

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

1 guarantee that the City will purchase any specific quantity of any specific kit. The parties
2 agree that the cost to the City to use or rent equipment provided by Gen-Probe is included
3 in the cost of the test kits and that no separate charge is due for the use of the equipment.

4 City shall pay in due course of payments following receipt of an invoice from
5 Gen-Probe identifying the type and number of kits provided to the City. *[Signature]*
Also see Exhibit B for additional terms.

6 2. Term. This Agreement shall begin on September 6, 2005 and end on
7 September 5, 2006 unless sooner terminated as provided herein. The City has the option
8 to extend the contract for two additional periods of one (1) year each at the discretion of
9 the City Manager, and may terminate this Agreement by giving thirty (30) days prior notice
10 of termination to Gen-Probe.

11 3. Return of Equipment. On expiration or sooner termination of this
12 Agreement, City shall promptly return the equipment to Gen-Probe.

13 4. Notice. Notice shall be in writing and personally delivered or deposited
14 in the U.S. Postal Service, first class, postage prepaid, proof of delivery required, to Gen-
15 Probe at the address first stated above and to the City at 2525 Grand Avenue, Long
16 Beach, CA 90815 Attn: Director of Health and Human Services. Notice shall be deemed
17 given on the date personal delivery is made or on the date shown on the proof of delivery,
18 whichever first occurs. Notice of change of address shall be given as other notices.

19 5. Miscellaneous. A. This Agreement, including exhibits, shall not be
20 amended, nor any provision or breach waived except in a writing signed by the parties.

21 B. This Agreement shall be governed by and construed pursuant to the laws
22 of the State of California (except those provisions pertaining to conflicts of laws). Any
23 action involving this Agreement shall be brought in the Los Angeles Superior Court, Long
24 Beach Judicial District.

25 C. This Agreement, including the exhibits, constitutes the entire
26 understanding between the parties and supersedes all other agreements, oral or written,
27 or preprinted terms on a Purchase Order to the extent they are inconsistent with this
28 Agreement, with respect to the subject matter in this Agreement.

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

1 D. In the event of any conflict or ambiguity between this Agreement and any
2 exhibit, this Agreement shall govern.

3 E. If there is any legal proceeding between the parties to enforce or interpret
4 this Agreement or to protect or establish any rights or remedies, the prevailing party shall
5 be entitled to its costs and expenses, including reasonable attorney's fees.

6 F. The acceptance of services or the payment of money shall not operate
7 as a waiver of any provision of this Agreement or of any right existing under this
8 Agreement. The waiver of any breach of this Agreement shall not constitute a waiver of
9 any other or subsequent breach of this Agreement.

10 G. Termination or expiration of this Agreement shall not affect any rights or
11 liabilities of the parties which accrued prior to termination or expiration.

12 H. This Agreement is intended by the parties to benefit themselves only and
13 is not in any way intended or designed to or entered for the purpose of creating any benefit
14 or right for any person or entity that is not a party to this Agreement. This Agreement shall
15 not be construed against either party as the drafter.

16 I. Gen-Probe shall comply with all applicable laws, rules and regulations
17 governing the subject matter of this Agreement during its performance of this Agreement.

18 J. The terms and conditions of this Agreement are severable. If any term
19 or condition is held invalid, void or unenforceable, then the remaining terms and conditions
20 shall be given effect. The division of this Agreement into sections and the captions on
21 those sections is for convenience only and shall not be considered in construing this
22 Agreement.

23 IN WITNESS WHEREOF, the parties have executed this document with


24 ///
25 ///
26 ///
27 ///
28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

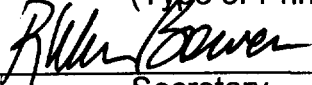
all formalities required by law as of the date first stated above.

GEN-PROBE SALES & SERVICE, INC., a Delaware corporation

Feb. 22, 2006, ~~2005~~

By 
V. President Sales & Marketing
Stephen J. Kondor
(Type or Print Name)

Feb. 22, 2006, ~~2005~~

By 
Secretary
R. William Bowen
(Type or Print Name)

CITY OF LONG BEACH

September 5, 2006, ~~2005~~

By 
City Manager

This Agreement is approved as to form on 8/28, 2006

ROBERT E. SHANNON, City Attorney

By 
Senior Deputy

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

EXHIBIT "A"



October 20, 2005

Long Beach Public Health Lab
 ATTN: Mimi Lachica
 Laboratory
 2525 Grand Avenue Suite 260
 Long Beach , CA L590815

Dear Ms. Lachica:

Thank you for your interest in our Aptima / AccuProbe family of products. We are pleased to quote the following pricing, for your consideration, for Long Beach Public Health Lab.

Product Number	Product Description	Price/Kit	Monthly Purchase Quantity	Extended Monthly Price
301032	Aptima Combo2 Reagent Kit	\$ 1,075.00	7.0	\$ 7,525.00
301048	Aptima Auto Detect Kit	\$ 45.00	2.5	\$ 112.50
301040	Urine Collection Kit	\$ 62.50	10.0	\$ 625.00
301041	Swab Collection Kit	\$ 62.50	3.0	\$ 187.50
1791	Detection Reagent	\$ 29.00	0.3	\$ 8.70
2800	Identification Reagent	\$ 79.00	0.6	\$ 47.40
2845	Mycobacterium Avium Complex	\$ 369.00	1.0	\$ 369.00
2850	Mycobacterium Gordonae	\$ 369.00	0.3	\$ 110.70
2855	Mycobacterium Kansasii	\$ 369.00	As Needed	\$ -
2860	Mycobacterium Tuberculosis	\$ 369.00	1.5	\$ 553.50
TOTAL:				\$9,539.30

Instrumentation/equipment required and to be located in Long Beach , CA. will include the following:

Quantity & Instrumentation	Description	Purchase Price:
3100i	LEADER 50i Luminometer	N/A
3772	Sonicator	N/A
5105	DTS 400 system (Direct Tube Sampling)	N/A
2 x 5524	SB 100 Dry Heat Bath - Vortexer	\$15,000 (9/21/2005)

Freight Terms: FOB origin prepaid and added to invoice.
 Contract Period: October 1, 2004 through September 30, 2007

Sincerely,

Linda Harshman, Technical Sales Representative
 (800) 523-5001 # 5321
lindah@gen-probe.com



EXHIBIT B

1. **TITLE OF RENTAL EQUIPMENT.** Gen-Probe shall hold exclusive title to rental Equipment and may assign, transfer, pledge or sell Gen-Probe's interest in the rental Equipment without notice to or approval from City of Long Beach. Gen-Probe is Gen-Probe Sales & Service, Inc., a wholly-owned distribution subsidiary of Gen-Probe Incorporated. The City shall not remove any markings from the rental Equipment, which identify Gen-Probe as the owner. The City shall keep the rental Equipment free from any and all liens, claims and encumbrances and shall not lease, sublease, transfer, sell, or assign the rental Equipment. Gen-Probe will execute and file, in the name of Gen-Probe, a UCC-1 statement in favor of Gen-Probe covering the rental Equipment and at the expiration of this Agreement, will promptly file all documents necessary to release its liens.
2. **REAGENT AND TEST KITS WARRANTY.** Gen-Probe warrants that the Reagents and Test Kits shall conform to all material respects to the performance specifications described in the package inserts. The extent of Gen-Probe's liability and City's sole and exclusive remedy under this warranty is limited to replacing any defective Reagents or Test Kits. **THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT AND THOSE ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE.**
3. **RENTAL EQUIPMENT WARRANTY AND SERVICE.** The rental Equipment is warranted through manufacturers as described in the Operator's Manual provided to City and such warranties extend to Gen-Probe's customers. Gen-Probe may, at its option, repair or replace any defective rental Equipment. The foregoing warranty shall not apply in the event that: (a) City has not used and maintained the rental Equipment in accordance with the guidelines set forth in the Operator's Manual provided to City; (b) if City has used the rental Equipment with reagents and supplies not expressly authorized by Gen-Probe; (c) if the rental Equipment is repaired or altered by a party other than Gen-Probe without Gen-Probe's prior written approval; or (d) if the rental Equipment has been subject to misuse, negligence, or accident. **THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT AND THOSE ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE.**
4. **MAINTENANCE and REPAIR.** Customer agrees to maintain the rental Equipment in good operating condition and assumes all risks of loss and damage to the rental Equipment, except as covered in Section 3 (Rental Equipment Warranty and Service). In the event of loss or damage, Gen-Probe reserves the right to inspect and service the rental Equipment at any time.
5. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR COSTS INCURRED BY THE OTHER PARTY IN CONNECTION WITH THE USE OF ANY EQUIPMENT, REAGENTS OR TEST KITS BY CITY OR ANY OTHER PERSON UTILIZING ANY EQUIPMENT, REAGENTS OR TEST KITS, NOR SHALL GEN-PROBE BE LIABLE FOR THE COST OF PROCUREMENT OF SUBSTITUTE REAGENTS OR ANY EQUIPMENT. Such limitation is intended to apply without regard to whether such damages are claimed, asserted or brought in an action or claim sounding in tort or contract, or on the warranty, or under any other law or form of action.