

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 AGREEMENT

2 **35244**

3 THIS AGREEMENT is made and entered, in duplicate, as of May 23, 2019,
4 for reference purposes only, pursuant to a minute order adopted by the City Council of the
5 City of Long Beach at its meeting on May 7, 2019, by and between PENWAL INDUSTRIES,
6 INC., a California corporation ("Consultant"), with a place of business at 10611 Acacia St.,
7 Rancho Cucamonga, CA 91730, and the CITY OF LONG BEACH, a municipal corporation
8 ("City").

9 WHEREAS, the City requires specialized services requiring unique skills to
10 be performed in connection with Fire Police Memorial Design and Install ("Project"); and

11 WHEREAS, City has selected Consultant in accordance with City's
12 administrative procedures and City has determined that Consultant and its employees are
13 qualified, licensed, if so required, and experienced in performing these specialized
14 services; and

15 WHEREAS, City desires to have Consultant perform these specialized
16 services, and Consultant is willing and able to do so on the terms and conditions in this
17 Agreement;

18 NOW, THEREFORE, in consideration of the mutual terms, covenants, and
19 conditions in this Agreement, the parties agree as follows:

20 1. SCOPE OF WORK OR SERVICES.

21 A. Consultant shall furnish specialized services more particularly
22 described in Exhibit "A", attached to this Agreement and incorporated by this
23 reference, in accordance with the standards of the profession, and City shall pay for
24 these services in the manner described below, not to exceed Six Hundred Twenty-
25 Five Thousand Dollars (\$625,000), at the rates or charges shown in Exhibit "B".

26 B. The City's obligation to pay the sum stated above for any one
27 fiscal year shall be contingent upon the City Council of the City appropriating the
28 necessary funds for such payment by the City in each fiscal year during the term of

1 this Agreement. For the purposes of this Section, a fiscal year commences on
2 October 1 of the year and continues through September 30 of the following year. In
3 the event that the City Council of the City fails to appropriate the necessary funds
4 for any fiscal year, then, and in that event, the Agreement will terminate at no
5 additional cost or obligation to the City.

6 C. Consultant may select the time and place of performance for
7 these services provided, however, that access to City documents, records, and the
8 like, if needed by Consultant, shall be available only during City's normal business
9 hours and provided that milestones for performance, if any, are met.

10 D. Consultant has requested to receive regular payments. City
11 shall pay Consultant in due course of payments following receipt from Consultant
12 and approval by City of invoices showing the services or task performed, the time
13 expended (if billing is hourly), and the name of the Project. Consultant shall certify
14 on the invoices that Consultant has performed the services in full conformance with
15 this Agreement and is entitled to receive payment. Each invoice shall be
16 accompanied by a progress report indicating the progress to date of services
17 performed and covered by the invoice, including a brief statement of any Project
18 problems and potential causes of delay in performance, and listing those services
19 that are projected for performance by Consultant during the next invoice cycle.
20 Where billing is done and payment is made on an hourly basis, the parties
21 acknowledge that this arrangement is either customary practice for Consultant's
22 profession, industry, or business, or is necessary to satisfy audit and legal
23 requirements which may arise due to the fact that City is a municipality.

24 E. Consultant represents that Consultant has obtained all
25 necessary information on conditions and circumstances that may affect its
26 performance and has conducted site visits, if necessary.

27 F. CAUTION: Consultant shall not begin work until this
28 Agreement has been signed by both parties and until Consultant's evidence of

1 insurance has been delivered to and approved by the City.

2 2. TERM. The term of this Agreement shall commence at midnight on
3 April 24, 2019, and shall terminate at 11:59 p.m. on September 11, 2019, unless sooner
4 terminated as provided in this Agreement, or unless the services or the Project is
5 completed sooner.

6 3. COORDINATION AND ORGANIZATION.

7 A. Consultant shall coordinate its performance with City's
8 representative, if any, named in Exhibit "C", attached to this Agreement and
9 incorporated by this reference. Consultant shall advise and inform City's
10 representative of the work in progress on the Project in sufficient detail so as to
11 assist City's representative in making presentations and in holding meetings on the
12 Project. City shall furnish to Consultant information or materials, if any, described
13 in Exhibit "D" attached to this Agreement and incorporated by this reference, and
14 shall perform any other tasks described in the Exhibit.

15 B. The parties acknowledge that a substantial inducement to City
16 for entering this Agreement was and is the reputation and skill of Consultant's key
17 employee, named in Exhibit "E" attached to this Agreement and incorporated by this
18 reference. City shall have the right to approve any person proposed by Consultant
19 to replace that key employee.

20 4. INDEPENDENT CONTRACTOR. In performing its services,
21 Consultant is and shall act as an independent contractor and not an employee,
22 representative, or agent of City. Consultant shall have control of Consultant's work and
23 the manner in which it is performed. Consultant shall be free to contract for similar services
24 to be performed for others during this Agreement provided, however, that Consultant acts
25 in accordance with Section 9 and Section 11 of this Agreement. Consultant acknowledges
26 and agrees that a) City will not withhold taxes of any kind from Consultant's compensation,
27 b) City will not secure workers' compensation or pay unemployment insurance to, for or on
28 Consultant's behalf, and c) City will not provide and Consultant is not entitled to any of the

1 usual and customary rights, benefits or privileges of City employees. Consultant expressly
2 warrants that neither Consultant nor any of Consultant's employees or agents shall
3 represent themselves to be employees or agents of City.

4 5. INSURANCE.

5 A. As a condition precedent to the effectiveness of this
6 Agreement, Consultant shall procure and maintain, at Consultant's expense for the
7 duration of this Agreement, from insurance companies that are admitted to write
8 insurance in California and have ratings of or equivalent to A:V by A.M. Best
9 Company or from authorized non-admitted insurance companies subject to Section
10 1763 of the California Insurance Code and that have ratings of or equivalent to A:VIII
11 by A.M. Best Company the following insurance:

12 i. Commercial general liability insurance (equivalent in
13 scope to ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less
14 than \$1,000,000 per each occurrence and \$2,000,000 general aggregate.
15 This coverage shall include but not be limited to broad form contractual
16 liability, cross liability, independent contractors liability, and products and
17 completed operations liability. The City, its boards and commissions, and
18 their officials, employees and agents shall be named as additional insureds
19 by endorsement (on City's endorsement form or on an endorsement
20 equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85 or both
21 CG 20 10 07 04 and CG 20 37 07 04 or both CG 20 33 07 04 and CG 20 37
22 07 04), and this insurance shall contain no special limitations on the scope of
23 protection given to the City, its boards and commissions, and their officials,
24 employees and agents. This policy shall be endorsed to state that the insurer
25 waives its right of subrogation against City, its boards and commissions, and
26 their officials, employees and agents.

27 ii. Workers' Compensation insurance as required by the
28 California Labor Code and employer's liability insurance in an amount not

1 less than \$1,000,000. This policy shall be endorsed to state that the insurer
2 waives its right of subrogation against City, its boards and commissions, and
3 their officials, employees and agents.

4 iii. Professional liability or errors and omissions insurance
5 in an amount not less than \$1,000,000 per claim.

6 iv. Commercial automobile liability insurance (equivalent in
7 scope to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in
8 an amount not less than \$500,000 combined single limit per accident.

9 B. Any self-insurance program, self-insured retention, or
10 deductible must be separately approved in writing by City's Risk Manager or
11 designee and shall protect City, its officials, employees and agents in the same
12 manner and to the same extent as they would have been protected had the policy
13 or policies not contained retention or deductible provisions.

14 C. Each insurance policy shall be endorsed to state that coverage
15 shall not be reduced, non-renewed, or canceled except after thirty (30) days prior
16 written notice to City, shall be primary and not contributing to any other insurance
17 or self-insurance maintained by City, and shall be endorsed to state that coverage
18 maintained by City shall be excess to and shall not contribute to insurance or self-
19 insurance maintained by Consultant. Consultant shall notify the City in writing within
20 five (5) days after any insurance has been voided by the insurer or cancelled by the
21 insured.

22 D. If this coverage is written on a "claims made" basis, it must
23 provide for an extended reporting period of not less than one hundred eighty (180)
24 days, commencing on the date this Agreement expires or is terminated, unless
25 Consultant guarantees that Consultant will provide to the City evidence of
26 uninterrupted, continuing coverage for a period of not less than three (3) years,
27 commencing on the date this Agreement expires or is terminated.

28 E. Consultant shall require that all subconsultants or contractors

1 which Consultant uses in the performance of these services maintain insurance in
2 compliance with this Section unless otherwise agreed in writing by City's Risk
3 Manager or designee.

4 F. Prior to the start of performance, Consultant shall deliver to City
5 certificates of insurance and the endorsements for approval as to sufficiency and
6 form. In addition, Consultant, shall, within thirty (30) days prior to expiration of the
7 insurance, furnish to City certificates of insurance and endorsements evidencing
8 renewal of the insurance. City reserves the right to require complete certified copies
9 of all policies of Consultant and Consultant's subconsultants and contractors, at any
10 time. Consultant shall make available to City's Risk Manager or designee all books,
11 records and other information relating to this insurance, during normal business
12 hours.

13 G. Any modification or waiver of these insurance requirements
14 shall only be made with the approval of City's Risk Manager or designee. Not more
15 frequently than once a year, the City's Risk Manager or designee may require that
16 Consultant, Consultant's subconsultants and contractors change the amount, scope
17 or types of coverages required in this Section if, in his or her sole opinion, the
18 amount, scope, or types of coverages are not adequate.

19 H. The procuring or existence of insurance shall not be construed
20 or deemed as a limitation on liability relating to Consultant's performance or as full
21 performance of or compliance with the indemnification provisions of this Agreement.

22 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement
23 contemplates the personal services of Consultant and Consultant's employees, and the
24 parties acknowledge that a substantial inducement to City for entering this Agreement was
25 and is the professional reputation and competence of Consultant and Consultant's
26 employees. Consultant shall not assign its rights or delegate its duties under this
27 Agreement, or any interest in this Agreement, or any portion of it, without the prior approval
28 of City, except that Consultant may with the prior approval of the City Manager of City,

1 assign any moneys due or to become due the Consultant under this Agreement. Any
2 attempted assignment or delegation shall be void, and any assignee or delegate shall
3 acquire no right or interest by reason of an attempted assignment or delegation.
4 Furthermore, Consultant shall not subcontract any portion of its performance without the
5 prior approval of the City Manager or designee, or substitute an approved subconsultant
6 or contractor without approval prior to the substitution. Nothing stated in this Section shall
7 prevent Consultant from employing as many employees as Consultant deems necessary
8 for performance of this Agreement.

9 7. CONFLICT OF INTEREST. Consultant, by executing this Agreement,
10 certifies that, at the time Consultant executes this Agreement and for its duration,
11 Consultant does not and will not perform services for any other client which would create
12 a conflict, whether monetary or otherwise, as between the interests of City and the interests
13 of that other client. Consultant further certifies that Consultant does not now have and shall
14 not acquire any interest, direct or indirect, in the area covered by this Agreement or any
15 other source of income, interest in real property or investment which would be affected in
16 any manner or degree by the performance of Consultant's services hereunder. And,
17 Consultant shall obtain similar certifications from Consultant's employees, subconsultants
18 and contractors.

19 8. MATERIALS. Consultant shall furnish all labor and supervision,
20 supplies, materials, tools, machinery, equipment, appliances, transportation, and services
21 necessary to or used in the performance of Consultant's obligations under this Agreement,
22 except as stated in Exhibit "D".

23 9. OWNERSHIP OF DATA. All materials, information and data
24 prepared, developed, or assembled by Consultant or furnished to Consultant in connection
25 with this Agreement, including but not limited to documents, estimates, calculations,
26 studies, maps, graphs, charts, computer disks, computer source documentation, samples,
27 models, reports, summaries, drawings, designs, notes, plans, information, material, and
28 memorandum ("Data") shall be the exclusive property of City. Data shall be given to City,

1 and City shall have the unrestricted right to use and disclose the Data in any manner and
2 for any purpose without payment of further compensation to Consultant. Copies of Data
3 may be retained by Consultant but Consultant warrants that Data shall not be made
4 available to any person or entity for use without the prior approval of City. This warranty
5 shall survive termination of this Agreement for five (5) years.

6 10. TERMINATION. Either party shall have the right to terminate this
7 Agreement for any reason or no reason at any time by giving fifteen (15) calendar days
8 prior written notice to the other party. In the event of termination under this Section, City
9 shall pay Consultant for services satisfactorily performed and costs incurred up to the
10 effective date of termination for which Consultant has not been previously paid. The
11 procedures for payment in Section 1.B. with regard to invoices shall apply. On the effective
12 date of termination, Consultant shall deliver to City all Data developed or accumulated in
13 the performance of this Agreement, whether in draft or final form, or in process. And,
14 Consultant acknowledges and agrees that City's obligation to make final payment is
15 conditioned on Consultant's delivery of the Data to the City.

16 11. CONFIDENTIALITY. Consultant shall keep the Data confidential and
17 shall not disclose the Data or use the Data directly or indirectly other than in the course of
18 performing its services, during the term of this Agreement and for five (5) years following
19 expiration or termination of this Agreement. In addition, Consultant shall keep confidential
20 all information, whether written, oral, or visual, obtained by any means whatsoever in the
21 course of performing its services for the same period of time. Consultant shall not disclose
22 any or all of the Data to any third party, or use it for Consultant's own benefit or the benefit
23 of others except for the purpose of this Agreement.

24 12. BREACH OF CONFIDENTIALITY. Consultant shall not be liable for
25 a breach of confidentiality with respect to Data that: (a) Consultant demonstrates
26 Consultant knew prior to the time City disclosed it; or (b) is or becomes publicly available
27 without breach of this Agreement by Consultant; or (c) a third party who has a right to
28 disclose does so to Consultant without restrictions on further disclosure; or (d) must be

1 disclosed pursuant to subpoena or court order.

2 13. ADDITIONAL COSTS AND REDESIGN.

3 A. Any costs incurred by the City due to Consultant's failure to
4 meet the standards required by the scope of work or Consultant's failure to perform
5 fully the tasks described in the scope of work which, in either case, causes the City
6 to request that Consultant perform again all or part of the Scope of Work shall be at
7 the sole cost of Consultant and City shall not pay any additional compensation to
8 Consultant for its re-performance.

9 B. If the Project involves construction and the scope of work
10 requires Consultant to prepare plans and specifications with an estimate of the cost
11 of construction, then Consultant may be required to modify the plans and
12 specifications, any construction documents relating to the plans and specifications,
13 and Consultant's estimate, at no cost to City, when the lowest bid for construction
14 received by City exceeds by more than ten percent (10%) Consultant's estimate.
15 This modification shall be submitted in a timely fashion to allow City to receive new
16 bids within four (4) months after the date on which the original plans and
17 specifications were submitted by Consultant.

18 14. AMENDMENT. This Agreement, including all Exhibits, shall not be
19 amended, nor any provision or breach waived, except in writing signed by the parties which
20 expressly refers to this Agreement.

21 15. LAW. This Agreement shall be governed by and construed pursuant
22 to the laws of the State of California (except those provisions of California law pertaining
23 to conflicts of laws). Consultant shall comply with all laws, ordinances, rules and
24 regulations of and obtain all permits, licenses, and certificates required by all federal, state
25 and local governmental authorities.

26 16. ENTIRE AGREEMENT. This Agreement, including all Exhibits,
27 constitutes the entire understanding between the parties and supersedes all other
28 agreements, oral or written, with respect to the subject matter in this Agreement.

1 17. INDEMNITY.

2 A. Consultant shall indemnify, protect and hold harmless City, its
3 Boards, Commissions, and their officials, employees and agents ("Indemnified
4 Parties"), from and against any and all liability, claims, demands, damage, loss,
5 obligations, causes of action, proceedings, awards, fines, judgments, penalties,
6 costs and expenses, arising or alleged to have arisen, in whole or in part, out of or
7 in connection with (1) Consultant's breach or failure to comply with any of its
8 obligations contained in this Agreement, or (2) negligent or willful acts, errors,
9 omissions or misrepresentations committed by Consultant, its officers, employees,
10 agents, subcontractors, or anyone under Consultant's control, in the performance
11 of work or services under this Agreement (collectively "Claims" or individually
12 "Claim").

13 B. In addition to Consultant's duty to indemnify, Consultant shall
14 have a separate and wholly independent duty to defend Indemnified Parties at
15 Consultant's expense by legal counsel approved by City, from and against all
16 Claims, and shall continue this defense until the Claims are resolved, whether by
17 settlement, judgment or otherwise. No finding or judgment of negligence, fault,
18 breach, or the like on the part of Consultant shall be required for the duty to defend
19 to arise. City shall notify Consultant of any Claim, shall tender the defense of the
20 Claim to Consultant, and shall assist Consultant, as may be reasonably requested,
21 in the defense.

22 C. If a court of competent jurisdiction determines that a Claim was
23 caused by the sole negligence or willful misconduct of Indemnified Parties,
24 Consultant's costs of defense and indemnity shall be (1) reimbursed in full if the
25 court determines sole negligence by the Indemnified Parties, or (2) reduced by the
26 percentage of willful misconduct attributed by the court to the Indemnified Parties.

27 D. To the extent this Agreement is a professional service
28 agreement for work or services performed by a design professional (architect,

1 landscape architect, professional engineer or professional land surveyor), the
2 provisions of this Section regarding Consultant's duty to defend and indemnify shall
3 be limited as provided in California Civil Code Section 2782.8, and shall apply only
4 to Claims that arise out of, pertain to, or relate to the negligence, recklessness, or
5 willful misconduct of the Consultant.

6 E. The provisions of this Section shall survive the expiration or
7 termination of this Agreement.

8 18. AMBIGUITY. In the event of any conflict or ambiguity between this
9 Agreement and any Exhibit, the provisions of this Agreement shall govern.

10 19. NONDISCRIMINATION.

11 A. In connection with performance of this Agreement and subject
12 to applicable rules and regulations, Consultant shall not discriminate against any
13 employee or applicant for employment because of race, religion, national origin,
14 color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap, or
15 disability. Consultant shall ensure that applicants are employed, and that employees
16 are treated during their employment, without regard to these bases. These actions
17 shall include, but not be limited to, the following: employment, upgrading, demotion
18 or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay
19 or other forms of compensation, and selection for training, including apprenticeship.

20 B. It is the policy of City to encourage the participation of
21 Disadvantaged, Minority and Women-owned Business Enterprises in City's
22 procurement process, and Consultant agrees to use its best efforts to carry out this
23 policy in its use of subconsultants and contractors to the fullest extent consistent
24 with the efficient performance of this Agreement. Consultant may rely on written
25 representations by subconsultants and contractors regarding their status.
26 Consultant shall report to City in May and in December or, in the case of short-term
27 agreements, prior to invoicing for final payment, the names of all subconsultants
28 and contractors hired by Consultant for this Project and information on whether or

1 not they are a Disadvantaged, Minority or Women-Owned Business Enterprise, as
2 defined in Section 8 of the Small Business Act (15 U.S.C. Sec. 637).

3 20. EQUAL BENEFITS ORDINANCE. Unless otherwise exempted in
4 accordance with the provisions of the Ordinance, this Agreement is subject to the
5 applicable provisions of the Equal Benefits Ordinance (EBO), section 2.73 et seq. of the
6 Long Beach Municipal Code, as amended from time to time.

7 A. During the performance of this Agreement, the Consultant
8 certifies and represents that the Consultant will comply with the EBO. The
9 Consultant agrees to post the following statement in conspicuous places at its place
10 of business available to employees and applicants for employment:

11 "During the performance of a contract with the City of Long Beach, the
12 Consultant will provide equal benefits to employees with spouses and its
13 employees with domestic partners. Additional information about the City of
14 Long Beach's Equal Benefits Ordinance may be obtained from the City of
15 Long Beach Business Services Division at 562-570-6200."

16 B. The failure of the Consultant to comply with the EBO will be
17 deemed to be a material breach of the Agreement by the City.

18 C. If the Consultant fails to comply with the EBO, the City may
19 cancel, terminate or suspend the Agreement, in whole or in part, and monies due or
20 to become due under the Agreement may be retained by the City. The City may
21 also pursue any and all other remedies at law or in equity for any breach.

22 D. Failure to comply with the EBO may be used as evidence
23 against the Consultant in actions taken pursuant to the provisions of Long Beach
24 Municipal Code 2.93 et seq., Contractor Responsibility.

25 E. If the City determines that the Consultant has set up or used its
26 contracting entity for the purpose of evading the intent of the EBO, the City may
27 terminate the Agreement on behalf of the City. Violation of this provision may be
28 used as evidence against the Consultant in actions taken pursuant to the provisions

1 of Long Beach Municipal Code section 2.93 et seq., Contractor Responsibility.

2 21. NOTICES. Any notice or approval required by this Agreement shall
3 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,
4 postage prepaid, addressed to Consultant at the address first stated above, and to the City
5 at 333 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager with a
6 copy to the City Engineer at the same address. Notice of change of address shall be given
7 in the same manner as stated for other notices. Notice shall be deemed given on the date
8 deposited in the mail or on the date personal delivery is made, whichever occurs first.

9 22. COPYRIGHTS AND PATENT RIGHTS.

10 A. Consultant shall place the following copyright protection on all
11 Data: © City of Long Beach, California ____, inserting the appropriate year.

12 B. City reserves the exclusive right to seek and obtain a patent or
13 copyright registration on any Data or other result arising from Consultant's
14 performance of this Agreement. By executing this Agreement, Consultant assigns
15 any ownership interest Consultant may have in the Data to the City.

16 C. Consultant warrants that the Data does not violate or infringe
17 any patent, copyright, trade secret or other proprietary right of any other party.
18 Consultant agrees to and shall protect, defend, indemnify and hold City, its officials
19 and employees harmless from any and all claims, demands, damages, loss, liability,
20 causes of action, costs or expenses (including reasonable attorneys' fees) whether
21 or not reduced to judgment, arising from any breach or alleged breach of this
22 warranty.

23 23. COVENANT AGAINST CONTINGENT FEES. Consultant warrants
24 that Consultant has not employed or retained any entity or person to solicit or obtain this
25 Agreement and that Consultant has not paid or agreed to pay any entity or person any fee,
26 commission, or other monies based on or from the award of this Agreement. If Consultant
27 breaches this warranty, City shall have the right to terminate this Agreement immediately
28 notwithstanding the provisions of Section 10 or, in its discretion, to deduct from payments

1 due under this Agreement or otherwise recover the full amount of the fee, commission, or
2 other monies.

3 24. WAIVER. The acceptance of any services or the payment of any
4 money by City shall not operate as a waiver of any provision of this Agreement or of any
5 right to damages or indemnity stated in this Agreement. The waiver of any breach of this
6 Agreement shall not constitute a waiver of any other or subsequent breach of this
7 Agreement.

8 25. CONTINUATION. Termination or expiration of this Agreement shall
9 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,
10 17, 19, 22, and 28 prior to termination or expiration of this Agreement.

11 26. TAX REPORTING. As required by federal and state law, City is
12 obligated to and will report the payment of compensation to Consultant on Form 1099-
13 Misc. Consultant shall be solely responsible for payment of all federal and state taxes
14 resulting from payments under this Agreement. Consultant shall submit Consultant's
15 Employer Identification Number (EIN), or Consultant's Social Security Number if
16 Consultant does not have an EIN, in writing to City's Accounts Payable, Department of
17 Financial Management. Consultant acknowledges and agrees that City has no obligation
18 to pay Consultant until Consultant provides one of these numbers.

19 27. ADVERTISING. Consultant shall not use the name of City, its officials
20 or employees in any advertising or solicitation for business or as a reference, without the
21 prior approval of the City Manager or designee.

22 28. AUDIT. City shall have the right at all reasonable times during the
23 term of this Agreement and for a period of five (5) years after termination or expiration of
24 this Agreement to examine, audit, inspect, review, extract information from, and copy all
25 books, records, accounts, and other documents of Consultant relating to this Agreement.

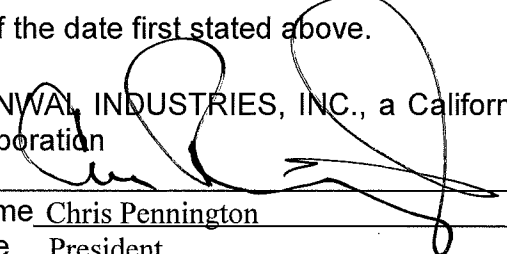
26 29. THIRD PARTY BENEFICIARY. This Agreement is not intended or
27 designed to or entered for the purpose of creating any benefit or right for any person or
28 entity of any kind that is not a party to this Agreement.

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IN WITNESS WHEREOF, the parties have caused this document to be duly executed with all formalities required by law as of the date first stated above.

PENWAL INDUSTRIES, INC., a California corporation

_____, 2019

By 
Name Chris Pennington
Title President

_____, 2019

By _____
Name _____
Title _____

Tom Modica
Assistant City Manager Consultant"

EXECUTED PURSUANT
TO SECTION 301 OF CITY OF LONG BEACH, a municipal
THE CITY CHARTER corporation

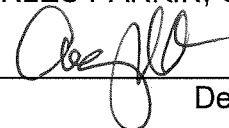
June 5, 2019

By 
City Manager

"City"

This Agreement is approved as to form on June 5, 2019.

CHARLES PARKIN, City Attorney

By 
Deputy

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Lona Beach, CA 90802-4664

EXHIBIT A AND B

SCOPE OF WORK AND RATE



10611 Acacia Street
Rancho Cucamonga, CA 91730
909.466.1555
www.penwal.com

April 24, 2019

Marilyn Surakus
Program Manager
Long Beach Public Works
P: (562) 570-5793
www.longbeach.gov/pw/

RE: Revised Long Beach Civic Center Fire Department & Police Department (LBCC FDPD) Memorial - Estimate

Dear Marilyn,

Thank you for reaching out to Penwal for this FDPD memorial feature, for the city of Long Beach. We are extremely excited to engage and work with you and Skidmore, Owens & Merrill, LLC on this project.

The custom design and complexity level of the build are a perfect fit for our capabilities, not to mention Penwal's experience in producing iconic elements, architectural pieces and impactful environments worldwide. When brought on early to a project team, we add value by providing solutions to accommodate unique specifications, while keeping considerations of budget parameters and schedule requirements. This memorial feature will be reviewed and handled in the same manner.

Based on our recent conversations, existing information and SOM Police and Fire Memorial drawing package, we have presented a budgetary price for this feature. Variables that influence the pricing are materials, design configuration and installation system. As we move into the production phase, our approach would be to use the best available materials, and fabrication methods to meet the design intent, structural integrity, and budget parameters.

We would love to work together with you and the project team on this project, and allowing Penwal flexibility with the design/build, we can help make it happen!

Please reach out with any questions or need for additional information.

Kind regards,

Diane

Diane Bader | Director, Business Development
PENWAL INDUSTRIES, INC
909.466.1555 EXT. 215



10611 Acacia Street
Rancho Cucamonga, CA 91730
909.466.1555
www.penwal.com

LBCC FDPD Memorial – Estimate

Memorial overall description includes:

- Five (5) curved stacked rows of triangular-shaped adjoined 'Flags', running approximately 55' by 6'6" tall.
- Each row of flags includes a front radius, interior diagonal and outer radius, in a uniquely configured pattern.
- Apron by Penwal and to include content inscription and plaques. Please see attached Penwal "layout of project responsibilities" drawing dated 4/16/19 for additional scope clarification. Please note we have provided an allowance for this element of the project, as we feel there is an opportunity to refine the design, meet the design intent and save costs.

General Assumptions:

- Design/build project.
- Collaborate with SOM on design refinement of memorial design.
- Penwal may share normally produced work product ie. drawings, scale models, sample materials and finishes with SOM as part of the normal development of the memorial.
- Penwal will be directly under contract with the City of Long Beach.
- A precision construction approach is critical for the success of the project. It is critical that site work by others be completed in a very precise manner, stricter than traditional construction methods and tolerances.
- All Penwal built elements of the project will be built in a production line method for reduced costs.
- Penwal's scope includes all work above structural 'table top'. (Below grade level, by others.)
- Penwal to assist the design team to refine structural attachment methods. Penwal to approve of field mate up of our assembly to the site. Our current thinking is that welding needs to be reduced or eliminated.
- Penwal will exercise flexibility and select the materials and fabrication methods best suited to meet design intent and budget. We will work with the design team to explore materials.
- Once final design of memorial is established Penwal can assist lighting, GC and other trade/vendor scope and work schedule requirements.
- SOM to provide accurate up to date usable computer models and information within one week of start.
- SOM to provide accurate list of names for flags.
- SOM to approve of RFI's within 48 hours.
- Assume staging area and clear/easy access is provided for installation.
- Shipping and installation included.
- Bi-weekly calls or face to face meetings alternating between SOM or project site. Additionally, there will be a series of required visits to Penwal to discuss and view processes, materials, mockups, etc.



10611 Acacia Street
Rancho Cucamonga, CA 91730
909.466.1555
www.penwal.com

Fabrication Inclusions / Scope Detail:

- Build modular, creating a geometric standard for an efficient on-site install.
- Memorial may consist of six (6) pre-fit sections (estimated), which include flags and poles. Prior to shipping, these sections will be sub assembled in Penwal's facility for final viewing by SOM.
- Refine pole and connector finishes, we will explore sleeve, paint, polish and powder coat options.
- Triangular shaped flags:
 - o Three (3) sizes – inner radius, diagonal radius, and outer radius – approx. 1'3" x 1'3" x 1'5" with slight variations.
 - o We will consider all options of bronze material for the flag including cast, sheet and stamped.
 - o Two (2) finish colors; 50% light bronze, 50% medium bronze. There are inherent or natural variations in color and texture of bronze which is acceptable. We will provide three (3) color sample board mockups.
 - o Total of 318 flags. A 25% reduction of flags in outer radius (approx. 26) has been included. This quantity includes attic stock and two black flags.
 - o Foundry method for flags is unattainable with certainty. With Penwal utilizing an in-house method, it will provide an internal control of process, materials and QC to meet a 9/11/19 completion.

- Refine, reconfigure and simplify current 'Flag' connections, construction components and pole attachment system. The pole wrap around detail for flags maybe omitted due to cost and schedule. This detail can possibly be added back in, but cost and schedule will be affected.
- Application (or inscribe) of Flag identification content (name, badge, date), to be determined after exploring options as they pertain to cost, durability and maintainability.
- Includes hardware/bolt-up or weld for poles. Penwal to determine attachment method.
- Metal variation and natural patina oxidation acceptable.
- One (1) mockup of flag and post/attachment design and material finish samples provided. We can provide additional mockups at additional costs upon request.
- Stamped engineering of Penwal built items from base plate up, provided by Penwal.

- ❖ **Estimated Fabrication Price: \$549,500.**
- ❖ **Estimated Installation Price: \$500.**
- ❖ **Separate add-on allocation for Fabrication of Apron: \$35,000. to \$75,000.**

Production/Delivery Schedule: *Begins upon receipt of order and startup payment.*

- To meet the September 11, 2019 installation completion, an April 22, 2019 approval/start date is required. A shorter completion schedule may have an impact on pricing.

General Terms/Conditions:

- Payment terms: \$25,000. start-up, \$75,000 in 15 days, with monthly progress payments. 95% of balance due at completion of fabrication, prior to shipping and installation.
- Estimate is based on complete scope of work as stated. Changes in design, quantity or scope will require an estimate review and applicable revisions to estimate pricing.



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Exclusions:

The following are not included in this estimate but can be provided upon request.

- Purchase of lighting fixtures, we can typically save significant costs thru our sources. Option: cost plus 10%.
- Taxes, permits, city jurisdiction, bonds, union or prevailing wage, on-site impacts, overtime or other fees.
- Lighting, Electrical connections, all facility improvements, roadway/traffic control.
- Benches, landscaping, below Penwal base plate and grade work.

Marilyn, again we are looking forward to working together with you and your team on this very exciting project. Please give us a call if you have any questions or need to discuss further. We are available at your earliest convenience. Thank you again.

Both parties accept and approve this Design/Build Estimate Proposal by signature below:

Long Beach Public Works

Authorized Representative Name (please print)

Title

Signature

Date

Penwal Industries, Inc.

Chris Pennington

Authorized Representative Name (Please print)

President

Title

[Handwritten Signature]

Signature

Date

EXHIBIT C

CITY'S REPRESENTATIVE IS
MARILYN SURAKUS, PROJECT MANAGER
562/570-5793
MARILYN.SURAKUS@LONGBEACH.GOV

EXHIBIT D

NO INFORMATION OR MATERIALS ARE
PROVIDED BY THE CITY OF LONG BEACH.

EXHIBIT E

CONTRACTORS REPRESENTATIVE IS
DIANE BADER, DIRECTOR
909/466-1555 EXT 215
DIANE@PENWAL.COM