

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

November 16, 2021

FROM

MELISSA RUSSO, Director, County Museum

SUBJECT

Revenue Agreement with Bank of America for Museums on Us Program

RECOMMENDATION(S)

Approve **Revenue Agreement No. 21-825** with Bank of America in consideration for County Museum's participation in the Museums on Us program in the amount of \$4,000 for the period of January 1, 2022 through December 31, 2022.

(Presenter: Melissa Russo, Director, 798-8608)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Operate in a Fiscally-Responsible and Business-Like Manner.

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

FINANCIAL IMPACT

Approval of this item will not result in the use of additional Discretionary General Funding (Net County Cost). The County Museum (Museum) will receive \$4,000 from Bank of America in consideration for the Museum's participation in the Museums on Us program. These funds will be used to offset the cost of free museum admissions offered to Bank of America and Merrill Lynch cardholders. The San Bernardino County Museum Association has agreed to reimburse any free museum admissions exceeding \$4,000. Adequate appropriation and revenue have been included in the Museum's 2021-22 budget, and will be included in the 2022-23 Recommended Budget.

BACKGROUND INFORMATION

Approval of this action will authorize the San Bernardino County Museum to receive \$4,000 from Bank of America in consideration for the Museum's participation in the Bank of America Museums on Us program offering free admission to Bank of America and Merrill Lynch cardholders on the first full weekend (Saturday and Sunday) of each month. The program rules provide for free admission to cardholders only, not to additional guests or family members. Qualifying dates during the contract period 2022 are as follows:

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Qualifying Dates: Museums on Us Program

January 2, 2022
February 5 - 6, 2022
March 5 - 6, 2022
April 2 - 3, 2022
May 7 - 8, 2022
June 4 - 5, 2022
July 2 - 3, 2022
August 6 - 7, 2022
September 3 - 4, 2022
October 1 - 2, 2022
November 5 - 6, 2022
December 3 - 4, 2022

The Museums on Us program launched nationally in 2000 and is a benefit to Bank of America cardholders across the United States. Bank of America partners with an array of prominent cultural institutions in the United States including museums, science centers, botanical gardens and aquariums. Participating museums benefit in several ways including a cash stipend, extensive marketing and promotion of the program within and outside of the Inland Empire market, increased paid admissions and relationship building with the philanthropy arm of Bank of America, which is one of the largest donors to museums in California and across the United States. Approximately 200 museums currently participate in the program. This will be the sixth year that San Bernardino County Museum has been invited to participate.

Promotion of the program features a Museums on Us website, which lists the partner museums, emails and mail to cardholders, and social media prior to each month's Museums on Us weekend through Facebook and Twitter reminders. In Fiscal Year 2018-19 there were 1,045 free admissions, and in Fiscal Year 2019-20 before the museum closed due to COVID, there were 715 free admissions.

The 2022 Museums on Us Agreement contains the following non-negotiable non-standard terms and conditions.

1. The Agreement is governed by the laws of the State of North Carolina.
 - The standard County contract requires California governing law.
 - Potential Impact: The contract will be interpreted according to the laws of the State of North Carolina. Any questions, issues or claims arising under the Agreement will require the County to hire outside counsel to advise on North Carolina law.
2. Venue is in the State of North Carolina.
 - The County standard contract requires venue for disputes to be in the Superior Court of California, San Bernardino County, San Bernardino District.
 - The County may incur additional expenses as a result of the New York venue.
3. The Agreement contains a mutual indemnity provision.
 - The County standard contract requires contractor to indemnify the County but does not require the County to indemnify the contractor.

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- Potential Impact: By agreeing to indemnify Bank of America, the County may be contractually waiving the protection of sovereign immunity. Claims that may otherwise be barred against the County, time limited or expense limited, could be brought against Bank of America, and the County would be responsible to defend and reimburse Bank of America for costs, expenses and damages. County counsel cannot advise on whether and to what extent the law of North Carolina may limit or expand this contract provision.
4. The Agreement does not contain the Standard County insurance terms though it does generally require each party to maintain commercial general liability insurance, excess or umbrella insurance and workers compensation coverage during the term of the Agreement without specifying policy amounts.
- Standard County policy requires inclusion of the standard County insurance requirements in contracts unless otherwise approved by the Risk Management Department.
 - Potential Impact: The County does not have a full understanding of the insurance put in place by Bank of America and cannot evaluate its adequacy in terms of providing protection to the County. The Agreement does state that either party may request certificates evidencing proof of insurance.

The Museum recommends approval of this revenue Agreement with Bank of America, including all non-standard terms, as the program provides the revenue benefit, as well as non-revenue benefits, including the extensive nationwide promotion as a participant, and relationship building with Bank of America and their Inland Empire philanthropic team.

PROCUREMENT

N/A

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Katherine Hardy, Deputy County Counsel, 387-5455) on October 15, 2021; Risk Management (Victor Tordesillas, 386-8655) on November 2, 2021; Finance (Elias Duenas, Finance Analyst, 387-4052) on October 20, 2021; and Finance (Robert Saldana, Deputy Executive Officer, 387-5423) on October 27, 2021.

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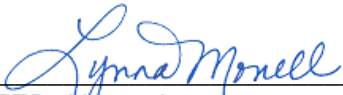
Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Joe Baca, Jr. Seconded: Dawn Rowe

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

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: November 16, 2021



cc: Museum- Russo w/agree
Contractor - C/O Museum w/agree
File - w/agree
CCM 11/17/2021