

ORDINANCE

2019-03-07-0173

**APPROVING AN AMENDMENT TO THE CONTRACT WITH GEN-PROBE SALES & SERVICE, INC. TO PROVIDE FOR THE CONTINUED LEASE OF TESTING EQUIPMENT AND PURCHASE OF SPECIFIC REAGENT TEST KITS AND SUPPLIES FOR THE SAN ANTONIO METROPOLITAN HEALTH DISTRICT FOR AN ESTIMATED ANNUAL COST OF \$297,000.00, FUNDED THROUGH THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES STD STAFF SUPPORT PROGRAM GRANT.**

\* \* \* \* \*

**WHEREAS**, the San Antonio Metropolitan Health District (SAMHD) receives grant funding on an annually recurring basis from the Texas Department of State Health Services (TDSHS) to support the mission of the STD/HIV Prevention Program; and

**WHEREAS**, TDSHS adopted Hologic testing technology and previously coordinated the purchase of the required reagents, test kits and supplies for the Hologic testing equipment for use by SAMHD; and

**WHEREAS**, this ordinance will authorize an amendment to the contract with Gen-Probe Sales & Service, Inc. to provide for SAMHD's continued used of the Hologic testing equipment and to allow SAMHD to directly purchase the required reagents, test kits and supplies; and

**WHEREAS**, the Texas Local Government Code indicates that competitive bidding is not required under section 252.022(a)(7)(A), which provides for any items that are available only from a sole source of supply; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The City Manager or designee, or the Director of the Finance Department, Purchasing Division, is hereby authorized to execute a contract amendment with Gen-Probe Sales & Service, Inc., a copy of which is attached hereto and incorporated herein as **Exhibit I**.

**SECTION 2.** Funding for this ordinance is available in General Ledger 5304040, Internal Order Number 136000000769 and Fund 2201636052 for the Texas Department of State Health Services (TDSHS) STD Staff Support Program grant for a total amount up to \$297,000.00.

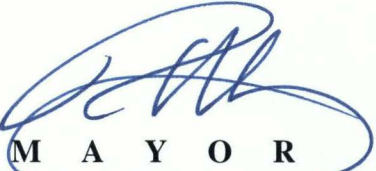
**SECTION 3.** Payment not to exceed the budgeted amount is authorized to Gen-Probe Sales & Service, Inc. and will be encumbered upon the issuance of a purchase order. All expenditures will be in accordance with the Fiscal Year 2019 budget and such other appropriations necessary to fund the contract through its term as evidenced by subsequent ordinances.

**SECTION 4.** The financial allocations in this ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers,

SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this ordinance.

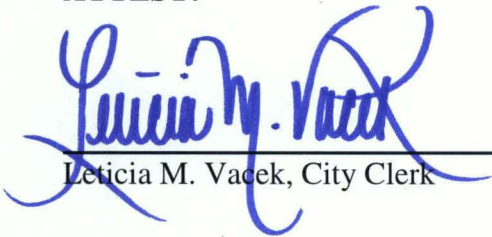
**SECTION 5.** This ordinance is effective immediately upon passage by eight affirmative votes; otherwise it is effective on the tenth day after passage.

**PASSED and APPROVED** this 7<sup>th</sup> day of March, 2019.




**M A Y O R**  
Ron Nirenberg

**ATTEST:**



\_\_\_\_\_  
Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**



\_\_\_\_\_  
Andrew Segovia, City Attorney

<b>Agenda Item:</b>	<b>7 ( in consent vote: 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15A, 15B, 15C, 16, 17, 19, 21, 22, 23A, 23B )</b>						
<b>Date:</b>	03/07/2019						
<b>Time:</b>	09:39:10 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	Ordinance approving an amendment to the contract with Gen-Probe Sales & Service to provide for the continued lease of testing equipment and purchase of specific reagent test kits and supplies for the San Antonio Metropolitan Health District for an estimated annual cost of \$297,000.00, funded through the Texas Department of State Health Services, STD Staff Support Program grant. [Ben Gorzell, Chief Financial Officer; Troy Elliott, Deputy Chief Financial Officer, Finance]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x				x
Art A. Hall	District 2		x			x	
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x				
Clayton H. Perry	District 10		x				

LC  
03/07/19  
Item No. 7

# **Exhibit I**



## Exhibit I



### City of San Antonio

CONTRACT NAME:	Annual Contract for Hologic Testing Platform Supplies and Equipment Rental
CONTRACT NUMBER:	4400004232
VENDOR NAME:	Gen-Probe Sales & Service, Inc.
VENDOR ADDRESS:	250 Campus Drive, Marlborough, MA 01752
ATTN: Keith Gantner	
AMENDMENT NUMBER:	1
EFFECTIVE DATE OF AMENDMENT:	March 7, 2019

The City of San Antonio and the vendor identified above hereby agree to amend the contract identified above, as follows. This amendment is authorized pursuant to Ordinance No. \_\_\_\_\_.

#### 1. AMENDMENTS

1.1 The Product Pricing table is hereby replaced in entirety with the following table:

Product No.	Product Description	Price/Kit
302923	APTIMA COMBO 2, 100-TEST KIT, PANTHER	\$700.00
301041	Kit, APTIMA COMBO 2 Swab Spec Coll	\$62.50
301040	Kit, APTIMA COMBO 2 Swab Urine Coll	\$62.50
PRD-03546	Collect Kit, Multi-Test Swab (IVD)	\$62.50
105668	APTIMA PENETRABLE CAPS	\$100.00
303094	APTIMA COMBO 2, 250-TEST KIT, PANTHER	\$1750.00

1.2 Paragraph 1 of the Hologic Terms and Conditions is hereby revised to read as follows:

**Equipment and Title:** In consideration of the purchase by City of the Products listed herein at the prices stated herein, and in a quantity sufficient to meet City's needs, Hologic shall provide Customer with the use of the Equipment ("Equipment") specified above for the Term, which shall include on-site installation and training by Hologic authorized personnel. Customer shall not

remove any markings from the Equipment which identify Hologic as the owner. Hologic will retain title to the Equipment during the Term and may file a standard Uniform Commercial Code ("UCC") Form 1 to perfect its interest in the Equipment. Customer will notify Hologic immediately if any attachment, encumbrance, lien or security interest is filed or claimed.

1.3 Paragraph 9 of the Hologic Terms and Conditions is hereby revised to read as follows:

This contract shall begin upon execution by the last party to sign the contract, and shall terminate December 31, 2019. At City's option, this Contract may be renewed under the same terms and conditions for 4 additional 1 year period(s). Renewals shall be in writing and signed by the Director of City's Finance Department (Director), without further action by the San Antonio City Council, subject to and contingent upon appropriation of funding therefore. City may terminate this contract at any time, with written notice to Contractor, should the grant funds referenced below cease to be provided to the City. Notwithstanding the foregoing, City must pay Hologic for any products ordered and shipped under the Agreement up to the effective date of termination. The Director is further authorized to execute any amendments to this contract without additional City Council approval, subject to and contingent upon appropriation for any expenditures required thereby. All amendments shall be in writing and signed by both parties.

1.4 Grant Funded Contract Requirements

This contract is funded by a grant from the Centers for Disease Control. As such, the following clauses are required.

1.4.1 Clean Air Act & Federal Water Pollution Control Act

(1) Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. §§1251-1387), as amended. Contractor agrees to report each violation to the City and understands that the City will, in turn, report each violation as required to the federal agency providing funds for this contract and the appropriate EPA Regional Office. (2) Contractor agrees to include these requirements in each subcontract to this contract exceeding \$150,000 financed in whole or in part with federal funds.

1.4.2 Suspension and Debarment.

This contract is a covered transaction for purposes of 2 CFR Part 180.220(b) and (c). As such, the contractor is required to verify that neither the contractor, nor its principals, as defined at 2 CFR 180.995, are excluded or disqualified as defined at 2 CFR 180.940 and 2 CFR 180.935, respectively .

The contractor is required to comply with 2 CFR 376, Subpart C and must include the requirement to comply with 2 CFR 376, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, Contractor certifies that:

- Neither it nor its principals are presently debarred, suspended for debarment, declared ineligible or voluntarily excluded from participation in any State or Federal Program;



- Contractor shall provide immediate written notice to City if, at any time during the term of this contract, including any renewals hereof, Contractor learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances.

The certification in this clause is a material representation of fact relied upon by the City of San Antonio and the Federal Department of Health and Human Services. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the City of San Antonio, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 CFR 376, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

1.4.3 Certification Regarding Lobbying. Vendor shall complete and return with this amendment, the Certification Regarding Lobbying, attached hereto and as Attachment I.

1.4.4 Procurement Of Recovered Materials.

Vendor and its subcontractors shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, including, but not limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

## 2. PROVISIONS REMAIN IN EFFECT

All other terms, conditions, covenants and provisions of the above referenced contract, as previously amended, not specifically mentioned herein and revised by this document, are retained in their entirety, unchanged, and remain in full force in effect for the duration of said contract, and any renewals thereof.

## 3. ENTIRE AGREEMENT

This contract, as amended, embodies the complete agreement of the parties hereto with regard to the subject matter contained herein, superseding all oral or written previous and contemporary agreements between the parties relating to matters herein.

**EXECUTED and AGREED** to as of the dates indicated below.

**CITY OF SAN ANTONIO**

**VENDOR**

Hologic's signature is contingent upon Customer signing this Agreement and returning to Hologic by 3/15/19.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

Printed Name: Norbert Dziuk  
Title: Procurement Operations  
Lead  
Date: \_\_\_\_\_

Printed Name: Keith Gantner  
Title: SVP, Group Sales & Commercial Excellence  
Date: 1-23-19

*Gen-Probe Sales & Service, Inc. is a subsidiary of  
Hologic, Inc.*

Please return this amendment to the Finance Department, Purchasing Division at the address below, or hand deliver to 111 Soledad, 5<sup>th</sup> Floor, San Antonio, TX 78205.



**Attachment I**  
**Certification Regarding Lobbying**

Title 31, United States Code, Section 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," generally prohibits recipients of Federal grants and cooperative agreements from using Federal (appropriated) funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a SPECIFIC grant or cooperative agreement. Section 1352 also requires that each person who requests or receives a Federal grant or cooperative agreement must disclose lobbying undertaken with non-Federal (non-appropriated) funds. These requirements apply to grants and cooperative agreements EXCEEDING \$100,000 in total costs (45 CFR Part 93).

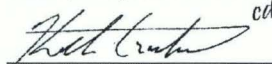
The undersigned (authorized official signing for the applicant organization) certifies, to the best of his or her knowledge and belief, that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

(c) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



\_\_\_\_\_  
Signature of Vendor's Authorized Official

Keith Gantner, SVP, Group Sales & Commercial Excellence

\_\_\_\_\_  
Name and Title of Vendor's Authorized Official

1-23-19

\_\_\_\_\_  
Date