

**LICENSE AGREEMENT
FOR
MURAL INSTALLATION AND MAINTENANCE**

This License Agreement for Mural Installation and Maintenance (“Agreement”) is made and entered into this _____ day of _____ 2017 (“Effective Date”), by and between the City of Riverside, a California charter city and municipal corporation (“City”), and Riverside Food Hall, LP, a California limited partnership (“Licensee”).

RECITALS

A. City is the owner of certain real property known as the Fox Entertainment Plaza generally situated at 3625 Market Street, Riverside, California 92501 (“Property”).

B. Licensee has requested a license to have a mural (“Mural”) painted on the eastern side of that certain building (“Building”) at the Property. City is willing to grant to Licensee a license subject to and in accordance with the terms, conditions, covenants and provisions of this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Licensee agree as follows:

1. **GRANT OF LICENSE.** Subject to the terms, conditions, covenants and provisions of this Agreement, City hereby grants to Licensee a non-exclusive, nontransferable license (“License”) for the sole purpose of having the Mural painted on the Building which is marked and shown on the picture attached hereto as Exhibit “A” and incorporated herein by reference (“Licensed Area”), which Exhibit and Licensed area may be amended by mutual consent of the Parties as pursuant to the terms and conditions in Section 26 below.

2. **TERM OF THE LICENSE.** The License shall begin on the Effective Date and shall expire one (1) year thereafter (“Expiration Date”), unless earlier revoked by the City at its sole discretion. At the Expiration Date, the term shall automatically renew in perpetuity for consecutive additional periods of one year, unless either party gives written notice of termination of this Agreement to the other party with at least three (3) days prior written notice to the other party.

3. **CONSIDERATION.** (a) As consideration for use of the Licensed Area, Licensee shall pay to City a license fee in the amount of One Dollars (\$1.00) annually. Said license fee shall be payable upon execution of this Agreement and then annually on the yearly anniversary date.

(a) The annual license fee shall be paid by check made payable to the “City of Riverside” and sent to the City of Riverside, Central Cashiering, City Hall, 3900 Main Street, Riverside, California 92522.

(b) If Licensee fails to pay the annual license fee by the tenth (10th) day of the month in which it is due, Licensee agrees that the actual damage to the City would be impracticable or extremely difficult to determine. Therefore, Licensee agrees to pay a late fee equal to ten percent (10%) of the annual license fee, which amount shall be added to the license fee due and considered part of the license fee due City hereunder. The amounts due under this subparagraph are in addition to and not in lieu of any other remedies of City.

4. **USE OF PREMISES.** Subject to the terms set forth in Section 5 below, the Licensed Area shall be used solely for the purpose of a Mural which shall be sized so as to “fit” the Building. The Mural shall not be illuminated (except from lights mounted across the walkway with power provided from Licensee’s electrical meters), and City shall have no responsibility or liability to provide lighting of the Mural. Licensee shall have reasonable non-exclusive access to, and reasonable non-exclusive use of, space or pathways adjacent to the Building, as provided by City in City’s reasonable but exclusive discretion, as reasonably necessary and incident to painting the Mural. Licensee’s use of the Property and the exercise of the rights herein granted shall not in any manner whatsoever interfere with the City’s operations. City shall at all times have access to the Property. The rights herein granted are not exclusive rights and in no way limit the City’s use of the Property.

5. **MURAL REGULATIONS.**

5.1 Artistic Freedom. The provisions of this Section 5 shall not in any way limit or restrict the right of an artist (“Artist”) to include content in the Mural that is not commercial, political, indecent or obscene.

5.2 Commercial Content. The Mural shall not include any advertisement or be commercial in nature. The Mural may contain limited commercial elements so long as they are not considered commercial speech with the purpose of promoting a commercial transaction. The Mural may not be deemed signage by the municipal code and regulations as determined by the Planning Department.

5.3 Sponsor and Artist Identification. In no event shall the name of a sponsor, a sponsor product likeness, or the Artists signature individually comprise more than 1% of the Mural.

5.4 Prior Review. Prior to Artist attaching the Mural to the Premises, the City shall be given a copy of the proposed Mural for review and approval.

6. **ARTIST AGREEMENT.** Licensee shall be solely responsible for negotiating and entering into an agreement with the Artist for the Mural, and City shall have no responsibility or liability in connection therewith. Licensee shall be solely responsible for the acts of the Artist while on the Property. The Mural shall be installed and maintained at Licensee’s sole cost and expense. Licensee’s access to the Property and the Licensed Area is solely for the purpose of installing and maintaining the Mural in the Licensed Area, subject to advance notice to, and in coordination with the City’s Property management personnel. No portion of the Licensed Area shall be used for any purposes other than as herein expressly permitted.

7. **MURAL OWNERSHIP.** All ownership interest and rights, reproduction rights, title and interest to the Mural (include all drawings, sketches, drafts, etc.) shall become the sole property of the City, in perpetuity. Notwithstanding, Artist and Licensee reserves the right of reproduction and use for all non-commercial and promotional purposes with no licensing fee due to the City. Licensee shall include in all agreements with the Artist a provision whereby the Artist expressly assigns all of his/her ownership interests and rights, and all reproduction rights to the City, in perpetuity. Further, Licensee shall include in all agreements with the Artist the following warranty language from the Artist:

- a. The Mural is solely the result of the artistic effort of Artist.
- b. The Mural is unique and original and does not infringe upon any copyright.
- c. The Mural has not been accepted for sale elsewhere.
- d. The Mural is free and clear of any liens from any source whatever.

8. **RESPONSIBILITY OF LICENSEE.** Licensee shall conduct all activities related to the Mural in such a manner as will minimize any disruption of or interference at the Property. Licensee agrees to assume, and hereby assumes, all responsibility for the Mural and activities relating to the Mural and the consequences thereof including, without limitation, (i) all acts and omissions of the Artist, Licensee and Licensee' agents, officers, directors, contractors, employees, servants, customers, licensees and invitees in connection therewith and (ii) compliance with any and all applicable laws, codes, ordinances, copyrights, trademarks, rules and regulations. The Mural and all activities related thereto shall be completed promptly in a good and workmanlike manner, free of defects in material and workmanship, including any defects consisting of inherent vice, or qualities, which cause or accelerate of the Mural. The Mural shall thereafter be maintained by Licensee in a neat and clean condition (including cleaning and repainting the Mural, if deemed reasonably necessary by City to maintain the overall appearance of the Building), and in compliance with all applicable governmental laws, regulations and other requirements. Licensee agrees to use its best efforts to complete the Mural in as short a period of time as is commercially reasonable.

9. **MAINTENANCE.** The Premises shall be maintained by Licensee in a clean and orderly condition, including but not limited to weed abatement, all in compliance with all applicable provisions of the Riverside Municipal Code. A neat and clean appearance and safe and sanitary conditions are required and are considered of utmost importance by City.

10. **REMOVAL BY CITY.** City may remove the Mural at Licensee's expense if Licensee fails to maintain the Mural in good condition or defaults in any other term or condition of this Agreement.

11. **FLAMMABLES, WASTE AND NUISANCES.** Licensee agrees that it will not place or store, or allow any placement or storage of any hazardous waste, hazardous material, or flammable materials on the Property, and that it will not commit any waste upon or damage to the Property, nor suffer any to be done. Licensee also specifically agrees that it will not allow others to take such actions on the Property.

12. **HAZARDOUS SUBSTANCES INDEMNITY.** Licensee expressly agrees to and shall indemnify, defend, release and hold the City, its officers, officials, directors, agents, servants, and employees harmless from and against any liability, loss, fine, penalty, fee, charge, lien, judgment, damage, entry, claim, cause of action, suit, proceeding (whether legal or administrative), remediation, response, removal, or clean-up, and all costs and expenses associated therewith, and all other costs and expenses (including, but not limited to, attorney's fees, expert fees, and court costs) in any way related to the disposal, treatment, transportation, manufacture, or use of any Hazardous Substances on, in, under, or about the Property by Licensee, its officers, directors, agents, servants, or employees. This indemnity, defense and hold harmless obligation shall survive the expiration or termination of this License.

13. **HAZARDOUS SUBSTANCES DEFINED.** Hazardous Substances shall mean any (a) substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to CERCLA, 42 U.S.C. § 9601, *et seq.*; The Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.* ("RCRA"); The Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; The Clean Water Act, 33 U.S.C. § 1251, *et seq.*; The Hazardous Waste Control Act, California Health and Safety Code ("H. & S.C.") § 25100, *et seq.*; the Hazardous Substance Account Act, H. & S.C. § 25330, *et seq.*; the California Safe Drinking Water and Toxic Enforcement Act, H. & S.C. § 25249.5, *et seq.*; Underground Storage of Hazardous Substances H.& S.C. § 25280, *et seq.*; the Carpenter-Presley-Tanner Hazardous Substance Account Act (H & S.C. § 25300 *et seq.*); The Hazardous Waste Management Act, H. & S.C. § 25170.1, *et seq.*; Hazardous Materials Response Plans and Inventory H.& S.C. § 25001 *et seq.*; or the Porter-Cologne Water Quality Control Act, Water Code § 13000, *et seq.*, all as amended, or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect, (b) substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes, (c) petroleum, crude oil or any substance which contains gasoline, diesel fuel or other petroleum hydrocarbons other than petroleum and petroleum products contained within regularly operated motor vehicles, and (d) polychlorinated biphenyls (PCB), radon gas, urea-formaldehyde, asbestos and lead.

14. **RISK; PERMITS.** Licensee shall (i) enter and use the Property and the Licensed Area, and conduct all activities related to the Mural, at its sole risk and expense; (ii) obtain, at its own cost and expense, all governmental approvals, licenses, permits and certificates, comply with all laws, statutes, rules and regulations, and pay any sales or use taxes or other taxes, impositions or levies as are required by any governmental authority.

15. **CONDITION OF LICENSED AREA.** Licensee acknowledges that the Licensed Area is presented to Licensee under these terms and conditions in its "As Is" "Where Is" condition, with all faults (if any). Any defect, condition, or other circumstance which Licensee may find disagreeable in respect of the Licensed Area shall not give rise to any right, claim or demand on behalf of Licensee. Licensee shall not install, construct or erect any structures, buildings, signs or other improvements on the Licensed Area or the Property, except for the Mural, as approved by City, on the Licensed Area, if and when approved by City as provided hereunder, on the Building.

Licensee shall be responsible for maintaining the Mural during the term of this Agreement in accordance with Section 8 hereof.

16. **INDEMNIFICATION.** Except as to the sole negligence or willful misconduct of City, Licensee shall protect, defend, indemnify, and hold City and its officers, agents, employees and volunteers completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury to or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorneys' fees, court costs, and expert fees), of any nature whatsoever arising out of or incident to this License and/or the use or occupancy of the Property or the acts or omissions of Licensee's officers, agents, employees, contractors, subcontractors, licensees, invitees or guests, regardless of where the injury, death, or damage may occur, unless such injury, death or damage is caused by the negligence or willful misconduct of City and/or its officers, employees or agents. This indemnification provision shall apply to any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of Licensee or any of Licensee's officers, agents, employees, contractors, subcontractors, licensees, invitees or guests. City shall give Licensee reasonable notice of any such claims or actions. Licensee shall use counsel reasonably acceptable to City in carrying out its obligations hereunder.

17. **INSURANCE.** Prior to City's execution of this License, Licensee shall obtain, and shall thereafter maintain during the term of this License at Licensee's sole expense, such commercial general liability insurance as required to insure Licensee against damages for personal injury, including accidental death, as well as from claims for property damage which may arise from or which may concern operations by anyone directly or indirectly employed by, connected with, or acting for or on behalf of Licensee or Artist.

(a) All liability insurance shall be issued by insurance companies authorized to transact liability insurance business in the State of California, with a liability rating of A or higher, and a financial rating of at least VII.

(b) Licensee's commercial general liability policy shall cover both bodily injury (including death) and property damage (including but not limited to premises-operations liability, products-completed operations liability, independent contractors liability, personal injury liability, and contractual liability), in an amount not less than \$1,000,000 per occurrence, \$2,000,000 aggregate.

(c) These minimum amounts of coverage shall not constitute any limitation or cap on Licensee's indemnification obligations under Section 16 hereof.

(d) Insurance policies or original certificates and additional insured endorsements evidencing the coverage required by this License, for commercial general shall be filed with City and shall include City, their officers, agents and employees as additional insureds. Said policies shall be in the usual form of commercial general liability insurance, but shall include the following:

"It is agreed that the City of Riverside, and its officers, employees and agents, are added as additional insureds under this policy."

(e) The policies shall not be canceled unless thirty (30) days prior written notification of intended cancellation has been given to City by certified or registered mail.

(f) City, its agents and employees make no representation that the limits of the insurance specified to be carried by Licensee pursuant to this License are adequate to protect Licensee. If Licensee believes that any required insurance coverage is inadequate, Licensee will obtain such additional insurance coverage as Licensee deems adequate, at Licensee's sole expense.

18. **VENUE.** Any action at law or in equity brought by any of the parties hereto for the purpose of enforcing a right or rights provided for by this Agreement shall be tried in the superior court in the County of Riverside, State of California, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county.

19. **NONDISCRIMINATION.** During Licensee's performance of this Agreement, it shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition, including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex, genetic information, gender, gender identity, gender expression or sexual orientation, in the selection and retention of employees and subcontractors and the procurement of materials and equipment, except as provided in Section 12940 of the California Government Code. Further, Licensee agrees to conform to the requirements of the Americans with Disabilities Act in the performance of this Agreement.

20. **TERMINATION:** In addition to the other methods of terminating this License, as provided herein, this License may be terminated at any time upon ninety (90) days' notice in writing to Licensee. City will give Licensee thirty (30) days written notice to terminate in the event Licensee has failed to perform or has breached any of the terms, covenants or conditions of this License. Licensee shall have ten (10) days in which to cure the default. Should Licensee fail to cure within that ten (10) day period, this License shall automatically be terminated.

No termination hereunder shall release the Licensee from any liability or obligation, which may have attached or accrued prior to or which may accrue as of the time of termination of this License.

21. **DEFAULT.** Upon the failure of Licensee to perform any condition or term required herein, the City shall give written notice of such failure to perform as constituting a default of this License. If within ten (10) calendar days Licensee does not correct the failure to the satisfaction of the City, or does not provide a written explanation of Licensee's failure to perform, which explanation must be acceptable to City, this License shall then terminate immediately without further notice. Also, the City shall have the right to require that all operations immediately cease if City determines that the activities are being conducted in an unsafe or illegal manner.

22. **NOTICES.** Service of any notices, bills, invoices or other documents required or permitted under this Agreement shall be sufficient if sent by one party to the other by United States mail, postage prepaid and addressed as follows:

City

City of Riverside
3900 Main St., 5th Floor
Riverside, California 92522
Attn: David Welch

Licensee

Riverside Food Hall, LP
281 S. Thomas Street, Suite 504
Pomona, California 91766
Attn: Gerald V. Tessier

23. **ASSIGNMENT.** It is mutually understood and agreed that this Agreement is personal to Licensee and shall be binding upon Licensee and its successors and may not be assigned or transferred in any way. Any transfer shall be void and of no effect.

24. **AUTHORITY.** The individuals executing this Agreement each represent and warrant that they have the legal power, right and actual authority to bind their respective entities to the terms and conditions hereof and thereof.

25. **SEVERABILITY.** Each provision, term, condition, covenant, and/or restriction, in whole and in part, in this Agreement shall be considered severable. In the event any provision, term, condition, covenant, and/or restriction, in whole and/or in part, in this Agreement is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed from this Agreement and shall not affect any other provision, term, condition, covenant, and/or restriction, of this Agreement and the remainder of the Agreement shall continue in full force and effect.

26. **AMENDMENT.** Exhibit "A" and the "Licensed Area" may be amended at any time through written agreement by mutual consent of Licensee and the City, through its City Manager or his designee, so long as the amended Licensed Area is located on the buildings commonly referred to as the Showcase or the Box Theater building, the Parking Structure southern façade, or the bridge structure connecting the two locations ("Amended License Area"). Any Mural installed on the Amended License Area must comply with all of the terms and conditions of this Agreement. Notwithstanding, if the Mural on the Amended Licenses Area is not painted directly onto the wall surface of a building or structure, then the all ownership interest and rights, reproduction rights, title and interest to the Mural (include all drawings, sketches, drafts, etc.) shall be the sole property of the Licensee or the Artist, pursuant to the contract between Licensee and Artist, and all other terms and conditions of this Agreement shall still apply. However the City has the right at any time to require the free standing art to be removed at Licensee's cost and expense. Should Licensee fail to remove the free standing art when directed by the City, the City has every right to remove the same at Licensee's cost. Any agreement between Licensee and Artist shall provide for said removal.

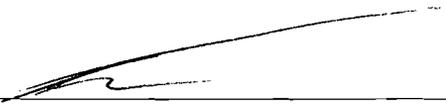
[Signatures on following page.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date and year first written above.

CITY OF RIVERSIDE

RIVERSIDE FOOD HALL, LP

By: _____
City Manager

By: 
Name: Gerald V Tessier, Manager
By: Arteco General LLC
Its: General Partner

Attested to:

By: _____
City Clerk

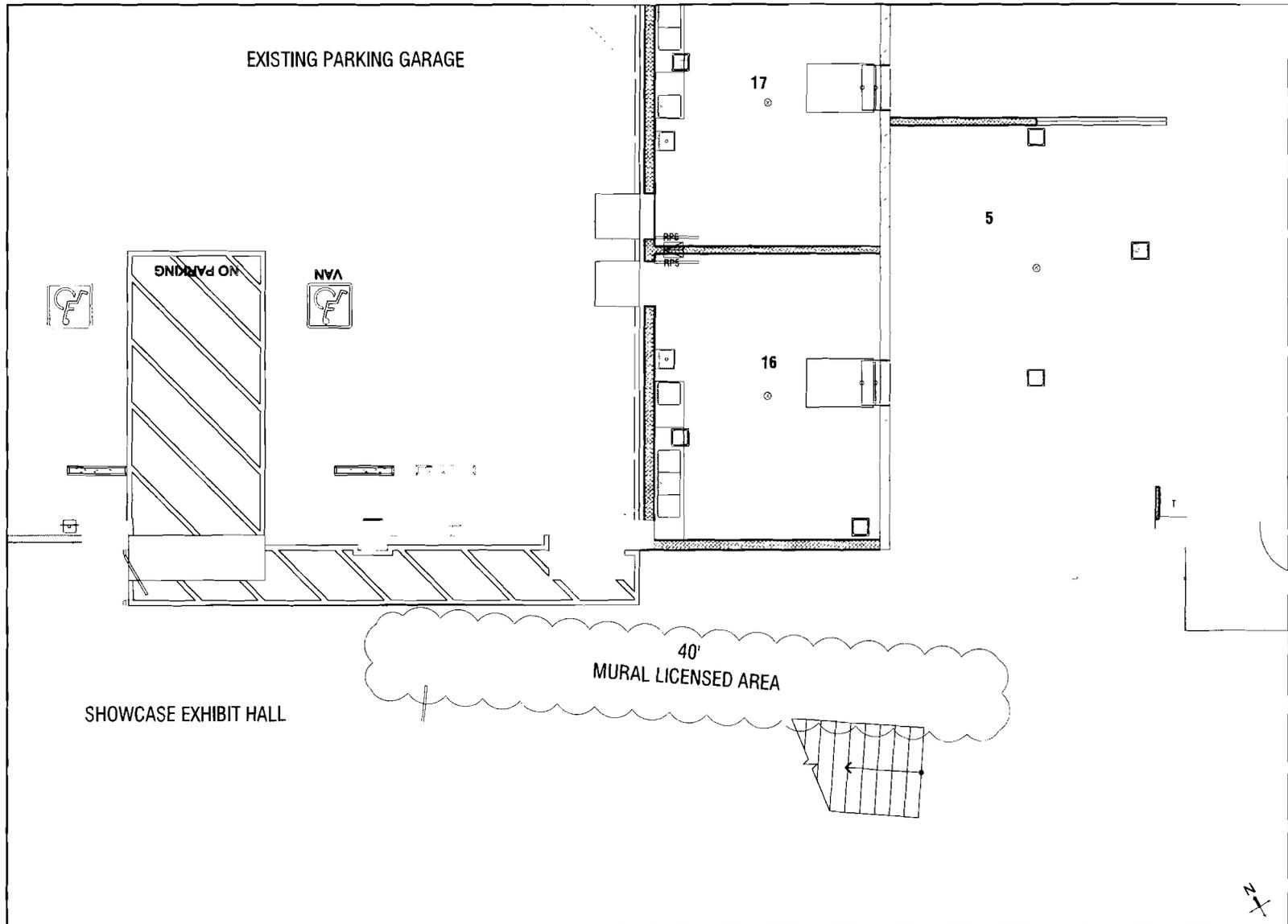
Approved as to Form:

By: 
Chief Assistant City Attorney

CA 17-1462; 11/30/17

EXHIBIT "A"

RIVERSIDE FOOD LAB - EXHIBIT "A"



NOT TO SCALE

*****Please Do Not Remove This Slip*****

COMMUNITY & ECONOMIC DEVELOPMENT DEPARTMENT ROUTING SLIP

Date: 1/10/18

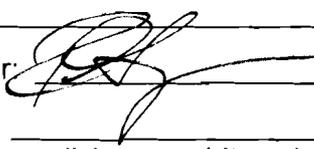
Contract Agreement/PSA Other (Specify) LICENSE AGREEMENT

Council/Successor Agency/Housing Authority Approval Date: _____

Title of Document: LICENSE AGREEMENT FOR MURAL

Staff Member: N. FREEMAN Ext. No. 5374 CA's # 17462

Signatures Required:

- Division Manager:  Date: 1-10-18
- Fiscal Manager: _____ Date: _____
- Funds Available? Yes No Amount \$ _____ Account # _____
- Deputy Director: _____ Date: _____
- Department Director:  Date: 1.17.18
- Finance Director: _____ Date: _____
(For Non-Agency/Council Approved Items)
- City Attorney's Office: _____ Date: _____
- City Clerk's Office: _____ Date: _____
- City Manager/Executive Director: _____ Date: _____