations per the above scope of work.
3. Pricing is based on the quantities as detailed above and does not necessarily represent a one for one installation.
4. Pricing is based on lay-down for tools, equipment and material being in the immediate area.
5. Education and Teaching of the programming software is not included in this pricing and will need to be provided in a separate estimate and will require an extended amount of time for proper instruction. Basic Instruction is included. This is defined as a quick review of cloud controls and manual override.

6. This bid assumes that the staff facilities will be available during this time to assist access to the site, and during the commissioning process.
7. Pricing is based on providing safe-off only for electrical devices and equipment to be removed under the demolition scope of work. Salvage or storage of any equipment/materials is by others.
- 8.) Includes 1 Year Workmanship Warranty, and Manufacturer Pass Through Warranty on Materials

Exclusions

1. Any work other than what is specially mentioned in the scope noted above.
2. Unforeseen conditions.
3. Field cutting, coring, patching, painting and coatings for all exterior surfaces.
4. Spare materials.
5. Utility fees.

Notable Clarifications

- **PHASE 1:** ProCal will provide design documents, manufacturer information, and electrical load calcs (specific to new load) for permit submission.
- **PHASE 2:** Bid assumes that existing electrical infrastructure at base of midblock poles is in working order, and will NOT require fuse replacement or other repair.
- **PHASE 2:** Bid assumes voltage available at base of pole is 120v.
- **PHASE 2:** Bid assumes "in working order" structural integrity of existing midblock poles.
- **PHASE 2:** Bid assumes single gang GFCI Receptacle Outlet.
- **PHASE 2:** Intent is to use a GFCI receptacle per Electrical code, and to utilize an "in-use" bubble cover.
- **PHASE 3:** RGB product from Color Kinetics maintains a 5 year manufacturers warranty.
- **PHASE 2 & 3:** Bid assumes use of a 20' Electric Scissor Lift throughout duration of install of Phase 2 and Phase 3.
- **PHASE 2 & 3:** Bid assumes that all work will be done from the sidewalk, without intrusion to the right of way.
- Programmed Schedule is for one complete year

Notable Exclusions

1. All subterranean work .
2. Replacement of existing poles or midblock post top luminaires.
3. Traffic Control.
4. Changes in design due to permit comments from AHJ
5. Bonding.
6. Wireless Communication.

Please call me at (858) 539-3857 if there are any questions regarding this proposal. This quotation is valid for (15) days from the date of proposal, and any modifications or amendments to this document must be in writing.

Sincerely,

Brendan McCartney
Vice President PreConstruction
(858) 539-3857
bmccartney@procallighting.com

A handwritten signature in blue ink, appearing to read 'T. Jones', is written over a horizontal line. Below the line, the text 'Customer Signature' is printed.

**EXHIBIT B
FORM OF CHANGE ORDER**

Change Order No:	PO No:
Date:	
Contractor's Name and Address:	Owner's Name and Address:
THE CONTRACTOR AGREEMENT IS HEREBY CHANGED AS FOLLOWS	
Additional Contract Days Needed to complete Work: (if none, state "NONE"):	
ALL OTHER TERMS AND CONDITIONS OF THE CONTRACTOR AGREEMENT THAT ARE NOT CHANGED BY THIS CHANGE ORDER REMAIN IN FULL FORCE AND EFFECT.	
PREVIOUS CONTRACT PRICE: \$	
REVISED CONTRACT PRICE: \$	
ACCEPTANCE	
The above prices, specifications, and conditions are satisfactory, and are hereby accepted. The Contractor is authorized to do the work as specified, and the Owner shall make payments as outlined above.	
Owner Signature: _____	Date: _____
Contractor Signature: _____	Date: _____