

2022 Museums on Us Agreement

A. General Information.

Museum Name: San Bernardino County Museum (“Museum”)	Bank of America Corporation, a Delaware corporation (“Bank of America”)
Contact: Melissa Russo	Contact: Cathy Paredes
Address: 2024 Orange Tree Lane, Redlands, CA 92374	Address: 3650 14th St., Riverside, CA 92501
Phone: 909.798.8608	Phone: 951.274.4046
E-Mail: Melissa.Russo@sbcm.sbcounty.gov	E-Mail: c.paredes@bofa.com

B. Term. The term of this agreement shall commence on January 1, 2022 and shall conclude December 31, 2022 (“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.

1. All visitors to the Museum who present (i) an active Bank of America®, Merrill® (formerly Merrill Lynch®) or Bank of America Private Bank® (formerly U.S. Trust®) branded physical or digital/electronic debit or credit card –and a valid photo ID (“Bank Customers”), or (ii) a current and valid corporate identification or other proof of employment with Bank of America®, Merrill® (formerly Merrill Lynch®), or Bank of America Private Bank® (formerly U.S. Trust®), and a valid photo ID (“Bank Employees”), shall receive one free general admission to the Museum on the first full weekend of each month (“Program Weekend”) during the Term. If advanced ticket purchase or admission reservations are required, the Museum must provide alternate Museums on Us admission protocols (i.e. promo code or a separate Museums on Us line) for the Bank Customer/Bank Employee. Special exhibitions, with separate admission charge, and ticketed activities are not included in the Program and must be purchased separately by the Bank Customer/Bank Employee. In the event special exhibitions and ticketed activities take place during any Program Weekend, the Museum must honor its obligations to Bank Customers/Bank Employees with respect to admissions covered by, and as set forth in, this agreement.
2. The Museum is required to provide Bank of America with a usage report, via the provided Museums on Us tracking worksheet or administrative website. Information is to be shared immediately following the Program Weekend by the Museum, identifying the number of Bank Customers and Bank Employees who took advantage of the benefit outlined in section D.1. and the number of paying guests accompanying the Bank Customer/Bank Employee.
3. The Museum is required to coordinate with its Bank of America contacts to keep their Museums on Us profile information (Description; Museums on Us admission protocols; Address; Phone number; Website; Primary and Secondary Contact Information) 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.

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F. Consideration. In consideration of the agreements of the parties hereto, Bank of America agrees to pay the Museum a fee of Four Thousand Dollars (\$4,000), which shall be payable on or before June 30, 2022. The Museum shall 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.

1. **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 any such Claim is caused by the other party. Neither Party shall be liable to the other for any special, indirect, incidental, consequential, punitive or exemplary damages, including, but not limited to, lost profits, even if such party has knowledge of the possibility of such damages; provided, however, that the limitations set forth in this section shall not apply to or in any way limit the obligations of the parties in connection with liability to a third party for any Claims.
2. **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 in any advertising, promotion or communication that either party as Grantee, in its reasonable judgment, determines is necessary or appropriate in order to publicize the Program in all forms of media throughout the world, but only with Grantor's prior written approval. 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).
3. **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 seven (7) 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 Grantee must abide by Grantor's directions concerning any such discontinuance of use, alteration or change of Grantor's Proprietary Marks.

Grantee acknowledges and agrees Grantor is and shall remain the sole and exclusive owner of Grantor's Proprietary Marks. Grantee agrees and covenants 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.

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4. **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 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. Each party's policies shall name the other party as an additional insured. Certificates evidencing proof of insurance shall be provided by either party upon request of the other party.
5. **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 6 (Force Majeure), or (c) if the other party becomes insolvent or becomes the subject of any petition, case, proceeding or other action pursuant to the Bankruptcy Code of the United States, or any other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect.
6. **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 acts of God; acts or omissions of governmental authorities; strikes or other industrial disturbances; acts of a public enemy; natural disaster (e.g., hurricanes, tornadoes, blizzards, ice storms, floods, and earthquakes); wars; acts or threats of terrorism; riots or civil disturbances; epidemics as declared by a federal declaration of national emergency or identification by the World Health Organization as a global pandemic; fire and any other similar events or occurrences beyond the control of the parties (individually and collectively, a "Force Majeure Event"); provided, however, that in no event shall a Force Majeure Event extend the time for performance of any obligation hereunder by more than sixty (60) days. Following such sixty (60) day period, either party may terminate this Agreement by giving notice to the non-terminating party.
7. **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.
8. **General Provisions:** 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 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. Time shall be of the essence for each and every provision of this Agreement of which time is an element.

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None of the terms or provisions of this Agreement may be changed, waived, modified, discharged or terminated except by instrument in writing executed by the party or parties against whom enforcement of the change, waiver, modification, discharge or termination is asserted. None of the terms or provisions of this Agreement shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same. In the event any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable, in whole or in part or in any other respect, such provision or provisions only shall be deemed null and void and the remaining provisions of this Agreement shall remain operative and in full force and effect. Section headings in this Agreement are included merely for ease of reference only and shall not be given any substantive effect

9. **Governing Law:** 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.
10. **Entire Agreement:** 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.
11. **Assignment:** Neither party shall assign this agreement or any of the rights or responsibilities hereunder without prior written approval of the other party, except that either party or any permitted assignee of such party may assign any of its rights and obligations under this agreement to any affiliate of such party, the surviving corporation with or into which such party or such permitted assignee may merge or consolidate, or an entity to which such party or such permitted assignee transfers all, or substantially all, of its business and assets.
12. **Confidentiality:** During the Term and thereafter, each party agrees to keep confidential and not to use or disclose the terms and conditions of this agreement or any information provided by the other party under this agreement and any information it derives therefrom (collectively, the "Confidential Information") to any third party. Either party may disclose the Confidential Information to those of its directors, officers, employees, attorneys, investors, lenders, auditors, and consultants (collectively "Representatives") who need to know such information, provided that such Representatives are informed of its confidential nature and agree to keep such information confidential. Each party agrees to be responsible for any breach of this Agreement by its Representatives. Confidential Information does not include any information that (i) at the time of disclosure was, or becomes, part of the public domain (through a source other than the recipient); (ii) was lawfully obtained from a third party that was not under, and did not impose, an obligation of confidentiality with respect to such information; (iii) is independently developed by the recipient without use of, or reference to, Confidential Information; or (iv) was known by recipient prior to disclosure by the discloser. Nothing in this Agreement prohibits the disclosure of Confidential Information if required by law, rule, regulation or subpoena or in connection with any litigation, arbitration or other legal proceedings between the parties, or if it is requested or required by government regulators acting under color of authority.

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13. **Notices:** Any notices required or permitted to be given hereunder shall be in writing and sent to the persons and addresses identified at the top of this Agreement by (a) first class, registered or certified United States mail, return receipt requested and postage prepaid, (b) overnight express courier, (c) by hand delivery to such addresses, or (d) by such other method as the parties may agree. Such notices shall be deemed to have been duly given (i) three (3) business days after the date of mailing as described above, (ii) the same day if by express courier during business hours or the next business day if after business hours, or (iii) the same day if by hand delivery.
14. **Non-Discrimination:** The Museum shall not, in its administration of the Program, discriminate against any individual or entity on the basis of race, religion, color, sex, sexual orientation, gender identity, age, national origin, ancestry, citizenship, veteran, or disability status.
15. **Electronic Communications; Counterparts:** This agreement and any document, amendment, approval, consent, notice, or authorization related to this agreement (each a "Communication") may be in the form of an Electronic Record and may be executed using Electronic Signatures, including, without limitation, facsimile and/or .pdf. The parties agree that any Electronic Signature (including, without limitation, facsimile or .pdf) on or associated with any Communication shall be valid and binding on the parties to the same extent as a manual, original signature. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. All Communications in the form of an Electronic Record shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. For purposes hereof, "Electronic Record" and "Electronic Signature" shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

AGREED TO AND ACCEPTED BY:

BANK OF AMERICA CORPORATION,
a Delaware corporation

SAN BERNARDINO COUNTY
Curt Hagman, Chairman, Board of Supervisors

By:  _____

By: _____

Print Name: Cathy Paredes

Print Name: _____

Title: Market Executive

Title: _____