

1 FIRST AMENDMENT TO CONTRACT NO. 31000

2 **31000**

3 THIS FIRST AMENDMENT TO CONTRACT NO. 31000 is made and
4 entered, in duplicate, as of May 1, 2009 for reference purposes only, pursuant to a
5 minute order adopted by the City Council of the City of Long Beach at its meeting held on
6 April 21, 2009, by and between GEN-PROBE SALES & SERVICE, INC., a Delaware
7 corporation ("Contractor"), with a place of business at 10210 Genetic Center Drive, San
8 Diego, California 92121, and the CITY OF LONG BEACH, a municipal corporation
9 ("City"). Contractor and City, each, are individually referred to herein as the "Party", and
10 collectively referred to herein as the "Parties".

11 WHEREAS, the number of diagnostic test kits needed by the City has
12 increased; and

13 WHEREAS, the Parties entered Contract No. 31000 whereby Contractor
14 agreed to provide these diagnostic test kits to the City; and

15 WHEREAS, the Parties desire to increase the annual contract amount to
16 purchase the additional diagnostic kits needed for an amount not to exceed \$225,000;

17 NOW, THEREFORE, in consideration of the mutual terms and conditions
18 herein contained, the Parties agree as follows:

19 1. Section 2 of Agreement No. 31000 is hereby amended in its entirety
20 to read as follows:

21 "2. City shall pay Contractor in due course of payments for these
22 diagnostic test kits the prices shown in Exhibit "A", a sum not to exceed Two Hundred
23 Twenty-Five Thousand Dollars (\$225,000), including tax, plus a ten percent (10%)
24 contingency for additional test kits if necessary. The parties agree that the cost to the
25 City to use or rent equipment provided by Contractor is included in the cost of the test kits
26 and that no separate charge is due for the use of the equipment."

27 2. Except as expressly modified herein, all of the terms and conditions
28 contained in Contract No. 31000 are ratified and confirmed and shall remain in full force

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

1 and effect.

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

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

6 May 21

, 2009

By 

President VP, North
Brian B. Hansen American Sales

7 May 18

8 , 2009

By 

Type or Print Name

Secretary Sr. VP and
R William Bowen General Counsel
Type or Print Name



11 "Contractor"

12 CITY OF LONG BEACH, a municipal
13 corporation

14 June 9

, 2009

By 

Assistant City Manager

City Manager

16 "City"

**EXECUTED PURSUANT
TO SECTION 501 OF
THE CITY CHARTER.**

17 This First Amendment to Contract No. 31000 is approved as to form on

18 May 27

, 2009.

20 ROBERT E. SHANNON, City Attorney

21 By 

Deputy

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	Extended Monthly
			Quantity	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	\$ -
1044	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 Kansaii	\$ 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:
1x 5105	Direct Tube Sampling (DTS) 400 System	N/A
1x 3100i	LEADER 50i Luminometer	N/A
1x 3772	Sonicator	N/A
2x 5524	SB 100 Dry Heat Bath - Vortexers	N/A Lab owned
1x	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

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 NON-INFRINGEMENT 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 NON-INFRINGEMENT 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)

<u>Name</u>	<u>Position</u>
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