

REVOCABLE LICENSE FOR INSTALLATION OF A MURAL

By and Between

THE CITY OF POMONA

and

THE DA CENTER FOR THE ARTS

[DATED _____ FOR REFERENCE PURPOSES ONLY]

REVOCABLE LICENSE FOR INSTALLATION OF A MURAL

This REVOCABLE LICENSE FOR INSTALLATION OF A MURAL ("License"), dated as of this _____ day of _____, 2019, for identification purposes only, by and between the CITY OF POMONA, a public entity ("CITY" or "LICENSOR") and the dA Center for the Arts, a California non-profit organization ("LICENSEE"), is made with reference to the following facts:

- A. CITY is the owner of an existing building and real property, situated in the County of Los Angeles, State of California, more particularly described on attached Exhibit "A" (the "Property" or the "Premises").
- B. MURAL is the painting that is applied to and made an integral part of the exterior wall, more particularly described on attached Exhibit "B".
- C. LICENSEE desires to use the a portion of a building wall located on Property for the installation of a MURAL for the benefit of the dA Center for the Arts and the Pomona community, and CITY desires to license the building wall on the Property to Licensee upon the terms and conditions set forth below. A general description of the proposed MURAL and the location of its proposed installation, maintenance, and benefits to the Community is attached hereto as Exhibit "B."
- D. The principal purpose of City in entering into this License is to allow LICENSEE to use the PREMISES to serve the common benefit of the community by:
 - 1. Providing community gathering places.
 - 2. Providing public access to art.
 - 3. Providing an encouraging environment for artistic creativity.
 - 4. Contributing to the civic pride of Pomona citizens.
 - 5. Encouraging participation by all socioeconomic and ethnic groups in the public art process.

NOW THEREFORE, in consideration of the terms, covenants and conditions hereinafter contained to be kept and performed by the respective parties, it is agreed as follows:

SECTION 1. PERMISSION GRANTED

- A. For and in consideration of the promises made by Licensee, and subject to all of the terms, covenants, and conditions of this LICENSE, CITY hereby grants LICENSEE the revocable license and permission to use PREMISES to install and maintain the MURAL, at no cost, including installation, resurfacing, repairing, and painting, and not for any other purpose without the prior written consent of the DEVELOPMENT SERVICES DIRECTOR of CITY, or their designee ("DEVELOPMENT SERVICES DIRECTOR"). The rights herein granted shall be carried on solely within the limits and

confines of said areas designated as PREMISES, a map of which is attached hereto as Exhibit A.

B. LICENSEE, by accepting the LICENSE, agrees for itself, and its successors and assignees, that it will not make use of the PREMISES in any manner which might interfere with CITY's planning and development of the PREMISES for future development or municipal uses.

C. The term of this License shall commence _____, (the "Commencement Date") and unless sooner terminated under any subsequent provision of this License, shall expire and terminate at 12:00 midnight, five (5) years after the commencement date. At the time of the LICENSE termination the LICENSEE shall remove the MURAL and revert the PREMISES back to the original condition to the satisfaction of the DEVELOPMENT SERVICES DIRECTOR. If the LICENSEE fails to revert the PREMISES to the original condition, the DEVELOPMENT SERVICES DIRECTOR may at his/her option, and in addition to all other remedies which may be available to the CITY, repair, replace, rebuild, redecorate, or paint the PREMISES, with the cost thereof, to be paid by the LICENSEE to the CITY, on demand.

SECTION 2. CONDITIONS OF LICENSE

The uses permitted under this LICENSE shall be subject to the Conditions of Approval contained in Exhibit B to this License Agreement, and the following conditions and limitations:

A. Donations. LICENSEE shall, at their discretion, have the right to solicit volunteer donations for the installation and maintenance of the MURAL.

B. Non-Discrimination. LICENSEE, in the execution and maintenance of the MURAL for itself, its personal representatives, successors in interest and assignees, as part of the consideration hereof, does hereby covenant and agree that: (1) no person on the grounds of race, color, national origin, religion, ancestry, sex, age (provided that restrictions may be placed on minor's participation of the installation and maintenance of the MURAL), physical disability, or sexual orientation shall be excluded from the PREMISES or MURAL or activities thereon, denied the benefits of or be otherwise subjected to unjust discrimination in access to or in the use of the facilities covered by this LICENSE; (2) that in the construction of any improvements on, over or under the PREMISES authorized to be utilized herein and the furnishing of services thereon, no person on the grounds of race, color, national origin, religion, ancestry, sex, age, physical disability, or sexual orientation shall be excluded from participation in, denied the benefits of or otherwise be subjected to unjust discrimination. If, in the future, LICENSEE hires paid employees, during the term of the LICENSE, LICENSEE agrees not to unjustly discriminate in its employment practices against any employee or applicant for employment because of the employee's or applicant's race, color, religion, national origin, ancestry, sex, age, physical disability, or sexual orientation. All subcontracts entered into by LICENSEE to conduct any work on the Premises shall be

approved in advance by DEVELOPMENT SERVICES DIRECTOR and shall contain a like provision.

C. Manager. LICENSEE shall appoint a manager of the MURAL for installation, maintenance and operations ("MANAGER") who shall be an experienced art professional and shall have expertise in the maintenance of a mural. MANAGER shall act as the operational contact to DEVELOPMENT SERVICES DIRECTOR.

D. Safety. LICENSEE shall correct safety deficiencies, and violations of safety practices, immediately after the condition becomes known or DEVELOPMENT SERVICES DIRECTOR notifies LICENSEE of said condition. LICENSEE shall cooperate fully with DEVELOPMENT SERVICES DIRECTOR in the investigation of accidents occurring on the PREMISES. If LICENSEE fails to correct hazardous conditions specified by DEVELOPMENT SERVICES DIRECTOR in a written notice, which have led, or in the opinion of DEVELOPMENT SERVICES DIRECTOR could lead, to injury, DEVELOPMENT SERVICES DIRECTOR may, in addition to all other remedies which may be available to CITY, repair, replace, rebuild, redecorate, or paint any such PREMISES to correct the specified hazardous conditions, with the cost thereof, plus fifteen percent (15%) for administrative overhead, to be paid by LICENSEE to DEVELOPMENT SERVICES DIRECTOR, on demand.

~~F. Fundraising and Special Events Activities. Any fundraising activity or special events to which the general public is invited to be held on the PREMISES shall be subject to DEVELOPMENT SERVICES DIRECTOR's approval in advance. LICENSEE will be expected to obtain all CITY permits relative to the conduct of fundraising and/or special events.~~

E. Signage. Any proposed signage shall be subject to DEVELOPMENT SERVICES DIRECTOR's prior approval.

F. RIGHT AND TITLE TO, AND INTEREST IN, THE DESIGN

1. The copyright to the Design of the Mural and all related materials will belong exclusively to the Licensee.

2. Licensee grants the City an irrevocable license to make two-dimensional, photographic reproductions of the Mural for non-commercial purposes, including but not limited to, reproductions used in informational brochures, media publicity, the City's website, posters, and catalogues or similar publications.

3. Licensee represents and warrants that: (i) the Mural is and will be original; (ii) Licensee is the sole owner of the Mural Design and of all rights therein including copyright, trademark and other proprietary rights therein; (iii) Licensee is and will be the sole creator of the piece of art created pursuant to the Mural Design; (iv) Licensee has and will have full and sufficient right to assign all rights granted herein and to waive all

rights relinquished herein; (v) Licensee is not under any obligation to transfer or sell the Mural Design to any third party; (vi) the Mural Design has not been and will not be published under circumstances which have or will cause a loss of any copyright, trademark or other proprietary rights therein; and (vii) the Mural Design does not and will not infringe any patent, copyright, trademark or other proprietary rights, privacy rights or other rights of any third party, nor has any claim (whether or not embodied in a legal action, past or present) of such infringement been threatened or asserted, nor is such a claim pending, against the Artist and/or Licensee (or, insofar as the Artist or Licensee is aware, against any entity from which the Artist or Licensee has obtained any rights).

SECTION 3. MAINTENANCE AND REPAIR

A. “As Is.” LICENSEE acknowledges that it is agreeing to a LICENSE of the PREMISES on an “as is” basis.

B. Maintenance and Operating Standards. During all periods that the PREMISES are used or are under the control of the LICENSEE for the uses, purposes, and occupancy set forth in this LICENSE, LICENSEE shall maintain the MURAL at its own expense, in compliance with law and the Conditions of Approval shown on Exhibit B. Unless otherwise more specifically set forth, LICENSEE shall be responsible for all necessary maintenance duties and damage and maintenance repairs, to the satisfaction of DEVELOPMENT SERVICES DIRECTOR. The cause of said cleaning and repairs may result from normal wear and tear, as well as vandalism.

C. Parking Prohibited/Vehicle Access. LICENSEE shall not permit parking or vehicle access by anyone on the PREMISES, except that vehicle access to the PREMISES may be allowed subject to the approval of DEVELOPMENT SERVICES DIRECTOR for the purposes of delivery of materials or for the purposes of installation and maintenance.

D. Utilities. LICENSEE shall be responsible for any required utility charges. Charges may include, but are not limited to, deposits, installation costs and all service charges for gas, electricity, water, and other utility services to PREMISES, and shall be paid by LICENSEE regardless of whether such utility services are furnished by CITY or by other utility service providers.

E. Correction of Conditions Leading to Damage. If LICENSEE fails, after written notice, to correct such conditions which have led or, in the opinion of DEVELOPMENT SERVICES DIRECTOR, could lead to significant waste or damage to CITY property, DEVELOPMENT SERVICES DIRECTOR may, at his/her option, and in addition to all other remedies which may be available to CITY, repair, replace, rebuild, redecorate or paint any such property included in said notice, with the cost thereof, to be paid by LICENSEE to DEVELOPMENT SERVICES DIRECTOR, on demand.

F. Property Damage and Theft Reporting. LICENSEE shall report to DEVELOPMENT SERVICES DIRECTOR, in writing, in the event that the PREMISES and/or CITY-owned property is damaged or destroyed, in whole or in part, from any cause whatsoever, and in the event of theft, burglary, or other crime committed on the PREMISES.

G. Damage or Destruction to PREMISES. If all or a portion of the PREMISES are partially damaged by fire, explosion, flooding inundation, floods, the elements, public enemy, or other casualty, CITY shall be under no obligation, but may choose, to repair, replace or reconstruct said PREMISES to the same extent and of equal quality as obtained by LICENSEE at the commencement of its operations hereunder. Notwithstanding the foregoing, if the said PREMISES, or a portion thereof, are damaged or destroyed as a result of the negligent acts or omissions of LICENSEE, its agents, officers, volunteers, or employees, CITY may, in its discretion, require LICENSEE to repair and reconstruct the same within twelve (12) months of such destruction and LICENSEE shall be responsible and pay for the cost and expenses incurred in making such repairs.

SECTION 4. IMPROVEMENTS

LICENSEE shall be responsible and pay all costs of necessary improvements, fixtures and other construction necessary to install and maintain the MURAL. Prior to work on any such improvement, LICENSEE shall submit to DEVELOPMENT SERVICES DIRECTOR a site plan showing all intended improvements needed for such installation and maintenance of the Mural.

Such improvements shall be subject to the approval of DEVELOPMENT SERVICES DIRECTOR. A cost estimate of the proposed improvement shall be submitted to DEVELOPMENT SERVICES DIRECTOR for any improvements estimated to cost over five thousand dollars (\$5,000.00). Any revision, deletion or additions, except for minor changes, to the site plan shall be subject to review and approval by DEVELOPMENT SERVICES DIRECTOR.

SECTION 5. LIABILITY

A. Indemnification.

1. Except for the active negligence or willful misconduct of CITY, LICENSEE undertakes and agrees to defend, indemnify and hold harmless CITY, and any and all of its officers, agents, and employees from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and cost of litigation, damage or liability of any nature whatsoever, for death or injury to any person, including LICENSEE'S, volunteers, employees, agents, guests or invitees, or damage or destruction of any property of either party hereto or of third parties, arising in

any manner by reason of, or incident to, the performance of the acts contemplated in this LICENSE or the entry and use of the MURAL and PREMISES.

B. Waiver of Defective Conditions. LICENSEE hereby expressly waives all claims for compensation, for any and all loss or damage by reason of any defect, deficiency, or impairment of the conditions or fixtures on the PREMISES; and LICENSEE hereby expressly releases and discharges CITY and its officers, employees, and agents from any and all demands, claims, actions, and causes of action arising from any of the aforesaid causes.

C. Insurance Required.

1.. The Artist shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

a. A policy or policies of Comprehensive General Liability Insurance, with minimum limits of \$1,000,000 for each occurrence, combined single limit, against any personal injury, death, loss, or damage resulting from the wrongful or negligent acts by the Artist.

b. A policy or policies of Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of \$1,000,000 per occurrence combined single limit, covering any vehicle utilized by the Artist in performing the work required by this Agreement.

c. Workers' compensation insurance as required by the State of California.

2. The Artist shall require each of its sub-contractors (if any) to maintain insurance coverage that meets all of the requirements of this Agreement.

3. The City's Risk Manager may, in writing, amend and/or waive the insurance provisions set forth in paragraph (a) herein. In such case, the Artist shall comply with the insurance provisions required by the City's Risk Manager.

4. The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A-;VII in the latest edition of Best's Insurance Guide.

5. The Artist agrees that if it does not keep the aforesaid insurance in full force and effect, City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may take out the necessary insurance and pay, at the Artist's expense, the premium thereon.

6. At all times during the term of this Agreement, the Artist shall maintain on file with the City Clerk a certificate or certificates of insurance on the form approved by the City's Risk Manager, showing that the aforesaid policies are in effect in the required amounts. The Artist shall, prior to commencement of work under this Agreement, file with the City

Clerk such certificate or certificates. The general liability insurance and vehicle insurance shall contain an endorsement naming the City as an additional insured. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.

7. The insurance provided by the Artist shall be primary to any coverage available to City. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.

8. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, the Artist shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or the Artist shall procure a bond guaranteeing payment of losses and expenses.

SECTION 6. PROHIBITED ACTS

LICENSEE shall not:

B. Do or permit to be done any act or thing upon the PREMISES which will invalidate, suspend or increase the rate of any insurance policy required under the LICENSE, or carried by CITY and/or CITY, covering the PREMISES, or which, in the opinion of DEVELOPMENT SERVICES DIRECTOR , may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under the LICENSE, provided, however, that nothing contained herein shall preclude LICENSEE from bringing, keeping or using on or about the PREMISES such materials, supplies, equipment and machinery as are appropriate or customary in carrying on installation and maintenance of a mural, or from carrying on installation and maintenance of a mural in all respects as is customary;

C. Use any hazardous materials as defined in Title 26, Division 19.1, Section 19-2510 of the California Code of Regulations, or those which meet the criteria of the above Code, as well as any other substance which poses a hazard to health and environment, provided, however, that nothing contained herein shall preclude LICENSEE from bringing on or about the PREMISES such materials, supplies, equipment and machinery as are appropriate or customary in carrying on installation and maintenance of a mural, or from carrying on installation and maintenance of a mural in all respects as is customary except that all hazardous materials must be stored and used in compliance with all local, State and Federal rules, regulations, ordinances and laws; or

SECTION 7. INDEPENDENT CONTRACTORS / CONSULTANTS

LICENSEE is acting hereunder as an independent contractor and not as an agent or employee of CITY. LICENSEE shall not represent or otherwise hold itself or any of its directors, officers, partners, volunteers, employees, or agents to be an agent or employee of CITY.

SECTION 8. TAXES, PERMITS AND LICENSES

LICENSEE shall obtain and maintain, at its sole expense, any and all approvals, permits, or licenses that may be required in connection with the installation of the MURAL including, but not limited to payment of tax permits, business licenses, health permits, building permits, etc. and shall pay all taxes, fees or permit charges that may be levied or charged upon the rights of LICENSEE to use the PREMISES, or upon LICENSEE'S improvements, fixtures, equipment, or other property thereon or upon LICENSEE'S operations hereunder.

SECTION 9. REGULATIONS, INSPECTION AND DIRECTIVES

A. The installation and maintenance conducted by LICENSEE pursuant to the LICENSE shall be subject to:

1. Any and all applicable rules, regulations, orders, and restrictions which are now in force or which may be hereafter adopted by CITY with respect to the installation and maintenance of the MURAL;
2. Any and all orders, directions or conditions issued, given, or imposed by DEVELOPMENT SERVICES DIRECTOR with respect to the use of the roadways, driveways, curbs, sidewalks, parking areas, or public areas adjacent to the PREMISES;
3. Any and all applicable laws, ordinances, statutes, rules, regulations or orders, including the Pomona Municipal Code, and of any governmental authority, federal, state or municipal, lawfully exercising authority over LICENSEE's operations; and
4. Any and all applicable local, state and federal laws and regulations relative to the design and installation of facilities to accommodate disabled persons, including the Americans with Disabilities Act.

SECTION 10. TERMINATION & TERMINATION UPON DEFAULT

A. Either party may terminate this License without cause upon 60 days prior written notice to the other party. In addition, CITY may terminate based on cause if any one or more of the following events of default occur:

1. LICENSEE fails to keep, perform and observe any promise, covenant and condition set forth in the LICENSE on its part to be kept, performed or observed and LICENSEE fails to perform within seven (7) days after the receipt of written notice from

DEVELOPMENT SERVICES DIRECTOR, or, where fulfillment of LICENSEE's obligation requires activity over a period of time, LICENSEE fails to commence to perform whatever may be required within seven (7) days after receipt of such notice or fails to continue such performance until the obligation is met;

2. The interest of LICENSEE under the LICENSE is assigned, transferred, passes to or devolves upon, by operation of law or otherwise, any other person, firm or corporation without the written consent of DEVELOPMENT SERVICES DIRECTOR;

3. The levy of any attachment or execution, or the appointment of any receiver, or the execution of any other process of any court of competent jurisdiction which is not vacated, dismissed or set aside within a period of ten (10) days and which does, or as a direct consequence of such process will, interfere with LICENSEE's use of the PREMISES or with its operations under the LICENSE;

4. LICENSEE becomes insolvent, files for bankruptcy or a petition for bankruptcy is filed against LICENSEE;

6. LICENSEE voluntarily abandons, deserts, vacates or discontinues its maintenance of the MURAL.

7. LICENSEE shall have no claim against CITY by reason of termination, including any claim for compensation.

B. Waiver of Redemption and Damages:

LICENSEE hereby waives any and all rights of redemption granted by or under any present or future law or statute in the event it is dispossessed for any cause, or in the event CITY obtains or retains possession of the PREMISES in any lawful manner. LICENSEE further agrees that in the event the manner or method employed by CITY in reentering or regaining possession of the PREMISES gives rise to a cause of action by LICENSEE due to forcible entry and detailed under the laws of the State of California, the total amount of damages to which LICENSEE shall be entitled in any such action shall be the sum of one dollar (\$1.00). LICENSEE agrees that this provision may be filed in any such action as its stipulation fixing the amount of damages to which it is entitled.

SECTION 11. SURRENDER OF POSSESSION

A. LICENSEE agrees to yield and deliver possession of the PREMISES to CITY on the date of the expiration, revocation or earlier termination of the LICENSE promptly, peaceably, quietly, and in as good order and condition as the same now are or may be hereafter improved by LICENSEE, CITY or CITY, normal use and wear and tear thereof excepted. No agreement of surrender or to accept a surrender shall be valid unless and until the same is in writing and signed by the duly authorized representatives of CITY and LICENSEE. Neither the doing nor omission of any act or thing by any of the

officers, agents or employees of CITY shall be deemed an acceptance of a surrender of the PREMISES utilized by LICENSEE under the LICENSE.

SECTION 12. WAIVER

A waiver of a default of any part, term, or provision of the LICENSE shall not be construed as a waiver of any succeeding default or as a waiver of the part, term, or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

SECTION 13. FORCE MAJEURE

Neither party hereto shall be liable to the other for any failure, delay, or interruption in the performance of any of the terms, covenants or conditions of the LICENSE due to causes beyond the control of that party including, without limitation, strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, landslides, acts of the public enemy, acts of superior governmental authority, floods, riots, rebellion, sabotage, or any other circumstance for which such party is not responsible and which is not in its power to control.

SECTION 14. REMEDIES ARE NON-EXCLUSIVE

No right, power, remedy, or privilege of CITY shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of said rights, powers, remedies, or privileges shall be deemed cumulative and additional and not in lieu or exclusive of each other or of any other remedy available to CITY at law or in equity.

SECTION 15. LAW OF CALIFORNIA APPLIES

The LICENSE shall be enforced and interpreted under the laws of the State of California. Venue shall be in Los Angeles County.

SECTION 16. NOTICES

A. To CITY:

Unless otherwise stated in the LICENSE, written notices to CITY hereunder shall be addressed to:

City Manager
City of Pomona
505 S. Garey Avenue
Box 660

Pomona, CA 91769

B. To LICENSEE:

Written notices to LICENSEE shall be addressed as follows:

LICENSEE

SECTION 17. LICENSE CONTAINS ENTIRE AGREEMENT

The provisions of the LICENSE contain the entire Agreement between the parties hereto and said LICENSE may not be changed or modified in any manner except by formal, written amendment fully executed by both CITY and LICENSEE.

IN WITNESS WHEREOF, Licensor and Licensee have executed this License as of the day and year shown next to their signatures.

LICENSOR
The City of Pomona

LICENSEE
The dA Center for the Arts

By: _____
Linda C. Lowry, CITY MANAGER

By: _____

Date: _____

Date: _____

By: _____

ATTEST:

City Clerk

Approved as to Form:

City Attorney

Exhibit "A"

The proposed mural is to be located on the garden wall of the front lower level elevation of Pomona City Hall, 505 South Garey Avenue. The mural is proposed to be located at the southwest block of Garey Avenue and Mission Boulevard; it will be on the lower level, north facing central wall of the non-public entrance to Pomona City Hall. The wall is located below street level and will be partially visible from Mission Boulevard. The wall is approximately 4'-7" in height and 34'-0" in length.

Exhibit "B"

Staff Report Dated February 25, 2019, from the City of Pomona Planning Division
Containing the Cultural Arts Commission signed Resolution for the Mural.