

2020 Museums on Us Agreement

A. General Information

Museum Name: San Bernardino County Museum ("Museum")	Bank of America Corporation ("Bank of America")
Contact: Melissa Russo	Contact: Al Arguello
Address: 2024 Orange Tree Lane Redlands, Ca 92374	Address: 3650 14th St. Riverside, Ca 92501
Phone: 909-798-8608	Phone: 951-274-4062
E-Mail: Melissa.Russo@sbcm.sbcounty.gov	E-Mail: alfred.j.arguello@bofa.com

B. Term. The term of this agreement shall commence on January 1, 2020 and shall conclude December 31, 2020 ("Term") unless sooner terminated or extended as provided herein.

C. Museums on Us. The Museum agrees to, and Bank of America permits the Museum to, participate in Bank of America's Museums on Us program ("Program") during the Term and subject to the terms and conditions set forth herein.

D. Museum's Responsibilities

- a. All visitors who present an active Bank of America®, Merrill® (formerly Merrill Lynch®) or Bank of America Private Bank® (formerly U.S. Trust®) branded debit or credit card - physical or electronic/digital card - and an active, valid photo ID shall receive one free general admission to the Museum on the first full weekend of each month ("Program Weekend") during the Term. Special exhibitions, with separate admission charge, and ticketed activities are not included with the Program and must be purchased separately by the Visitor. In the event that special exhibitions and ticketed activities take place during any Program Weekend, the Museum must honor its obligations as set forth in this agreement.
- b. All Bank of America®, Merrill® (formerly Merrill Lynch®) or Bank of America Private Bank® (formerly U.S. Trust®) employees who present a current and valid Corporation ID and photo ID, shall receive one free general admission to any Program Weekend during the Term.
- c. Museum is required to provide Bank of America with a monthly usage report, via the Museums on Us administrative website. Information is to be entered immediately following the program weekend by the Museum, identifying the number of cardholders who took advantage of the benefit outlined in section D.a. and the number of paying guests accompanying the cardholder.
- d. Museum is required to keep their Museums on Us profile (Museum Hours; Description; Primary and Secondary Contact Information) information on the Museums on Us administrative website up-to-date.

E. Bank of America's Responsibilities. Bank of America agrees to promote the Museum's participation in the Program through the Bank of America Museums on Us website.

F. Consideration

- a. Bank of America agrees to pay Museum a fee of **Four Thousand US Dollars (\$4,000.00)** which shall be payable on or before June 30, 2020.

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- b. Museum agrees to provide an invoice and any appropriate documentation requested to Bank of America at least 60 days prior to the above due date.

G. Terms and Conditions

- a. **Indemnification:** Each party agrees to indemnify, defend and hold harmless the other party and its subsidiaries, affiliates, successors, permitted assigns, officers, directors, agents, and employees from and against any and all third-party expenses, liabilities, damages, claims, suits, legal proceedings, actions, judgments and costs including reasonable attorney's fees ("Claims") arising out of that party's breach of this Agreement, the acts or omissions of that party, its employees, or contractors, and/or any infringement of the intellectual property rights of a third party, except to the extent that any such Claim is caused by the other party.
- b. **Intellectual Property:** Each party (each a "Grantor" and/or "Grantee" as the context requires) hereby grants to the other party, during the Term, a limited, non-exclusive license to use Grantor's name, logo, trademarks, service marks and any other proprietary marks or copyrights now or hereafter owned by Grantor, whether registered or owned under common law ("Proprietary Marks"). Museum and Bank Proprietary Marks may be used together to promote and advertise the Program and in any advertising, promotion or communication by Bank of America, in its reasonable judgment, determines is necessary or appropriate in order to publicize the Program in all forms of media throughout the world. Museum and Bank Proprietary Marks may be used together to promote and advertise the Program and in any advertising, promotion or communication by Museum, only with Bank of America's prior written approval, to publicize the Program in all forms of media throughout the world. Use of Bank of America Proprietary Marks in this Agreement shall be limited to use of the following marks only: MUSEUMS ON US (U.S. registration no. 3286433), BANK OF AMERICA (U.S. registration no. 2713720), BANK OF AMERICA and stripes design (U.S. registration no. 2494690) and stripes design (U.S. registration no. 2494686).
- c. **Trademark & IP Quality Control Requirements:** Grantee shall submit to Grantor for its prior approval, specimens of copy and usage intended by Grantee of Grantor's Proprietary Marks by no later than ten (10) business days prior to release date. Grantor expressly reserves the right to reject any copy or usage of its Proprietary Marks which it, in its sole discretion, reasonably deems to be inappropriate. Any copy or usage rejected shall not be used by Grantee. Grantor expressly reserves the right to discontinue use of, alter or change its own Proprietary Marks, in which event the Grantee must abide by the Grantor's directions concerning any such discontinuance of use, alteration or change of Grantor's Proprietary Marks.

Grantee acknowledges and agrees that the Grantor is and shall remain the sole and exclusive owner of Grantor's Proprietary Marks. Grantee agrees and covenants that it shall use or reproduce Grantor's Proprietary Marks without alteration or distortion and, when appropriate, the Proprietary Marks shall be accompanied by the applicable trademark symbol. Upon termination of this agreement, Grantee shall immediately cease using any of Grantor's Proprietary Marks.
- d. **Insurance:** Each party agrees to secure and maintain the following insurance in full force and effect throughout the Term and thereafter: (i) commercial general liability insurance and general aggregate to cover bodily injury/and or property damage to third parties (including

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host liquor liability and contractual liability coverage), (ii) excess or umbrella insurance and general aggregate, and (iii) workers compensation coverage with statutory limits as required by law. Certificates evidencing proof of insurance shall be provided upon request.

- e. **Option to Terminate:** Bank of America may terminate this Agreement without cause, at any time without further charge or expense upon at least thirty (30) calendar days prior written notice to Museum. Either party shall have the right, but not the obligation, to terminate this Agreement if (a) the other party commits a material breach of this Agreement that is not cured by the other party within thirty (30) days of receipt of written notice from the non-breaching party, (b) as provided in subsection e (Force Majeure), or (c) if the other party becomes insolvent or becomes involved in bankruptcy proceedings.
- f. **Force Majeure:** Neither party shall be considered in default in the performance of its obligations under this Agreement to the extent that performance of its obligations is prevented or delayed by any cause beyond its reasonable control, including, without limitation, acts of God; acts or omissions of governmental authorities; strikes, lockouts, or other industrial disturbances; acts of public enemy; weather; wars; acts or threats of terrorism; blockades; riots; civil disturbances; epidemics; floods; hurricanes; tornadoes; fire; storms; explosions; and any other similar events, acts, or omissions beyond the control of the parties (a Force Majeure Event).
- g. **Representations and Warranties:** Each party represents and warrants to the other that: (a) it has the full right and legal authority to enter into and fully perform this Agreement in accordance with its terms without violating the rights of any third party; (b) it has, or will timely obtain, all licenses, permits or other authorizations necessary to perform its obligations and conduct the Event as contemplated under this Agreement; and (c) it will comply with all applicable laws, regulations and ordinances pertaining to this Agreement and the activities contemplated herein.
- h. **Miscellaneous:** The failure of either party at any time to demand strict performance by the other of any of the terms or conditions set forth herein shall not be construed as a continuing waiver thereof. This agreement may not be modified and none of its terms may be waived, except in writing signed by both parties. This agreement does not constitute, and shall not be construed as constituting or creating a partnership, joint venture or agency relationship between the Museum and Bank of America. Further, each party agrees to be responsible for hiring, supervising, and paying its own assistants and employees. Neither party shall have the authority to bind the other party to any third party contracts without the prior written consent of the other party. This agreement is to be governed by and construed in accordance with the laws of the State of North Carolina applicable to contracts entered into and wholly performed within the United States, without regard to conflict of laws principles thereof. In the event of any litigation arising out of this agreement, venue shall lie in the State of North Carolina, and each party hereby consents to jurisdiction in the state and federal courts of North Carolina. This agreement constitutes the entire understanding between the parties, and cannot be amended, altered or modified except by an agreement in writing signed by both parties. Upon its full execution, this agreement shall supersede all prior negotiations, understandings and agreements, whether oral or written, and such prior agreements shall thereupon be null and void and without further legal effect.

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AGREED TO AND ACCEPTED BY:

BANK OF AMERICA CORPORATION

By: _____

Print Name: Al Arguello

Title: SVP-Market President, Inland Empire

Date: November 18, 2019

Email: alfred.j.arguello@bofa.com

[INSERT MUSEUM HERE]

By: _____

Print Name: _____

Title: _____

Date: _____

Email: _____