

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

August 6, 2024

FROM

JOSHUA DUGAS, Director, Department of Public Health

SUBJECT

Terms of Use with Western Kentucky University Research Foundation, Inc. for the Bingocize Evidence-Based Health Prevention Program

RECOMMENDATION(S)

1. Approve the Terms of Use (**Agreement No. 24-738**) with Western Kentucky University Research Foundation, Inc., including non-standard terms, for the non-exclusive license of the Bingocize evidence-based health prevention program, in the amount not-to-exceed \$400 for the period of July 1, 2024 through June 30, 2026.
2. Authorize the Director of the Department of Public Health or Assistant Director of the Department of Public Health to electronically accept the online Terms of Use with Western Kentucky University Research Foundation, Inc., and any future non-substantive amendments, for the non-exclusive license of the Bingocize evidence-based health prevention program, on behalf of the County, subject to review by County Counsel.
3. Direct the Director of the Department of Public Health to transmit all amendments in relation to the Terms of Use with Western Kentucky Research Foundation, Inc. to the Clerk of the Board of Supervisors within 30 days of execution.

(Presenter: Joshua Dugas, Director, 387-9146)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Provide for the Safety, Health and Social Service Needs of County Residents.

Pursue County Goals and Objectives by Working with Other Agencies and Stakeholders.

FINANCIAL IMPACT

This item does not impact Discretionary General Funding (Net County Cost). The \$400 cost associated with this license over the two-year term will be reimbursed to the Department of Public Health (DPH) under an existing Memorandum of Understanding (MOU) with the Department of Aging and Adult Services – Public Guardian (DAAS – PG) from the Area Plan allocation, which includes Disease Prevention and Health Promotion Services Title III D (Title IIID) funds. Adequate appropriation and revenue are included in the DPH 2024-25 budget and will be included in the 2025-26 recommended budget.

BACKGROUND INFORMATION

DPH's Nutrition and Wellness Services (NWS) and DAAS-PG established a collaboration in 2017 and have since continued this partnership for the provision of health education and activities to seniors. The renewal of the Bingocize license will enable NWS to continue fulfilling the obligated services outlined in the current MOU with DAAS – PG for the provision of evidence-based health prevention education and activities to seniors within the county. Bingocize is an evidence-based health prevention program that strategically combines the game

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of bingo, health education, and/or exercise, developed by the Western Kentucky University Research Foundation, Inc. (Foundation).

The Bingocize license renewal will allow NWS staff to continue utilizing the Bingocize Fall Prevention and Nutrition Education program curriculum, which includes providing physical activities and nutrition education programs for seniors at senior community centers and nutrition sites, and senior housing facilities within the county. Prior terms of use agreements with the Foundation for the Bingocize license were approved within the authority of the County Purchasing Department. However, as the recommended Terms of Use includes non-standard terms, per County Policy 11-05, Board of Supervisors' (Board) approval is required.

The Terms of Use with the Foundation includes terms that differ from the standard County terms and conditions. The non-standard and missing terms include the following:

1. The Terms of Use cannot be terminated by the County but may be terminated by the Foundation upon a breach by DPH.
 - The County standard contract term is five years and allows for termination of the contract for convenience with a 30-day notice.
 - Potential Impact: The County is bound to the Terms of Use until the end of the two-year period.
2. The Terms of Use require the County to indemnify and hold harmless the Foundation from any and all claims, suits damages, attorney's fees, costs and other expenses arising from DPH's performance of the Bingocize Fall Prevention and Nutrition Education program curriculum, and does not require the Foundation 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, and does not include any indemnification or defense by the County of a contractor.
 - Potential Impact: The Foundation is not required to defend, indemnify or hold the County harmless from any claims. If the County or the Foundation are sued for any claim, the County may be solely liable for the costs of defense and damages, which could exceed the total amount of the Terms of Use.
3. The Foundation provides Bingocize on an "AS IS" and disclaims all warranties of any kind.
 - County Policy 11-05 requires a contractor to fully warrant its services and products.
 - Potential Impact: There is no warranty requirement in the Terms of Use with the Foundation. The County's use of the Bingocize Fall Prevention and Nutrition Education program curriculum is solely at its own risk.
4. The Terms of Use do not require the Foundation to meet the County's insurance standards as required pursuant to County Policy 11-07.
 - 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 Terms of Use do not include County standard insurance requirements. This means that the County has no assurance that the Foundation will be financially responsible for claims that may arise.

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5. The liability to the County is equal to the fees paid during the term of the contract.
 - The County standard contract does not include a limitation of liability.
 - Potential Impact: The Foundation caps its liability to the County for all claims arising under the Terms of Use to the amount paid by the county. Claims could exceed the liability cap of the total amount of the Terms of Use, leaving the County financially liable for the excess. In addition, the County's liability under the contract is not similarly limited.
6. Governing law is the State of Kentucky.
 - The County standard contract requires California governing law.
 - Potential Impact: The Agreement will be interpreted under Kentucky law. Any questions, issues or claims arising under this Agreement will require the County to hire outside counsel competent to advise on Kentucky law, which may result in fees that exceed the total Agreement amount.

DPH recommends the approval of the Terms of Use, including the non-standard terms, to allow NWS to continue providing the Bingocize Fall Prevention and Nutrition Education program curriculum to increase functional fitness, health knowledge, and social engagement in older adults in a variety of settings, which promote the health and wellness of county residents.

Recommendation No. 2 will authorize the Director or Assistant Director of DPH to electronically accept the Terms of Use and any future non-substantive amendments, subject to review by County Counsel, as required by the Foundation.

PROCUREMENT

DPH utilizes the Bingocize Fall Prevention and Nutrition Education program curriculum based on specialized credentials, expertise, and training for Title IIID interventions. The curriculum is only available through the Foundation and is on the approved list of curricula for Title IIID interventions, as well as being specified as the program curriculum within the MOU with DAAS-PG.

Approval of this non-competitive Terms of Use for the non-exclusive license of the Bingocize evidence-based health prevention program will allow the continued support of a variety of activities to maintain and improve the physical, mental, and nutritional health of older adults.

Purchasing concurs with the non-competitive justification of the services as specialized training.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Adam Ebright, Deputy County Counsel, 387-5455) on July 15, 2024; Purchasing (Jessica Barajas, Supervising Buyer, 387-2065) on July 12, 2024; Risk Management (Gregory Ustaszewski, Staff Analyst, 386-9008) on July 15, 2024; Finance (Carl Lofton, Administrative Analyst, 387-5404) on July 23, 2024; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on July 23, 2024.

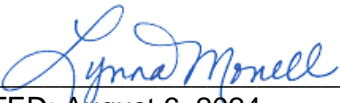
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Record of Action of the Board of Supervisors
San Bernardino County

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: August 6, 2024



cc: PH - Saucedo w/agree
Contractor - c/o PH w/agree
File - w/agree
CCM 08/13/2024