

**MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN
COUNTY OF HUMBOLDT
AND
CHAN ZUCKERBERG BIOHUB, INC**

This Memorandum of Understanding ("MOU"), entered into this 18th day of June, 2020, by and between the County of Humboldt, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and the Chan Zuckerberg Biohub, a non-profit public benefit corporation, hereinafter referred to as "BIOHUB," is made upon the following considerations:

WHEREAS, COUNTY, through its Department of Health and Human Services – Public Health ("DHHS – Public Health") is conducting SARS-CoV-2 testing of individuals who are critical to preserving the capacity of the healthcare delivery system, regional emergency response, and containing and mitigating the spread of COVID-19 within the county; and

WHEREAS, COUNTY desires to perform SARS-CoV-2 genomic sequencing on certain specimens collected in Humboldt County for further investigation; and

WHEREAS, BIOHUB is willing to provide such services at no cost to COUNTY; and

WHEREAS, COUNTY and BIOHUB desire to enter into an agreement which sets forth each party's rights and responsibilities regarding the operation thereof.

NOW THEREFORE, in consideration of the foregoing and the mutual promises contained herein, the parties hereto mutually agree as follows:

1. RIGHTS AND RESPONSIBILITIES OF THE PARTIES:

Each party hereto agrees to cooperate, coordinate and work collaboratively with the other party to perform genome sequencing of SARS-CoV-2 in accordance with the requirements set forth herein and Exhibit A – Shared Responsibilities, which is attached hereto and incorporated herein by reference.

2. TERM:

This MOU shall begin upon execution by both parties, and shall remain in full force and effect for one (1) year, unless sooner terminated as provided herein. This MOU may be extended by mutual written agreement by the parties for a term to be agreed upon.

3. TERMINATION:

- A. Breach of Contract. Either party may immediately terminate this MOU, upon written notice, in the event that the other party materially defaults in performing any obligation under this MOU, or violates any laws, regulations or standards applicable to its performance hereunder.
- B. Without Cause. Either party may terminate this MOU without cause upon ten (10) days advance written notice which states the effective date of the termination.

4. NOTICES:

Any and all notices required to be given pursuant to the terms and conditions of this MOU shall be in writing and either served personally or sent by certified mail, return receipt requested, to the respective

addresses set forth below. Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

COUNTY: Humboldt County DHHS – Public Health
Attention: Jeremy Corrigan, Laboratory Manager
529 I Street
Eureka, California 95501

BIOHUB: Chan Zuckerberg Biohub
Attention: Amy Kistler, Group Leader, Infectious Disease
499 Illinois Street, #400
San Francisco, California 94158

5. RECORD RETENTION AND INSPECTION:

- A. Maintenance and Preservation of Records. Each party hereby agrees to timely prepare accurate and complete records, documents and other evidence relating to its performance hereunder, and to maintain and preserve said records for a period of three (3) years after expiration or termination of this MOU, or as otherwise required by any and all applicable local, state and federal laws, regulations and standards, except that if any litigation, claim, negotiation, audit or other action is pending, such records shall be retained until completion and resolution of all issues arising therefrom.
- B. Inspection of Records. Each party hereby agrees to make all records, documents and other evidence relating to its performance hereunder available during normal business hours to inspection, audit and reproduction by any duly authorized local, state and/or federal agencies for a period of three (3) years after expiration or termination of this MOU, or as otherwise required by any and all local, state and federal laws, regulations or standards. Each party further agrees to allow interviews of any of its employees who might reasonably have information related to such records by any duly authorized local, state and/or federal agencies. All examinations and audits conducted pursuant to the terms and conditions of this MOU shall be strictly confined to those matters connected with its performance hereunder, including, without limitation, the costs of administering this MOU.
- C. Audit Costs. In the event of an audit exception or exceptions related to the performance of this MOU, the party responsible for not meeting the requirements set forth herein shall be responsible for the cost of the audit.

6. CONFIDENTIAL INFORMATION:

- A. Disclosure of Confidential Information. In the performance of this MOU, each party may receive information that is confidential under local, state or federal law. Each party hereby agrees to protect all confidential information in conformance with any and all applicable local, state and federal laws, regulations, policies, procedures and standards, including, without limitation: Division 19 of the California Department of Social Services Manual of Policies and Procedures – Confidentiality of Information; California Welfare and Institutions Code Sections 827, 5328, 10850 and 14100.2; California Health and Safety Code Sections 1280.15 and 1280.18; the California Information Practices Act of 1977; the California Confidentiality of Medical Information Act (“CMIA”); the United States Health Information Technology for Economic and Clinical Health Act (“HITECH Act”); the United States Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and any current and future implementing regulations promulgated thereunder, including, without limitation, the Federal Privacy Regulations

contained in Title 45 of the Code of Federal Regulations ("C.F.R.") Parts 160 and 164, the Federal Security Standards contained in 45 C.F.R. Parts 160, 162 and 164 and the Federal Standards for Electronic Transactions contained in 45 C.F.R. Parts 160 and 162, all as may be amended from time to time.

- B. Continuing Compliance with Confidentiality Laws. Each party hereby acknowledges that local, state and federal laws, regulations and standards pertaining to confidentiality, electronic data security and privacy are rapidly evolving and that amendment of this MOU may be required to ensure compliance with such developments. Each party agrees to promptly enter into negotiations concerning an amendment to this MOU embodying written assurances consistent with the requirements of HIPAA, the HITECH Act, the CMIA and any other applicable local, state and federal laws, regulations or standards.

7. NON-DISCRIMINATION COMPLIANCE:

- A. Professional Services and Employment. In connection with the execution of this MOU, neither party shall unlawfully discriminate in the provision of professional services or against any employee or applicant for employment because of: race; religion or religious creed; color; age (over forty (40) years of age); sex, including, without limitation, gender identity and expression, pregnancy, childbirth and related medical conditions; sexual orientation, including, without limitation, heterosexuality, homosexuality and bisexuality; national origin; ancestry; marital status; medical condition, including, without limitation, cancer and genetic characteristics; mental or physical disability, including, without limitation, HIV status and AIDS; political affiliation; military service; denial of family care leave; or any other classifications protected by any applicable local, state or federal laws, regulations or standards. Nothing herein shall be construed to require employment of unqualified persons.

- B. Compliance with Anti-Discrimination Laws. Each party further assures that it will abide by the applicable provisions of: Title VI and Title VII of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; the Food Stamp Act of 1977; Title II of the Americans with Disabilities Act of 1990; the California Fair Employment and Housing Act; California Civil Code Sections 51, *et seq.*; California Government Code Sections 4450, *et seq.*; California Welfare and Institutions Code Section 10000; Division 21 of the California Department of Social Services Manual of Policies and Procedures; United States Executive Order 11246, as amended and supplemented by United States Executive Order 11375 and 41 C.F.R. Part 60; and any other applicable local, state and/or federal laws and regulations, all as may be amended from time to time. The applicable regulations of the California Fair Employment and Housing commission implementing California Government Code Section 12990, set forth in Sections 8101, *et seq.* of Title 2 of the California Code of Regulations are incorporated into this MOU by reference as if set forth in full.

8. NUCLEAR-FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE:

By executing this MOU, BIOHUB certifies that it is not a Nuclear Weapons Contractor, in that BIOHUB is not knowingly or intentionally engaged in the research, development, production or testing of nuclear warheads, nuclear weapons systems or nuclear weapons components as defined by the Nuclear Free Humboldt County Ordinance. BIOHUB agrees to notify COUNTY immediately if it becomes a Nuclear Weapons Contractor as defined above. COUNTY may immediately terminate this MOU if it determines that the foregoing certification is false or if BIOHUB subsequently becomes a Nuclear Weapons Contractor.

9. INDEMNIFICATION:

- A. Mutual Indemnity. Each party hereto shall hold harmless, defend and indemnify the other party and its agents, officers, officials, employees and volunteers from and against any and all claims, demands, losses, damages, liabilities, expenses and costs of any kind or nature, including, without limitation, attorney's fees and other costs of litigation, arising out of, or in connection with, the negligent performance of, or failure to comply with, any of the duties and/or obligations contained herein, except such loss or damage which was caused by the sole negligence or willful misconduct of the other party or its agents, officers, officials, employees or volunteers.
- B. Comparative Liability. Notwithstanding anything to the contrary, in the event that both parties are held to be negligently or willfully responsible, each party will bear their proportionate share of liability as determined in any such proceeding. In such cases, each party will bear their own costs and attorney's fees.
- C. Effect of Insurance. Acceptance of the insurance required by this MOU shall not relieve either party from liability under this provision. This provision shall apply to all claims for damages related to either party's performance hereunder, regardless of whether any insurance is applicable or not.

10. INSURANCE REQUIREMENTS:

- A. General Insurance Requirements. Without limiting the parties' indemnification obligations set forth herein, each party shall maintain in full force and effect, at its own expense, any and all appropriate comprehensive general liability, comprehensive automobile, workers' compensation and professional liability insurance policies.
- B. Insurance Notices. Any and all insurance notices required to be given pursuant to the terms and conditions of this MOU shall be sent to the addresses set forth below in accordance with the notice requirements contained herein.

COUNTY: County of Humboldt
Attention: Risk Management
825 Fifth Street, Room 131
Eureka, California 95501

BIOHUB: Chan Zuckerberg Biohub
Attention: Chief Financial Officer
499 Illinois Street, #400
San Francisco, California 94158

11. RELATIONSHIP OF PARTIES:

It is understood that this MOU is by and between two (2) independent entities and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or any other similar association. Each party shall be solely responsible for the acts or omissions of its agents, officers, employees, assignees and subcontractors.

12. COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS AND STANDARDS:

- A. General Legal Requirements. Each party hereto agrees to comply with any and all local, state

and federal laws, regulations, policies, procedures and standards, including, without limitation, any and all local, state and federal licensure, certification and accreditation requirements, applicable to its performance hereunder.

- B. Conflict of Interest Requirements. Each party hereto agrees to comply with any and all applicable conflict of interest requirements set forth in the California Political Reform Act and any current and future implementing regulations, policies, procedures and standards promulgated thereunder, including, without limitation, COUNTY's Conflict of Interest Code, all as may be amended from time to time.

13. PROVISIONS REQUIRED BY LAW:

This MOU is subject to any additional local, state and federal restrictions, limitations or conditions that may affect the terms, conditions or funding of this MOU. This MOU shall be read and enforced as though all legally required provisions are included herein, and if for any reason any such provision is not included, or is not correctly stated, the parties agree to amend the pertinent section to make such insertion or correction.

14. REFERENCE TO LAWS, REGULATIONS AND STANDARDS:

In the event any law, regulation or standard referred to herein is amended during the term of this MOU, the parties agree to comply with the amended provision as of the effective date thereof.

15. PROTOCOLS:

Both parties agree that the inclusion of additional protocols may be required to make this MOU specific. All such protocols shall be negotiated, determined and agreed upon by both parties hereto.

16. SEVERABILITY:

If any provision of this MOU, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this MOU.

17. AGREEMENT SHALL BIND SUCCESSORS:

All provisions of this MOU shall be fully binding upon, and shall inure to the benefit of, the parties and to each of their heirs, executors, administrators, successors and permitted assigns.

18. NON-LIABILITY OF OFFICIALS AND EMPLOYEES:

No official or employee of either party shall be personally liable for any default or liability under this MOU.

19. AMENDMENT:

This MOU may be amended at any time during the term hereof upon the mutual consent of both parties. No addition to, or alteration of, the terms of this MOU shall be valid unless made in writing and signed by an authorized representative of each party hereto.

20. STANDARD OF PRACTICE:

Each party warrants that it has the degree of learning and skill ordinarily possessed by reputable professionals practicing in similar localities in the same profession and under similar circumstances. Each party's duty is to exercise such care, skill and diligence as professionals engaged in the same profession ordinarily exercise under like circumstances.

21. JURISDICTION AND VENUE:

This MOU shall be construed in accordance with the laws of the State of California. Any dispute arising hereunder, or relating hereto, shall be litigated in the State of California and venue shall lie in the County of Humboldt unless transferred by court order pursuant to California Code of Civil Procedure Sections 394 or 395.

22. ADVERTISING AND MEDIA RELEASE:

Each party shall obtain the written approval of the other party before any informational material related to this MOU may be used as advertising or released to the media, including, without limitation, television, radio, newspapers and internet. Each party shall inform the other party of any and all requests for interviews by media related to this MOU before such interviews take place; and the other party shall be entitled to have a representative present at such interviews. All notices required by this provision shall be given to the Director in accordance with the notice requirements set forth herein.

23. SURVIVAL OF PROVISIONS:

The duties and obligations of the parties set forth in Section 6 – Record Retention and Inspection, Section 7 – Confidential Information and Section 10 – Indemnification shall survive the expiration or termination of this MOU.

24. CONFLICTING TERMS OR CONDITIONS:

In the event of any conflict in the terms or conditions set forth in any other agreements in place between the parties hereto and the terms and conditions set forth in this MOU, the terms and conditions set forth herein shall have priority.

25. FORCE MAJEURE:

Neither party hereto shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control, and without the fault or negligence, of such party. Such events shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism or other disasters, whether or not similar to the foregoing.

26. ENTIRE AGREEMENT:

This MOU contains all of the terms and conditions agreed upon by the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this MOU shall be deemed to exist or to bind either of the parties hereto. In addition, this MOU shall supersede in their entirety any and all prior agreements, promises, representations, understandings and negotiations of the parties, whether oral or written, concerning the same subject matter. Any and all acts which may have already been consummated pursuant to the terms and conditions of this MOU are hereby ratified.

27. COUNTERPART EXECUTION:

This MOU, and any amendments hereto, may be executed in one (1) or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to be one (1) and the same agreement. This MOU, and any amendments hereto, may be signed by manual or electronic signatures in accordance with any and all applicable local, state and federal laws, regulations and standards, and such signatures shall constitute original signatures for all purposes. A signed copy of this MOU, and any amendments hereto, transmitted by email or by other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this MOU and any amendments hereto.

28. AUTHORITY TO EXECUTE:

Each person executing this MOU represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this MOU. Each party represents and warrants to the other that the execution and delivery of this MOU and the performance of such party's obligations hereunder have been duly authorized.

[Signatures on following page.]

IN WITNESS WHEREOF, the parties have entered into this MOU as of the date first written above.

CHAN ZUCKERBERG BIOHUB:

By: [Signature]
Name: Victor R. Cowen
Title: CFO

Date: 6/4/2020

By: [Signature]
Name: Maurice A. Shady
Title: General Counsel

Date: 6/12/2020

COUNTY OF HUMBOLDT:

By: [Signature]
Michele Stephens, DHHS – Public Health Director
(Pursuant to the authority granted by the
Humboldt County Board of Supervisors
on March 26, 2020 [Item D-1, Resolution 20-25])

Date: 6/18/2020

INSURANCE AND INDEMNIFICATION REQUIREMENTS APPROVED:

By: [Signature]
Risk Management

Date: 6/17/2020

LIST OF EXHIBITS:

Exhibit A – Shared Responsibilities

EXHIBIT A
SHARED RESPONSIBILITIES
CHAN ZUCKERBERG BIOHUB
For Fiscal Year 2019-2022

COUNTY, by and through its Department of Health and Human Services - Public Health is conducting SARS-COV-2 testing of individuals who are critical to preserving the capacity of the healthcare delivery system, regional emergency response, and containing and mitigating the spread of COVID-19 within the County. BIOHUB is willing to perform genomic sequencing for positive samples of SARS-COV-2 at no charge to COUNTY.

I. Collection and Delivery of Specimens to BIOHUB for Genomic Sequencing.

COUNTY will collect and provide excess specimens of individuals who test positive to the SARS-COV-2 virus to BIOHUB for genomic sequencing. Specimens will be those that are tested by the COUNTY's Public Health Laboratory. COUNTY will deliver, or arrange and pay for transportation and delivery of, clinical laboratory specimens to BIOHUB's designated location. COUNTY will ensure that the excess specimens are properly handled and transported in accordance with industry standard practices for such samples. The COUNTY's samples shall be de-identified (as defined in 45 C.F.R. § 164.514) in accordance with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule and assigned accession numbers by COUNTY prior to COUNTY sending the de-identified samples to BIOHUB. Each de-identified sample sent to BIOHUB shall also include the sample's collection date and first 3 digits of the zip code associated with the sample. COUNTY will not subsequently provide any information to BIOHUB that could be used to re-identify samples.

In addition, in the event that the University of California San Francisco's ("UCSF") Clinical Lab performs tests on behalf of COUNTY's Public Health Laboratory, COUNTY has requested that BIOHUB perform genomic sequencing on excess samples which are tested positive for SARS-COV-2 by the University of California San Francisco's Clinical Lab. ("Clin Lab Samples"). The Clin Lab Samples will be delivered directly to the BIOHUB by UCSF, and handled by BIOHUB in accordance with Section II below.

II. SARS-COV-2 Testing and Genomic Sequencing.

BIOHUB will perform genomic sequencing for the positive samples for SARS-COV-2 ("Positive Specimens") to produce a phylogenetic tree for COUNTY at no charge. The genomic sequencing shall not constitute human subjects research, and the genomic sequencing does not constitute an FDA-regulated IVD test. The de-identified viral sequences from Positive Specimens, along with their associated dates of specimen collection and truncated zip codes, may be shared by BIOHUB on public databases for educational, epidemiological, and surveillance purposes.