

Meeting Date: July 27, 2010

Agenda Item

21

REQUESTED COMMISSION ACTION:

<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Ordinance	<input checked="" type="checkbox"/> Resolution	<input type="checkbox"/> Consideration/ Discussion	<input type="checkbox"/> Presentation
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SHORT TITLE A resolution of the City of Pompano Beach approving and authorizing the proper city officials to execute a license agreement between the City of Pompano Beach and Pour Penmanship, Inc., to permit access to authorize participants in city recreational programs to make available and provide educational tutoring services, and which sets forth responsibilities of both parties.

**Summary of Purpose and Why:**

A resolution of the City of Pompano Beach approving and authorizing the proper city officials to execute a license agreement between the City of Pompano Beach and Pour Penmanship, Inc., to permit access to authorized participants in city recreational programs to make available and provide educational tutoring services, and which sets forth responsibilities of both parties.

- (1) Origin of request for this action: Staff initiated
- (2) Primary staff contact: Mark Beaudreau, Recreation Programs Administrator Ext. 4191
- (3) Expiration of contract, if applicable: \_\_\_\_\_
- (4) Fiscal impact and source of funding: \_\_\_\_\_

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
<u>Parks &amp; Recreation</u>	<u>7/21/10</u>	<u>Approve <i>Mark Beaudreau</i></u>	<u>Parks &amp; Recreation Dept. Memo 10-A125</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

City Manager

*Mark Beaudreau*

ACTION TAKEN BY COMMISSION:

<u>Ordinance</u>	<u>Resolution</u>	<u>Consideration</u>
<u>Workshop</u>		
1 <sup>st</sup> Reading	1 <sup>st</sup> Reading	Results:
_____	_____	_____
2 <sup>nd</sup> Reading		Results:
_____	_____	_____
_____	_____	_____

PARKS AND RECREATION DEPARTMENT  
MEMORANDUM 10-A125

DATE: July 21, 2010

TO: Dennis W. Beach, City Manager

FROM: Mark A. Beaudreau, Recreation Programs Administrator *mb*

SUBJECT: Agenda Item – Pour Penmanship, Inc. License Agreement

Please place the attached resolution on the July 27, City Commission agenda. The License Agreement with Pour Penmanship will provide free tutoring services and necessary materials to eligible students qualifying for supplemental educational services. Primarily this will be for the football/cheerleading programs at the Parks and Recreation Department facilities and applicable to the schools the Florida Department of Education has designated as a School In Need of Improvement (SINI).

If you have any questions regarding this item please call me.

afh

Attachments

RESOLUTION NO. 2010-\_\_\_\_\_

**CITY OF POMPANO BEACH**  
**Broward County, Florida**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A LICENSE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND POUR PENMANSHIP, INC., TO PERMIT ACCESS TO AUTHORIZED PARTICIPANTS IN CITY RECREATIONAL PROGRAMS TO MAKE AVAILABLE AND PROVIDE EDUCATIONAL TUTORING SERVICES, AND WHICH SETS FORTH RESPONSIBILITIES OF BOTH PARTIES; PROVIDING AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:**

**SECTION 1.** That a License Agreement between the City of Pompano Beach and Pour Penmanship, Inc., a copy of which Agreement is attached hereto and incorporated herein by reference as if set forth in full, is hereby approved.

**SECTION 2.** That the proper City officials are hereby authorized to execute said Agreement between the City of Pompano Beach and Pour Penmanship, Inc.

**SECTION 3.** This Resolution shall become effective upon passage.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
**LAMAR FISHER, MAYOR**

**ATTEST:**

\_\_\_\_\_  
**MARY L. CHAMBERS, CITY CLERK**

/ds

7/21/10

l:reso/2010-327

# ***LICENSE AGREEMENT***

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**THIS AGREEMENT** made and entered into this \_\_\_\_\_ day of

\_\_\_\_\_, 2010, by and between:

**CITY OF POMPANO BEACH, FLORIDA**, a municipal corporation of the State of Florida, having its principal office located at 100 W. Atlantic Blvd., Pompano Beach, Florida 33060, hereinafter referred to as “CITY,”

and

**POUR PENMANSHIP, INC.**, a Florida corporation, having its business office located at 13181 SW 45<sup>th</sup> Drive, Miramar, Florida 33027, hereinafter referred to as “POPEN.”

**WHEREAS**, CITY owns and operates children’s athletic and aftercare programs at certain facilities located at

- **Highlands Park**, 1650 NE 50<sup>th</sup> Court, Pompano Beach, FL 33064 (Facility 1)
- **Ronald E. McNair Center**, 951 NW 27<sup>th</sup> Avenue, Pompano Beach FL 33069 (Facility 2)
- **Mitchell Moore Park**, 901 NW 10<sup>th</sup> Street, Pompano Beach, FL 33060 (Facility 3)
- **North Broward Park**, 4400 NE 18<sup>th</sup> Avenue, Pompano Beach, FL 33064 (Facility 4)
- **Kester Park**, NE 9<sup>th</sup> Avenue and NE 4<sup>th</sup> Street, Pompano Beach, FL 33064 (Facility 5)
- **Pompano Community Park**, 2001 NE 10<sup>th</sup> Street, Pompano Beach, FL 33064 (Facility 6)

Collectively known as “the Facilities,” and has the authority to offer certain advertising and product availability rights in such Facilities over a one (1) year term; and

**WHEREAS**, POPEN desires to advertise certain segments of its tutoring services to be made available to eligible children participating in athletic and aftercare programs at the Facilities for free through Federal Title-1 funding streams in such Facilities; and

**WHEREAS**, CITY wishes to grant POPEN the license, right, and privilege to offer and provide through its company, its Supplemental Educational tutoring Services (“SES”) used at the

Facilities listed herein. "SES" or "products" shall constitute the delivery of free tutoring services and necessary materials to eligible students qualifying for Supplemental Educational Services. Students that parents register and are approved for POPEN to provide such SES services to by the Broward County School district in grades kindergarten through eighth grade will receive twenty-one (21) hours of tutoring utilizing State Approved, FCAT Coach materials in either Reading or Math depending on their identified area of need.

**NOW, THEREFORE,** in consideration of the acts and promises contained herein, the parties hereby agree as follows:

1. ***Responsibilities of POPEN.*** POPEN shall:

A. Provide \$1,000 in funding per tackle football program that has 50% of its SES eligible participants complete a POPEN tutoring program, to be used by the football and cheerleading booster programs at the Facilities at their discretion for the purchase of football or cheerleading related materials or merchandise. These funds will be distributed in January 2011. For purposes of this Agreement, the phrase "SES eligible" shall mean any student on free or reduced lunch attending a Title-I School that the Florida Department of Education has designated as a School In Need of Improvement (SINI). Students on free and reduced lunch at SINI 1-4 schools are eligible.

B. Donate funding for a \$500 award for an "Academic Athlete of the Year" per participating program, per year. Participating programs shall be defined as any one of the tackle football or cheerleading programs at the above mentioned six (6) facilities. This financial award is to be given to the top academic player or cheerleader who completes a POPEN SES tutoring program. POPEN will select the recipient based on its own internal criteria in a non-discriminatory manner that conforms with all applicable laws and regulations.

C. Provide FREE tutoring services to students that participate in all athletic and aftercare/school programs at the Facilities, at one of the six facility locations, and provide free POPEN's tutoring products, by and through participation in a tutoring program.

D. Contribute \$25 towards registration reimbursement for each football player or cheerleader that completes the POPEN SES tutoring program.

E. For the purpose of security screening, POPEN will submit to CITY, the names and necessary information of all personnel of POPEN that will have any contact with children at any of the Facilities. POPEN understands and agrees that any and all of its personnel, employees or agents performing the duties under this Agreement must be screened by CITY, and must meet the standards set forth in the CITY'S administrative policy for volunteers and coaches, prior to participation in the tutoring program and prior to any interaction with children.

F. POPEN agrees that it shall fully comply with all applicable Federal, State, County, and Municipal laws and regulations. Failure to comply with same shall constitute grounds for immediate termination of the contract by the CITY.

G. POPEN shall not assign the rights and duties under this contract to any person or entity without the express written authorization of CITY.

H. Indemnification – POPEN agrees it shall indemnify, save, and hold harmless the City of Pompano Beach, its officials, agents, and employees and staff from any and all claims or causes of action, or suits (including judgments, costs, and attorney's fees) arising out of POPEN'S performance of service under this agreement and from any negligence or intentional torts or criminal acts caused by its principals, employees, staff, or agents.

I. Insurance – For the period this Agreement is in effect secure General Commercial Liability insurance with a combined single limit of not less than \$1,000,000 per occurrence, naming the City as an additional insured.

Additionally, POPEN shall provide the City with proof of Workers' Compensation Insurance covering all employees and providing benefits as required by Florida Statute, Chapter 440. POPEN further agrees to be responsible for employment, control and conduct of its personnel, employees or agents and for any injury sustained by such personnel, employees or agents in the course of their activities for POPEN.

All required coverages must be approved by the City's Risk Manager with proof furnished to same, prior to the commencement of any work under this contract.

2. ***Responsibilities of CITY.*** CITY shall:

A. In two week intervals after football and cheerleading registration begins, until October 1, 2010, provide full contact information to POPEN for each child and coach participating in all athletic and aftercare/school programs at the Facilities, that authorize the CITY to release such information to POPEN, including, mailing address, email address, telephone number, - all in an electronic format, at no charge to POPEN.

B. Maximize all service opportunities for POPEN by permitting introduction at registration of the POPEN tutoring program and by allowing representatives from the company to distribute information about POPEN'S tutoring services and permit POPEN to temporarily set up an approved display area approved by CITY to meet with at the Facilities with the parents or guardians of all athletic and aftercare/school program children twice a year; once mid August after registration begins, and once during the month of September, at no additional charge.

C. Cause the public address systems or the DJ equipment playing music or announcing the game on the premises of the Facilities that have such systems in use, to promote POPEN as the official tutoring company of the athletic and aftercare/school programs at the Facilities. This is to be done three times each game; once in the first half, once during half-time and once during the second half, at no additional charge.

D. Grant POPEN the non-exclusive right to provide SES tutoring services and the right to advertise those services in the athletic and aftercare/school programs located at the Facilities to POPEN, as provided in this Agreement.

E. Provide POPEN, at no charge, visible space to hang two 4' x 5' banners at areas designated by CITY through its authorized personnel, and in a manner authorized, and not visible from outside the City facilities, advertising POPEN as the official SES tutoring company of the athletic and aftercare/school programs located at the Facilities. These banners may be hung in place each day immediately prior to the first football game to be played at the approved location, and shall be removed immediately following the last game played at the location each day. CITY shall not have any responsibility for these banners.

F. At POPEN'S expense, allow POPEN to have a patch no larger than 3" x 5" bearing the company's logo and name to be sewed onto the game uniform of every football player (on the left sleeve or upper back side of the jersey) and cheerleader (on a visible area in the front or side) enrolled or participating in the football and cheerleading programs located at the Facilities, at no additional charge.

### **3. Terms and Termination.**

The term of this agreement shall commence at the date the last party signs this agreement and ends March 31, 2011.

If POPEN fails to be approved as a PRODUCTS provider by the Florida Department of Education or the Broward County School Board prior to the initiation of CITY'S responsibilities under this Agreement, then POPEN shall have the option to terminate this agreement. After said time, CITY and POPEN may terminate this agreement only upon mutual agreement of both parties in writing.

If POPEN fails to perform any of the promises set forth in this Agreement, CITY shall notify POPEN of its breach in writing. If within thirty (30) days of notice, the breach has not been corrected; CITY may terminate this Agreement by giving thirty (30) days written notice thereafter.

Notice to POPEN shall be provided to: Ardonis Lumpkin  
13181 SW 45<sup>th</sup> Drive  
Miramar, Florida 33027

Notice to CITY shall be provided to: Dennis W. Beach, City Manager  
City of Pompano Beach  
100 W. Atlantic Boulevard  
Pompano Beach, Florida 33060

Notwithstanding the other provisions of this Agreement, if at any time during the term of this Agreement, any Federal, State, or local rule, regulation, or order prohibits, restricts, or in any manner interferes with the terms of this AGREEMENT, and its related educational functions, then either POPEN or the CITY may terminate this Agreement.

This Agreement constitutes the entire understanding of the parties, and no terms may be altered or waived, except by the mutual written consent of both parties.

**4. Laws.**

POPEN shall comply with any and all applicable Federal, State, County, Local, or other laws and requirements in its performance of duties under this contract. Violation of any such regulation shall constitute grounds for termination of this agreement by CITY at its discretion.

**5. Venue.**

This agreement has been prepared and shall be construed under the laws of the State of Florida. The venue for any litigation of any provisions of this Agreement shall be in Broward County, Florida.

**6. Force Majeure.**

Neither party shall be in default pursuant to the terms of this Agreement or liable to the other party for any failure to perform or for delay in performance with respect to any obligation under or pursuant to the terms thereof, except obligations to make payments of any amounts due and owing through the date of cessation of service, due to acts of God, acts of public authorities, wars, insurrections, riots, civil disturbances, strikes, lock-outs, or labor disturbances, fires, floods, hurricanes or other similar damage-inducing storms, earthquakes, or other cause, whether enumerated in this section or otherwise, not within the control of the party claiming inability to perform. Each party agrees to endeavor to resume its performance under this Agreement, if such performance is interrupted by reason of force majeure.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

**"CITY":**

Witnesses:

**CITY OF POMPANO BEACH**

\_\_\_\_\_

By: \_\_\_\_\_  
LAMAR FISHER, MAYOR

\_\_\_\_\_

By: \_\_\_\_\_  
DENNIS W. BEACH, CITY MANAGER

Attest:

(SEAL)

\_\_\_\_\_  
MARY L. CHAMBERS, CITY CLERK

Approved by:

\_\_\_\_\_  
GORDON B. LINN, CITY ATTORNEY

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010 by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** as City Manager, and **MARY L. CHAMBERS** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.

NOTARY'S SEAL:

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number

**"POPEN":**

Witnesses:

**POUR PENMANSHIP, INC.**, a Florida corporation

*Lori L. Alexander*

Print Name: Lori L. Alexander

*Ardonnis Lumpkin*

ARDONNIS LUMPKIN, President

Print Name: Chris Fils

STATE OF FLORIDA  
COUNTY OF BROWARD

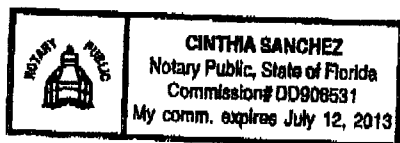
The foregoing instrument was acknowledged before me this 21 day of July, 2010, by ARDONNIS LUMPKIN as President of POUR PENMANSHIP, INC. He is personally known to me or who has produced FL DL LS12-013-69.343-0 (type of identification) as identification.

NOTARY'S SEAL:

*Cynthia Sanchez*  
NOTARY PUBLIC, STATE OF FLORIDA

Cynthia Sanchez  
(Name of Acknowledgee Typed, Printed or Stamped)

DD 90653  
Commission Number



MEB/jrm/ds  
7/20/10  
l:agr/recr/2010-1540



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)  
07/21/10

**PRODUCER** McKinley Financial Services  
546 North Andrews Avenue  
Ft. Lauderdale, FL 33301  
Phone (954)938-2686 Fax (954)938-2695

**INSURED** Pour Penmanship Inc  
13181 SW 45th Drive  
Miramar FL 33027

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.**

INSURERS AFFORDING COVERAGE		NAIC #
INSURER A:	Maxum Specialty Insuranc	
INSURER B:	Hartford Insurance	
INSURER C:	National Liability & Fire Insurance	
INSURER D:		
INSURER E:		

### COVERAGES

THE POLICIES OF INSURANCE LISTED 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. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/>	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC	MPL492853	05/21/2010	05/21/2011	EACH OCCURRENCE	1000000
						DAMAGE TO RENTED PREMISES (Ea occurrence)	50000
						MED EXP (Any one person)	5000
						PERSONAL & ADV INJURY	1000000
						GENERAL AGGREGATE	2000000
						PRODUCTS - COMP/OP AGG	
C	<input type="checkbox"/>	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON OWNED AUTOS	73APR249488	05/06/2010	05/06/2011	COMBINED SINGLE LIMIT (Ea accident)	1000000
						BODILY INJURY (Per person)	
						BODILY INJURY (Per accident)	
						PROPERTY DAMAGE (Per accident)	
						AUTO ONLY - EA ACCIDENT	
						OTHER THAN AUTO ONLY: EA ACC	
						AGG	
						EACH OCCURRENCE	
						AGGREGATE	
B	<input type="checkbox"/>	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> Y/N ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER / MEMBER EXCLUDED? n (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below	21WECZH0473			<input checked="" type="checkbox"/> W/O STATUTORY LIMITS <input type="checkbox"/> OTHER	
						E.L. EACH ACCIDENT	100000
						E.L. DISEASE - EA EMPLOYEE	100000
						E.L. DISEASE - POLICY LIMIT	500000
A	<input type="checkbox"/>	<b>OTHER</b> Professional Liability	MPL492853	05/21/2010	05/21/2011	Aggregate	2000000

APPROVED  
RISK MANAGEMENT  
ON: *[Signature]*  
BY: *[Signature]*

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS**  
 City of Pompano Beach, FL is named additional insured with respects to the General Liability

CERTIFICATE HOLDER	CANCELLATION
City of Pompano Beach, FL 100 W. Atlantic Blvd Pompano Beach, FL 33060	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE <i>[Signature]</i>