

Meeting Date: 3/22/2016

Report Type: Consent

Report ID: 2016-00307

Title: GO-Biz California-China Trade Network Member Agreement

Location: Citywide

Recommendation: Pass a Motion authorizing the City Manager or his designee to execute a China Trade Network Member Agreement with Go-Biz California.

Contact: Larry Burkhardt, Director of Economic Development, (916) 808-1955, Economic Development Department

Presenter: None

Department: Economic Development Dept

Division: Citywide Development

Dept ID: 18001031

Attachments:

1-Description/Analysis

2-Agreement

City Attorney Review

Approved as to Form
Michael Sparks
3/16/2016 10:15:20 AM

Approvals/Acknowledgements

Department Director or Designee: Larry Burkhardt - 3/3/2016 5:31:29 PM

Description/Analysis

Issue Detail: As an element of its economic development efforts to grow the local economy and local job base through increased and diversified activity, the City of Sacramento established a formal relationship with Chongqing, China in 2012. Led by Chongqing's Foreign Trade and Economic Relations Commission President Wang Yi, a delegation visited Sacramento to sign the Chongqing-Sacramento Memorandum of Understanding on Strategic Economic and Trade Cooperation. A result of the Memorandum of Understanding (MOU) was the establishment of a Sacramento Office of Trade and Education to develop two-way business activity and educational exchange.

Late in 2015, the State of California Governor's Office of Business and Economic Development (GO-Biz) approached the City about entering into a relationship that would designate the City's Chongqing office as a Network Member of GO-Biz's California-China Trade Network to enhance efforts of the California-China Trade Office and create a synergy by recognizing existing entities focused on promoting trade and investment between California and China.

Policy Considerations: The proposed agreement will provide the opportunity to expand exposure of the City's Chongqing office, resources, and trade opportunities with the Sacramento region, thereby advancing the City's overall economic development agenda. Through the State's relationship with the Bay Area Council, the proposed agreement will obligate the State of California, through its relationship with the City of Sacramento, to collaborate to more effectively identify and support California businesses interested in expansion into Chinese markets. The City's Chongqing office would, at its discretion, have the opportunity to arrange and manage California business delegations to China. The agreement calls for expanded communications between the State and the City regarding goals, objectives, and activities.

As a benefit of the relationship, GO-Biz would grant the City a non-exclusive, non-transferable, non-assignable, royalty-free, fully-revocable license to display GO-Biz's California-China Trade logo as a "Network Member," thereby building credibility of the City's standing as a potential partner. The agreement will remain in effect for a period of one year and will automatically-renew for additional one-year periods unless either party provides the other at least five business days prior written notice of non-renewal.

Economic Impacts: An expanded partnership with the State's GO-Biz office may leverage opportunities that could sustain the City's efforts to increase trade with China and assist in building our China trade program.

Environmental Considerations: None.

Sustainability: None.

Commission/Committee Action: None.

Rationale for Recommendation: The chief benefits to the City of the proposed agreement are the license for use of GO-Biz's California-China Trade logo to enhance the credibility of our office, and the expanded trade opportunities that may result from a partnership with the State and its alliance of Network Members.

Financial Considerations: The proposed agreement does not bind the City to any specific financial obligations. At its discretion, the City's Chongqing office may choose to support projects and activities, e.g., support of visiting delegations that could represent a cost to be borne by the City.

Local Business Enterprise (LBE): Not applicable.

TERMS

NOW, THEREFORE, in consideration of the mutual covenants, agreements and warranties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Representation and Warranties by Network Member. Network Member represents and warrants that it:

- a. is a non-profit or governmental entity (city/county/district);
- b. has a presence (need not be physical) and infrastructure in China (*e.g.*, staff, office space, technology, partnerships with local/regional businesses and entities, etc.) to promote international trade and attract investment;
- c. provides international business counseling, business development, and business match-making assistance;
- d. has existing focus on promoting trade and investment with China;
- e. has experience in the use of database information and market research;
- f. has experience organizing, leading, and receiving delegations; and,
- g. is willing to work collaboratively with GO-Biz.

2. License to use Seal.

a. Provided Network Member satisfies and continues to satisfy the requirements set forth in this Agreement, including but not limited to Section 1, GO-Biz grants to Network Member a non-exclusive, non-transferable, non-assignable, royalty-free, fully-revocable license, without the right to grant sublicenses, to display the Seal to designate the entity as a "Network Member." More specifically, GO-Biz grants Network Member a license to display the Seal at the Network Member's office, on stationary, business cards, its website, email, and other similar products to identify itself as a "Network Member" of business development and business counseling, with a focus on promoting trade and investment in China (collectively, "**Permitted Purpose**"). However, Network Member will not state or imply either directly or indirectly or use the Seal in such a manner that the Network Member or the Network Member's programs or seminars are supported, certified, endorsed, or sponsored by GO-Biz, unless GO-Biz provides prior written consent to use its Seal in connection with the event or program.

b. Network Member must include the following statement each time the Seal is used in a clear and conspicuous manner "GO-Biz California-China Trade Network Member

c. Restrictions. Network Member shall use the Seal only in connection with the Permitted Purpose and will preserve the goodwill and good reputation associated with the Seal. In addition, Network Member agrees to immediately submit to GO-Biz specimens showing Network Member's intended use of the Seal for inspection prior to use of the Seal if its use is beyond the terms set forth in this Agreement. GO-Biz will approve in writing the materials depicting the Seal prior to Network Member's use with five (5) business days of submission. Network Member will comply with all guidelines and instructions provided by GO-Biz from time to time to preserve the goodwill and good reputation associated with the Seal.

d. Network Member agrees that nothing in this Agreement shall be construed as granting to Network Member any right, title or interest in the Seal, other than the right to use the Seal in accordance with this Agreement.

3. GO-Biz Obligations. GO-Biz shall do the following:
- a. oversee the California-China Trade Office and serve as the main point of contact for all Network members in connection with the California-China Trade Office, the network, and any other related issues;
 - b. announce the execution of this Agreement with the Network Member through a press release or similar public dissemination of information;
 - c. maintain a list of Network Member(s) on its GO-Biz website;
 - d. promote the Network Member on its website and other events, as deemed appropriate by GO-Biz;
 - e. work collaboratively with Network Member, as deemed appropriate by GO-Biz, to identify California businesses interested in and suited towards expansion into Chinese markets (the "Businesses") and the regional expertise of the Network Member;
 - f. actively participate, as deemed practical by GO-Biz, in the delegations and other activities organized by the Network Member;
 - g. arrange for relevant California government officials to attend delegation events organized by Network Member;
 - h. arrange for relevant California government officials to attend delegation trips to China led by Network Member.

4. Network Member's Obligations. Network Member shall do the following:
- a. continue to meet the requirements set forth in Section 1;
 - b. meet (in-person or telephonically, as determined by Network Member) with GO-Biz and the Office Manager bi-weekly to inform GO-Biz of active business developments related to exports and foreign investments;
 - c. work primarily with the Office Manager to coordinate business development efforts, delegations and other similar activities in China;
 - d. work directly with GO-Biz to coordinate business development efforts, delegations and other similar activities in California;
 - e. more specifically, at Network Member's sole discretion, cooperate with GO-Biz and the Office Manager to: (i) arrange and manage California business delegations to China; (ii) work with GO-Biz to solicit, identify, and recruit California businesses interested in participating in such delegations; (iii) establish a network of business associations in California from which such delegations can be recruited; (iv) provide a broad overview of the Chinese culture and best business practices to help California companies on such delegations develop a better understanding of Chinese markets; (v) assist delegation members to maintain and deepen the relationships they began on their trip to China with a goal of driving as many deals as possible to completion; (vi) help Chinese businesses expand operations into California; and, (vii) undertake day-to-day operational matters related to the Office, delegations, and related events in China in coordination with GO-Biz California -China Trade Network Members. Network Member may be reimbursed for expenses related to the activities identified in this Section 4.e. provided that prior written approval of GO-Biz is obtained and reimbursement is provided by hosted delegation(as appropriate);
 - f. assist GO-Biz with the preparation of the legislative report and provide the following information when requested by GO-Biz, or any other information as may be required by GO-Biz from time to time:
 - i. summary of Network Member's policy goals, objectives and recommendations directed at promoting California-China employment-producing direct foreign investment;
 - ii. summary of Network Member's efforts to support California businesses in accessing China market, including assistance with increasing California exports;

- iii. summary of Network Member's business plan as it relates to California-China trade, including any strategies, timelines and/or goals
- iv. summary of impediments for achieving such goals and objectives
- v. identification of key stakeholder partners that will be used to increase California-China trade relations.

g. in its sole discretion, assist with the general promotion of the State of California in connection with exports and/or business in China, with a particular emphasis on promoting export trade and other investment between City of Sacramento businesses and the Chongqing region of China; and,

h. not use the Seal in a manner that creates the appearance of affiliation or endorsement by the State of California for services provided by Network Member for a fee, unless Network Member obtains prior written consent from GO-Biz indicating otherwise.

5. Termination. The Agreement will remain in effect for a period of one year. Thereafter, this Agreement shall automatically-renew for additional one-year periods unless either party provides the other at least five (5) business days prior written notice of non-renewal, or unless otherwise terminated as provided herein. Either Party may terminate this Agreement at any time, for any reason, by giving the other Party sixty (60) calendar days' prior written notice. GO-Biz may terminate the Agreement immediately with notice if it determines in its sole discretion that Network Member's use of the Seal would result in any damage to the reputation or goodwill associated with GO-Biz, GO-Biz's services, or the Seal. Upon termination, Network Member agrees to immediately discontinue all use of the Seal and any designation confusingly similar to the Seal, and to give GO-Biz satisfactory evidence of destruction of materials bearing the Seal.

6. Notices. All notices regarding this Agreement shall be in writing and will be deemed delivered if (1) sent by email and email is received and acknowledged; or (2) sent via certified mail or overnight mail to the address/contact information provided below or as such contact information may be updated from time to time or (3) other means provided that confirmation of receipt is confirmed. The date of receipt will be the date delivery is confirmed.

7. Indemnification/Warranty Disclaimer/Limitation of Liability. Network Member shall defend, indemnify and hold GO-Biz, its agents or assigns, harmless from and against all claims, damages, and liabilities (including reasonable attorneys' fees) resulting from Network Member's use of the Seal. GO-BIZ EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY, RELATING TO THE SEAL, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL GO-BIZ BE LIABLE FOR ANY DAMAGES, INCLUDING WITHOUT LIMITATION, DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY, OR OTHERWISE, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OF SUCH DAMAGES IN CONNECTION WITH THIS AGREEMENT.

8. Miscellaneous. This Agreement shall be governed by the law of the State of California, and all claims arising hereunder shall be brought solely in the state or federal courts located in Sacramento County, California. No waiver by either party of a breach or a default hereunder shall be deemed a waiver by such party of a subsequent breach or default. This Agreement constitutes the entire understanding between GO-Biz and Network Member with respect to the subject matter hereof and supersedes any prior verbal representations or other communications; notwithstanding, in the event GO-Biz and Network Member are Parties to a separate written agreement regarding the subject matter

of this Agreement, the terms and conditions of such separate written agreement will control in the event there is any inconsistencies between this Agreement and the other agreement. Network Member agrees that in the event of Network Member's breach of this Agreement, GO-Biz will be entitled to injunctive or other equitable relief and such other relief as any court with jurisdiction may deem just and proper without the necessity of posting a bond.

9. Amendment. No amendment, modification or supplement of any provision of this Agreement shall be valid or effective unless made in writing and signed by a duly authorized officer of each Party.

10. Descriptive Headings. The descriptive headings of this Agreement are for convenience only, and shall be of no force or effect in construing or interpreting any of the provisions of this Agreement.

11. Authority. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement and that executing this Agreement will not violate any other obligations or requirements previously made by the signing party.

12. Counterparts, Electronic Signatures. This Agreement may be executed in counterparts and such counterparts taken together shall constitute one and the same agreement. This Agreement may be executed by facsimile or other electronic signatures, which signatures shall have the same force and effect as original signatures.

Governor's Office of Business and Economic Development

By: _____

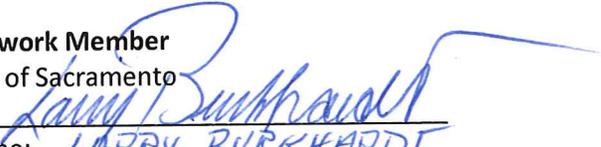
Name: _____

Its: _____

1325 J Street, Suite 1800
Sacramento, California, USA 95814

Network Member

City of Sacramento

By:  _____

Name: HARRY BURKHARDT

Its: _____

915th I Street, Fourth Floor
Sacramento, California, USA 95814

Approved as to form:

 _____

Michael Sparks,
Senior Deputy City Attorney

Attest:

City Clerk

Exhibit A