

**MEMORANDUM OF UNDERSTANDING
BETWEEN
COUNTY OF SAN BENITO
AND
THE ECONOMIC DEVELOPMENT CORPORATION OF SAN BENITO COUNTY**

This Memorandum of Understanding (MOU) between the Economic Development Corporation of San Benito County (the “EDC”) and the County of San Benito (“County”) establishes the rights and responsibilities of the Parties for the allocation of annual General Fund monies for economic development 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. Resolution 19-____ memorializes the County’s desire to develop a Memorandum of Understanding with the Economic Development Corporation of San Benito County (the “EDC”) to provide assistance with economic development within San Benito County related to industrial recruitment, business retention and expansion, business start-up and marketing efforts.
4. The EDC is a 501(c)(3) non-profit corporation that has been instrumental in the adoption of the 2017 San Benito County Comprehensive Economic Development Strategy (CEDS); and
5. In previous fiscal years the EDC staffed an Executive Director position. This position was funded partially from County General Fund contributions.
6. County General Fund contributions have not been appropriated since fiscal year 2012/2013,
7. The EDC in prior years assisted with the recruitment of Corbin, Milgard, West Marine, and with retention and expansion of business within San Benito County, but momentum was stalled with the elimination of the County General Fund contributions and the great recession;
8. Implementation of the CEDS, pursuit of grants and other business recruitment, and expansion and retention programs require ongoing investment to support a paid qualified economic development coordinator,
9. The City of Hollister recently committed \$100,000 annually beginning in Fiscal Year 2019/20 for a period of five years for economic development with the EDC;
10. The County and the EDC realize the potential for economic development that can be attained from developing and sustaining an economic coordinator in San Benito County;

GOAL

To develop a public/private partnership promoting economic development within San Benito County, to establish a framework to be utilized in coordinating local, state, and federal efforts, with primary emphasis on providing the necessary foundation essential for healthy economic growth in San Benito County, and to assist in the re-establishment of the Economic Development Corporation (EDC).

TERMS AND CONDITIONS

1. **Staff:** The EDC agrees to retain a qualified economic development professional to assist with the following priorities and objectives over the next five years:
 - a. Optimize cooperation among the four local jurisdictions to include San Benito County, Santa Clara County, Santa Cruz County, and Monterey County, local and regional economic development organizations..
 - Deliverables:
 - i. Cooperation Strategy –roles, responsibilities, and resources.
 - b. Diversify revenue streams to the EDC.
 - c. Develop a scalable business attraction program in cooperation with local agencies, business organizations, and service providers to showcase industrial properties, , agricultural business and local opportunities for small businesses.
 - Deliverables:
 - i. Internal Business Plan; and
 - ii. Community/Business Engagement Plan.
 - d. Serve as a liaison for new business, business expansion, and retention for permit processing.
 - Deliverables:
 - i. More effective deployment of financial resources to maximize tangible outcomes.
 - ii. Regional Business Assistance Program: Develop and implement an effective regional business assistance and retention strategy by 2021 to help existing businesses grow or remain in the region.
 - iii. Entrepreneurs and Start-Ups: Foster innovation and new business development identify and assist prospective companies and entrepreneurs to start or grow new ventures in the region.
 - iv. Small Business Development: increase collaboration and connections with small business to provide training and support.
 - v. Improve the Regulatory Environment: Continue to advocate for improved policies and procedures to promote the economic growth of the region over the next five years. Focus on regional permitting processes, cost of doing business, and tax structure.

- e. Form 'red teams' tailored to business sectors (small, industrial, manufacturing, tourism, start-ups, and hospitality) to problem solve with applicants and businesses that may be considering leaving. Encourage visitors at national and state parks to patronize local businesses.
 - f. Work cooperatively with the Small Business Development Center, San Benito County Workforce Development Board, Veterans Support organizations, and support organizations for persons with disabilities, California State Monterey Bay Institute of Innovation and Economic Development, Gavilan Community College and other educational institutions to foster an entrepreneurial culture to support and spark the development and expansion of small and large scale businesses.
 - g. Cooperate with local and regional partners to create economic resiliency from economic downturns and natural disasters.
 - h. Maintain programs with on-going training, listening sessions, and networking with existing businesses to proactively support business retention and expansion.
 - i. Work cooperatively with educational institutions, the EDC board, Business Council, local government and other job support organizations to fill information gaps, create updated tool boxes for new and expanding businesses and business retention.
 - j. Assist business with workforce development.
 - k. Pursue funding from the Economic Development Administration and other sources in cooperation with the County and partner organizations with a near-term priority for small business and expansion of broadband services and a telecommuting center.
2. **Web Page/Social Media:** The EDC will maintain an updated web site and use social media to promote employment, business opportunities, along with educational opportunities, and financing programs.
3. **Marketing:** The EDC agrees to work cooperatively with the San Benito County Business Council, the San Benito County Chamber of Commerce, Visitor's Bureau, the San Juan Committee, the Hollister Downtown Association, and the three jurisdictions in San Benito County to update and maintain collaborative marketing campaigns with consistent branding and messaging.
4. **Leverage Funding:** The EDC agrees to pursue a variety of approaches to leverage funding with grants, membership dues, continuing partnerships with the business community, private interests and other organizations, co-sharing office space and support staff. The County agrees to provide letters of support for grant applications.
- a. Diversify funding streams and seek additional revenue streams.

- Deliverables:
 - i. Establish a multi-year funding commitment to support implementation of the Goals and Objective.
- 5. **Partnerships/Education:** The EDC agrees to become a member of CalEd and local and regional economic development organizations and to actively participate in monthly and quarterly meetings. The EDC agrees to help serve as a clearinghouse to share information about educational opportunities in support of local businesses.
- 6. **Internships/Volunteer:** The EDC agrees to coordinate with Gavilan Community College, California State University, Monterey Bay, regional educational institutions, and local businesses to develop internship programs in support of employment for local business.
 - a. Support Community Colleges and High School Technical Programs.
 - Deliverables:
 - i. Retain and Attract Young Professionals: Build upon and promote existing regional young professional organizations and work to develop additional programs, policies and mentorships to attract and retain young professionals to the excellent quality of life in the San Benito County region.
- 7. **Payment:** The County agrees to pay the EDC \$100,000.00 annually, beginning in Fiscal Year 2019/20, for a period of five years ending in Fiscal Year 2023/24
- 8. **Report/Monitoring:** The EDC agrees that the hired economic development coordinator will meet monthly with County Staff, will provide a quarterly report, to be presented to the Board of Supervisors, and an annual report, to be presented to the Planning Commission, addressing the information addressed in the San Benito County Index, attached hereto and incorporated herein by reference as Attachment A. The parties recognize that the San Benito County Index is simply a reporting out of economic conditions and activity and is not a direct reflection on the success or shortcomings of the EDC's efforts. A local economy is complex and influenced by numerous factors that are outside of the control of the EDC, and even outside the control of local governments (ex. tariffs, monetary policy, business decision makers, etc.) The EDC agrees to collect information and monitor business attraction, retention, and expansion. EDC will submit an annual update of the CEDS to the U.S. Economic Development Administration (EDA), and submit an overall update every five years, unless circumstances arise that lead to a change in development.
- 9. **Annual Retreat:** The EDC will include a County representative from the Board of Supervisors' ad-hoc committee at an annual retreat to review the five-year goals for the EDC. During the first year of the Agreement, the EDC agrees to hold a special meeting with the Board of the EDC and the County representative to review three year and five-year goals.

- 10. Hiring an Economic Development Coordinator:** The EDC agrees to initiate hiring an Economic Development Coordinator within two months of execution of this MOU provided funding is guaranteed to be provided by the County within one month. The EDC agrees to establish a hiring committee and include a County representative on the committee.
- 11. Independent Contractor:** The EDC 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 EDC 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 EDC further represents to the County that the EDC has no expectation of receiving any benefits incidental to employment.
- 12. Hold Harmless:** The EDC 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 EDC agrees to indemnify the County from any financial or tax liability arising from its status as an independent contractor.
- 13. General Insurance Requirements:** Without limiting the EDC's duty to indemnify the County, the EDC 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 EDC shall require all subcontractors performing work under this MOU to obtain substantially the identical insurance coverage required of the EDC pursuant to this MOU.

- 14. Insurance Requirements:** The EDC shall maintain the following insurance policies in full force and effect during the term of this MOU:

- a. Comprehensive general liability insurance. The EDC shall maintain comprehensive general liability insurance, covering all of the EDC's operations with a combined single limit of \$1,000,000.00.
 - b. Professional liability insurance. The EDC shall maintain professional liability insurance with liability limits of not less than \$1,000,000.00.
 - c. Comprehensive motor vehicle liability insurance. The EDC 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 EDC 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 EDC elects to be self-insured, the certificate of insurance otherwise required by this MOU shall be replaced with a consent to self-insure issued by the State Director of Industrial Relations.
15. **Certificate of Insurance:** Prior to the commencement of performance of services by the EDC and prior to any obligations of the County, the EDC shall file certificates of insurance with the County, showing that the EDC has in effect the insurance required by this MOU. The EDC 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 EDC may provide proof of self-insurance meeting requirements equivalent to those imposed herein. The EDC warrants that its self-insurance provides substantially the same protection to the County as the insurance required herein. The EDC 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.
16. **Taxes:** The EDC agrees that as a non-profit corporation, the EDC 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 EDC 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 EDC with coverage for worker's compensation, long or short-term disability, or unemployment insurance.

- 17. 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
Telephone No.: (831) 636-4000
Facsimile No.: (831) 636-4010

EDC's MOU Administrator:

Aaron Johnston, President
P.O. Box 1265
Hollister, CA 95023
Email: ajohnston@graniterock.com
Telephone No.: (831) 234-5486
Facsimile No.:

- 18. 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:
- The day the notice is personally delivered to the MOU administrator or the office of the party's MOU administrator; or
 - 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
 - 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 facsimile transmission is made.
- 19. Termination:** The provisions of this MOU may be terminated upon sixty (60) days written notice by either Party.
- 20. 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 sixty (60) days advance written notice of such determinations.
- 21. 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.

- 22. 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 EDC without the prior written consent of the County, and any attempted assignment or delegation without such consent shall be void.
- 23. Compliance With Applicable Laws; Nondiscrimination:** The EDC 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 EDC 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.
- 24. Conflict of Interest:** The EDC 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 EDC further covenants that, in the performance of this MOU, no subcontractor or person having such an interest shall be used or employed. The EDC certifies that no one who has or will have any financial interest under this MOU is an officer or employee of the County.
- 25. Records To Be Maintained:** The EDC shall keep and maintain accurate records of all costs incurred and all time expended for work under this MOU. The EDC 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 EDC 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 EDC 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 EDC 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 EDC of the commencement of an audit prior to the expiration of the three year period.
- 26. 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.
- 27. 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

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.

28. **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.
29. **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.
30. **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.
31. **Materiality:** The parties consider each and every term, covenant, and provision of this MOU to be material and reasonable.
32. **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 EDC'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.
33. **Authority and Capacity:** The EDC and the EDC's signatory each warrant and represent that each has full authority and capacity to enter into this MOU.
34. **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.

35. **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 EDC

SAN BENITO COUNTY

By: Aaron Johnston, President

By: Ray Espinosa, CAO

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

By: Shirley L. Murphy, Deputy County Counsel