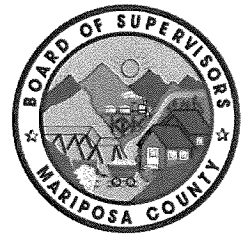


# MARIPOSA COUNTY

Health and Human Services • (209) 966-2000



## RESOLUTION - ACTION REQUESTED 2021-388

MEETING: July 6, 2021

TO: The Board of Supervisors

FROM: Shannon Gadd, Health and Human Services Agency Director

RE: Approval of Agreement with Biobot Analytics, Inc for COVID Wastewater Samples Testing

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### RECOMMENDATION AND JUSTIFICATION

Approve an Agreement with Biobot Analytics, Inc to provide wastewater epidemiology services for an amount not to exceed \$60,840; and Authorize the Board of Supervisors Chair to Sign the Agreement.

Biobot Analytics, Inc specializes in sample collection and analysis of wastewater facilities or other agreed upon locations and will collaborate with the Health Services division within County of Mariposa Health and Human Services Agency (HHSA) to implement programs for designated work sites that require such services.

### BACKGROUND AND HISTORY OF BOARD ACTIONS:

Board of Supervisors approved the most recent agreement with Biobot Analytics on November 17, 2020 through Resolution No. 2020-677.

### ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Failure to approve the agreement would make it extremely difficult for HHSA to meet environmental health laws and aid in public health research regarding COVID-19.

### FINANCIAL IMPACT:

**Revenue and corresponding appropriations are included in the HHSA Fiscal Year 2021 - 2022 Budget.**

### ATTACHMENTS:

**Mariposa County-Biobot Master Agreementv3 - June 11 2021 (PDF)**

**RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]**

**MOVER:** Wayne Forsythe, District IV Supervisor

**SECONDER:** Tom Sweeney, District II Supervisors

**AYES:** Tom Sweeney, Marshall Long, Wayne Forsythe, Miles Menetrey

**EXCUSED:** Rosemarie Smallcombe

## **BIOBOT WASTEWATER EPIDEMIOLOGY MASTER SERVICES AGREEMENT**

This **BIOBOT WASTEWATER EPIDEMIOLOGY MASTER SERVICES AGREEMENT** (“**Agreement**”) is entered into as of [ COMPLETE ], 2021 (“**Effective Date**”) by and between **BIOBOT ANALYTICS, INC.** (“**Biobot**”) and [Mariposa County Health & Human Services Agency](“**Customer**”) for the purpose of analyzing various targets in wastewater samples collected by or on behalf of Customer. The intent of the work will be to assist the Customer in understanding the presence of various human health indicators that are excreted in urine and stool, and inform rapid public health decision-making.

### **1. PROJECT ENGAGEMENT**

**1.1 Statements of Work.** All services to be performed by Biobot under this Agreement (the “**Services**”) will be covered by one or more statements of work mutually agreed to in writing by the parties (each, an “**SOW**”). Pursuant to this Agreement, Biobot agrees to provide the Services as specified in the applicable SOW. SOW No. 1, which covers the Services that have been agreed upon by the parties as of the Effective Date, is attached as Exhibit A. The Parties may from time to time agree on additional SOWs, which will be substantially in the form attached hereto as Exhibit B for additional Services. All SOWs will be subject to the terms and conditions of this Agreement and will be considered part of this Agreement. To the extent there are any conflicts or inconsistencies between this Agreement and any SOW, the provisions of this Agreement shall govern and control, unless the SOW expressly states otherwise.

**1.2 Sample Collection and Analysis.** Biobot agrees to deliver to Customer the wastewater collection protocols and Equipment (as defined below) as specified in the applicable SOW. Customer agrees to collect and provide wastewater samples from Customer’s wastewater treatment facilities or other agreed upon locations in the amounts, on the schedule, and in the containers specified in the applicable SOW. Customer agrees to collect the samples in accordance with all applicable laws and in the manner reasonably directed by Biobot, including using any equipment and kits Biobot provides or directs Customer to use (collectively, “**Equipment**”). Biobot may retain duplicates of all samples received from Customer as backup samples and for Biobot’s internal research and development purposes. Customer acknowledges that Biobot is unable to return any wastewater samples or duplicates to Customer. Subject to Biobot receiving samples from Customer in accordance with the specifications and on the schedule described in the applicable SOW, Biobot will analyze the samples and provide reports (the “**Reports**”) as specified in the applicable SOW.

**1.3 Publication.** Customer acknowledges the public health benefits of Biobot being able to share data with other entities. Therefore, so long as (a) Customer is not identified as a source of any specific data, and (b) the data and Reports provided by Biobot to other communities or government agencies, or in any publications, are aggregated at the state or province level or greater population metric, Customer agrees that Biobot may publish such data and reports in its reasonable judgment for any purpose, including in scientific publications.

**1.4 Publicity.** Customer agrees that Biobot may identify Customer, the county in which Customer resides (if applicable), and any facility participating under this Agreement as a client of Biobot, provided that Biobot agrees not to publicize the Reports associated with Customer without Customer’s prior consent.

### **2. FEES**

**2.1 Payment.** In consideration of the Services performed pursuant to a particular SOW, Customer will pay Biobot the fees specified in such SOW (the “**Fees**”), subject to this Section 2. All payments shall be made in full within thirty (30) days of date of invoice, without offset or deduction of any kind. If any payment due from Customer under this Agreement becomes more than thirty (30) days past due, Biobot may charge Customer a late payment charge equal to the lesser of (a) one and one-half percent (1.5%) per month, compounded monthly, or (b) the maximum rate permitted under applicable law on the past due balance.

**2.2 Taxes.** The Fees are exclusive of taxes, and Customer is responsible for all applicable taxes other than taxes on Biobot’s net income.

### **3. OWNERSHIP**

**3.1 Data.** As between the parties, subject to the provisions herein, Customer and Biobot will jointly own all right, title, and interest in and to the data related to and resulting from Biobot’s processing the samples (the

“Data”), including all intellectual property rights and related proprietary rights therein, without rights of accounting. Neither party shall be entitled to share in any profits earned by the other party in its use of the data. The parties acknowledge and agree that Biobot shall be permitted to use the Data in any manner, without restriction.

**3.2 Reports.** Customer will own all Reports prepared for Customer by Biobot. Notwithstanding the foregoing, Customer acknowledges that Biobot may use any insights and analysis learned by Biobot from preparing and generating the Reports, including benchmarking data, for any purpose; provided that Biobot does not identify Customer as the source of such insights or any other Data without Customer’s prior approval.

**4. CONFIDENTIALITY.** EACH PARTY AGREES IT WILL MAINTAIN IN CONFIDENCE AND NOT TO USE EXCEPT AS PERMITTED BY THIS AGREEMENT ANY CONFIDENTIAL INFORMATION DISCLOSED TO IT BY THE OTHER PARTY. “CONFIDENTIAL INFORMATION” MEANS ANY TECHNICAL AND NON-TECHNICAL DATA OR INFORMATION, IN ORAL, WRITTEN, GRAPHIC OR ELECTRONIC FORM, THAT IS EITHER INDICATED TO BE THE PROPRIETARY OR CONFIDENTIAL INFORMATION OF THE DISCLOSING PARTY, OR WHICH, BY ITS NATURE, THE RECEIVING PARTY WOULD REASONABLY DEEM TO BE CONFIDENTIAL. THE OBLIGATIONS OF CONFIDENTIALITY CONTAINED IN THIS SECTION 4 WILL NOT APPLY TO THE EXTENT THAT IT CAN BE ESTABLISHED BY THE RECEIVING PARTY THAT THE CONFIDENTIAL INFORMATION: (A) WAS ALREADY KNOWN TO THE RECEIVING PARTY, OTHER THAN UNDER AN OBLIGATION OF CONFIDENTIALITY, AT THE TIME OF DISCLOSURE; (B) WAS GENERALLY AVAILABLE TO THE PUBLIC OR OTHERWISE PART OF THE PUBLIC DOMAIN AT THE TIME OF ITS DISCLOSURE; (C) BECAME GENERALLY AVAILABLE TO THE PUBLIC OR OTHERWISE PART OF THE PUBLIC DOMAIN AFTER ITS DISCLOSURE AND OTHER THAN THROUGH ANY ACT OR OMISSION OF THE RECEIVING PARTY; OR (D) WAS DEVELOPED INDEPENDENTLY BY THE RECEIVING PARTY WITHOUT ANY USE OF THE DISCLOSING PARTY’S CONFIDENTIAL INFORMATION. ANY RESTRICTIONS ON DISCLOSURE OF DATA OR REPORTS WILL NOT APPLY TO INFORMATION THAT IS REQUIRED TO BE DISCLOSED BY A COURT, APPLICABLE PUBLIC RECORDS LAWS OR REGULATIONS, OR GOVERNMENT AGENCY OR REGULATORY REQUIREMENTS. NOTWITHSTANDING THE FOREGOING, EACH PARTY ACKNOWLEDGES THAT THE RAW DATA COLLECTED FROM THE SAMPLES DOES NOT REPRESENT THE CONFIDENTIAL INFORMATION OF EITHER PARTY.

**5. WARRANTIES; WARRANTY DISCLAIMER**

**5.1 Representations.** Each party represents and warrants to the other party that (a) such party has the required operational power, right, and authority to enter into this Agreement and perform its obligations hereunder, (b) such party will comply with all applicable laws and regulations with respect to its activities under this Agreement, (c) the execution of this Agreement and performance of its obligations thereunder do not and will not violate any other agreement to which it is a party, and (d) this Agreement constitutes a legal, valid, and binding obligation of such party. Customer represents and warrants that it will not use the Equipment or the Reports for any purpose other than as set forth in this Agreement. Biobot represents and warrants that: (i) it will use commercially reasonable efforts to perform the Services in a workman-like manner consistent with industry standards and protocols and (ii) the Services provided will meet the specifications set forth in the applicable documentation provided by Biobot. If, through no fault or delay of Customer, the Services do not materially conform to the foregoing warranty and Customer provides Biobot with written notice within thirty (30) days of Biobot’s performance of the Services, Customer’s sole and exclusive remedy will be for Biobot to re-perform the nonconforming portions of the Services.

**5.2 Disclaimer.** WITHOUT LIMITING THE FOREGOING, BIOBOT HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. BIOBOT SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

**6. LIMITATION OF LIABILITY.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER, OR TO ANY PERSON CLAIMING THROUGH OR UNDER THE OTHER, FOR ANY LOST PROFITS, LOSS OF USE, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT, HOWEVER CAUSED AND WHETHER IN

CONTRACT, IN TORT, OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

**7. INSURANCE.** DURING THE TERM OF THIS AGREEMENT, BIOBOT AGREES TO MAINTAIN INSURANCE COVERAGE AT ITS OWN EXPENSE AS PROVIDED IN THIS PARAGRAPH AND, IF REQUESTED IN WRITING, SHALL DELIVER CERTIFICATES OF INSURANCE IN A FORM SATISFACTORY TO CUSTOMER BEFORE COMMENCING ANY WORK UNDER THIS AGREEMENT. POLICIES SHALL BE WRITTEN SO AS TO INCLUDE A PROVISION THAT THE POLICY WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED WITHOUT AT LEAST THIRTY (30) DAYS' PRIOR WRITTEN NOTICE EXCEPT FOR NONPAYMENT AS REQUIRED BY LAW. AT LEAST TWO (2) WEEKS PRIOR TO THE EXPIRATION OF ANY POLICY REQUIRED UNDER THIS AGREEMENT, EVIDENCE OF RENEWAL OR REPLACEMENT OF POLICIES OF INSURANCE WITH TERMS NO LESS FAVORABLE TO CUSTOMER THAN THE EXPIRING POLICIES SHALL BE DELIVERED TO CUSTOMER IN THE MANNER REQUIRED FOR SERVICE OF NOTICE UNDER THE CONTRACT. THE INSURANCE POLICIES REQUIRED UNDER THIS AGREEMENT SHALL CONTAIN CUSTOMARY TERMS GENERALLY AVAILABLE IN THE MARKETPLACE AT THE TIME COVERAGE IS PROCURED AND SHALL BE:

- (a) A professional liability policy (errors and omissions) in the amount of One Million Dollars (\$1,000,000.00) per claim and in the aggregate.
- (b) Workers' Compensation coverage for the life of this Agreement for the benefit of employees required to be covered by the applicable workers' compensation law.
- (c) General Liability Insurance with limits of no less than One Million Dollars (\$1,000,000.00) per claim and Two Million Dollars (\$2,000,000.00) in the aggregate.

## **8. TERM; TERMINATION**

**8.1 Term.** This Agreement will commence as of the Effective Date and, unless sooner terminated as provided in Section 9, will remain in effect for 6 months unless otherwise specified in the SOW (the "**Term**").

**8.2 Termination Without Cause.** This Agreement may be terminated without cause by either party upon sixty (60) days' written notice to the other party.

**8.3 Termination for Cause.** This Agreement may be terminated by either party upon written notice to the other party if the other party commits a material breach of any of its obligations hereunder and fails to cure such breach within thirty (30) days from the date of such written notice.

### **8.4 Effects of Termination.**

(a) In the event of termination of any SOW for the convenience of Customer or by reason of a material breach of the Agreement or a SOW by Customer, Biobot shall be paid that portion of its fees and expenses that it has earned hereunder to the date of termination, plus a repayment of any Discount granted to Customer.

(b) In the event of termination by reason of a material breach of a SOW by Biobot, Biobot shall be paid that portion of its fees and expenses that it has earned to the date of termination.

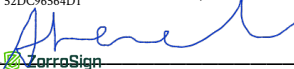

**8.5 Survival.** In the event of termination or upon expiration of this Agreement, Sections 1.3, 1.4, 2, 3, 4 (for a period of two years), 5.2, 6, 7, 9.4, and 10 hereof will survive and continue in full force and effect.

**9. MISCELLANEOUS.** NO LICENSES UNDER ANY INTELLECTUAL PROPERTY RIGHTS ARE GRANTED UNDER THIS AGREEMENT AND ALL RIGHTS ARE RESERVED. NEITHER PARTY WILL BE HELD RESPONSIBLE FOR ANY DELAY OR FAILURE IN PERFORMANCE OF THIS AGREEMENT CAUSED BY ANY EVENTS BEYOND THE REASONABLE CONTROL OF THAT PARTY. THE RELATIONSHIP OF THE PARTIES CREATED BY THIS AGREEMENT IS THAT OF INDEPENDENT CONTRACTORS AND NOT THAT OF EMPLOYER/EMPLOYEE, PRINCIPAL/AGENT, PARTNERSHIP, JOINT VENTURE, OR REPRESENTATIVE OF THE OTHER. THIS AGREEMENT WILL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS, WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS. IN THE EVENT ANY PROVISION OF THIS AGREEMENT

IS HELD BY A PROPER AUTHORITY TO BE PROHIBITED BY LAW OR UNENFORCEABLE, SUCH PROVISION SHALL BE AMENDED AND INTERPRETED TO ACCOMPLISH THE OBJECTIVES OF SUCH PROVISION TO THE GREATEST EXTENT POSSIBLE UNDER APPLICABLE LAW, AND THE REMAINING PROVISIONS WILL CONTINUE IN FULL FORCE AND EFFECT. NEITHER PARTY MAY ASSIGN THIS AGREEMENT OR ITS RIGHTS HEREUNDER, IN WHOLE OR IN PART, BY OPERATION OF LAW OR OTHERWISE, WITHOUT THE PRIOR WRITTEN CONSENT OF THE OTHER PARTY, SUCH CONSENT NOT TO BE UNREASONABLY CONDITIONED OR WITHHELD. NOTWITHSTANDING THE FOREGOING, BIOBOT MAY ASSIGN THIS AGREEMENT AND ITS RIGHTS HEREUNDER TO ANY AFFILIATE OR SUCCESSOR IN INTEREST WITHOUT CUSTOMER'S PRIOR WRITTEN CONSENT. ALL NOTICES, CONSENTS, AND APPROVALS UNDER THIS AGREEMENT MUST BE DELIVERED IN WRITING BY COURIER, OR BY CERTIFIED OR REGISTERED MAIL (POSTAGE PREPAID AND RETURN RECEIPT REQUESTED), TO THE OTHER PARTY AT THE ADDRESS SET FORTH BELOW, AND WILL BE EFFECTIVE UPON RECEIPT OR THREE BUSINESS DAYS AFTER BEING DEPOSITED IN THE MAIL AS REQUIRED ABOVE, WHICHEVER OCCURS SOONER. EITHER PARTY MAY CHANGE ITS ADDRESS BY GIVING NOTICE OF THE NEW ADDRESS TO THE OTHER PARTY IN ACCORDANCE WITH THE FOREGOING. WAIVER OF ANY BREACH OR FAILURE TO ENFORCE ANY TERM OF THIS AGREEMENT WILL NOT BE DEEMED A WAIVER OF ANY BREACH OR RIGHT TO ENFORCE WHICH MAY THEREAFTER OCCUR. THIS AGREEMENT MAY BE MODIFIED ONLY BY WRITTEN MUTUAL CONSENT OF THE PARTIES. HEADINGS USED IN THIS AGREEMENT ARE INTENDED FOR CONVENIENCE OF REFERENCE ONLY AND SHALL NOT CONTROL OR AFFECT THE MEANING OR CONSTRUCTION OF ANY PROVISION OF THIS AGREEMENT. THIS AGREEMENT WILL BE CONSTRUED WITHOUT REGARD TO ANY PRESUMPTION OR RULE REQUIRING CONSTRUCTION OR INTERPRETATION AGAINST THE PARTY DRAFTING AN INSTRUMENT OR CAUSING AN INSTRUMENT TO BE DRAFTED. AS USED IN THIS AGREEMENT, THE WORDS "INCLUDE" AND "INCLUDING" AND VARIATIONS THEREOF WILL NOT BE DEEMED TO BE TERMS OF LIMITATION, BUT RATHER WILL BE DEEMED TO BE FOLLOWED BY THE WORDS "WITHOUT LIMITATION." THIS AGREEMENT CONTAINS THE FINAL, COMPLETE, AND EXCLUSIVE AGREEMENT OF THE PARTIES RELATIVE TO THE SUBJECT MATTER HEREOF AND SUPERSEDES ALL PRIOR AND CONTEMPORANEOUS UNDERSTANDINGS AND AGREEMENTS RELATING TO ITS SUBJECT MATTER. THIS AGREEMENT MAY BE EXECUTED IN COUNTERPARTS, EACH OF WHICH SHALL BE DEEMED AN ORIGINAL, BUT ALL OF WHICH TOGETHER SHALL BE DEEMED TO BE ONE AND THE SAME AGREEMENT. A SIGNED COPY OF THIS AGREEMENT DELIVERED BY FACSIMILE, E-MAIL OR OTHER MEANS OF ELECTRONIC TRANSMISSION (TO WHICH A PDF COPY IS ATTACHED) SHALL BE DEEMED TO HAVE THE SAME LEGAL EFFECT AS DELIVERY OF AN ORIGINAL SIGNED COPY OF THIS AGREEMENT.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the Effective Date.



**BIOBOT ANALYTICS, INC.**

By:  52DC96564D1  


Name: Newsha Ghaeli  
President and Co-Founder  
Address: 501 Massachusetts Ave  
Cambridge, MA 02139

Date: \_\_\_\_\_

**CUSTOMER**

By:  52DC96564D1  


Name: Marshall Long  
Chair, Board of Supervisors  
Address: P.O. Box 99  
Mariposa, CA 95338

Date: \_\_\_\_\_

Approved as to Legal Form:

 52DC96564BD  


Steven W. Dahlem, County Counsel

**Exhibit A**

**SOW No. 1**

1. Project Term: 26 Weeks
2. Scope of Services:
  - a. Program Design:
    - i. Develop sampling program
  - b. Wastewater Sample Collection Kits: 78
  - c. Lab Analysis:
    - i. Laboratory analysis, continuously updated and optimized
    - ii. Analysis of SARS-CoV-2 RNA fragments run with positive control, negative control, and internal control for Quality Control purposes
  - d. Data Analysis:
    - i. Quantitative analysis of raw SARS-CoV-2 concentration in samples
    - ii. Quantitative analysis of SARS-CoV-2 concentration normalized to internal control (normalized SARS-CoV-2 concentration)
    - iii. Temporal trend analysis using normalized SARS-CoV-2 concentration
    - iv. Contextualizing results with the temporal trend of reported cases in the respective county
  - e. Data Interpretation and Communication:
    - i. Support with data interpretation and communication to key stakeholders and the press (as requested)
    - ii. Weekly webinar with Biobot and participating treatment facilities, and other customers
3. Reports:
  - a. Content:
    - i. A quantitative measurement of the virus concentration in wastewater sample
    - ii. Analysis of the viral load standardized to a fecal biomarker
    - iii. Time series of wastewater-based normalized SARS-CoV-2 concentration
    - iv. Time series of reported clinical cases in the county averaged over 7 days
    - v. Estimate of Covid-19 cases corresponding to the measured virus concentration [Community+ only]
    - vi. Contextualization of results with entire Biobot dataset and regional overviews of average concentrations [Community+ only]

- b. Report delivery: Reports will be provided within 1 business day after the samples(s) are received by Biobot.

4. Fees:

The total cost for this Program that will last 26 weeks is \$60,840. Customer agrees to pay Biobot \$780 per sample analysed by Biobot for 78 samples.