

Memorandum of Understanding
Between
County of El Dorado and
Folsom Economic Development Corporation
Memorandum of Understanding #7699

THIS MEMORANDUM OF UNDERSTANDING (this "Agreement") is made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and Folsom Economic Development Corporation, a California 501(c)(3) nonprofit corporation, duly qualified to conduct business in the State of California, whose principal place of business is 200 Wool Street, Folsom California 95630 (hereinafter referred to as "FEDCORP"). County and FEDCORP are collectively referred to herein as the "Parties."

RECITALS

WHEREAS, the 50 Economic Alliance Subregion Consists of a 12 zip code subregion of El Dorado and Sacramento Counties, including 95827, 95670, 95742, 95655, 95683, 95630, 95623, 95762, 95682, 95667, 95619, 95709.

WHEREAS, County is located within the 12 zip code subregion of El Dorado and Sacramento Counties, defined by this Agreement as the 50 Economic Alliance ("50EA").

WHEREAS, County believes efforts to support local business initiatives through analysis of industries and the workforce that currently resides in or commute into the 50EA are beneficial to spur economic activity and opportunities in the 50EA which serves a public purpose of economic development.

WHEREAS, County intends to support the initiation of marketing efforts to grow businesses in the 50EA subregion in order to bolster the economic opportunities in the region.

WHEREAS, this marketing effort will provide greater business opportunities in the 50EA to jurisdictions in the subregion, the Greater Sacramento Economic Council, site selectors, real estate professionals, and businesses through the benefit of greater market intelligence to generate business leads and company expansion opportunities.

WHEREAS, the FEDCORP has entered into a separate agreement with consultants hired for the marketing and business outreach efforts, which shall include, but not be limited to, conducting data analysis, preparing marketing materials, establishing a website for 50 Economic Alliance, and establishing a methodology to track and disperse business leads for use in the described marketing effort and company expansion ("Marketing Effort").

WHEREAS, County does not intend to enter into a direct or joint agreement with consultants, County desires to enter into a cost sharing agreement with the FEDCORP to support the marketing & business development effort.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **SERVICES.** Subject to the terms and conditions set forth in this Agreement, County has allocated Six Thousand Dollars (\$6,000) for the purposes of contributing to a cost-share arrangement to assist in funding the marketing & business development efforts. As a condition of County's allocation, FEDCORP agrees to contribute Twenty-Five Hundred Dollars (\$2,500) to the marketing & business development effort.

Deliverables shall be submitted via electronic file and FEDCORP shall produce the file using Microsoft Office (MS) 365 applications (specifically, MS Word, MS PowerPoint, and MS Excel). Signed reports shall be submitted in Adobe portable document format (PDF). All deliverables shall be submitted in the language, format and design that are compatible with and completely transferable to County's computer, and that are acceptable to County's Contract Administrator. Newer versions of software may be used and other types of software used for analytical purposes may be authorized if approved in advance of the submittal by County's Contract Administrator. FEDCORP shall submit all deliverables to County's Contract Administrator in accordance with completion time schedules that have been agreed upon in advance by FEDCORP and County's Contract Administrator pursuant to this Agreement.

2. **USE OF FUNDS.** FEDCORP may only use the funds to contribute to expenses related to the planning and deployment of the marketing & business development effort.
3. **TERM:** This Agreement shall become effective when fully executed by the parties hereto and shall cover the period of July 1, 2023, through June 30, 2024.
4. **SEPARATE AGREEMENT.** The Parties acknowledge and agree that other entities have entered into agreements with FEDCORP for the purposes of sharing the costs of the marketing and business development effort in the following amounts:

A.	El Dorado County	\$6,000
B.	Folsom Economic Development Corporation	\$2,500
C.	El Dorado Hills Chamber of Commerce	\$2,500
D.	El Dorado County Chamber of Commerce	\$2,500
E.	City of Rancho Cordova	\$6,000
F.	City of Folsom	\$6,000
G.	Rancho Cordova Chamber of Commerce	\$2,500
Total		\$28,000

In no event shall combined funding from all listed entities, including Parties, of the marketing & business development effort, collectively ("Contributing Entities"), exceed Twenty-Eight Thousand Dollars (\$28,000). In the event that it is determined that the marketing & business development effort will require more than Twenty-Eight Thousand Dollars (\$28,000), the Parties may enter into a new agreement for additional funding by mutual agreement.

5. ALLOCATION AND PAYMENT OF FUNDS. County shall distribute the funds to FEDCORP upon execution of this Agreement. If any of the funds provided under this Agreement remain unexpended upon the completion of the marketing & business development effort, FEDCORP shall return the unexpended funds within thirty (30) days of the completion of the marketing & business development effort. If FEDCORP fails to use the funds for the purposes permitted in this Agreement, FEDCORP shall reimburse County the amount of funds used for unpermitted purposes plus any remaining funds, this Agreement shall be terminated, and County shall have no further obligations related to this Agreement.
6. JOINT OWNERSHIP. It is understood and agreed that all Contributing Entities shall be deemed to have joint and equal ownership of and access to all materials, resources, marketing elements, social media accounts, and websites that are developed as a result of the marketing & business development effort.
7. INDEPENDENT CONTRACTOR. No relationship of employer and employee is created by this Agreement; it being understood that FEDCORP is an Independent Contractor. FEDCORP is not an agent or employee of County in any capacity whatsoever, and County shall not be liable for any acts or omissions by FEDCORP nor for any obligations or liabilities incurred by FEDCORP.
 - A. FEDCORP shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance, medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, unemployment insurance benefits, civil service protection, eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of County, entitlement to any contribution to be paid by County for employer contributions and/or employee contributions for PERS benefits, or any other employee benefits of any kind.
 - B. FEDCORP shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents, or employees, including but not limited to, PERS, and agrees to indemnify and hold County harmless from any and all liability which County may incur because of FEDCORP's failure to pay such accounts.

- C. In carrying out the work contemplated herein, FEDCORP shall comply with all the applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents, and/or employees conducting and participating in the work; agrees that such officers, agents, and/or employees will be considered Independent Contractors and shall not be treated or considered in any way as officers, agents, and/or employees of County.
- D. FEDCORP agrees to perform its work and functions at all times in strict compliance with all applicable federal, state, county, and County laws, resolutions, regulations, titles, departmental procedures, and currently approved methods and practices in the field; and that the sole interest of County is to ensure that said service shall be performed and rendered in a competent, efficient, timely, and satisfactory manner and in accordance with standards required by County.

8. INDEMNIFICATION.

- A. General Requirement. FEDCORP shall indemnify, defend with counsel selected by County, and hold harmless County and its officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of FEDCORP or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of FEDCORP shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of County or its officers, employees, agents, or volunteers and (2) the actions of FEDCORP or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of FEDCORP to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by County of insurance certificates and endorsements required under this Agreement does not relieve FEDCORP from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, FEDCORP acknowledges and agrees to the provisions of this Section and that it is a material element of consideration. They may be liable, regardless of whether or not it is caused in part by any party indemnified hereunder. County may participate in the defense of any such claim without relieving FEDCORP of any obligation hereunder.
- B. PERS Indemnification. In the event that FEDCORP or any employee, agent, or subcontractor of FEDCORP providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of County, FEDCORP shall indemnify, defend, and hold harmless County for the payment of

any employee and/or employer contributions for PERS benefits on behalf of FEDCORP or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which, would otherwise be the responsibility of County.

9. INSURANCE. Insurance coverage in a minimum amount set forth herein shall not be construed to relieve FEDCORP for liability in excess of such coverage, nor shall it preclude County from taking such other action as is available to it under any provisions of this Agreement or otherwise in law.
 - A. FEDCORP affirms that it is aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of the Code and FEDCORP further assures that it will comply with such provisions before commencing the performance of work under this Agreement. FEDCORP shall furnish to County certificate(s) of insurance evidencing Workers' Compensation Insurance coverage to cover its employees, and FEDCORP shall require all subcontractors similarly to provide Workers' Compensation Insurance as required by the Labor Code of the State of California for all of FEDCORP's and subcontractors' employees.
 - B. FEDCORP shall furnish to County certificates of insurance with Automobile Liability/General Liability Endorsements evidencing, at minimum, the following:
 - (1) Combined single limit bodily injury liability and property damage liability in the amount of ONE MILLION DOLLARS (\$1,000,000) each occurrence.
 - (2) Vehicle/Bodily Injury combined single limit vehicle bodily injury and property damage liability in the amount of Five Hundred Thousand Dollars (\$500,000) each occurrence.
10. WORKERS' COMPENSATION. FEDCORP shall provide Workers' Compensation insurance, as applicable, at FEDCORP's sole cost and expense. Neither FEDCORP nor its carrier shall be entitled to recover from County any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.
11. CONFORMITY WITH LAW.
 - A. In performing services under this Agreement, FEDCORP shall observe and comply with all applicable laws, resolutions, codes, and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. FEDCORP shall indemnify and hold County harmless from any and all liability, fines, penalties, and consequences from any of FEDCORP's failures to comply with such laws, resolutions, codes, and regulations.

12. CONFLICTS OF INTEREST. FEDCORP covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with performance of services required under this Agreement.
13. USE OF COUNTY PROPERTY. FEDCORP shall not use County property, including equipment, instruments, supplies, or personnel, for any purpose other than in the performance of its obligations under this Agreement.
14. NOTICES. Any approval, document, or other notice which either Party may desire to give to the other Party under this Agreement must be made in writing and may be given by first class mail, postage pre-paid, or reputable overnight delivery service or by personal delivery addressed to the party to whom the notice is directed as set forth below, or at any other address as that Party may later Designate:

To County:

County of El Dorado
Planning and Building Department
2850 Fairlane Court
Placerville, California 95667

Attn.: Kyle Zimbelman
Economic and Business Relations
Manager

With a copy to:

County of El Dorado
Chief Administrative Office
330 Fair Lane
Placerville, California 95667

Attn.: Michele Weimer
Procurement and Contracts Manager

or to such other location as County directs.

Notices to FEDCORP shall be addressed as follows:

Folsom Economic Development Corporation
200 Wool Street
Folsom, California 95630

Attn.: Joe Gagliardi
Chief Executive Officer

or to such other location as FEDCORP directs.

15. ELECTRONIC SIGNATURES. This Agreement may be signed by an electronic signature as defined in California Civil Code Section 1633.2 unless, in County's discretion, County requires that it be signed by a digital signature that complies with the requirements of California Government Code Section 16.5 and its implementing regulations, as the same may be amended from time to time.

16. EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS. FEDCORP certifies that it is in compliance with the Equal Employment Opportunity Requirement of Executive Order 11246, as amended by Executive Order 11375 and supplemented 145 CFR, Part 60, Title VII of the Civil Rights Act and any other federal or state laws pertaining to equal employment opportunity and that it shall not discriminate against any employee or applicant for employment on the basis of race, color, religion, age, sex, national origin, ancestry, marital status, political affiliation, or physical or mental condition, in matters pertaining to recruitment, hiring, training, upgrading, transfer, compensation, or termination.
17. CHOICE OF LAW AND VENUE. This Agreement, and any dispute arising from the relationship between the Parties hereto, shall be governed by the laws of the State of California. In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in El Dorado County Superior Court or in the United States District Court for the Eastern District of California.
18. ADVERTISING OR PUBLICITY. FEDCORP shall not use, reproduce or copy the seal of County and shall not represent County in an official capacity as spokesperson or officer or agent or use the name El Dorado County or County of El Dorado, or the names of County's officers, directors, employees or agents, in advertising or public releases or otherwise without securing the prior written consent of County in each instance unless set forth in this Agreement.
19. SEVERABILITY. If any provisions in this Agreement are found by a court of competent jurisdiction to be, or are in fact, illegal, inoperative, or unenforceable, those provisions shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end, the terms and conditions of this Agreement are declared severable.
20. AUDITS REQUIRED: If requested, FEDCORP shall submit to County a year-end financial statement covering all fiscal years during which FEDCORP expends funds provided pursuant to this Agreement. FEDCORP shall maintain client records, books, documents, and other evidence, accounting procedures and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this Agreement, including any matching costs and expenses, all of which will be deemed to constitute records for purposes of this section. Such records shall clearly reflect the cost and scope of the services provided. FEDCORP's facility or office or such part thereof as may be engaged in the performance of this Agreement and its records shall be subject at all reasonable times to inspection, audit, and reproduction by County, the State, or any of their duly authorized representatives.
21. AUDIT BY CALIFORNIA STATE AUDITOR: FEDCORP acknowledges that if total compensation under this Agreement is greater than \$10,000.00, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this

Agreement, pursuant to Government Code section 8546.7. In order to facilitate these potential examinations and audits, FEDCORP shall maintain, for a period of at least three (3) years, or for any longer period required final payment under the contract, all books, records, and documentation necessary to demonstrate performance under the Agreement.

22. POLITICAL ACTIVITY: Pursuant to California Government Code §54964, §54964.5, and §54964.6, FEDCORP shall not expend or authorize the expenditure of any funds provided to it pursuant to this Agreement, or use any property owned or funded in whole or in part by County, in support of any political activity including but not limited to support or opposition of a candidate for public office or any ballot measure.
23. LEVINE ACT: Pursuant to Government Code section 84308 (SB 1439, the Levine Act), FEDCORP shall complete and sign the attached Exhibit A, marked "California Levine Act Statement," incorporated herein and made by reference a part hereof, regarding campaign contributions by FEDCORP, if any, to any officer of County.
24. ADMINISTRATOR: The County Officer or employee with responsibility for administering this Agreement is Kyle Zimbelman, Economic and Business Relations Manager, Planning and Building Department, Economic Development Division, or successor.
25. AUTHORIZED SIGNATURES: The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.
26. ENTIRE AGREEMENT: This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral agreements or understandings.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

--COUNTY OF EL DORADO--

By: Wendy Thomas

Board of Supervisors
"County"

Dated: 6-27-23

Attest:
Kim Dawson
Clerk of the Board of Supervisors

By: Kyle Hyfer

Deputy Clerk

Dated: 6-27-23

--FOLSOM ECONOMIC DEVELOPMENT CORPORATION--

By: Joe Gagliardi
Joseph Gagliardi (Jun 9, 2023 16:49 EDT)

Joe Gagliardi
Chief Executive Officer
"FEDCORP"

Dated: 06/09/2023

By: Rob Aragon
Rob Aragon (Jun 9, 2023 14:30 PDT)

Rob Aragon
Corporate Secretary

Dated: 06/09/2023

Folsom Economic Development Corporation

Exhibit A

California Levine Act Statement

California Levine Act Statement

California Government Code section 84308, commonly referred to as the "Levine Act," prohibits any officer of El Dorado County from participating in any action related to a contract if he or she receives any political contributions totaling more than two hundred and fifty dollars (\$250) within the previous twelve (12) months, and for twelve (12) months following the date a final decision concerning the contract has been made, from the person or company awarded the contract. The Levine Act also requires disclosure of such contribution by a party to be awarded a specific contract. An officer of El Dorado County includes the Board of Supervisors, and any elected official (collectively "Officer"). It is the FEDCORP's responsibility to confirm the appropriate "officer" and name the individual(s) in their disclosure.

Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to an Officer of the County of El Dorado in the twelve months preceding the date of the submission of your proposals or the anticipated date of any Officer action related to this contract?

☐ YES ☒ NO

If yes, please identify the person(s) by name:

Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contribution of more than \$250 to an Officer of the County of El Dorado in the twelve months following any Officer action related to this contract?

☐ YES ☒ NO

If yes, please identify the person(s) by name:

Answering YES to either of the two questions above does not preclude the County of El Dorado from awarding a contract to your firm or any taking any subsequent action related to the contract. It does, however, preclude the identified Officer(s) from participating in any actions related to this contract.

06/09/2023

Date


Joseph Gagliardi (Jun 9, 2023 16:49 EDT)

Signature of authorized individual

Folsom Economic Development Corporation
Type or write name of company

Joe Gagliardi-Chief Executive Officer
Type or write name of authorized individual