

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY
AND RECORD OF ACTION**

July 9, 2024

FROM

DEREK ARMSTRONG, Director, Economic Development Department

SUBJECT

Non-Financial Memorandum of Understanding for the Continuation of International Trade and Investment Cooperation

RECOMMENDATION(S)

1. Approve the non-financial **Memorandum of Understanding No. 24-577**, including non-standard terms, with the INCHEON Free Economic Zone Authority of the Republic of Korea for a term of five years, for the continuation of international trade and investment cooperation.
 2. Authorize the Chair of the Board of Supervisors, Chief Executive Officer, or Director of Economic Development to execute the Memorandum of Understanding.
 3. Direct the Director of Economic Development to submit the Memorandum of Understanding to the Clerk of the Board of Supervisors within 30 days of execution.
- (Presenter: Derek Armstrong, Director, 387-4386)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Promote the Countywide Vision.

Create, Maintain and Grow Jobs and Economic Value in the County.

Ensure Development of a Well-Planned, Balanced, and Sustainable County.

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost) as the Memorandum of Understanding (MOU) is non-financial in nature.

BACKGROUND INFORMATION

San Bernardino County (County) is an increasingly important gateway for international trade and, therefore, potential recipient of foreign direct investment. Led by, and with the support of the Board of Supervisors (Board), the Economic Development Department (ED) has established a trade and investment program to attract foreign direct investment and promote the county as a prime location for investment, setting the groundwork to create new jobs, increase capital availability for local businesses, contribute to higher economic productivity and growth, and increase global competitiveness.

A MOU template was approved by the Board on May 24, 2016 (Item No. 73), for the establishment of trade and investment cooperative relationship building with international agencies. The MOU is a statement of mutual intent to support cooperation and communication to promote business in sectors of importance to the County including advanced healthcare, agriculture, education, clean energy, and tourism.

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On April 22, 2021 (Pacific Standard Time) / April 23, 2021 (Korea Standard Time) the County entered into a three-year non-financial MOU with the INCHEON Free Economic Zone Authority (IFEZ) of the Republic of Korea. The MOU was signed by then Chairman Curt Hagman and then IFEZ Commissioner Lee, Won-jae and served to foster business cooperation, promote information exchange, and support collaboration to bolster economic development. Leaders from the County and IFEZ convened in person in Incheon Metropolitan City during the South Korea leg of the 2023 trade mission. Additional meetings with IFEZ leadership and business partners have also taken place throughout the last three years.

This MOU is with IFEZ of the Republic of Korea, with no apparent presence within the United States, and the terms and conditions of the MOU are potentially governed by the laws of Korea. County Counsel is unable to approve the MOU as to legal form because County Counsel is not sufficiently knowledgeable about the requirements for forming an enforceable MOU under Korea's law. The non-standard and missing terms in this contract include:

1. IFEZ of the Republic of Korea may assign the MOU without notice to the County and without the County's approval.
 - County Policy 11-05 requires that the County must approve any assignment of the contract.
 - Potential Impact: IFEZ of the Republic of Korea could assign the MOU to a third party or business with which the County is legally prohibited from doing business due to issues of Federal debarment or suspension and conflict of interest, without the County's knowledge. Should this occur, the County could be out of compliance with the law until it becomes aware of the assignment and is able to terminate the MOU. County Counsel cannot advise on whether and to what extent Korea's law may permit or restrict a party's right to assign without an express provision in the MOU.
2. There is no provision in the MOU addressing each party's responsibility for paying attorneys' fees.
 - County Policy 11-05 requires each party to bear its own costs and attorney fees, regardless of who is the prevailing party.
 - Potential Impact: County Counsel cannot advise on, whether and to what extent, Korea's law may affect a party's requirement to pay the prevailing party's attorneys' fees and costs in a legal action where no specific provision is provided in the MOU.
3. The MOU is silent on governing law.
 - The County standard contract requires California governing law pursuant to County Policy 11-05.
 - Potential Impact: Having no specified governing law in the MOU results in uncertainty over the interpretation of the MOU and leads to ambiguity in interpretation of the MOU terms with IFEZ. The MOU could be interpreted under Korea's law. Any questions, issues or claims arising under this MOU could require the County to hire outside counsel competent to advise on Korea's law, which may result in fees that exceed the non-financial MOU amount.
4. The MOU does not require IFEZ of the Republic of Korea to indemnify the County, as required by County Policies 11-05 and 11-07.
 - The County standard contract indemnity provision requires the contractor to indemnify, defend, and hold County harmless from third party claims arising out of the acts, errors, or omissions of any person.

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- Potential Impact: IFEZ is not required to defend, indemnify, or hold the County harmless from any claims. County Counsel cannot advise on whether and to what extent Korea's law may allow the County to require IFEZ to defend or indemnify it absent an express provision in the MOU.
5. The MOU does not require IFEZ of the Republic of Korea to meet the County's insurance standards as required pursuant to County Policies, 11-05, 11-07 and 11-07SP.
- County policy requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department and as set forth in County policy and in the County standard contract.
 - Potential Impact: The County has no assurance that IFEZ will be financially responsible for claims that may arise under the MOU, which could result in expenses to the County that exceed the total non-financial MOU amount.
6. There is no stated venue for disputes in the MOU.
- County Policy 11-05 requires venue for disputes in Superior Court of California, County of San Bernardino, San Bernardino District.
 - Potential Impact: IFEZ is located in Korea. Having no express venue in the MOU means that IFEZ Korea venue could be applied to disputes arising under this MOU, which may result in additional expenses that exceed the non-financial amount of the MOU.

Per Policy 11-05, non-standard contract language must be approved by the Board. Because County Counsel is not able to advise on Korea's law, there is no specific analysis of possible legal impacts from any MOU provisions, including those that appear to be inconsistent with County Policy 11-05. If the Board approves the MOU, it is likely subject to the exclusive jurisdiction of the courts located in Korea, to resolve any legal matter arising from the MOU.

The 2021 MOU expired on April 22, 2024. In the interest of continuing and strengthening the County's partnership with IFEZ, ED recommends a new MOU with IFEZ for a five-year term, including non-standard terms. If approved, the MOU will be signed via a live virtual signing ceremony. The date of the ceremony will be determined following Board approval.

PROCUREMENT

N/A

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Dawn Martin, Deputy County Counsel, 387-5455) on May 17, 2024; Finance (Carl Lofton, Administrative Analyst, 387-5404) on May 24, 2024; County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on June 8, 2024.

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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Joe Baca, Jr. Seconded: Curt Hagman

Ayes: Col. Paul Cook (Ret.), Jesse Armendarez, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: July 9, 2024



cc: EDA - Armstrong w/agree for sign
Contractor - c/o EDA w/agree
File - w/agree

CCM 07/10/2024