

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (“Agreement”), made this _____ day of _____ of _____ 2025, by and between:

T E P M, INC., a Florida profit corporation (hereinafter “LICENSOR”), and

CITY OF POMPANO BEACH, a municipal corporation of the State of Florida (hereinafter “LICENSEE”).

WITNESSETH:

WHEREAS, LICENSOR is the owner of the commercial property located at 135 NE 1st Avenue, Pompano Beach, FL 33060 (the “Property” more particularly described in Exhibit “A” attached hereto and made a part hereof); and

WHEREAS, the LICENSEE, through hired artist, Montague Art, LLC, would like to install a mural (the “Project”) on the north exterior wall of T E P M, Inc’s building (the “Design Location”) located on the Property as part of its approved plan to place public art throughout the city for the benefit of residents and the public; and

WHEREAS, the Project design will be selected and approved through the LICENSEE’s Public Art Committee and approved with LICENSOR; and

WHEREAS, the Design Location is situated in the City’s “Old Town” area where the Project will be part of a large alley of artwork as part of the Public Art Program’s strategic plan initiative to beautify the city with enhanced visual appearance in this growing community of creativity and businesses;

WHEREAS, LICENSOR desires to allow LICENSEE to use the north exterior wall of the Property as heretofore described as the Design Location for the Project.

NOW, THEREFORE, in consideration of the foregoing and mutual covenants and conditions hereinafter contained, it is agreed by the parties hereto as follows:

1. **AUTHORIZATION AND LICENSE FEE.** LICENSOR hereby grants to LICENSEE and LICENSEE hereby accepts from LICENSOR, a license to install and maintain, at LICENSEE's sole cost, the Project to be installed on the Design Location subject to the terms, covenants, fees and conditions hereinafter set forth. In exchange, LICENSEE agrees to pay LICENSOR Ten Dollars (\$10.00) as compensation for this License to be paid in full at the time of execution of this agreement, as well as provide the in-kind benefit of installing and maintaining the Project, at LICENSEE's sole cost, on LICENSOR's Property, the receipt and sufficiency of which are hereby acknowledged.

2. **TERM.** The term of Agreement shall commence upon the date this Agreement is fully-executed by both parties (the "Effective Date") and continue in duration for ten (10) years regardless whether ownership of the Property changes before expiration of the ten (10) year period, unless the Design Location is removed before the ten (10) year term period. The aforesaid condition shall be memorialized in any future Purchase and Sales Agreement for the Property during the Term with the intent of binding the Purchaser to the terms of this Agreement.

3. **USE OF PREMISES.** LICENSOR hereby grants to LICENSEE and LICENSEE hereby accepts from LICENSOR, a license to use the Design Location, upon and subject to all of the terms, covenants, fees and conditions hereinafter set forth. LICENSEE specifically agrees the Property shall not be used for any other purpose whatsoever without the written consent of LICENSOR; that LICENSEE shall not permit the Design Location to be used or occupied in any manner that is inconsistent with the use granted herein; and that LICENSEE shall take good care of the Design Location, suffer no waste or injury thereto, and take no action which would

interfere with the commercial business operating on the Property.

LICENSEE agrees to accept the Design Location in the condition and state of repair on the date hereof, "as is", and expressly acknowledges and agrees that LICENSOR shall not be obligated to make repairs to, or to perform any work on said location.

4. **ASSIGNMENT.** LICENSEE is not permitted to assign, transfer, convey or otherwise dispose of this License to any other person or corporation without the previous written consent of LICENSOR.

5. **RESPONSIBILITIES OF LICENSEE.** LICENSEE agrees to be responsible for payment to the selected Artist for the Project, will power wash and prime the wall for the Project installation, and once installed, LICENSEE agrees at all times to maintain and repair the Project at its sole cost and expense. LICENSOR agrees that what constitutes reasonable maintenance and repair of the Project shall be reasonably determined by LICENSEE, in LICENSEE's sole discretion.

6. **RESPONSIBILITIES OF LICENSOR.**

A. LICENSOR shall grant the Artist access to the property to complete the Project; and LICENSOR shall continue to display the installed Project at the Design Location in accordance with the ten (10) year term period of the Agreement set forth in paragraph 2 above.

B. LICENSOR shall not alter, cover, deface, fully or partially obscure the Project in any manner with any covering or material of any kind or nature.

C. The license provided pursuant to this Agreement authorizes LICENSEE'S exclusive use of the Design Location.

7. **INDEMNIFICATION AND NO WAIVER OF SOVEREIGN IMMUNITY.**

LICENSOR shall indemnify, defend and hold harmless the LICENSEE and its officials, agents

and employees from and against any and all claims, loss, suit actions, damages, liabilities, expenditures, or causes of action, including accidents and injuries to person or property and attorney fees, of any kind arising from this Agreement without limitation, even if the claim(s) is/are groundless, false or fraudulent.

The foregoing indemnification of LICENSEE by LICENSOR shall not be operative as to any claims by LICENSOR for any causes of action LICENSOR has or may have for breaches, defaults, negligence, gross negligence or willful misconduct of LICENSEE or any of its officers, employees or other authorized agents. LICENSOR acknowledges and agrees that one percent (1%) of the License fee paid and the LICENSEE's provision of in-kind benefits as heretofore described shall serve as consideration for such indemnification. The provisions and obligations of this Section shall survive the expiration or earlier termination of this License.

Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by the LICENSEE as provided for in § 768.28, Florida Statute.

8. **INSURANCE.** LICENSEE and LICENSOR will be added to the Artist's Certificate of Insurance as additional insureds under the Artist's insurance policy in accordance with the terms and conditions of the Art Agreement between the Artist and LICENSEE.

9. **AMENDMENTS.** No modification, amendment or alteration of the terms or conditions contained herein shall be effective unless contained in a written document executed by the parties hereto, with the same formality and of equal dignity herewith.

10. **SURRENDER UPON TERMINATION.** Unless this agreement is renewed, cancelled, or extended by the parties, LICENSEE shall peaceably surrender this license and, at LICENSEE's sole cost, restore the Design Location to the condition it was in prior to installation of the Project upon written demand by LICENSOR in accordance with Section 13 herein.

11. **WAIVER.** Failure of either party to insist upon strict performance of any covenant or condition of this Agreement, or to exercise any right herein contained, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right; but the same shall remain in full force and effect. None of the conditions, covenants or provisions of this Agreement shall be waived or modified except by the parties hereto in writing.

12. **TERMINATION.** LICENSEE OR LICENSOR may cancel this Agreement for convenience or cause at any time during the term thereof upon sixty (60) days written notice to the other party. If LICENSEE or LICENSOR cancels this agreement prior to the expiration of the 10-year term, the cancelling party shall be solely responsible for the cost to restore the Design Location to the condition it was in prior to installation of the Project. If applicable, LICENSEE shall have the option to remove any of the artwork from the Building prior to the date of termination.

13. **NOTICES.** Any notice or demand, which under the terms of this Agreement or by any statute or ordinance must be given or made by a party hereto shall be in writing and provided by email, fax or certified mail to the other party as set forth below, or to such other address as such party may from time to time designate by notice.

Addresses of the parties are as follows:

FOR LICENSEE:	City Manager City of Pompano Beach Manager Post Office Box 1300 Pompano Beach, FL 33061 Greg.Harrison@copbfl.com 954-786-4601 office 954-786 4504 fax	<u>With a copy to:</u> Laura Atria, Public Art Program Cultural Affairs Department 50 West Atlantic Boulevard Pompano Beach, FL 33061 Laura.Atria@copbfl.com 954-545-7800 ext. 3813 office
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FOR LICENSOR: T E P M, Inc.
Thomas E. McMahon,
President
31 N.E 1st Street
Pompano Beach, FL 33060
tomrmcmahon@gmail.com
(954) 709-8678

14. **MISCELLANEOUS PROVISION.** It is expressly understood and agreed that no real or personal property is leased to LICENSEE and that LICENSEE is a licensee not a lessee.

15. **LAWS AND ORDINANCES.** LICENSEE shall observe all local, state and federal laws, ordinances and other regulations directly relating its use of the Property.

16. **GOVERNING LAW AND VENUE.** The Agreement must be interpreted and construed in accordance with and governed by the laws of the State of Florida. LICENSEE and LICENSOR agree that the exclusive venue for any lawsuit arising from, related to, or in connection with the Agreement will be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit will be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. BY ENTERING INTO THIS AGREEMENT, THE PARTIES HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.

17. **NO THIRD-PARTY BENEFICIARIES.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intends to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based on this Agreement. Nothing herein shall be construed as consent by any agency or political

subdivision of the State of Florida to be sued by third parties in any manner arising out of the Project.

18. **NON-DISCRIMINATION.** Neither LICENSEE nor LICENSOR shall discriminate against any Person in the performance of duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

19. **CONTINUITY.** This Agreement shall be binding on and inure to the benefit of the parties, their successors and assigns.

20. **PUBLIC RECORDS.**

A. The LICENSEE is a public agency subject to Chapter 119, Florida Statutes. LICENSOR shall comply with Florida's Public Records Law, as amended. Specifically, LICENSOR shall:

1. Keep and maintain public records required by the LICENSEE in order to perform the service.

2. Upon request from the LICENSEE's custodian of public records, provide the LICENSEE with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.

3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if LICENSOR does not transfer the records to the LICENSEE.

4. Upon completion of the Agreement, transfer, at no cost to the LICENSEE, all public records in possession of LICENSOR, or keep and maintain public records required by the LICENSEE to perform the service. If LICENSOR transfers all public records to the LICENSEE upon completion of the Agreement, LICENSOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If LICENSOR keeps and maintains public records upon completion of the contract, LICENSOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the LICENSEE, upon request from the LICENSEE's custodian of public records in a format that is compatible with the information technology systems of the LICENSEE.

B. Failure of LICENSOR to provide the above-described public records to the LICENSEE within a reasonable time may subject LICENSEE to penalties under 119.10, Florida Statutes, as amended.

PUBLIC RECORDS CUSTODIAN

IF LICENSOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE LICENSEE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**CITY CLERK
100 W. Atlantic Blvd., Suite 253
Pompano Beach, Florida 33060
(954) 786-4611
RecordsCustodian@copbfl.com**

21. **FORCE MAJEURE.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other

labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds alone on the part of LICENSOR be deemed Force Majeure.

22. **ENTIRE AGREEMENT AND INTERPRETATION.** This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and both parties agree there are no commitments, agreements or understandings concerning the subject matter herein that are not contained in this Agreement. Accordingly, both parties agree no deviation from the terms herein shall be predicated upon any prior representations or agreements, whether oral or written.

Regardless of which party or party's counsel prepared the original draft and subsequent revisions of this Agreement, both LICENSEE and LICENSOR and their respective counsel have had equal opportunity to contribute to and have contributed to its contents, and this Agreement shall not be deemed to be the product of, and therefore construed against either party.

It is further agreed the omission of a term or provision contained in an earlier draft of this Agreement shall have no evidentiary significance regarding the contractual intent of the parties and that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document agreed to and executed by authorized representatives of both parties with the same formality of this Agreement.

Furthermore, if any provision herein is invalid it shall be considered deleted here from, and shall not invalidate the remaining provisions.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year hereinabove written.

“LICENSEE”:

CITY OF POMPANO BEACH

By: _____
REX HARDIN, MAYOR

By: _____
GREGORY P. HARRISON, CITY MANAGER

Attest:

KERVIN ALFRED, CITY CLERK

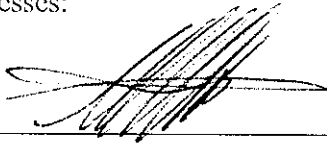
(SEAL)

Approved As To Form:

MARK E. BERMAN, CITY ATTORNEY

"LICENSOR":

Witnesses:



Kelly McMahon
Print Name

T E P M, INC.,
a Florida profit corporation

By: Thomas E McMahon
THOMAS E. MCMAHON, PRESIDENT

Laura Newitt
Print Name

(SEAL)

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 10th day of March, 2025, by **Thomas E. McMahon**, as **President** of T.E.P.M., Inc., a Florida profit corporation, on behalf of the corporation. He is personally known to me or has produced _____ (type of identification) as identification.

NOTARY'S SEAL:



Shannon Montoya
NOTARY PUBLIC, STATE OF FLORIDA

Shannon Montoya
(Name of Acknowledger Typed, Printed or Stamped)

HH 476156
Commission Number

Kelly's Chemicals
Exterior North Wall
135 NE 1st Ave,
Pompano Beach, FL
33060

Owner: T E P M Inc.

Exhibit "A"



