

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

September 26, 2023

FROM

DAVID MYERS, Director, Museum

SUBJECT

Non-Financial Exhibit Agreement with National Parks Service

RECOMMENDATION(S)

Approve non-financial Exhibit **Agreement No. 23-1069** with the National Parks Service, including non-standard terms, for display of a temporary museum exhibit at Victor Valley Museum.

(Presenter: David Myers, Director, 798-8601)

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 additional Discretionary Funding (Net County Costs) as the agreement is non-financial in nature.

BACKGROUND INFORMATION

The Victor Valley Museum, located in Apple Valley, is a regional cultural and natural history museum holding collections and exhibits in biology, geology, paleontology, history, and art with a goal to engage visitors to explore exhibitions and educational programs that interpret the High Desert region of San Bernardino County (County).

Approval of this item would allow, at no cost, installation of a National Park Service exhibit that explores ice age paleontology and geology through the presentation of fossils and interpretation, which will engage visitors and create opportunities for education and entertainment. The exhibit has not yet been scheduled, but is expected to be on display for a period of nine months and end prior to September 2024.

The agreement contains terms that differ from the standard County contract and omits certain County standard contract terms. The National Park Service is unwilling to negotiate the terms. The non-standard or missing terms include:

1. Federal laws and policies governing National Parks Service museum collections take precedence over state and local laws. Applicable state law is not addressed.
 - The County standard contract requires California governing law.

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- Potential Impact: The agreement will be interpreted under applicable Federal law. County Counsel is able to advise on Federal law. If state law becomes applicable, the agreement does not specifically provide for California law. The lender of the exhibit loan is located in Nevada. Having no specified governing state law in the agreement results in uncertainty over which state's laws will govern interpretation of the agreement and leads to ambiguity in interpretation of agreement terms. The agreement could be interpreted under any state law depending on where the claim is brought, including Nevada or California. Any questions, issues or claims arising under this agreement could require the County to hire outside counsel competent to advise on the applicable state or law, which may result in increased costs.
2. There is no stated venue in the agreement.
 - The County standard contract requires the venue for disputes be the Superior Court of California, County of San Bernardino, San Bernardino District.
 - Potential Impact: Having no express venue in the agreement means any venue could be applied to this agreement, which may result in additional expenses that exceed the amount of the agreement.
 3. The agreement does not contain an assignment provision.
 - The County standard contract provides that the County must approve any assignment of the contract.
 - Potential Impact: The National Park Service could assign the agreement to a third party or business with which the County is legally prohibited from doing business due to Federal debarment or suspension and conflict of interest, without the County's knowledge. Should this occur, the County would be out of compliance with the law until it becomes aware of the assignment and terminates the agreement. This result is unlikely given that the National Park Service is a Federal entity.
 4. The agreement does not require the National Parks Service to meet the County's insurance standards as required pursuant to County Policy 11-07,
 - County Policy requires contracting parties to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department and set forth in the County standard contract.
 - Potential Impact: The County does not have information on the National Parks Service level of insurance, and therefore has no assurance that the National Parks Service will be financially responsible for claims that may arise from the agreement. This could result in expenses to the County that exceed the total agreement amount, however, the National Park Service is a Federal entity and likely to be self-insured as is the County. Additionally, for exhibit loan agreements, it is common for the borrowing entity to carry the insurance.
 5. The County agrees to waive all claims and recourse against the National Parks Service for loss or damage to persons, museum collections or loaned items arising from the agreement and indemnify and save harmless the National Parks Service from all liability, loss, cost or obligation on account or arising out of any injury to any person or property of any kind, from any cause whatsoever, in any way connected with the County's use of the loaned item, including acceptance and redelivery thereof.
 - The County standard contract does not include any indemnification or defense by the County of a contracting party.

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- Potential Impact: The County, rather than the National Parks Service could be financially responsible for third party claims, however, the National Parks Service is a federal public entity rather than a private contractor. Both entities would enjoy the protection of sovereign immunity.
6. The County is required to indemnify any and all loss or damage to the loaned items occurring during the course of the loan, except for loss or damage resulting from inherent vice, war, and nuclear incident.
- The County standard contract does not include any indemnification or defense by the County of a contracting party.
 - Potential Impact: The County, rather than the National Parks Service could be financially responsible for third party claims, however, the National Parks Service is a federal public entity rather than a private contractor. Both entities would enjoy the protection of sovereign immunity.
7. The agreement does not require National Parks Service to indemnify the County, as required by County Policy 11-07, including intellectual infringement claims.
- The County standard contract indemnity provision requires a contracting party to indemnify, defend, and hold County harmless from third party claims arising out of the acts, errors or omissions of any person. The standard contract provision for intellectual property indemnity is: Contractor will indemnify, defend, and hold harmless County and its officers, employees, agents and volunteers, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) by any goods or services.
 - Potential Impact: National Parks Service is not required to defend, indemnify or hold the County harmless from any claims, including indemnification for claims arising from their negligent or intentional acts and intellectual property infringement. If the County is sued for any claim, including intellectual property infringement based on its use of the exhibit loan, the County may be solely liable for the costs of defense and damages.

San Bernardino County Museum recommends approval of the agreement, including all non-standard terms, as the rental agreement will allow the Victor Valley Museum to host a high-quality exhibit featuring regional geological and paleontological interpretant and objects at no cost to the County.

PROCUREMENT

N/A

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Katherine Hardy, Deputy County Counsel, 387-5455) on August 14, 2023; Risk Management (Victor Tordesillas, Director, 386-8623) on August 17, 2023; Finance (Elias Duenas, Administrative Analyst, 387-4052) on August 18, 2023; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387-5423) on August 18, 2023.

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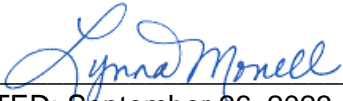
Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Joe Baca, Jr. Seconded: Jesse Armendarez

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

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: September 26, 2023



cc: Museum - Myers w/agree
Contractor - c/o Museum w/agree
File - w/agree

CCM 10/10/2023