

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

CONTRACT

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3 THIS CONTRACT is made and entered, in duplicate, as of November 26,
4 2008 for reference purposes only, pursuant to Resolution No. RES-08-0146, adopted by
5 the City Council of the City of Long Beach at its meeting on November 18, 2008, by and
6 between GEN-PROBE SALES & SERVICE, INC., a Delaware corporation ("Contractor"),
7 with a place of business at 10210 Genetic Center Drive, San Diego, California 92121 and
8 the CITY OF LONG BEACH ("City"), a municipal corporation.

9 WHEREAS, the City's Department of Health and Human Services performs
10 hundreds and thousands of tests each year for chlamydia, gonorrhea and DNA
11 mycobacteria identification; and

12 WHEREAS, the technology used by Contractor for the chlamydia and
13 gonorrhea testing methodology is proprietary and not available from another
14 manufacturer; and

15 WHEREAS, Contractor is the only company that produces molecular DNA
16 probe tests for the identification of mycobacteria; and

17 WHEREAS, City did by Resolution No. RES-08-0146 determine that the
18 City's need to purchase these diagnostic test kits could only be met by Contractor and, by
19 reason of the foregoing, no useful purpose would be served by advertising for bids to
20 purchase such diagnostic test kits;

21 NOW, THEREFORE, in consideration of the mutual terms and conditions
22 contained herein, the parties agree as follows:

23 1. Contractor shall sell, furnish and deliver to City diagnostic test kits as
24 authorized by Resolution No. RES-08-0146 and described in Exhibit "A" attached to this
25 Contract and incorporated by this reference.

26 2. City shall pay Contractor in due course of payments for these
27 diagnostic test kits the prices shown in Exhibit "A", a sum not to exceed One Hundred
28 Thousand Dollars (\$100,000), including tax. The parties agree that the cost to the City to

1 use or rent equipment provided by Contractor is included in the cost of the test kits and
2 that no separate charge is due for the use of the equipment.

3 City shall pay in due course of payments following receipt of an invoice from
4 Contractor identifying the type and number of kits provided to the City.

5 3. The parties shall also comply with the additional terms in Exhibit "B"
6 attached to this Contract and incorporated by this reference.

7 4. The term of this Contract shall commence at midnight on October 1,
8 2008, and shall terminate on September 30, 2009 unless sooner terminated as provided
9 herein. The City has the option to extend the contract for two (2) additional periods of
10 one (1) year each at the discretion of the City Manager, and may terminate this Contract
11 by giving thirty (30) days prior notice of termination to Contractor.

12 5. Neither this Contract nor any of the moneys that may become due
13 Contractor hereunder may be assigned without the prior written consent of City.

14 6. Any notices required hereunder or desired to be given by either party
15 shall be in writing and personally delivered or deposited in the U.S. Postal Service, first
16 class postage prepaid, addressed to Contractor at the address stated herein, and to City
17 at 333 West Ocean Boulevard, Long Beach, California 90802 Attn: City Manager. Notice
18 shall be deemed given on the date personal delivery is made or on the date of deposit in
19 the mail, whichever first occurs.

20 7. City shall have the benefit of any warranty from the manufacturer on
21 the diagnostic test kits supplied and Contractor warrants that the diagnostic test kits are
22 in good working order and free from defect at the time of delivery.

23 8.

24 A. In connection with performance of this Contract and federal
25 laws, rules and regulations, Contractor shall not discriminate in employment or in
26 the performance of this Contract on the basis of race, religion, national origin,
27 color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap or
28 disability.

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B. This Contract was created as a joint effort of both parties and neither it nor any part of it shall be construed against one party as the drafter.

C. This Contract, including Exhibits, shall not be amended, nor any provision or breach hereof waived except in a writing signed by the parties which expressly refers to this Contract.

D. This Contract shall be governed by and construed pursuant to the laws of the State of California (except those provisions of California law pertaining to conflicts of laws). Any action involving this Contract shall be brought in the Los Angeles County Superior Court, Long Beach Judicial District.

E. This Contract, including Exhibits, constitutes the entire understanding between the parties and supersedes all other contracts, oral or written, or preprinted terms and conditions of the Purchase Order to the extent they are inconsistent with this Contract, with respect to the subject matter herein.

F. In the event of any conflict or ambiguity between this Contract and any Exhibit, the provisions of this Contract shall govern.

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

H. The acceptance of any services or the payment of any money by City shall not operate as a waiver of any provision of this Contract, or of any right to damages or indemnity stated herein. The waiver of any breach of this Contract shall not constitute a waiver of any other or subsequent breach of this Contract.

I. Termination of this Contract shall not affect rights or liabilities of the parties which accrued prior to termination and shall not extinguish any warranties.

J. Contractor shall not use the name of City, its officials or

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IN WITNESS WHEREOF, the parties have signed this document with all the formalities required by law as of the date first stated above.

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

December 12, 2008

By [Signature]
VP, NORTH AMERICAN SALES
BRIAN B. HANSEN

December 30, 2008

By [Signature]
SR. VP, General Counsel and Secretary
WILLIAM BOWEN
(Type or Print Name)

"Contractor"

CITY OF LONG BEACH, a municipal corporation

Jan 9, 2009

By [Signature] Assistant City Manager
City Manager

"City"

EXECUTED PURSUANT TO SECTION 501 OF THE CITY CHARTER

This Contract is approved as to form on January 7, 2009

ROBERT E. SHANNON, City Attorney

By [Signature]
Deputy

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

EXHIBIT "A"



GEN-PROBE

November 21, 2008

Long Beach City Public Health
ATTN: Mimi Lachica
Laboratory
2525 Grand Avenue
Long Beach , CA, 90815

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 City Public Health .

Product Number	Product Description	Price/Kit	Monthly Purchase Quantity	Extended Monthly Price
1032	Aptima Combo2 Assay (100 test)	\$ 870.00	16.0	\$ 13,920.00
1048	Aptima Combo2 AutoDetect	\$ 45.00	5.0	\$ 225.00
1040	Aptima Combo2 Urine Collection	\$ 62.50	As Needed	\$ -
1041	Aptima Combo2 Swab Collection	\$ 62.50	1.0	\$ 62.50
5575	Aptima Bulk Urine Transports	\$ 100.00	16.0	\$ 1,600.00
1791	Detection Reagent	\$ 29.00	1.0	\$ 29.00
2800	Identification Reagent	\$ 79.00	0.6	\$ 47.40
2845	Mycobacterium Avium Complex	\$ 369.00	1.3	\$ 479.70
2850	Mycobacterium Gordonae	\$ 369.00	As Needed	\$ -
2855	Mycobacterium Kansasii	\$ 369.00	As Needed	\$ -
2860	Mycobacterium Tuberculosis	\$ 369.00	1.6	\$ 590.40
TOTAL:				\$ 16,954.00

Instrumentation/equipment required and to be located in Long Beach , CA, will include the following:
Service on the instrumentation is provided by Gen-Probe as part of the Reagent agreement.

Quantity & Instrumentation	Description	Purchase Price:
1 x 5105	Direct Tube Sampling (DTS) 400 System	N/A
1 x 3100i	LEADER 50i Luminometer	N/A
1 x 3772	Sonicator	N/A
2 x 5524	SB 100 Dry Heat Bath - Vortexers	N/A Lab owned
1 x	Tecan EVO Pipettor	N/A

Gen-Probe will pay a one-time cost for an LIS interface from Common Cents, up to \$4,995.

Freight Terms: FOB origin prepaid and added to invoice.
Contract Period: October 1, 2008 through September 30, 2010

Sincerely,

Linda Harshman
Technical Sales Rep



GEN-PROBE

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.

GEN-PROBE INCORPORATED OFFICERS

(May 15, 2008)

Name	Position
Henry L. Nordhoff	Chief Executive Officer
Carl R. Hull	President and Chief Operating Officer
Daniel L. Kacian, Ph.D., M.D.	Executive Vice President and Chief Scientist
R. William Bowen	Senior Vice President, General Counsel and Secretary
Diana De Walt	Senior Vice President, Human Resources
Martin Edelshain	Senior Vice President, Corporate Strategy
Jorgine Ellerbrock	Senior Vice President, Operations
Stephen Kondor	Senior Vice President, Sales & Marketing
Herm Rosenman	Senior Vice President, Finance and Chief Financial Officer
Christina C. Yang	Senior Vice President, Clinical, Regulatory, and Quality
Lyle J. Arnold	Vice President, Research
Robert Bradbury Blake	Vice President, Instrument Systems
Tammy Brach	Vice President, Program Management
Frederick L. Eibel	Vice President, Marketing
Paul E. Gargan, Ph.D	Vice President, Business Development
Cristina Giachetti	Vice President, Development
Brian Hansen	Vice President, North American Sales
Scott Milsten	Assistant Secretary