

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

CONTRACT

32439

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3 THIS CONTRACT is made and entered, in duplicate, as of November 29,
4 2011 for reference purposes only, pursuant to Resolution No. RES-11-0129, adopted by
5 the City Council of the City of Long Beach at its meeting on November 8, 2011, 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-11-0129 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-11-0129 and described in Exhibit "A" attached to this
25 Contract and incorporated by this reference.

26 2. City shall pay Contractor ~~in the course~~ of payments for these
27 diagnostic test kits the prices shown in Exhibit "A", a sum not to exceed Two Hundred
28 Fifty Thousand Dollars (\$250,000), including tax. The parties agree that the cost to the

1 City to use or rent equipment provided by Contractor is included in the cost of the test kits
2 and 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 2011, and shall terminate on September 30, 2012 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

1 employees in any advertising or solicitation for business nor as a reference without
2 the prior written approval of City's City Manager.

3 K. This Contract is intended by the parties to benefit themselves
4 only and is not in any way intended or designed to or entered for the purpose of
5 creating any benefit or right for any person or entity of any kind that is not a party
6 to this Contract.

7 L. In performing hereunder, Contractor is and shall act as an
8 independent contractor and neither Contractor nor its employees, agents,
9 suppliers or subcontractors shall act as or be deemed employees, representatives
10 or agents of City.

11 M. Contractor shall comply with all applicable federal, state and
12 local laws and regulations during performance hereunder.

13 N. The terms and conditions of this Contract are severable. If
14 any term or condition is held invalid, void or unenforceable, the remaining terms
15 and conditions shall be given effect.

16 O. The division of provisions hereof into sections and the
17 captions on those sections is for convenience only and shall not be considered in
18 construing this Contract.

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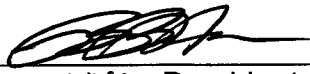
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Long Beach, CA 90802-4664


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

Dec. 13, 2011

By 
VICE President
BRIAN B. HANSEN

DEC. 14, 2011

By 
Secretary
R. WILLIAM BOWEN

"Contractor"

CITY OF LONG BEACH, a municipal corporation

12.22, 2011

By 
Assistant City Manager
City Manager

"City"

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

This Contract is approved as to form on 12/15, 2011.

ROBERT E. SHANNON, City Attorney

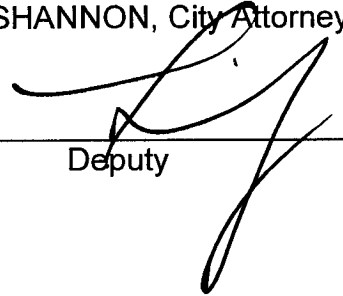
By 
Deputy

EXHIBIT “A”



GEN-PROBE

RECEIVED

August 10, 2011

AUG 25 2011

City of Long Beach Public Health Lab
Attn: Mimi Lachica
Laboratory Services Officer
2525 Grand Avenue
Long Beach, CA 90815 USA

LONG BEACH PUBLIC
HEALTH LABORATORY

Dear Mimi Lachica,

Thank you for your interest in our family of products. We are pleased to quote the following pricing, for your consideration.

Product Number	Product Description	Price/Kit	Monthly Purchase Quantity	Monthly Price
301032	Kit, APTIMA COMBO 2 (DTS 400)	\$ 870.00	15.0	\$ 13,050.00
102800	Kit,AccuProbe RGTS 200-TESTS	\$ 79.00	0.3	\$ 26.33
102845	Kit,AccuProbe, AVIUM COMPLEX	\$ 369.00	0.2	\$ 61.50
102850	Kit,AccuProbe, M. GORDONAE	\$ 369.00	0.1	\$ 30.75
102855	Kit,AccuProbe, M. KANSASII	\$ 369.00	0.2	\$ 61.50
102860	Kit,AccuProbe, M. TUBERCULOSIS	\$ 369.00	0.8	\$ 307.50
201791	Kit,Detection Rgt	\$ 29.00	0.3	\$ 9.67
105575	APTIMA Urine Collection Tubes	\$ 100.00	14.9	\$ 1,491.67
301040	Kit,APTIMA COMBO 2 Urine Spec Coll	\$ 62.50	0.0	\$ 0.10
301041	Kit,APTIMA COMBO 2 Swab Spec Coll	\$ 62.50	0.2	\$ 10.42
301048	Kit, APTIMA Auto Detect Rgt	\$ 45.00	1.0	\$ 45.00
301078	Kit, SYSCHECK, IVD, CDRH	\$ -	0.1	\$ -
302101	Kit, Bleach Enhancer/Cleaning	\$ 50.00	0.0	\$ 0.08
101847	Paper, Thermal Printer, LDR	\$ 6.00	0.3	\$ 1.50
Total Reagent Price per Month				\$ 15,096.02

Instrumentation/equipment required and to be located in 2525 Grand Avenue will include the following:

Product Number	Instrumentation Description	Price per Unit	Unit Qty	Total Price
302280	DTS 400	\$ -	1	\$ -
901104	Sonicator, Barnstead 120V	\$ -	1	\$ -
1031001	LEADER 50I	\$ -	1	\$ -
302280-Service	DTS 400 Service	\$ -	1	\$ -

Service on lab-owned SB100's is included.

Total Service Pricing for Instrumentation Per Year \$0.00

The Terms of Freight for this contract will be Origin Prepaid & Add.

Pricing listed above is for the following contract term: **October 1, 2011 - September 30, 2012** with two additional one-year term renewal options, during which time there will be no change in pricing. These prices become effective upon acceptance by the Long Beach Public Health Laboratory for the term dates described.

Sincerely,

Linda Harshman
TECHNICAL SALES REP.

Accepted by: *[Signature]*

Date: 8-25-11

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 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.