

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement"), made this _____ day of _____ 2019, by and between:

T E P M, INC., a Florida corporation (hereinafter "LICENSOR"),

and

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

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 CITY, through its hired artist, Sonata Kazimieraitiene, would like to install the Mosaic mural depicted in the Design Proposal attached hereto and made a part hereof as Exhibit "B" upon an exterior wall of the building (the "Design Location") located on the Property (the "Project");

WHEREAS, the Design Location is under the exclusive ownership, custody and control of LICENSOR; and

WHEREAS, the CITY's Public Art Committee approved the foregoing Design Location at its meeting on March 21, 2019; and

WHEREAS, LICENSOR desires to allow CITY to use the Property as heretofore described 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 CITY and CITY hereby accepts from LICENSOR, a license to install and maintain, at CITY's sole cost, the mural depicted in Exhibit "B" on the "Design Location" subject to the terms, covenants, fees and conditions hereinafter set forth. In exchange, CITY agrees to pay LICENSOR Ten Dollars (\$10.00) as compensation for this License as well as provide the in-kind benefit of installing and maintaining the Project, at CITY'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 date this Agreement is fully-executed by both parties (the "Effective Date") and continue in duration for a minimum of five (5) years after installation of the mural at the Design Location is complete regardless whether ownership of the Property changes before expiration of the five (5) year 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 CITY and CITY 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. CITY specifically agrees the Property shall not be used for any other purpose whatsoever without the written consent of LICENSOR; that CITY shall not permit the Design Location to be used or occupied in any manner that is inconsistent with the use granted herein; and that CITY 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.

CITY 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 it.

4. **ASSIGNMENT.** CITY 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. **MAINTENANCE.** CITY agrees to at all times maintain and repair the Project at its sole cost and expense. LICENSOR agrees that what constitutes reasonable maintenance and repair of the mural Project shall be determined by CITY, in CITY's sole discretion.

6. **INDEMNIFICATION AND NO WAIVER OF SOVEREIGN IMMUNITY.** LICENSOR shall indemnify, defend and hold harmless the CITY 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 CITY 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 CITY 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 CITY'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 CITY as provided for in § 768.28, Florida Statutes.

7. **INSURANCE.** During the term of this Agreement, LICENSOR, at its sole cost, shall maintain insurance in the amounts and subject to all conditions set forth in Exhibit "C."

8. **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.

9. **SURRENDER UPON TERMINATION.** CITY shall peaceably surrender this license and, at CITY's sole cost, restore the Design Location to the condition it was in prior to installation of the Project upon written notice as provided for in Section 12 herein.

10. **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.

11. **TERMINATION.** CITY may cancel this Agreement for convenience or cause at any time during the term thereof upon sixty (60) days written notice to LICENSOR.

12. **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 CITY:

City Manager
City of Pompano Beach
Post Office Box 1300
Pompano Beach, Florida 33061
Greg.Harrison@copbfl.com
954-786-4601 office
954-786 4504 fax

With a copy to:
Laura Atria, Public Art Program Manager
Cultural Affairs Department
50 West Atlantic Boulevard
Pompano Beach, Florida 33061
Laura.Atria@copbfl.com
954-545-7800 ext. 3813 office

FOR LICENSOR: Thomas E. McMahon, President
T E P M, Inc.
31 NE 1 Street
Pompano Beach, Florida 33060
tomjr@tmservice.net
(954) 709-8678 cell

13. **ENTIRE AGREEMENT.** This Agreement embodies the entire agreement between the parties. It may not be modified or terminated except as provided herein. If any provision herein is invalid, it shall be considered deleted here from, and shall not invalidate the remaining provisions.

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

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

16. **RECORDATION OF AGREEMENT.** This Agreement shall be recorded in the Public Records of Broward County, Florida, at the expense of CITY, with a copy given to LICENSOR.

17. **GOVERNING LAW AND VENUE.** The Agreement shall be governed by the laws of the State of Florida, both as to interpretation and performance. CITY and LICENSOR submit to the jurisdiction of Florida courts and federal courts located in Florida with respect to claims under this Agreement. The parties agree that proper venue for any suit at law or in equity attendant to this Agreement shall be instituted and maintained only in courts of competent jurisdiction in Broward County, Florida.

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and in addition to every other remedy given herein, now or hereafter existing at law or in equity or by statute or otherwise.

Both parties agree to waive all rights to sue or collect from the other any damages other than direct damages and they expressly waive benefit of the bargain, punitive, special, exemplary, treble or consequential damages.

18. 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 any contract.

19. NON-DISCRIMINATION. Neither CITY 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.

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

21. PUBLIC RECORDS. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to § 119.07, Florida Statutes, and any resultant award of attorney's fees of non-compliance with that law.

22. 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.

23. **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 CITY 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.

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

"CITY":

Witnesses:

CITY OF POMPANO BEACH

By: _____
REX HARDIN, MAYOR

By: _____
GREGORY P. HARRISON, CITY MANAGER

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved As To Form:

MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instruments were acknowledged before me this _____ day of _____, 2019 by REX HARDIN as Mayor, GREGORY P. HARRISON as CITY Manager and ASCELETA HAMMOND as CITY Clerk of the CITY of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

"LICENSOR":

Witnesses:

[Signature]
Kelly McMahon
Print Name

[Signature]
Christine King
Print Name

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

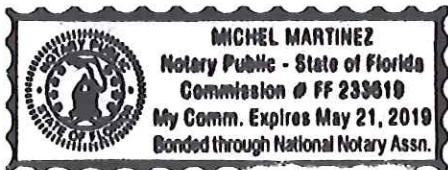
By: [Signature]
THOMAS E. MCMAHON, PRESIDENT

(SEAL)

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 16th day of April, 2019, by Thomas E. McMahon as President of T E P M, Inc. a Florida for profit corporation, on behalf of the corporation. He/she is personally known to me or who has produced _____ (type of identification) as identification.

NOTARY'S SEAL:



[Signature]
NOTARY PUBLIC, STATE OF FLORIDA

Michel Martinez
(Name of Acknowledger Typed, Printed or Stamped)

FF 233619
Commission Number

L:\agr\dev-svcs\2019-674f

Property

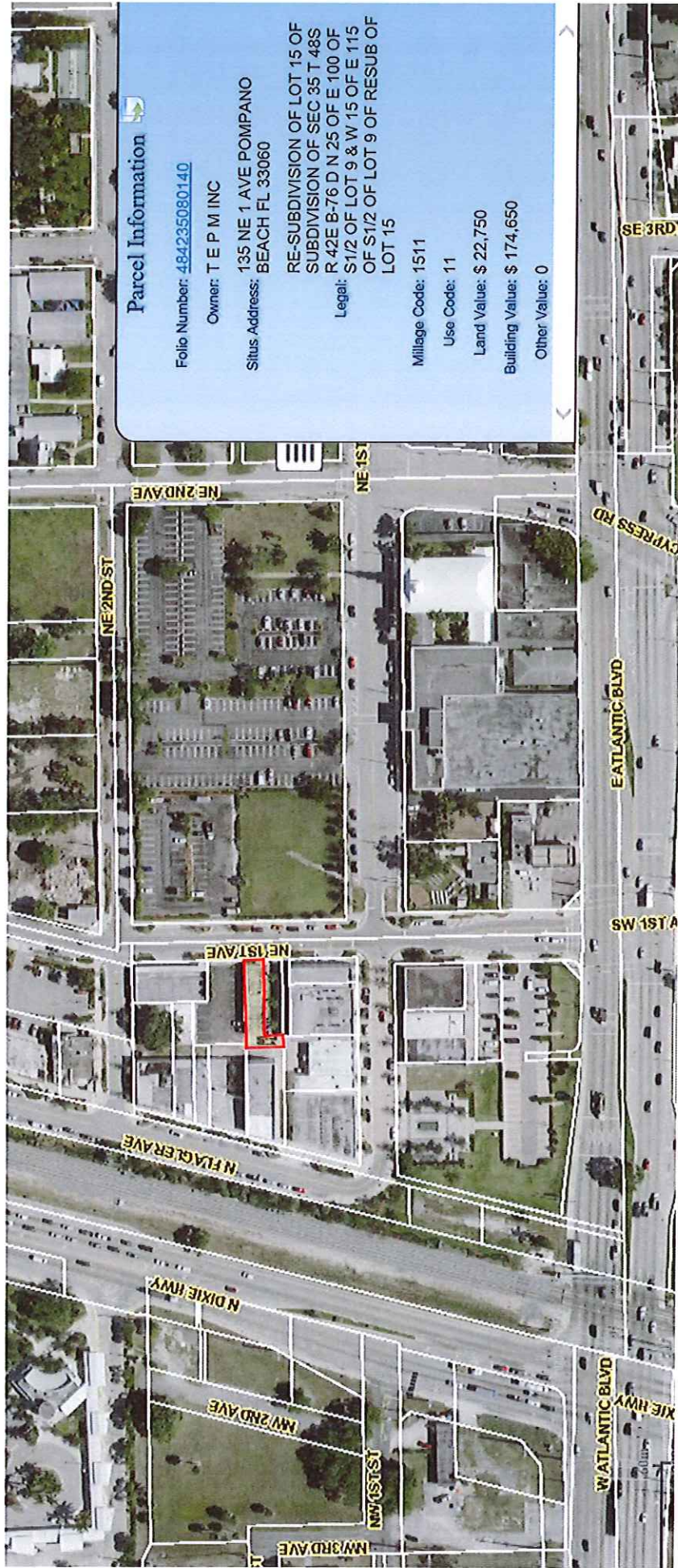


Exhibit: B

Location: 135 NE 1 Ave.

Owned by: T E P M, Inc.

Mosaic 3' x 3' #4

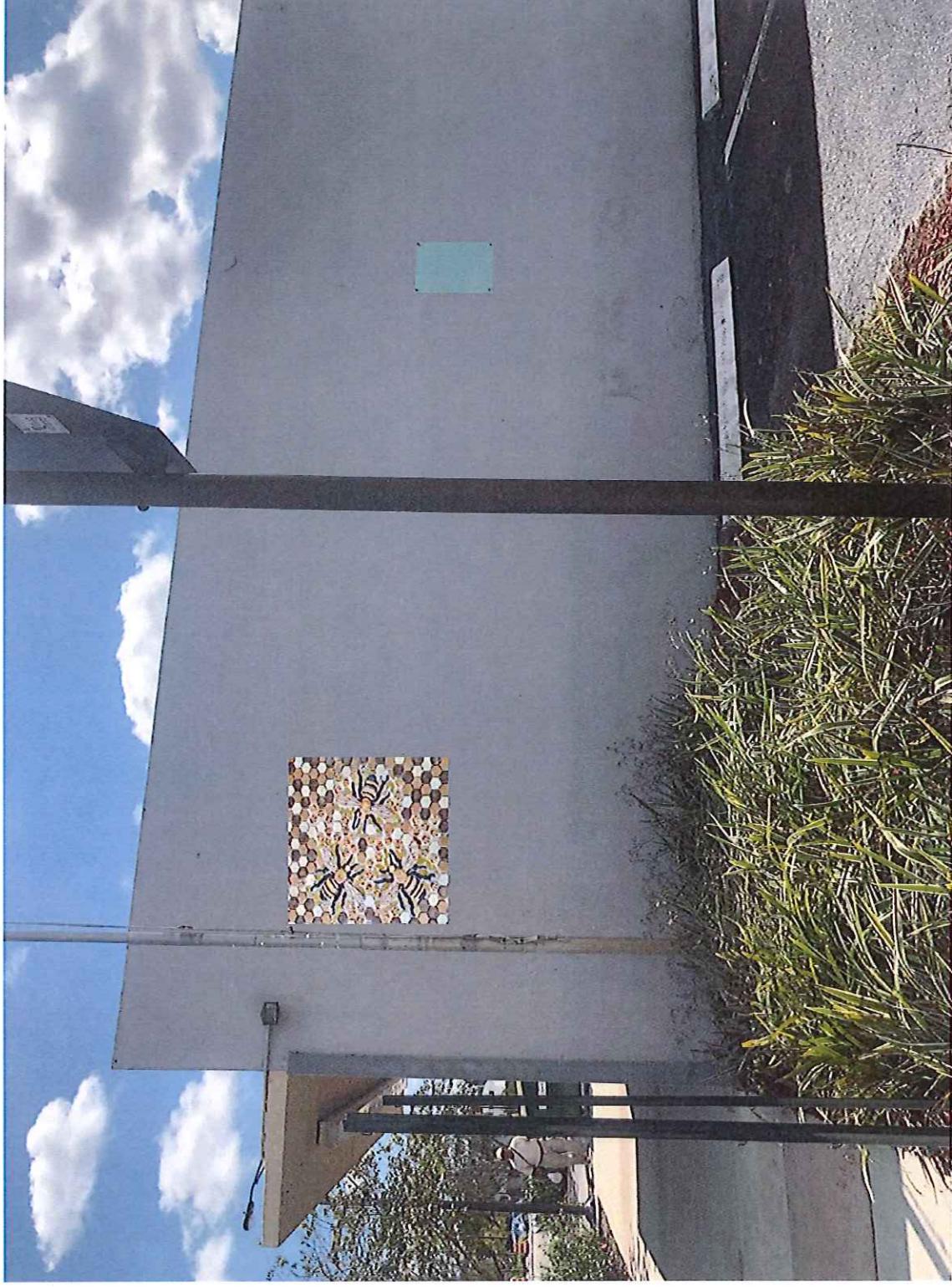


EXHIBIT C

INSURANCE REQUIREMENTS: T E M P, INC.

CONTRACTOR shall not commence services under the terms of this Agreement until certification or proof of insurance detailing terms and provisions has been received and approved in writing by the CITY's Risk Manager. If you are responding to a bid and have questions regarding the insurance requirements hereunder, please contact the City's Purchasing Department at (954) 786-4098. If the contract has already been awarded, please direct any queries and proof of the requisite insurance coverage to City staff responsible for oversight of the subject project/contract.

CONTRACTOR is responsible to deliver to the CITY for timely review and written approval/disapproval Certificates of Insurance which evidence that all insurance required hereunder is in full force and effect and which name on a primary basis, the CITY as an additional insured on all such coverage. Such policy or policies shall be issued by United States Treasury approved companies authorized to do business in the State of Florida. The policies shall be written on forms acceptable to the City's Risk Manager, meet a minimum financial A.M. Best and Company rating of no less than Excellent, and be part of the Florida Insurance Guarantee Association Act. No changes are to be made to these specifications without prior written approval of the City's Risk Manager.

Throughout the term of this Agreement, CITY, by and through its Risk Manager, reserve the right to review, modify, reject or accept any insurance policies required by this Agreement, including limits, coverages or endorsements. CITY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition or failure to operate legally.

Failure to maintain the required insurance shall be considered an event of default. The requirements herein, as well as CITY's review or acceptance of insurance maintained by CONTRACTOR, are not intended to and shall not in any way limit or qualify the liabilities and obligations assumed by CONTRACTOR under this Agreement.

Throughout the term of this Agreement, CONTRACTOR and all subcontractors or other agents hereunder, shall, at their sole expense, maintain in full force and effect, the following insurance coverages and limits described herein, including endorsements.

A. Worker's Compensation Insurance covering all employees and providing benefits as required by Florida Statute, Chapter 440, regardless of the size of the company (number of employees) or the state in which the work is to be performed or of the state in which Contractor is obligated to pay compensation to employees engaged in the performance of the work. Contractor further agrees to be responsible for employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.

B. Liability Insurance.

(1) Naming the City of Pompano Beach as an additional insured as City's interests may appear, on General Liability Insurance only, relative to claims which arise from

Contractor's negligent acts or omissions in connection with Contractor's performance under this Agreement.

(2) Such Liability insurance shall include the following checked types of insurance and indicated minimum policy limits.

Type of Insurance

Limits of Liability

GENERAL LIABILITY:

Minimum \$1,000,000 Per Occurrence and
\$2,000,000 Per Aggregate

* Policy to be written on a claims incurred basis

XX comprehensive form	bodily injury and property damage
XX premises - operations	bodily injury and property damage
— explosion & collapse	
— hazard	
— underground hazard	
XX products/completed	bodily injury and property damage combined
operations hazard	
XX contractual insurance	bodily injury and property damage combined
XX broad form property damage	bodily injury and property damage combined
XX independent contractors	personal injury
XX personal injury	

— sexual abuse/molestation	Minimum \$1,000,000 Per Occurrence and Aggregate
— liquor legal liability	Minimum \$1,000,000 Per Occurrence and Aggregate

AUTOMOBILE LIABILITY:

Minimum \$1,000,000 Per Occurrence and Aggregate.
Bodily injury (each person) bodily injury (each accident),
property damage, bodily injury and property damage
combined.

— comprehensive form
— owned
— hired
— non-owned

REAL & PERSONAL PROPERTY

— comprehensive form Agent must show proof they have this coverage.

EXCESS LIABILITY

Per Occurrence Aggregate

— other than umbrella	bodily injury and property damage combined	\$1,000,000	\$1,000,000
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PROFESSIONAL LIABILITY

Per Occurrence Aggregate

___ * Policy to be written on a claims made basis \$1,000,000 \$1,000,000

(3) If Professional Liability insurance is required, Contractor agrees the indemnification and hold harmless provisions of Section 12 of the Agreement shall survive the termination or expiration of the Agreement for a period of three (3) years unless terminated sooner by the applicable statute of limitations.

C. Employer's Liability. CONTRACTOR and all subcontractors shall, for the benefit of their employees, provide, carry, maintain and pay for Employer's Liability Insurance in the minimum amount of One Hundred Thousand Dollars (\$100,000.00) per employee, Five Hundred Thousand Dollars (\$500,000) per aggregate.

D. Policies. Whenever, under the provisions of this Agreement, insurance is required of the CONTRACTOR, the CONTRACTOR shall promptly provide the following:

- (1) Certificates of Insurance evidencing the required coverage;
- (2) Names and addresses of companies providing coverage;
- (3) Effective and expiration dates of policies; and
- (4) A provision in all policies affording CITY thirty (30) days written notice by a carrier of any cancellation or material change in any policy.

E. Insurance Cancellation or Modification. Should any of the required insurance policies be canceled before the expiration date, or modified or substantially modified, the issuing company shall provide thirty (30) days written notice to the CITY.

F. Waiver of Subrogation. CONTRACTOR hereby waives any and all right of subrogation against the CITY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition to the policy not specifically prohibiting such an endorsement, or voids coverage should CONTRACTOR enter into such an agreement on a pre-loss basis.



T&MSERV-01

STWIGGS

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

04/17/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Collinsworth, Alter, Fowler & French, LLC 8000 Governors Square Blvd Suite 301 Miami Lakes, FL 33016	CONTACT NAME:	
	PHONE (A/C, No, Ext): (305) 822-7800	FAX (A/C, No): (305) 362-2443
INSURED TEPM, Inc. 31 NE 1st Street Pompano Beach, FL 33060	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A: Berkley Assurance Company	NAIC # 39462
	INSURER B: Associated Industries Ins Co	23140
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	X		VUMC0185830	10/01/2018	10/01/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR DED <input checked="" type="checkbox"/> RETENTION \$ 0			VUMC0185840	10/01/2018	10/01/2019	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		AWC1128053	04/01/2019	04/01/2020	PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
City of Pompano Beach is included as additional insured with respects to General Liability

APPROVED

By Danielle Thorpe at 11:16 am, Apr 23, 2019

CERTIFICATE HOLDER

CANCELLATION

City of Pompano Beach
Jody Leshinsky, Cultural Venues Programming Manager
50 W Atlantic Blvd.
Pompano Beach, FL 33060

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE