

**MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN
COUNTY OF HUMBOLDT
AND
CITY OF ARCATA
FOR FISCAL YEAR 2020-2021**

This Memorandum of Understanding ("MOU"), entered into this 15 day of December 2020, by and between the County of Humboldt, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and the City of Arcata, a California municipal corporation, hereinafter referred to as "ARCATA," is made upon the following considerations:

WHEREAS, a novel coronavirus, COVID-19, causes infectious disease and was first detected in Wuhan City, Hubei Province, China in December 2019, and symptoms of COVID-19 include fever, cough and shortness of breath and outcomes have ranged from mild to severe illness, and in some cases death; and

WHEREAS, on January 31, 2020, U.S. Department of Health and Human Services Secretary Alex M. Azar II declared a public health emergency for the United States to aid the nation's health care community in responding to COVID-19; and

WHEREAS, the Centers for Disease Control and Prevention has determined that the virus presents a serious public health threat; and

WHEREAS, Humboldt County had its first confirmed case of COVID-19 on February 20, 2020, and the potential of more COVID-19 cases in Humboldt County is an imminent threat; and

WHEREAS, on March 4, 2020, Governor Gavin Newsom proclaimed a state of emergency to exist in California; and

WHEREAS, on March 11, 2020, Humboldt County Health Officer declared a Local Health Emergency pursuant to Humboldt County Code section 2210-8 for a up to seven (7) days in the county or any area thereof, including but not limited to an imminent and proximate public health threat of the introduction of any contagious, infectious, or communicable disease, chemical agent, noncommunicable biologic agent, toxin, or radioactive agent; and

WHEREAS, on March 13, 2020, President Donald J. Trump declared a federal state of emergency regarding the global pandemic caused by COVID-19; and

WHEREAS, on March 17, 2020, Humboldt County Board of Supervisors ratified the Humboldt County Health Officer's March 11, 2020 Local Health Emergency Declaration; and

WHEREAS, COUNTY, by and through its Department of Health and Human Services – Public Health ("DHHS – Public Health"), desires to work collaboratively with ARCATA to deploy and operate COVID-19 testing operations; and

WHEREAS, COUNTY and ARCATA 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 deploy and operate COVID-19 testing operations, utilizing ARCATA's facilities located at 321 Dr. Martin Luther King Jr. Parkway, Arcata, California, hereinafter referred to as "Facility," 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 on December 11, 2020 and shall remain in full force and effect until June 30, 2021, unless sooner terminated as provided herein.

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 thirty (30) days advance written notice which states the effective date of the termination.
- C. Insufficient Funding. COUNTY's obligations under this MOU are contingent upon the availability of local, state and/or federal funds. In the event such funding is reduced or eliminated, COUNTY shall, at its sole discretion, determine whether this MOU shall be terminated. COUNTY shall provide ARCATA seven (7) days advance written notice of its intent to terminate this MOU due to insufficient funding.

6. 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: DHHS – Public Health
Attention: Michele Stephens, Director
529 I Street
Eureka, California 95501
Email: mstephens@co.humboldt.ca.us

ARCATA: City of Arcata
Attention: Karen Diemer, City Manager
736 F Street
Arcata, California 95521
Email: citymgr@cityofarcata.org

7. REPORTING REQUIREMENTS:

Each party hereto agrees to prepare and submit any and all reports that may be required by local, state and/or federal agencies for compliance with this MOU. Any and all reports required hereunder shall be prepared in a format that complies with the Americans with Disabilities Act, and any other

applicable local, state and federal accessibility laws, regulations and standards, and submitted in accordance with any and all applicable timeframes.

8. 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.

9. 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.

10. 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.

11. NUCLEAR-FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE:

By executing this MOU, ARCATA certifies that it is not a Nuclear Weapons Contractor, in that ARCATA 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. ARCATA 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 ARCATA subsequently becomes a Nuclear Weapons Contractor.

12. 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.

13. 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

ARCATA: City of Arcata
Attention: Karen Diemer
736 F Street
Arcata, California 95521
Email: ctymgr@cityofarcata.org

14. 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.

15. 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. Accessibility Requirements. Each party hereto agrees to comply with any and all applicable accessibility requirements set forth in the Americans with Disabilities Act, Section 508 of the Rehabilitation Act of 1973, as amended, California Government Code Section 1135 and any current and future implementing regulations, policies, procedures and standards promulgated thereunder, including, without limitation, the federal accessibility standards set forth in 36 C.F.R. Section 1194.1, all as may be amended from time to time.

- C. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. ASSIGNMENT:

Neither party shall delegate its duties nor assign its rights hereunder, either in whole or in part, without the other party's prior written consent. Any assignment in violation of this provision shall be void, and shall be cause for immediate termination of this MOU. This provision shall not be applicable to service agreements or other arrangements usually or customarily entered into by either party to obtain supplies, technical support or professional services.

21. 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.

22. NO WAIVER OF DEFAULT:

The waiver by either party of any breach of this MOU shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this MOU.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. SUBCONTRACTS:

Each party shall obtain prior written approval from the other party, which shall not be unreasonably withheld, before subcontracting any of its duties or obligations hereunder. Any and all subcontracts shall be subject to all applicable terms and conditions of this MOU, including, without limitation, the confidentiality, licensing and certification requirements set forth herein. Each party shall remain legally responsible for the performance of all terms and conditions of this MOU, including, without limitation, any and all duties performed by third parties under subcontracts, whether approved by the other party or not.

29. SURVIVAL OF PROVISIONS:

The duties and obligations of the parties set forth in Section 8 – Record Retention and Inspection, Section 9 – Confidential Information and Section 12 – Indemnification shall survive the expiration or termination of this MOU.

30. 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.

31. INTERPRETATION:

This MOU, as well as its individual provisions, shall be deemed to have been prepared equally by both of the parties hereto, and shall not be construed or interpreted more favorably for one (1) party on the basis that the other party prepared it.

32. INDEPENDENT CONSTRUCTION:

The titles of the sections and subsections set forth herein are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this MOU.

33. 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, pandemics, 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.

34. 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.

35. 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.

36. 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.

CITY OF ARCATA:

By: Karen Diemer

Date: 12.07.2020

Name: Karen Diemer

Title: City Manager

COUNTY OF HUMBOLDT:

By: Michele Stephens

Date: 12/15/2020

Michele Stephens, Director

DHHS – Public Health

*(Pursuant to the authority granted by the
Humboldt County Board of Supervisors
on March 26, 2020 [Item D-1])*

INSURANCE AND INDEMNIFICATION REQUIREMENTS APPROVED:

By: [Signature]
Risk Management

Date: 12/14/20

LIST OF EXHIBITS:

Exhibit A – Shared Responsibilities

EXHIBIT A
SHARED RESPONSIBILITIES
ARCATA
For Fiscal Year 2020-2021

1. RESPONSIBILITIES OF ARCATA:

- a. Provide access to, and use of, its Facility as needed by COUNTY for COVID-19 operations. Operations include, without limitation, COUNTY's COVID-19 testing services. Access to the Facility is restricted to ARCATA, COUNTY and Optum staff only during the hours listed in 1(c) and is limited to the following locations:
 - i. The Facility's entryway, lobby and hallways;
 - ii. The Facility's restrooms; and
 - iii. The Facility's Teen Room.
- b. Provide use of the Facility's surrounding parking lot for the purposes of resident and COUNTY staff parking and drive-through testing services.
- c. Provide use of its Facility between the hours of 7:00 AM and 7:00 PM every Monday until the termination of this MOU.
 - i. At all times when operations are occurring, a minimum of one (1) COUNTY or Optum representative shall be present on-site supervising operations.

2. RESPONSIBILITIES OF COUNTY:

- a. Provide an estimated timeline for the duration of use of ARCATA's Facility.
- b. Provide a list of COUNTY contacts to ARCATA.
- c. COUNTY is responsible for the collection and disposal of any non-traditional/hazardous waste, including, without limitation, medical waste.
- d. Coordinate the demobilization and return of the Facility at the termination of this MOU.
- e. Return the Facility back to the original condition in which they were at the commencement of this MOU.
- f. COUNTY will notify ARCATA of the closing date for the testing operations.
- g. If at any time a disaster event ("Disaster") occurs which generates the need for a disaster shelter, the American Red Cross, with whom ARCATA has a pre-existing agreement for the use of the Facility as a disaster shelter, shall be given priority use of the Facility. In the event of a Disaster, at ARCATA's request, COUNTY shall immediately remove all personal property of COUNTY from, and repair and restore the Facility as nearly as reasonably possible to the condition that existed prior to COUNTY's entry.
- h. COUNTY may install temporary directional signage related to the operations, provided that such signage does not obstruct walkways or ADA signage.