

SERIAL 07044 SS REAGENTS FOR INFECTIOUS TESTING

DATE OF LAST REVISION: January 01, 2007 CONTRACT END DATE: December 31, 2011

**CONTRACT PERIOD BEGINNING JANUARY 01, 2007
ENDING DECEMBER 31, 2011**

TO: All Departments

FROM: Department of Materials Management

SUBJECT: Contract for **REAGENTS FOR INFECTIOUS TESTING
(NIGP 17574)**

Attached to this letter is a listing of vendors available to Maricopa County Agencies utilizing the Agreement between the Maricopa County Department of Public Health and Gen-Probe # C-86-07-038-1-00.

Please note: Price Agreement Purchase Orders (PG documents) may be generated using the information from this list. Use NIGP CODE 1757401.

All purchases of product(s) listed on the attached pages of this letter are to be obtained from the listed contractor(s).

To Anderson

**CONTRACT FOR SERVICES
MARICOPA COUNTY
by and through the
DEPARTMENT OF PUBLIC HEALTH
4041 N. Central Ave., Suite 1400, Phoenix, Arizona 85012**

1. Contract No: C86-07-038-1 2. Contract Type: Fixed Price
3. Contract Amount: \$ NTE \$130,000 per year 4. Purpose: Laboratory
(Maximum Reimbursable Amount)
5. Budget Code: 8628 6. Contractor EIN/SSN: _____
7. Start Date: January 1, 2007 8. Expiration Date: December 31, 2011

This Contract is entered into by and between **GEN-PROBE** referred to hereinafter as Contractor, and Maricopa County. The Contractor, for and in consideration of the covenants and conditions set forth herein, shall provide and perform the services as set forth below. All rights and obligations of the parties shall be governed by the terms of this document, its Exhibits, Attachments and Appendices, including any Subcontracts or Amendments as set forth herein and in:

Section I - General Provisions Section III - Compensation
Section II - Work Statement Section IV - Attachment

This Contract contains all the terms and conditions agreed to by the parties. No other understanding, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto. Nothing in this Contract shall be construed as a consent to any suit or waiver of any defense in suit brought against the State of Arizona, Maricopa County, or Contractor, in any State or Federal Court.

Legal notice under this Contract shall be given by personal delivery or by registered or certified mail to the addresses set forth below and shall be effective upon receipt by the party to whom addressed unless otherwise indicated in said notice.

Notice to Contractor: Allison Horgan/Contracts Spvr. Phone: 858-410-8988
Address: Gen-Probe Sales & Service, 10210 Genetic Center Dr., San Diego, CA 92121

Notice to Department: Stacey Rice, Grant/Contract Supervisor Phone: (602) 506-1829
Address: 4041 N. Central Ave., Suite 1400, Phoenix, AZ 85012

IN WITNESS WHEREOF, the parties enter into this Contract:
CONTRACTOR

BY: *Paul McMullin* 3/13/07
Signature Date
Paul McMullin
Sr. Director, Sales
Typed Name & Title

MARICOPA COUNTY BOARD OF SUPERVISORS
BY: *Chilton Cook* FEB 21 2007
Chairman
ATTEST: *Janet Campbell*
Clerk of the Board

APPROVED AS TO FORM:
Chilton Cook 2-15-07
Name Date
DEPUTY MARICOPA COUNTY ATTORNEY

SECTION I

GENERAL PROVISIONS

LABORATORY

5. ADEQUACY OF RECORDS

If the Contractor's books, records and other documents relevant to this Contract are not sufficient to support and document that allowable services were provided to eligible clients the Contractor shall reimburse Maricopa County for the services not so adequately supported and documented. Gen-Probe will have thirty (30) days from date of customer notice to provide adequately supported records. *fine*

6. RETENTION OF RECORDS

The Contractor agrees to retain all financial books, records, and other documents relevant to this Contract for five (5) years after final payment or until after the resolution of any audit questions which could be more than five (5) years, whichever is longer. The County or Federal or State auditors and any other persons duly authorized by County shall have full access to, and the right to examine, copy and make use of any and all said materials.

7. ASSIGNMENT / SUBCONTRACTING

No rights, liability, obligations or duties under this contract may be assigned, delegated or subcontracted without the prior written approval of County.

8. AUDIT DISALLOWANCES

- A. The Contractor shall, upon written demand therefore, reimburse Maricopa County for any payments made under this Contract which are disallowed by a Federal, State or Maricopa County audit in the amount of the disallowance, as well as court costs and attorney fees which Maricopa County incurs to pursue legal action relating to such a disallowance.
- B. If at any time it is determined by County that a cost for which payment has been made is a disallowed cost, County shall notify the Contractor in writing of the disallowance and the required course of action, which shall be at the option of County either to adjust any future claim submitted by the Contractor by the amount of the disallowance or to require repayment of the disallowed amount by the Contractor.

9. CONTRACT COMPLIANCE MONITORING

County shall monitor the Contractor's compliance with, and performance under, the terms and conditions of this Contract. On-site visits for Contract compliance monitoring may be made by County and/or its grantor agencies at any time during the Contractor's normal business hours, announced or unannounced. The Contractor shall make available for inspection and/or copying by County, all records and accounts relating to the work performed or the services provided under this Contract, or for similar work and/or service provided under other grants and contracts.

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10. AVAILABILITY OF FUNDS

- A. The provisions of this Contract relating to payment for services shall become effective when funds assigned for the purpose of compensating the Contractor as herein provided are actually available to County for disbursement. The Director shall be the sole judge and authority in determining the availability of funds under this Contract and County shall keep the Contractor fully informed as to the availability of funds.
- B. If any action is taken by any State Agency, Federal Department or any other agency or instrumentality to suspend, decrease, or terminate its fiscal obligations under, or in connection with, this Contract, County may amend, suspend, decrease, or terminate its obligations under, or in connection with, this Contract. In the event of termination, County shall be liable for payment only for services rendered prior to the effective date of the termination, provided that such services are performed in accordance with the provisions of this Contract. County shall give written notice of the effective date of any suspension, amendment, or termination under this section, at least ten (10) days in advance.

11. CONTINGENCY RELATING TO OTHER CONTRACTS AND GRANTS

- A. The Contractor shall, during the term of this Contract, immediately inform County in writing of the award of any other contract or grant where the award of such contract or grant may affect either the direct or indirect costs being paid/reimbursed under this Contract. Failure by the Contractor to notify County of such award shall be considered a material breach of the Contract and County shall have the right to terminate this Contract without liability.
- B. County may request, and the Contractor shall provide within a reasonable time, a copy of any other contract or grant, when in the opinion of the Director, the award of the other contract or grant may affect the costs being paid or reimbursed under this Contract.
- C. If County determines that the award to the Contractor of such other Federal or State contract or grant has affected the costs being paid or reimbursed under this Contract, County shall prepare a Contract Amendment effecting a cost adjustment. If the Contractor protests the proposed cost adjustment, the protest shall be construed as a dispute within the meaning of the "Disputes" clause contained herein.

12. DEFAULT

County may suspend, modify or terminate this Contract immediately upon written notice to Contractor in the event of a non-performance of stated objectives or other material breach of contractual obligations; or upon the happening of any event which would jeopardize the ability of the Contractor to perform any of its contractual obligations.

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GENERAL PROVISIONS

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13. TERMINATION

- A. County or the Contractor may terminate this Contract at any time with at least thirty (30) days prior written notice to the other party. Such notice shall be given by personal delivery or by Registered or Certified Mail, return receipt requested.
- B. This Contract may be terminated by mutual written agreement of the parties specifying the termination date therein.
- C. County may terminate this Contract upon twenty-four (24) hours notice when County deems the health or welfare of a patient is endangered or Contractor non-compliance jeopardizes funding source financial participation. If not terminated by one of the above methods, this Contract will terminate upon the expiration date of this Contract as stated on the Cover Page.

14. SEVERABILITY

Any provision of this Contract which is determined to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and remaining provisions shall remain in full force and effect.

15. STRICT COMPLIANCE

Acceptance by County of performance not in strict compliance with the terms hereof shall not be deemed to waive the requirement of strict compliance for all future performance obligations. All changes in performance obligations under this Contract must be in writing.

16. NON-LIABILITY

Maricopa County and its officers and employees shall not be liable for any act or omission by the Contractor or any subcontractor, employee, officer, agent, or representative of Contractor or subcontractors occurring in the performance of this Contract, nor shall they be liable for purchases or Contracts made by the Contractor in anticipation of funding hereunder.

17. INDEMNITY

The Contractor agrees to indemnify, hold harmless, and defend Maricopa County, its officers and employees, boards and commissions, from and against any and all claims, damages, suits and proceedings, regardless of the merits, from liability, punitive damages, costs or expense of every type, all or any part thereof arising out of or in connection with or by reason of any act or omission of the Contractor or any subcontractors or anyone directly or indirectly employed by either the Contractor or any subcontractors. Contractor and its Subcontractors shall reimburse County for its costs, including attorney's fees for defense of any litigation arising from such claim. The Contractor shall include a clause to this effect in all subcontracts inuring to the benefit of the Contractor or County.

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18. COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this warranty County may annul this contract without liability.

19. SAFEGUARDING OF CLIENT INFORMATION

The use or disclosure by any party of any information concerning an eligible individual served under this Contract is directly limited to the performance of this Contract.

20. RIGHTS IN DATA

The parties hereto shall have the use of data and reports resulting from this Contract without cost or other restriction except as may otherwise be provided herein or by law or applicable regulation. Each party shall supply to the other party, upon request, any available information known to supplying party that is relevant to this Contract and to the performance hereunder.

21. NON-DISCRIMINATION

The Contractor, in connection with any service or other activity under this Contract, shall not in any way discriminate against any person on the grounds of race, color, religion, sex, national origin, age, or handicap. The Contractor shall include a clause to this effect in all Subcontracts inuring to the benefit of the Contractor or County.

22. EQUAL EMPLOYMENT OPPORTUNITY

The Contractor will not discriminate against any employee or applicant for employment because of race, age, handicap, color, religion, sex, or national origin. The Contractor will take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, age, handicap, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall to the extent such provisions apply, comply with Title VI and VII of the Federal Civil Rights Act; the Federal Rehabilitation Act; the Age Discrimination in Employment Act; the Immigration Reform and Control Act of 1986 (IRCA) and Arizona Executive Order 75-05 which mandates that all persons shall have equal access to employment opportunities. The Contractor shall also comply with all applicable provisions of the Americans with Disabilities Act of 1990.

23. RIGHT OF PARTIAL CANCELLATION

If more than one activity is funded by this Contract, Maricopa County reserves the right to terminate this Contract or any part thereof based upon the Contractor's failure to

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perform any part of this Contract without impairing, invalidating or canceling the remaining Work Statement obligations.

24. RIGHT TO EXTEND CONTRACT

Subject to the availability of funds and acceptable Contractor performance, the Contractor hereby acknowledges and agrees that the County shall have the right to extend this contract for additional periods, not to exceed a total term of five (5) years, except that the cost will be subject to renegotiation. Any extension of contract period must be mutually acceptable to the Department and the Contractor and signed by both parties in writing.

25. CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

A. The undersigned (authorized official signing for the Contractor) certifies to the best of his or her knowledge and belief, that the Contractor, defined as the primary participant in accordance with 45 CFR Part 76, and its principals:

1) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

2) have not within 3-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

3) are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and

4) have not within a 3-year period preceding this Contract had one or more public transaction (Federal, State or local) terminated for cause of default.

B. Should the Contractor not be able to provide this certification, an explanation as to why should be attached to the Contact.

C. The Contractor agrees to include, without modification, this clause in all lower tier covered transactions (i.e. transactions with subcontractors) and in all solicitations for lower tier covered transactions related to this Contract.

SECTION II

WORK STATEMENT

LABORATORY

1. SERVICE GOALS

A. Prevention

2. SERVICE OBJECTIVES/ACTIVITIESA. **Basic Service Level 2: Prevention:**

(1) Prevention of Gonorrhea & Chlamydia

The testing that is done by Gen-Probe and the lab is a Combo testing. This is a non-invasive combination test for Gonorrhea and Chlamydia done on urine. This test is also known as an amplified test. It is used in the detection of micro particles of Gonorrhea and Chlamydia. Early detection and treatment PREVENTS further transmission of these diseases

SECTION III

COMPENSATION

LABORATORY

1. COMPENSATION

- A. Subject to the availability of funds, County shall pay the Contractor for the services described herein for a sum not to exceed the Contract Amount listed on the cover page of this contract. County will pay the Contractor on a cost reimbursement basis in accordance with the Contractors line item budget which follows. The total funds paid to the Contractor will be dependent upon actual expenses incurred by the Contractor. County does not guarantee a minimum payment to the Contractor.

2. METHOD OF PAYMENT

- A. ~~Contractor shall submit a monthly expenditure report and programmatic reports for services performed on or before the tenth (10th) of the month after services were performed.~~ This reporting is not applicable to this Reagent Purchase & System Loan Agreement.
- B. Subject to the availability of funds, County will, within thirty (30) working days from the date of receipt of documents enumerated herein, process and remit to the Contractor a warrant for payment up to the maximum total allowable for services provided during the previous month. Should County make a disallowance in the claim, the claim shall be processed for the reduced amount. If the Contractor protests the amount or the reason for a disallowance, the protest shall be construed as a dispute concerning a question of fact within the meaning of the "Disputes" clause of the Special Provisions of this Contract.
- C. The Contractor understands and agrees that County will not honor any claim for payment submitted six months after date of service. The Contractor understands and agrees that County will not process any claim for payment for services rendered prior to the expiration date which are submitted sixty (60) days after the expiration date without approval of county.
- D. Payments made by County to the Contractor are conditioned upon the timely receipt of applicable, accurate and complete reports to be submitted by the Contractor. Contractor forfeits the right to reimbursement for costs incurred in any month for which is fails to meet the deadline for submitting the monthly expenditure and programmatic reports, except if such failure is beyond the reasonable control of Contractor.

SECTION IV

ATTACHMENT
C-86-07-038-1

LABORATORY

1. ATTACHMENT

A. Agreement from Gen- Probe