

1 FIRST AMENDMENT TO CONTRACT NO. 32439

2 **32439**

3 THIS FIRST AMENDMENT TO CONTRACT NO. 32439 is made and
4 entered, in quadruplicate, as of October 1, 2012 for reference purposes only, pursuant to
5 Resolution No. RES-11-0129, adopted by the City Council of the City of Long Beach at its
6 meeting on November 8, 2011, by and between GEN-PROBE SALES & SERVICE, INC.,
7 a Delaware corporation ("Contractor"), with a place of business at 10210 Genetic Center
8 Drive, San Diego, California 92121 and the CITY OF LONG BEACH ("City"), a municipal
9 corporation.

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

13 WHEREAS, the parties entered Contract No. 32439 whereby Contractor
14 agreed to provide such diagnostic test kits; and

15 WHEREAS, the parties desire to extend the term;

16 NOW, THEREFORE, in consideration of the mutual terms, covenants, and
17 conditions in Contract No. 32439 and herein, the parties agree as follows:

18 1. Section 4 of Contract No. 32439 is hereby amended to read as
19 follows:

20 "4. The term of this Contract shall commence at midnight on October 1,
21 2011, and shall terminate on September 30, 2013 unless sooner terminated as provided
22 herein. The City has the option to extend the contract for one (1) additional one (1) year
23 period at the discretion of the City Manager, and may terminate this Contract by giving
24 thirty (30) days prior notice of termination to Contractor."

25 2. Except as expressly modified herein, all of the terms and conditions
26 contained in Contract No. 32439 are ratified and confirmed and shall remain in full force
27 and effect.

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

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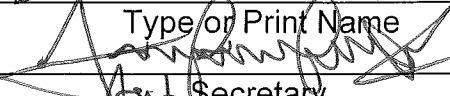
IN WITNESS WHEREOF, the parties have caused this document to be duly executed with all formalities required by law as of the date first stated above.

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

10/8, 2012

By 
President SR VP
BRIAN B. HANSEN
Type or Print Name

10/9, 2012

By 
Asst. Secretary
ANDREW GREENHAGEN
Type or Print Name

"Contractor"

CITY OF LONG BEACH, a municipal corporation

10.17, 2012

By 
Assistant City Manager
City Manager

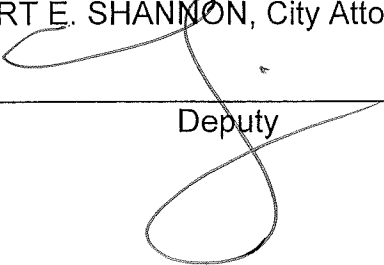
"City"

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

This First Amendment to Contract No. 32439 is approved as to form on

10/11, 2012.

ROBERT E. SHANNON, City Attorney

By 
Deputy

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

EXHIBIT "A"

EXHIBIT "B"



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.