



1 connection with such examination, including without limitation complete audio and visual  
2 recordings of the examination session. Consultant shall provide the information described  
3 in the sentence above to City in connection with any other examination upon the request  
4 of City.

5 B. City shall pay Consultant in due course of payments following receipt from  
6 Consultant and approval by City of invoices showing the services performed. Consultant  
7 shall certify on the invoices that Consultant has performed the services in full conformance  
8 with this Agreement and is entitled to receive payment. Where billing is done and payment  
9 is made on an hourly basis, the parties acknowledge that such arrangement is either  
10 customary practice for Consultant's profession, industry, or business, or is necessary to  
11 satisfy audit and legal requirements which may arise due to the fact that City is a  
12 municipality.

13 C. Consultant represents that Consultant has obtained all necessary  
14 information on conditions and circumstances that may affect performance hereunder.

15 2. TERM. The term of this Agreement shall commence at midnight on  
16 May 11, 2006 and shall terminate at 11:59 p.m. on May 10, 2007, unless sooner  
17 terminated as provided in this Agreement. City shall have the right to exercise two (2)  
18 separate extension options of one-year each by providing written notice to Consultant of  
19 its intention to exercise said option thirty (30) days in advance of the expiration of the then-  
20 current term of this Agreement.

21 3. COORDINATION AND ORGANIZATION. Consultant shall coordinate  
22 performance hereunder with City's representatives. Consultant shall advise and inform  
23 City's representatives of any work in progress in sufficient detail so as to assist City's  
24 representative in making presentations and in holding meetings for the exchange of  
25 information.

26 4. INDEPENDENT CONTRACTOR. In performing services hereunder,  
27 Consultant is and shall act as an independent contractor and not an employee,  
28 representative, or agent of City. Consultant shall have control of Consultant's work and the

1 manner in which it is performed. Consultant shall be free to contract for similar services  
2 to be performed for others during this Agreement provided, however, that Consultant acts  
3 in accordance with Section 9 and Section 11 of this Agreement. Consultant acknowledges  
4 and agrees that a) City will not withhold taxes of any kind from Consultant's compensation,  
5 b) City will not secure workers' compensation or pay unemployment insurance to, for or on  
6 Consultant's behalf, and c) City will not provide and Consultant is not entitled to any of the  
7 usual and customary rights, benefits or privileges of City employees. Consultant expressly  
8 warrants that neither Consultant nor any of Consultant's employees or agents shall  
9 represent themselves to be employees or agents of City.

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

15 (a) Commercial general liability insurance (equivalent in scope to ISO  
16 form CG 00 01 11 85 or CG 00 01 11 88) in an amount not less than One  
17 Million Dollars (\$1,000,000) per each occurrence and Two Million Dollars  
18 (\$2,000,000) general aggregate. Such coverage shall include but not be  
19 limited to broad form contractual liability, cross liability, independent  
20 contractors liability, and products and completed operations liability. The  
21 City, its officials, employees and agents shall be named as additional  
22 insureds by endorsement (on City's endorsement form or on an endorsement  
23 equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85), and  
24 this insurance shall contain no special limitations on the scope of protection  
25 given to the City, its officials, employees and agents.

26 (b) Workers' Compensation insurance as required by the Labor Code  
27 of the State of California and employer's liability insurance in an amount not  
28 less than One Million Dollars (\$1,000,000).

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1 (c) Professional liability or errors and omissions insurance in an  
2 amount not less than One Million Dollars (\$1,000,000) per claim.

3 Any self-insurance program, self-insured retention, or deductible must be  
4 separately approved in writing by City's Risk Manager or designee and shall protect City,  
5 its officials, employees and agents in the same manner and to the same extent as they  
6 would have been protected had the policy or policies not contained retention or deductible  
7 provisions. Each insurance policy shall be endorsed to state that coverage shall not be  
8 reduced, non-renewed, or canceled except after thirty (30) days prior written notice to City,  
9 and shall be primary and not contributing to any other insurance or self-insurance  
10 maintained by City. Consultant shall notify the City in writing within five (5) days after any  
11 insurance required herein has been voided by the insurer or cancelled by the insured.

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

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

26 Any modification or waiver of the insurance requirements herein shall only  
27 be made with the approval of City's Risk Manager or designee. Not more frequently than  
28 once a year, the City's Risk Manager or designee may require that Consultant,

1 Consultant's contractors and subcontractors change the amount, scope or types of  
2 coverages required herein if, in his or her sole opinion, the amount, scope, or types of  
3 coverages herein are not adequate.

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

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

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

27 8. MATERIALS. Consultant shall furnish all labor and supervision,  
28 supplies, material, tools, machinery, equipment, appliances, transportation, and services

1 necessary to or used in the performance of Consultant's obligations hereunder.

2           9.     OWNERSHIP OF DATA. All materials, information and data prepared,  
3 developed, or assembled by Consultant or furnished to Consultant in connection with this  
4 Agreement, including but not limited to documents, estimates, calculations, studies, maps,  
5 graphs, charts, computer disks, computer source documentation, samples, models,  
6 reports, summaries, drawings, designs, notes, plans, information, material, and  
7 memorandum ("Data") shall be the exclusive property of City. Notwithstanding anything  
8 to the contrary in this Section, all proprietary computer models or software developed by  
9 Consultant shall not constitute "Data" for purposes hereof and shall remain the exclusive  
10 property of Consultant. Data shall be given to City in PDF format, and City shall have the  
11 unrestricted right to use and disclose the Data in any manner and for any purpose without  
12 payment of further compensation to Consultant. Copies of Data may be retained by  
13 Consultant but Consultant warrants that Data shall not be made available to any person  
14 or entity for use without the prior approval of City. Said warranty shall survive termination  
15 of this Agreement for five (5) years.

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

24           11.   CONFIDENTIALITY. Consultant shall keep the Data confidential and  
25 shall not disclose the Data or use the Data directly or indirectly other than in the course of  
26 services provided hereunder during the term of this Agreement and for five (5) years  
27 following expiration or termination of this Agreement. In addition, Consultant shall keep  
28 confidential all information, whether written, oral, or visual, obtained by any means

1 whatsoever in the course of Consultant's performance hereunder for the same period of  
2 time. Consultant shall not disclose any or all of the Data to any third party, nor use it for  
3 Consultant's own benefit or the benefit of others except for the purpose of this Agreement.

4 12. BREACH OF CONFIDENTIALITY. Consultant shall not be liable for  
5 a breach of confidentiality with respect to Data that:

6 (a) Consultant demonstrates Consultant knew prior to the time City disclosed  
7 it; or

8 (b) Is or becomes publicly available without breach of this Agreement by  
9 Consultant; or

10 (c) A third party who has a right to disclose does so to Consultant without  
11 restrictions on further disclosure; or

12 (d) Must be disclosed pursuant to subpoena or court order.

13 13. AMENDMENT. This Agreement shall not be amended, nor any  
14 provision or breach hereof waived, except in writing signed by the parties which expressly  
15 refers to this Agreement.

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

21 15. ENTIRE AGREEMENT. This Agreement constitutes the entire  
22 understanding between the parties and supersedes all other agreements, oral or written,  
23 with respect to the subject matter herein.

24 16. INDEMNITY. With respect to services performed hereunder,  
25 Consultant shall indemnify and hold harmless the City, its Boards, Commissions, and their  
26 officials, employees and agents (collectively in this Section "City") from and against any  
27 and all liability, claims, demands, damage, causes of action, proceedings, penalties, loss,  
28 costs, and expenses (including attorney's fees, court costs, and expert and witness

1 fees)(collectively "Claims" or individually "Claim"). Claims include allegations and include  
2 Claims for property damage, monetary or personal injury or death arising in whole or in part  
3 from any negligent act or omission of Consultant, its officers, employees, agents, sub-  
4 consultants, or anyone under Consultant's control (collectively "Indemnitor"); Consultant's  
5 breach of this Agreement; misrepresentation; willful misconduct; and Claims by any  
6 employee of Indemnitor relating in any way to worker's compensation. Independent of the  
7 duty to indemnify and as a free-standing duty on the part of Consultant, Consultant shall  
8 defend City and shall continue such defense until the Claim is resolved, whether by  
9 settlement, judgment or otherwise. Consultant shall notify the City of any claim within ten  
10 (10) days. Likewise, City shall notify Consultant of any claim, shall tender the defense of  
11 such claim to Consultant, and shall assist Consultant, as may be reasonably requested,  
12 in such defense.

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

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

19 19. CHANGES AND EXTRA SERVICES. City may make changes within  
20 the general scope of work under this Agreement. Changes shall be in writing and shall  
21 state the dollar amount of the change, any adjustment in the time for performance and,  
22 when negotiated prices are involved, shall provide for the Consultant's signature indicating  
23 acceptance. If Consultant estimates that the change will cause an increase or decrease  
24 in the cost or time required for performance, Consultant shall so notify City of that fact.  
25 Any notification by Consultant shall be provided within ten (10) calendar days from the date  
26 of receipt by Consultant of the change order. In addition, Consultant shall notify City when  
27 Consultant identifies a condition which may change the initial scope of work or  
28 services. All changes shall be deemed part of this Agreement.



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1                   20.    NONDISCRIMINATION.  In connection with performance of this  
2 Agreement and subject to applicable rules and regulations, Consultant shall not  
3 discriminate against any employee or applicant for employment because of race, religion,  
4 national origin, color, age, gender, sexual orientation, AIDS, AIDS related condition,  
5 handicap, disability, or Vietnam Era veteran status. Consultant shall ensure that applicants  
6 are employed, and that employees are treated during their employment, without regard to  
7 these bases. Such actions shall include, but not be limited to, the following: Employment,  
8 upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or  
9 termination, rates of pay or other forms of compensation, and selection for training,  
10 including apprenticeship.

11                   It is the policy of City to encourage the participation of Disadvantaged,  
12 Minority and Women-owned Business Enterprises in City's procurement process, and  
13 Consultant agrees to use its best efforts to carry out this policy in the award of all approved  
14 subcontracts to the fullest extent consistent with the efficient performance of this  
15 Agreement. Consultant may rely on written representations by subcontractors regarding  
16 their status. City's policy is attached as Exhibit "B" hereto. Consultant shall report to City  
17 in May and in December or, in the case of short-term agreements, prior to invoicing for final  
18 payment, the names of all sub-consultants engaged by Consultant for this Project and  
19 information on whether or not they are a Disadvantaged, Minority or Women-Owned  
20 Business Enterprise, as defined in Section 8 of the Small Business Act (15 U.S.C. Sec.  
21 637).

22                   21.    NOTICES. Any notice or approval required hereunder by either party  
23 shall be in writing and personally delivered or deposited in the U.S. Postal Service, first  
24 class, postage prepaid, addressed to Consultant at the address first stated herein, and to  
25 the City at 333 West Ocean Boulevard, Long Beach, California 90802 Attn: City Manager.  
26 Notice of change of address shall be given in the same manner as stated herein for other  
27 notices. Notice shall be deemed given on the date deposited in the mail or on the date  
28 personal delivery is made, whichever first occurs.

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1                   22.    COPYRIGHTS AND PATENT RIGHTS.

2                   A. City reserves the exclusive right to seek and obtain a patent or copyright  
3 registration on any Data or other result arising from Consultant's performance of this  
4 Agreement. By executing this Agreement, Consultant assigns any ownership interest  
5 Consultant may have in the Data to City.

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

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

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

25                   25.    CONTINUATION. Termination or expiration of this Agreement shall  
26 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,  
27 16, 18, 22, and 28 prior to termination or expiration of this Agreement, and shall not  
28 extinguish any warranties hereunder.

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1           26.   TAX REPORTING. As required by federal and state law, City is  
2 obligated to and will report the payment of compensation to Consultant on Form 1099-  
3 Misc. Consultant shall be solely responsible for payment of all federal and state taxes  
4 resulting from payments under this Agreement. Consultant's Employer Identification  
5 Number is [REDACTED]. If Consultant has a Social Security Number rather than  
6 an Employer Identification Number, then Consultant shall submit that Social Security  
7 Number in writing to City's Accounts Payable, Department of Financial Management.  
8 Consultant acknowledges and agrees that City has no obligation to pay Consultant  
9 hereunder until Consultant provides one of the aforesaid Numbers.

10           27.   ADVERTISING. Consultant shall not use the name of City, its officials  
11 or employees in any advertising or solicitation for business, nor as a reference, without the  
12 prior approval of the City Manager or designee. Notwithstanding the above restriction,  
13 Consultant may list City as a client in its current client list and include a brief description  
14 of the projects and services provided to City under this Agreement, provided that  
15 Consultant does not disclose any information regarding confidential assignments.

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

20           29.   NO PECULIAR RISK. Consultant acknowledges and agrees that the  
21 services to be performed hereunder do not constitute a peculiar risk of bodily harm and  
22 that no special precautions are required to perform said services.

23           30.   THIRD PARTY BENEFICIARY. This Agreement is intended by the  
24 parties to benefit themselves only and is not in any way intended or designed to or entered  
25 for the purpose of creating any benefit or right for any person or entity of any kind that is  
26 not a party to this Agreement.

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

INTERCEPT, INC.

July 25, 2006

By [Signature]  
President

EDMUND I. GELB  
(Type or Print Name)

July 25, 2006

By [Signature]  
Secretary

Dee Gelb  
(Type or Print Name)

"Consultant"

CITY OF LONG BEACH

January 3, 2007

By [Signature]  
City Manager

"City"

This Agreement is approved as to form on August 7, 2006.

ROBERT E. SHANNON, City Attorney

By [Signature]  
Deputy

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EXHIBIT "A"  
RATE SCHEDULE

Pre-Employment Screening Exams	\$200
Specific Issue Exams	\$400
Pre-Employment Screening Exam No-Show*	\$100
Specific Issue Exam No-Show*	\$200

\* Cancellation made before 4:00 p.m. on the business day immediately prior to the schedule examination shall not constitute a "No-Show".