

## AGREEMENT

# 29515

THIS AGREEMENT is made and entered, in duplicate, as of February 9, 2006 for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting held on February 7, 2006, by and between MARTINEZ ARCHITECTS, INC., California corporation, whose business address is 8405 Pershing Drive, Suite 201, Playa del Rey, California 90293 ("Consultant"), and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, the City requires specialized architectural design services requiring unique skills to be performed in connection with the design and engineering for the California Recreation Center Teen Center Project ("Project"); and

WHEREAS, City has selected Consultant in accordance with City's administrative procedures and City has ascertained that Consultant and its employees are qualified, licensed, if so required, and experienced in performing such specialized services; and

WHEREAS, City desires to have Consultant perform said specialized architectural design services, and Consultant is willing and able to do so on the terms herein;

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

### 1. SCOPE OF WORK OR SERVICES.

A. Consultant shall furnish specialized services more particularly set forth in Exhibit "A", attached hereto and incorporated herein by this reference, in accordance with the standards of the profession, and City shall pay for said services in the manner described below, not to exceed \$325,800.00, at the rates or charges described in Exhibit "A".

B. Consultant may select the time and place of performance hereunder provided, however, that access to City documents, records, and the like, if needed by

1 Consultant, shall be available only during City's normal business hours and provided that  
2 milestones for performance, if any, are met.

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

16 D. Consultant represents that Consultant has obtained all necessary

1 this reference. Consultant shall advise and inform City's representative of the work in  
2 progress on the Project in sufficient detail so as to assist City's representative in making  
3 presentations and in holding meetings for the exchange of information. City shall furnish  
4 to Consultant information or materials, if any, described in Exhibit "C" attached hereto and  
5 incorporated herein by this reference, and shall perform any other tasks described therein.

6 B. The parties acknowledge that a substantial inducement to City for entering  
7 this Agreement was and is the reputation and skill of Consultant's key employee Norberto  
8 R. Martinez. City shall have the right to approve any person proposed by Consultant to  
9 replace that key employee.

10 4. INDEPENDENT CONTRACTOR. In performing services hereunder,  
11 Consultant is and shall act as an independent contractor and not an employee,  
12 representative, or agent of City. Consultant shall have control of Consultant's work and the  
13 manner in which it is performed. Consultant shall be free to contract for similar services  
14 to be performed for others during this Agreement provided, however, that Consultant acts  
15 in accordance with Section 9 and Section 11 of this Agreement. Consultant acknowledges  
16 and agrees that a) City will not withhold taxes of any kind from Consultant's compensation,  
17 b) City will not secure workers' compensation or pay unemployment insurance to, for or on  
18 Consultant's behalf, and c) City will not provide and Consultant is not entitled to any of the  
19 usual and customary rights, benefits or privileges of City employees. Consultant expressly  
20 warrants that neither Consultant nor any of Consultant's employees or agents shall  
21 represent themselves to be employees or agents of City.

22 5. INSURANCE. As a condition precedent to the effectiveness of this  
23 Agreement, Consultant shall procure and maintain at Consultant's expense for the duration  
24 of this Agreement from insurance companies that are admitted to write insurance in  
25 California or from authorized non-admitted insurance companies that have ratings of or  
26 equivalent to A:VIII by A.M. Best Company the following insurance:

27 (a) Commercial general liability insurance (equivalent in scope to ISO  
28 form CG 00 01 11 85 or CG 00 01 11 88) in an amount not less than One

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Million Dollars (\$1,000,000) per each occurrence and Two Million Dollars (\$2,000,000) general aggregate. Such coverage shall include but not be limited to broad form contractual liability, cross liability, independent contractors liability, and products and completed operations liability. The City, its officials, employees, agents and Martinez Architects, Inc. shall be named as additional insureds by endorsement (on City's endorsement form or on an endorsement equivalent in scope to ISO form CG 20 10 11 85 or

1 provide for an extended reporting period of not less than one year, commencing on the  
2 date this Agreement expires or is terminated, unless Consultant guarantees that  
3 Consultant will provide to the City evidence of uninterrupted, continuing coverage for a  
4 period of not less than three (3) years, commencing on the date this Agreement expires  
5 or is terminated.

6 Consultant shall require that all contractors and subcontractors which  
7 Consultant uses in the performance of services hereunder maintain insurance in  
8 compliance with this Section unless otherwise agreed in writing by City's Risk Manager or  
9 designee.

10 Prior to the start of performance, Consultant shall deliver to City certificates  
11 of insurance and required endorsements for approval as to sufficiency and form. The  
12 certificate and endorsements for each insurance policy shall contain the original signature  
13 of a person authorized by that insurer to bind coverage on its behalf. In addition,  
14 Consultant, shall, within thirty (30) days prior to expiration of the insurance required herein,  
15 furnish to City certificates of insurance and endorsements evidencing renewal of such  
16 insurance. City reserves the right to require complete certified copies of all policies of  
17 Consultant and Consultant's contractors and subcontractors, at any time. Consultant shall  
18 make available to City's Risk Manager or designee all books, records and other information  
19 relating to the insurance coverage required herein, during normal business hours.

20 Any modification or waiver of the insurance requirements herein shall only  
21 be made with the approval of City's Risk Manager or designee. Not more frequently than  
22 once a year, the City's Risk Manager or designee may require that Consultant,  
23 Consultant's contractors and subcontractors change the amount, scope or types of  
24 coverages required herein if, in his or her sole opinion, the amount, scope, or types of  
25 coverages herein are not adequate.

26 The procuring or existence of insurance shall not be construed or deemed  
27 as a limitation on liability relating to Consultant's performance or as full performance of or  
28 compliance with the indemnification provisions of this Agreement

1                   6.     ASSIGNMENT AND SUBCONTRACTING.     This Agreement  
2     contemplates the personal services of Consultant and Consultant's employees, and the  
3     parties acknowledge that a substantial inducement to City for entering this Agreement was  
4     and is the professional reputation and competence of Consultant and Consultant's  
5     employees. Consultant shall not assign its rights or delegate its duties hereunder, or any  
6     interest herein, or any portion hereof, without the prior approval of City, except that  
7     Consultant may with the prior approval of the City Manager of City, assign any moneys due  
8     or to become due the Consultant hereunder. Any attempted assignment or delegation  
9     shall be void, and any assignee or delegate shall acquire no right or interest by reason of  
10    such attempted assignment or delegation. Furthermore, Consultant shall not subcontract  
11    any portion of the performance required hereunder without the prior approval of the City  
12    Manager or designee, nor substitute an approved subcontractor without said prior approval  
13    to the substitution. Nothing stated in this Section 6 shall prevent Consultant from  
14    employing as many employees as Consultant deems necessary for performance of this  
15    Agreement.

16                   7.     CONFLICT OF INTEREST. Consultant, by executing this Agreement,  
17    certifies and shall obtain similar certifications from Consultant's employees and approved  
18    subcontractors that, at the time Consultant executes this Agreement and for its duration,  
19    Consultant does not and will not perform services for any other client which would create  
20    a conflict, whether monetary or otherwise, as between the interests of City hereunder and  
21    the interests of such other client.

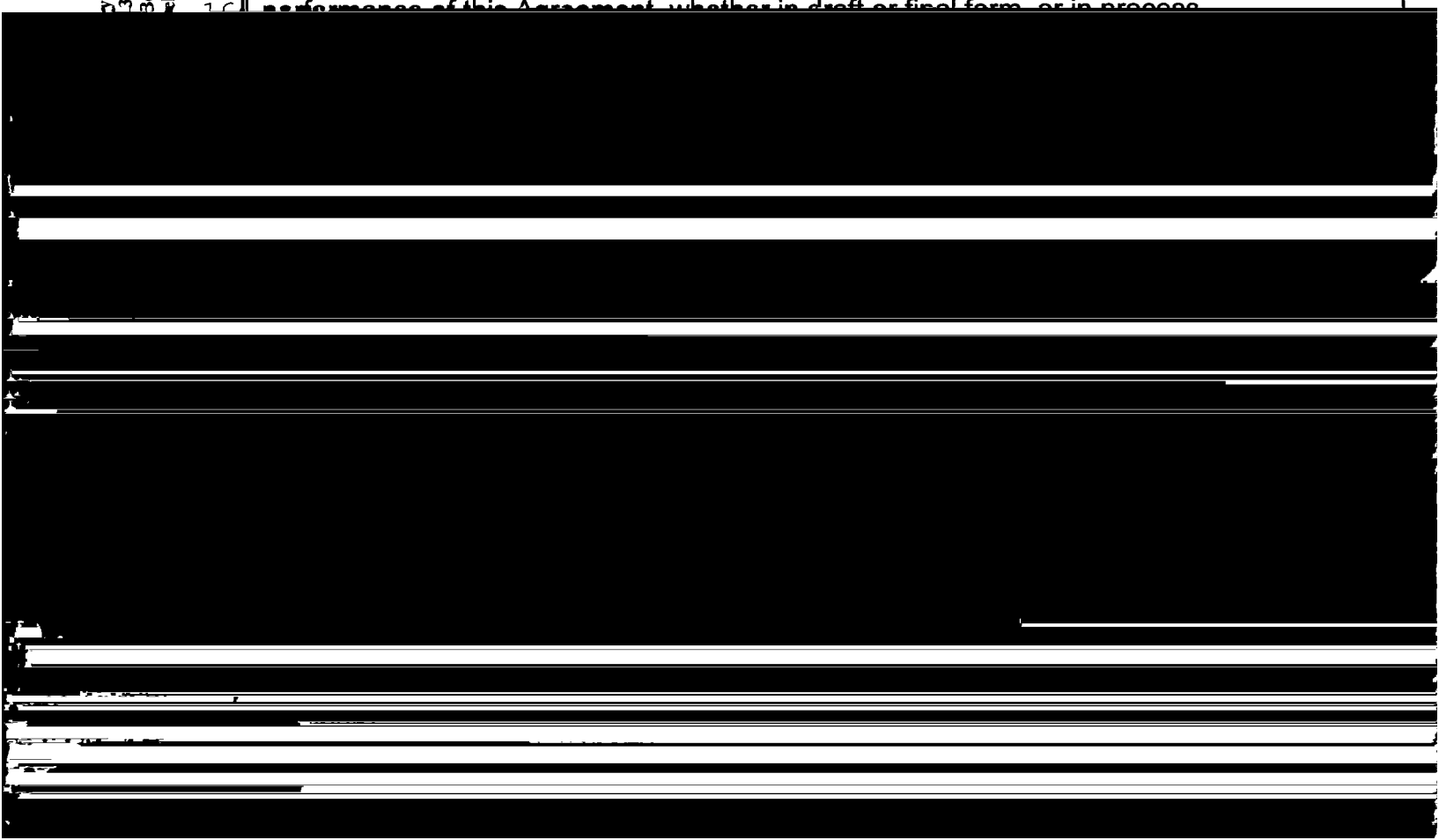
22                   8.     MATERIALS. Consultant shall furnish all labor and supervision,  
23    supplies, material, tools, machinery, equipment, appliances, transportation, and services  
24    necessary to or used in the performance of Consultant's obligations hereunder, except as  
25    stated in Exhibit "C", if any.

26                   9.     OWNERSHIP OF DATA. All materials, information and data prepared,  
27    developed, or assembled by Consultant or furnished to Consultant in connection with this  
28    Agreement, including but not limited to documents, estimates, calculations, studies, maps,

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City Attorney of Long Beach  
3333 West Ocean Boulevard  
Long Beach, California 90802-4664  
Telephone (562) 570-2200

1 graphs, charts, computer disks, computer source documentation, samples, models,  
2 reports, summaries, drawings, designs, notes, plans, information, material, and  
3 memorandum ("Data") shall be the exclusive property of City. Data shall be given to City,  
4 and City shall have the unrestricted right to use and disclose the Data in any manner and  
5 for any purpose without payment of further compensation to Consultant. Copies of Data  
6 may be retained by Consultant but Consultant warrants that Data shall not be made  
7 available to any person or entity for use without the prior approval of City. Said warranty  
8 shall survive termination of this Agreement for five (5) years.

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



1 disclose does so to Consultant without restrictions on further disclosure; or (d) Must be  
2 disclosed pursuant to subpoena or court order.

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

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

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

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

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

28 17. INDEMNITY. Consultant shall indemnify and hold harmless the City,



its Boards, Commissions, the Martinez Architects, Inc., and their officials, employees and agents (collectively in this Section "City") from and against any and all liability, claims, demands, damage, causes of action, proceedings, penalties, loss, costs, and expenses (including attorney's fees, court costs, and expert and witness fees) (collectively "Claims" or individually "Claim"). Claims include allegations and include by way of example but are not limited to: Claims for property damage, personal injury or death arising in whole or in part from any negligent act or omission of Consultant, its officers, employees, agents, sub-consultants, or anyone under Consultant's control (collectively "Indemnitor"); Consultant's breach of this Agreement; misrepresentation; willful misconduct; and Claims by any employee of Indemnitor relating in any way to worker's compensation. Independent of the duty to indemnify and as a free-standing duty on the part of Consultant, Consultant shall defend City and shall continue such defense until the Claim is resolved, whether by settlement, judgment or otherwise. Consultant shall notify the City of any claim within ten (10) days. Likewise, City shall notify Consultant of any claim, shall tender the defense of such claim to Consultant, and shall assist Consultant, as may be reasonably requested, in such defense.

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

19. COSTS. If there is any legal proceeding between the parties to enforce or interpret this Agreement or to protect or establish any rights or remedies hereunder, the prevailing party shall be entitled to its costs and expenses, including reasonable attorneys' fees and court costs (including appeals).

20. NONDISCRIMINATION. In connection with performance of this Agreement and subject to applicable rules and regulations, Consultant shall not discriminate against any employee or applicant for employment because of race, religion, national origin, color, age, sex, sexual orientation, AIDS, HIV status, handicap, or disability. Consultant shall ensure that applicants are employed, and that employees are treated during their employment, without regard to these bases. Such actions shall include, but

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City Attorney of Long Beach  
333 West Ocean Boulevard  
Long Beach, California 90802-4664  
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1 not be limited to, the following: Employment, upgrading, demotion or transfer, recruitment  
2 or recruitment advertising, layoff or termination, rates of pay or other forms of  
3 compensation, and selection for training, including apprenticeship.

4 It is the policy of City to encourage the participation of Disadvantaged,  
5 Minority and Women-owned Business Enterprises in City's procurement process, and  
6 Consultant agrees to use its best efforts to carry out this policy in the award of all approved  
7 subcontracts to the fullest extent consistent with the efficient performance of this  
8 Agreement. Consultant may rely on written representations by subcontractors regarding  
9 their status. City's policy is attached as Exhibit "D" hereto. Consultant shall report to City  
10 in May and in December or, in the case of short-term agreements, prior to invoicing for final  
11 payment, the names of all sub-consultants engaged by Consultant for this Project and  
12 information on whether or not they are a Disadvantaged, Minority or Women-Owned  
13 Business Enterprise, as defined in Section 8 of the Small Business Act (15 U.S.C.  
14 Sec. 637).

15 21. NOTICES. Any notice or approval required hereunder by either party  
16 shall be in writing and personally delivered or deposited in the U.S. Postal Service, first  
17 class, postage prepaid, addressed to Consultant at the address first stated herein, and to  
18 the City at 333 West Ocean Boulevard, Long Beach, California 90802 Attn: City Manager,  
19 with a copy to the Director, Parks, Recreation & Marine at 2780 Studebaker Road, Long  
20 Beach, California 90815. Notice of change of address shall be given in the same manner  
21 as stated herein for other notices. Notice shall be deemed given on the date deposited in  
22 the mail or on the date personal delivery is made, whichever first occurs, and failure to

23 providing any of the notice shall not be deemed failure to give notice.

1 Agreement. By executing this Agreement, Consultant assigns any ownership interest  
2 Consultant may have in the Data to City.

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

9 23. COVENANT AGAINST CONTINGENT FEES. Consultant warrants  
10 that Consultant has not employed or retained any entity or person to solicit or obtain this  
11 Agreement and that Consultant has not paid or agreed to pay any entity or person any fee,  
12 commission, or other monies based on or from the award of this Agreement. If Consultant  
13 breaches this warranty, City shall have the right to terminate this Agreement immediately  
14 notwithstanding the provisions of Section 10 hereof or, in its discretion, to deduct from  
15 payments due under this Agreement or otherwise recover the full amount of such fee,  
16 commission, or other monies.

17 24. WAIVER. The acceptance of any services or the payment of any  
18 money by City shall not operate as a waiver of any provision of this Agreement, or of any  
19 right to damages or indemnity stated in this Agreement. The waiver of any breach of this  
20 Agreement shall not constitute a waiver of any other or subsequent breach of this  
21 Agreement.

22 25. CONTINUATION. Termination or expiration of this Agreement shall  
23 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,  
24 16, 18, 21, and 27 prior to termination or expiration of this Agreement.

25 26. TAX REPORTING. As required by federal and state law, City is  
26 obligated to and will report the payment of compensation to Consultant on Form 1099-  
27 Misc. Consultant shall be solely responsible for payment of all federal and state taxes  
28 resulting from payments under this Agreement. Consultant's Employer Identification

1 Number is 95-4084203. If Consultant has a Social Security Number rather than an  
2 Employer Identification Number, then Consultant shall submit that Social Security Number  
3 in writing to City's Accounts Payable, Department of Financial Management. Consultant  
4 acknowledges and agrees that City has no obligation to pay Consultant hereunder until  
5 Consultant provides one of the aforesaid Numbers.

6 27. ADVERTISING. Consultant shall not use the name of City, its officials  
7 or employees in any advertising or solicitation for business, nor as a reference, without the  
8 prior approval of the City Manager or designee.

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

13 29. NO PECULIAR RISK. Consultant acknowledges and agrees that the  
14 services to be performed hereunder do not constitute a peculiar risk of bodily harm and

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executed with all formalities required by law as of the date first stated herein.

MARTINEZ ARCHITECTS, INC., California corporation

2-25-06, 2006

By *Norberto R. Martinez*  
President

NORBERTO R. MARTINEZ  
(Type or Print Name)

2-25-06, 2006

By *Norberto R. Martinez*  
Secretary

NORBERTO R. MARTINEZ  
(Type or Print Name)

"Consultant"

CITY OF LONG BEACH, a municipal corporation

3/14/, 2006

By *Mark Miller*  
City Manager

"City"

This Agreement is approved as to form on 3/8, 2006.

ROBERT E. SHANNON, City Attorney

By *R. E. Shannon*  
Senior Deputy



Exhibit "A"

Norberto R. Martinez, Architect + Tony Morera, Architect

December 7, 2005

City of Long Beach  
Department of Parks, Recreation and Marine  
2760 Studebaker Road  
Long Beach, CA 90815

Attn: Mrs. Anna Mendiola, Park Development Officer

Proj: **California Recreation Center Teen Center Project**

Subj: Proposal for Architectural/Engineering Services

Dear Ms. Mendiola:

Martinez Architects is pleased to be selected for the Construction of a New Teen Center and Renovation of the Existing Community Center. Based on our current understanding of the Scope of Work (Appendix A.1) and meeting on November 22, 2005, we propose the following:

Basic Services (Fixed Fee) – Items C, i, ii & D:

Concept Plan	\$ 50,000.00	
Design Development	50,000.00	
Construction Documents	100,000.00	
Plan Check Approval	15,000.00	
Final Documents	<u>15,000.00</u>	
Total Basic Services:		\$ 230,000.00

Construction Phase (T&M) – Item C,iii:

Pre-Bid Meeting/s	\$ 1,000.00	
Pre-Construction Meeting/s	1,000.00	
Shop Drawing Review	6,400.00	
R.F.I.s	12,800.00	
Field Meetings (1/week-9 mos.)	24,000.00	
Punch List	6,400.00	
Project Closeout	6,400.00	
Record Drawings	<u>6,400.00</u>	
Total Construction Phase:		294,400.00

8405 Pershing Drive, Suite 201 • Playa del Rey, California 90293 • Tel: 310 306 4708 • Fax: 310 306 8896  
755 Lakefield Road, Suite C • Thousand Oaks, California 91361 • Tel: 805 494 7375 • Fax: 805 494 9896

[www.martinezarchitects.com](http://www.martinezarchitects.com)



Norberto R. Martinez, Architect + Tony Morera, Architect

## RATE SCHEDULE FOR PROFESSIONAL SERVICES

October 2005

<u>Classification</u>	<u>Rate Per Hour</u>
Principal Architect	\$ 140.00
Principal Civil Engineer	140.00
Principal Structural Engineer	140.00
Principal Mechanical Engineer	140.00
Principal Electrical Engineer	140.00
Principal Landscape Architect	140.00
Project Manager / Senior Architect	\$ 120.00 / 105.00
Project Manager / Senior Civil Engineer	120.00 / 105.00
Project Manager / Senior Structural	120.00 / 105.00
Project Manager / Senior Mechanical	120.00 / 105.00
Project Manager / Senior Electrical	120.00 / 105.00
Project Manager / Senior Landscape Architect	120.00 / 105.00
Cost Estimator	\$ 105.00
Specifications Writer	\$ 105.00
Architect	\$ 95.00
Interior Designer / Project Coordinator	\$ 85.00
CADD Technician / Senior Draftsperson-Architectural	\$ 65.00
CADD Technician / Senior Draftsperson-Civil	\$ 73.00
CADD Technician / Senior Draftsperson-Structural	\$ 73.00
CADD Technician / Senior Draftsperson-Mechanical	\$ 73.00
CADD Technician / Senior Draftsperson-Electrical	\$ 73.00
CADD Technician / Senior Draftsperson-Landscape	\$ 65.00
Office Support / Clerical	\$ 52.00

Oct 05 Rate Schedule.doc

8405 Pershing Drive, Suite 201 · Playa del Rey, California 90293 · Tel: 310 306 4708 · Fax: 310 306 8896  
755 Lakefield Road, Suite C · Thousand Oaks, California 91361 · Tel: 805 494 7375 · Fax: 805 494 9896

[www.martinezarchitects.com](http://www.martinezarchitects.com)

December 7, 2005  
City of Long Beach  
Attn: Ms. Anna Mendiola  
Proj: Cal Rec Teen Center  
Subj: AE Fee Proposal  
Page 2

Miscellaneous Services and Allowances:

Topo Study	\$ 6,000.00	
Geotechnical Report (Soils)	7,400.00	
HazMat Report (Geotech)	9,000.00	
LBPaint/Asbestos Report	2,000.00	
Reproductions Allowance	<u>5,000.00</u>	
<u>Other Misc. Svcs/Allowances:</u>		<u>29,400.00</u>

**Total Proposed A/E Services: \$ 323,800.00**

Attached is our Professional Hourly Rate schedule for monthly billing during the Construction Phase on a T&M basis and any additional services required by the City not covered in this proposal.

The City will be receiving our insurance information directly from our agent.

We are ready to meet with you to discuss any of the above items. We are looking forward to a successful completion of the project and an ongoing relationship with the City of Long Beach.

In the meantime, if you have any questions or need more information, please contact our office. Thank you.

Sincerely,

**Martinez Architects, Inc.**



Norberto R. Martinez, AIA  
President

Enclosure (1)



## Exhibit "B"

City's Representative is Anna Mendiola, and can be reached at (562) 570-3165.

## Exhibit "C"

There is no Exhibit C.