

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, Cynthia Trezona, 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 July 18, 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 ten (10) years after installation of the mural at the Design Location is complete regardless whether ownership of the Property changes before expiration of the ten (10) 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@tmnservice.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:

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

Christine King
Print Name

M

Michel Maltinez
Print Name

By: X *Thomas E. McMahon*
THOMAS E. MCMAHON, PRESIDENT

(SEAL)

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 1st day of August, 2019, by **THOMAS E. MCMAHON** as President of T E P M, Inc. a Florida for profit corporation, on behalf of the corporation (He is personally known to me) or has produced _____ (type of identification) as identification.

NOTARY'S SEAL:



Woodrow J. Poitier
NOTARY PUBLIC, STATE OF FLORIDA

Woodrow J. Poitier
(Name of Acknowledger Typed, Printed or Stamped)

66071032
Commission Number

Exhibit: A

Mosaic Mural

Location:

135 NE 1 Ave.

Size: 41" x 10'

Owned by: T E P
M, Inc



Exhibit: B

Artist: Cindy Trezona
Artist Location: Pompano
Beach

Materials include, stained
glass, ceramic tile, stone,
nylon mesh, water based
temporary adhesive,
exterior grade thin-set
cement and grout and
aluminum.

Mosaic Mural

Location:

135 NE 1 Ave.

Size: 41" x 10'

Owned by: T E P
M, Inc

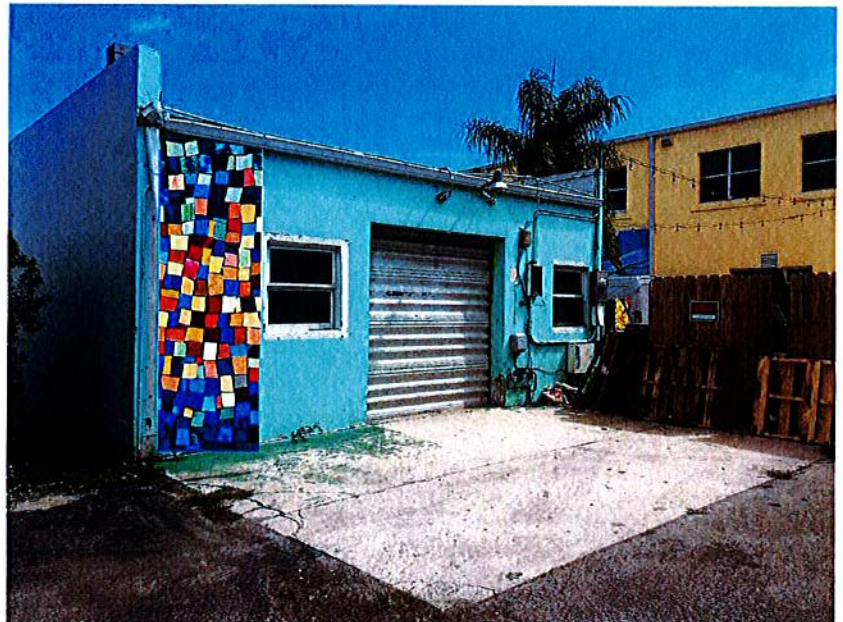




Exhibit: C

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 E-MAIL ADDRESS:														
INSURED TEPM, Inc. 31 NE 1st Street Pompano Beach, FL 33060	<table border="1"> <thead> <tr> <th data-bbox="803 472 1396 504">INSURER(S) AFFORDING COVERAGE</th> <th data-bbox="1396 472 1524 504">NAIC #</th> </tr> </thead> <tbody> <tr> <td data-bbox="803 504 1396 535">INSURER A: Berkley Assurance Company</td> <td data-bbox="1396 504 1524 535">39462</td> </tr> <tr> <td data-bbox="803 535 1396 567">INSURER B: Associated Industries Ins Co</td> <td data-bbox="1396 535 1524 567">23140</td> </tr> <tr> <td data-bbox="803 567 1396 598">INSURER C:</td> <td data-bbox="1396 567 1524 598"></td> </tr> <tr> <td data-bbox="803 598 1396 630">INSURER D:</td> <td data-bbox="1396 598 1524 630"></td> </tr> <tr> <td data-bbox="803 630 1396 661">INSURER E:</td> <td data-bbox="1396 630 1524 661"></td> </tr> <tr> <td data-bbox="803 661 1396 678">INSURER F:</td> <td data-bbox="1396 661 1524 678"></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Berkley Assurance Company	39462	INSURER B: Associated Industries Ins Co	23140	INSURER C:		INSURER D:		INSURER E:		INSURER F:	
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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	ADOL	SUBR	INSO	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					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 - COM/OP AGG \$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER								
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> 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"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE					VUMC0185840	10/01/2018	10/01/2019	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000
	DED <input checked="" type="checkbox"/> RETENTION \$ 0								
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N					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
	If yes, describe under DESCRIPTION OF OPERATIONS below								

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