

MOU Between the County of San Benito and the San Benito County Chamber of Commerce Foundation

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE COUNTY OF SAN BENITO  
AND  
SAN BENITO COUNTY CHAMBER OF COMMERCE FOUNDATION**

This Memorandum of Understanding (MOU) between the San Benito County Chamber of Commerce Foundation (the "CHAMBER") and the County of San Benito (the "COUNTY") establishes the rights and responsibilities of the parties for the allocation of annual General Fund monies for economic development and promotion of tourism within San Benito County.

**WHEREAS**

1. The COUNTY is a public entity;
2. The COUNTY is a political subdivision of the State of California;
3. The COUNTY Board of Supervisors promotes economic development and tourism within San Benito County;
4. The CHAMBER is a 501(c)(6) non-profit organization that has been instrumental in promoting business education, networking, business promotion and tourism in Hollister and San Benito County;
5. The CHAMBER provides staff and meeting space for Visitors Bureau Tourism Committee (the "Chamber Tourism Committee") to help promote tourism in San Benito County;
6. The parties recognize the need for and the advantages of marketing to promote the historic heritage of San Benito County, local events, cultural attractions, and recreational resources at the local, regional, state, and federal parks, as well as other tourism attractions in San Benito County; and
7. The parties realize the potential for economic development that can be attained from sustaining a County-wide marketing strategy in San Benito County.

**GOAL**

THEREFORE, to develop a public/private partnership promoting economic development and tourism within San Benito County, implementing a County-wide strategy with input from the Board of Supervisors, the community and existing business, the aforementioned parties hereby enter into this MOU and agree to the following:

**TERMS AND CONDITIONS**

1. **Staff:** The CHAMBER will have personnel assigned to tourism
  - a. Assist in optimizing cooperation among the local jurisdictions, including regional economic development organizations; and
  - b. Serve as a tourist liaison between local government and local business

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2. **Web Page/Social Media:** The CHAMBER will maintain an updated web site and use social media to promote tourism, employment, business opportunities, educational opportunities, and financing programs in San Benito County.
3. **Strategy:** The CHAMBER will work cooperatively with the San Benito County Business Council, the Economic Development Corporation (EDC), the San Juan Committee, and the Hollister Downtown Association, and the COUNTY, to update and maintain collaborative tourism marketing campaigns with consistent branding and messaging to combine the efforts of the industries.
  - a. **Cooperative Tourism Strategy:** The CHAMBER will work on leading a cooperative tourism strategy. At a minimum, such deliverables include:
    - Development of a Cooperative Strategy: to, define the roles of the agencies mentioned in section 3, establishing a division of responsibilities, and define any agreed to sharing of resources.
    - The Chamber will work closely with the partners to create the campaign, a workflow with agreed-upon deadlines fostering a collaborative creative culture in which each organization feels valued and respected.
4. **Leverage Funding:** The CHAMBER will pursue a variety of approaches to leverage funding with grants, continuing partnerships with the private business, private interests, other organizations, and provide co-sharing office space and support staff.
5. **Tourism Committee Membership:** The CHAMBER will recruit members representing food and beverage, travel, and tourism, lodging and hospitality, and recreation segments of tourist-related business, industry and parks to serve on the Chamber Tourism Committee. The COUNTY will appoint a County Member or designee to serve on the Chamber Tourism Committee.
6. **Colocation:** The CHAMBER will staff a welcome center.
7. **Activities:** The CHAMBER will coordinate and support a variety of community events to include but not limited to the Discovery Classic Bike Ride, Food and Wine Experience events, Farmer's Market Booth, Savor San Benito County, local festivals/rallies, and local tours.
8. **Payment:** The COUNTY will provide the CHAMBER with \$35,750.00 annually beginning in annual year January 1, 2022, for a period of three years and ending on December 31, 2024 to provide the services listed herein.
9. **Report/Monitoring:** The CHAMBER'S Chief Executive Officer (CEO) will meet monthly with the COUNTY'S County Administrative Officer (CAO) or designee, and will provide semi-annual reports to the Board of Supervisors in the following months of January and July as well as present annually at a board of Supervises Meeting. The CHAMBER will collect information and monitor business attraction

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for business and tourism related activities, website traffic, public inquiries and social media.

10. **Independent Contractor:** The CHAMBER and its officers and employees, in the performance of this MOU, are independent contractors in relation to the COUNTY and not officers or employees of the COUNTY. Nothing in this MOU shall create any of the rights, powers, privileges or immunities of any officer or employee of the COUNTY. The CHAMBER shall be solely liable for all applicable taxes or benefits, including, but not limited to, federal and state income taxes, Social Security taxes, or ERISA retirement benefits, which taxes or benefits arise out of the performance of this MOU. The CHAMBER further represents to the COUNTY that the CHAMBER has no expectation of receiving any benefits incidental to employment.
11. **Hold Harmless:** The CHAMBER agrees to indemnify, defend with counsel approved by COUNTY, and hold harmless the COUNTY, its officers, officials, employees, and agents from and against any and all liability, loss, damage, expense, and cost arising out of or in connection with its negligence, recklessness, or willful misconduct in carrying out these activities. In addition, the CHAMBER agrees to indemnify the COUNTY from any financial or tax liability arising from its status as an independent contractor.
12. **General Insurance Requirements:** Without limiting the CHAMBER's duty to indemnify the COUNTY, the CHAMBER shall comply with the insurance coverage requirements set forth in this MOU and shall satisfy the following requirements:
  - a. Each policy shall be issued by a company authorized by law to transact business in the State of California.
  - b. Each policy shall provide that the COUNTY shall be given notice in writing at least thirty (30) days in advance of any cancellation thereof.
  - c. The comprehensive motor vehicle and comprehensive general liability policies shall each provide an endorsement naming the County of San Benito and its officers, agents and employees as additional insureds.
  - d. The required coverage shall be maintained in effect throughout the term of this MOU.

The CHAMBER shall require all subcontractors performing work under this MOU to obtain substantially the identical insurance coverage required of the CHAMBER pursuant to this MOU.

13. **Insurance Requirements:** The CHAMBER shall maintain the following insurance policies in full force and effect during the term of this MOU:
  - a. Comprehensive general liability insurance. The CHAMBER shall maintain comprehensive general liability insurance, covering all of the CHAMBER's operations with a combined single limit of \$1,000,000.00.

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- b. Professional liability insurance. The CHAMBER shall maintain professional liability insurance with liability limits of not less than \$1,000,000.00.
- c. Comprehensive motor vehicle liability insurance. The CHAMBER shall maintain comprehensive motor vehicle insurance covering all motor vehicles (including owned, non-owned and hired) used in providing services under this MOU, with a combined single limit of not less than \$1,000,000.00.
- d. Workers' compensation insurance. The CHAMBER shall maintain a workers' compensation plan covering all of its employees as required by California Labor Code Section 3700, either through workers' compensation insurance issued by an insurance company or through a plan of self-insurance certified by the State Director of Industrial Relations. If the CHAMBER elects to be self-insured, the certificate of insurance otherwise required by this MOU shall be replaced with consent to self-insure issued by the State Director of Industrial Relations.

**14. Certificate of Insurance:** Prior to the commencement of performance of services by the CHAMBER and prior to any obligations of the COUNTY, the CHAMBER shall file certificates of insurance with the COUNTY, showing that the CHAMBER has in effect the insurance required by this MOU. The CHAMBER shall file a new or amended certificate promptly after any change is made in any insurance policy which would alter the information on the certificate then on file. In lieu of providing proof of insurance, the CHAMBER may provide proof of self-insurance meeting requirements equivalent to those imposed herein. The CHAMBER warrants that its self-insurance provides substantially the same protection to the COUNTY as the insurance required herein. The CHAMBER further agrees to notify the COUNTY in the event any change in self-insurance occurs that would alter the obligations undertaken in this MOU within thirty (30) days of such change.

**15. Taxes:** The CHAMBER agrees that as a non-profit corporation, the CHAMBER is solely responsible for reporting all revenues received, expenditures, and payment of all federal and state taxes and social security obligations to employees retained pursuant to this MOU. The CHAMBER also agrees that the COUNTY will not withhold any payments for federal or state taxes or social security (FICA) or Medicare benefits. In addition, the COUNTY will not provide the CHAMBER with coverage for worker's compensation, long or short-term disability, or unemployment insurance.

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16. **MOU Administrators:** All matters concerning this MOU which are within the responsibility of the parties shall be under the direction of, or shall be submitted to, the respective MOU administrators or to the party's employee specified, in writing, by the MOU administrator. A party may, in its sole discretion, change its designation of its MOU administrator and shall promptly give written notice to the other party of any such change. The parties' MOU administrators are:

COUNTY's MOU Administrator:

Ray Espinosa, CAO  
481 Fourth Street  
Hollister, CA 95023  
Email: [respinosa@cosb.us](mailto:respinosa@cosb.us)  
Telephone No.: (831) 636-4000  
Facsimile No.: (831) 636-4010

CHAMBER's MOU Administrator:

Michelle Leonard, President/CEO  
243 6<sup>th</sup> Street, Suite 100  
Hollister, CA 95023  
Email: [ceo@sanbenitocountychamber.com](mailto:ceo@sanbenitocountychamber.com)  
Telephone No.: (831) 637-5315

17. **Notices:** Notices to the parties in connection with the administration of this MOU shall be given to the parties' MOU administrator personally, by regular mail, by email, or by facsimile transmission as more particularly specified in this paragraph. Notices will be deemed given on:
- a. The day the notice is personally delivered to the MOU administrator or the office of the party's MOU administrator; or
  - b. Five days after the date the notice is deposited in the United States mail, addressed to a party's MOU administrator as indicated in this MOU, with first-class postage fully prepaid; or
  - c. On the day that the notice is transmitted by email or facsimile to a party's email address or facsimile number, provided that an original of such notice is deposited in the United States mail, addressed to a party's MOU administrator, on the same day as the email or facsimile transmission is made.
18. **Termination:** The provisions of this MOU may be terminated upon thirty (30) days written notice by either Party.
19. **Non-appropriation of Funds:** This agreement is subject for funding to be appropriated during the annual budget cycle and approved by the Board of Supervisors. If funding for any fiscal year is reduced or deleted for purposes of this program, the COUNTY has the option to either cancel this MOU with no liability occurring to the COUNTY, or offer to amend the MOU to reflect the reduced amount. The COUNTY will provide at least thirty (30) days advance written notice of such determinations.
20. **Amendment:** This MOU may be amended at any time with the mutual consent of all parties involved, effective in writing with signatures from each authorized party representative.

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- 21. Prohibition Against Assignment and Delegation of Duties:** Except as specifically authorized herein, no rights under this MOU may be assigned and no duties under this MOU may be delegated by the CHAMBER without the prior written consent of the COUNTY, and any attempted assignment or delegation without such consent shall be void.
- 22. Compliance With Applicable Laws; Nondiscrimination:** The CHAMBER shall comply with all applicable federal, state and local laws now, or hereafter, in force, and with any applicable regulations, in performing the work and providing the services specified in this MOU. The CHAMBER shall not discriminate in the employment of persons necessary to perform this MOU on any legally impermissible basis, including on the basis of the race, color, national origin, ancestry, religion, age, sex, or disability of such person.
- 23. Conflict of Interest:** The CHAMBER covenants that it presently has no interest and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. The CHAMBER further covenants that, in the performance of this MOU, no subcontractor or person having such an interest shall be used or employed. The CHAMBER certifies that no one who has or will have any financial interest under this MOU is an officer or employee of the COUNTY.
- 24. Records to Be Maintained:** The CHAMBER shall keep and maintain accurate records of all costs incurred and all time expended for work under this MOU. The CHAMBER shall contractually require that all of its subcontractors performing work called for under this MOU also keep and maintain such records. All such records, whether kept by the CHAMBER or any subcontractor, shall be made available to the COUNTY or its authorized representative, or officials of the State of California for review or audit during normal business hours, upon reasonable advance notice given by the COUNTY, its authorized representative, or officials of the State of California. The CHAMBER shall maintain and preserve all records related to this MOU for a period of three years from the close of the fiscal year in which final payment under this MOU is made. The CHAMBER shall also contractually require the maintenance of such records in the possession of any third party performing work related to this MOU for the same period of time. Such records shall be retained beyond the three-year period, if any audit involving such records is then pending, until the audit findings are resolved. The obligation to ensure the maintenance of the records beyond the initial three year period shall arise only if the COUNTY notifies the CHAMBER of the commencement of an audit prior to the expiration of the three year period.
- 25. Negotiated Agreement:** This MOU has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this MOU within the meaning of California Civil Code Section 1654.
- 26. Independent Advice:** Each party hereby represents and warrants that in executing this MOU it does so with full knowledge of the rights and duties it may

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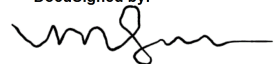
have with respect to the other. Each party also represents and warrants that it has received independent legal advice from its attorney with respect to the matters set forth in this MOU and the rights and duties arising out of this MOU, or that such party willingly foregoes any such consultation.

- 27. No Reliance on Representations:** Each party hereby represents and warrants that it is not relying, and has not relied, upon any representation or statement made by the other party with respect to the facts involved or its rights or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to this MOU may hereafter turn out to be other than, or different from the facts now known to such party as true, or believed by such party to be true. The parties expressly assume the risk of the facts turning out to be different and agree that this MOU shall be effective in all respects and shall not be subject to rescission by reason of any such difference in facts.
- 28. Severability:** Should any provision herein be found or deemed to be invalid, this MOU shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect. To this end, the provisions of this MOU are declared to be severable.
- 29. Entire Agreement:** This MOU is the entire agreement of the parties. There are no understandings or agreements pertaining to this MOU except as are expressly stated in writing in this MOU or in any document attached hereto or incorporated herein by reference.
- 30. Materiality:** The parties consider each and every term, covenant, and provision of this MOU to be material and reasonable.
- 31. Waiver:** Waiver by either party of a breach of any covenant of this MOU will not be construed to be a continuing waiver of any subsequent breach. The COUNTY'S receipt of consideration with knowledge of the CHAMBER'S violation of a covenant does not waive its right to enforce any covenant of this MOU. The parties shall not waive any provisions of this MOU unless the waiver is in writing and signed by all parties.
- 32. Authority and Capacity:** The CHAMBER and the CHAMBER'S signatory each warrant and represent that each has full authority and capacity to enter into this MOU.
- 33. Cumulative Remedies:** All of the various rights, options, elections, powers and remedies of the parties shall be construed as cumulative, and no one of them exclusive of any other or of any other legal or equitable remedy which a party might otherwise have in the event of a breach or default of any condition, covenant or term by the other party. The exercise of any single right, option, election, power or remedy shall not, in any way, impair any other right, option, election, power or remedy until all duties and obligations imposed shall have been fully performed.

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**34. Counterparts:** This MOU may be executed in any number of counterparts, each of which so executed shall be deemed to be an original. The counterparts shall together constitute one MOU.

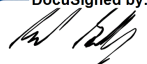
SAN BENITO COUNTY CHAMBER

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11/17/2021  
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By: Michelle Leonard, President/CEO

SAN BENITO COUNTY

By: Ray Espinosa, CAO

APPROVED AS TO LEGAL FORM:  
San Benito County Counsel's Office

DocuSigned by:  
  
11/17/2021  
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By: Reed Gallogly, Deputy County Counsel