



# MEMORANDUM

## Parks, Recreation & Cultural Arts

### Memorandum 15-A089

DATE: June 22, 2015

TO: Dennis Beach, City Manager

FROM: Mark Beaudreau, Recreation Programs Administrator *MB*

SUBJECT: Agenda Item –Resolution And Templates For License Agreements  
For Various Recreational Programs

Please place the attached agreement on the June 23, City Commission Agenda. The attached resolution allows the Mayor or Vice Mayor, City Clerk and City Manager to execute license agreements for various recreational programs on behalf of the City. The various recreational programs will be instructed by independent contractors at various city recreational facilities. The Parks, Recreation and Cultural Arts Department staff will collect the program fees, with the city receiving 30% of the program fees and paying 70% of the program fees to the independent contractor. The license agreements will be for programs such as Spanish Classes, Line Dance Classes, Drawing Classes, Karate Classes, Dog Obedience Classes, etc.

If you have any questions regarding the agenda item please call me at 954-786-4191.

afh



**City Attorney's Communication #2015-1117**  
June 12, 2015

**TO:** Mark A. Beaudreau, Recreation Programs Administrator

**FROM:** Fawn Powers, Assistant City Attorney

**RE:** Resolution and Templates for License Agreements for various recreational programs

As requested, the above referenced License Agreements have been prepared and are attached along with the appropriate Resolution captioned as follows:

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPAÑO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR OR VICE MAYOR, CITY CLERK AND CITY MANAGER TO EXECUTE LICENSE AGREEMENTS FOR VARIOUS RECREATIONAL PROGRAMS ON BEHALF OF THE CITY; PROVIDING AN EFFECTIVE DATE.**

Please feel free to contact me if I may be of further assistance.

  
\_\_\_\_\_  
FAWN POWERS

I:\cor\recr\2015-1122f  
Attachment

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

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, AUTHORIZING THE MAYOR OR VICE MAYOR, CITY CLERK AND CITY MANAGER TO EXECUTE LICENSE AGREEMENTS FOR VARIOUS CITY RECREATIONAL PROGRAMS ON BEHALF OF THE CITY; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City's Parks and Recreation Department requires the services of various instructors to provide recreational services to the public; and

**WHEREAS**, the City desires to carry out services efficiently without undue delays for its residents; and

**WHEREAS**, a contractual services agreement that addresses issues specific to the provision of such recreational services is necessary; now, therefore,

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

**SECTION 1.** Without further approval of the City Commission, the Mayor or Vice Mayor in the absence of the Mayor, City Clerk and City Manager are hereby authorized to execute on behalf of the City License Agreements in a form substantially similar to the forms attached hereto and made a part hereof for the City's recreation programs.

**SECTION 2.** This Resolution shall become effective upon passage.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

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

**ATTEST:**

\_\_\_\_\_  
**ASCELETA HAMMOND, CITY CLERK**

# **City of Pompano Beach**

## **LICENSE AGREEMENT**

**with**

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# LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement"), entered into this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, by and between:

**CITY OF POMPANO BEACH**, a municipal corporation located in Broward County, Florida (hereinafter "CITY"),

and

\_\_\_\_\_, an independent contractor  
(hereinafter "LICENSEE")

**WHEREAS**, the CITY requires services which LICENSEE is capable of providing under the terms and conditions hereinafter described; and

**WHEREAS**, LICENSEE is able and prepared to provide the services (the "Program") and the insurance set forth respectively in Exhibits 1 and 4 with the dates and times to be mutually established by both parties; and

**WHEREAS**, subject to the terms of this Agreement, LICENSEE may use the CITY-owned and maintained premises located at the \_\_\_\_\_ (the "Property") to provide the services set forth in Exhibit 1; and

**WHEREAS**, the CITY has determined entering into this License Agreement with LICENSEE is in the best interest of the public; and

**WHEREAS**, the CITY and LICENSEE desire to enter into this Agreement setting forth the parties' mutual understandings and undertakings.

**NOW, THEREFORE**, in consideration of the conditions, covenants and mutual promises herein contained, the CITY and LICENSEE agree as follows.

## **ARTICLE 1 REPRESENTATIONS**

A. **Representations of CITY.** CITY makes the following representations to LICENSEE which CITY acknowledges LICENSEE has relied upon in entering into this Agreement.

1. This Agreement is a valid, binding and permissible activity within the power and authority of the CITY and does not violate any CITY Code, Charter provision, rule, resolution, ordinance, policy or agreement of the CITY or constitute a default of any agreement or contract to which the CITY is a party.

2. The individuals executing the Agreement on behalf of the CITY are duly authorized to take such action, which action shall be, and is, binding upon the CITY.

3. LICENSEE shall be entitled to rely upon the accuracy and completeness of any information or reports supplied by CITY or by others authorized by the CITY's Recreation Programs Administrator.

**B. Representations of LICENSEE.** LICENSEE makes the following representations to CITY which CITY relies upon in entering into this Agreement.

1. LICENSEE's execution, delivery, consummation and performance under this Agreement will not violate or cause LICENSEE to be in default of any provisions of its governing documents, rules and regulations (as applicable) or any other agreement to which LICENSEE is a party or constitute a default thereunder or cause acceleration of any obligation of LICENSEE thereunder.

2. The individual executing this Agreement and related documents on behalf of LICENSEE is duly authorized to take such action which action shall be, and is, binding on LICENSEE.

3. There are no legal actions, suits or proceedings pending or threatened against or affecting LICENSEE or its principals that LICENSEE is aware of which would have any material effect on LICENSEE's ability to perform its obligations under this Agreement.

4. LICENSEE represents it has the ability, skill and resources to complete its requisite responsibilities under this Agreement.

5. The CITY shall be entitled to rely upon the technical and leadership skills of LICENSEE or by others authorized by LICENSEE under this Agreement.

6. LICENSEE represents and warrants it has and will continue to maintain all licenses and approvals required to conduct business and provide services under this Agreement and that it will at all times conduct its business activities in a reputable manner.

## **ARTICLE 2 NON-ASSIGNABILITY AND SUBCONTRACTING**

This Agreement is not assignable and LICENSEE agrees it shall not sell, assign, transfer, merge or otherwise convey any of its interests, rights or obligations under this Agreement, in whole or in part, to any other person, corporation or entity.

Any attempt by LICENSEE to assign or transfer any of its rights or obligations under this Agreement without first obtaining the CITY's written approval will result in CITY's immediate cancellation of this Agreement. Specifically, no assignment of any right or obligation under this Agreement shall be binding on the CITY without the written consent of the City Commission of Pompano Beach.

In addition, this Agreement and the rights and obligations therein shall not be assignable or transferable by any process or proceeding in court, or by judgment, execution, proceedings in insolvency, bankruptcy or receivership, and in the event of LICENSEE's insolvency or bankruptcy, CITY may at its option terminate and cancel this Agreement without any notice of any kind whatsoever, in which event all rights of LICENSEE hereunder shall immediately cease and terminate.

Nothing herein shall be construed to create any personal liability on the part of the CITY or its agent(s) nor shall it be construed as granting any rights or benefits hereunder to anyone other than CITY and LICENSEE.

**ARTICLE 3  
TERM AND RENEWAL**

This Agreement shall be for a \_\_\_\_\_ **week/month/year** term commencing \_\_\_\_\_, 201\_\_, and ending \_\_\_\_\_, 201\_\_. The CITY reserves the right to extend this Agreement for two (2) \_\_\_\_\_ week/month/year renewal options provided both parties agree in writing to said extension. Renegotiation should commence at least 45 days prior to normal termination.

**ARTICLE 4  
RESPONSIBILITIES OF LICENSEE**

LICENSEE shall at all times provide the scope of services set forth in Exhibit 1 obligations under this Agreement in a professional manner and also develop and adhere to written protocols to ensure public resources are properly tracked and appropriated.

1. LICENSEE shall immediately inform the CITY's Recreation Program Administrator of any repairs or maintenance necessary to keep the Property in good and safe condition.

2. LICENSEE shall operate and conduct the business covered by this Agreement in accordance with all applicable federal, state and local laws, ordinances and regulations as may now exist or as may hereafter be adopted, including, but not limited to, standards of licensing, conduct of business and those relating to criminal activity. Specifically, LICENSEE shall comply with Florida Statutes §501.143 (Dance Studio) and §501.0125 (Health Studio), where applicable. Additionally, LICENSEE shall at all times comply with CITY Code §98.06 (Unattended Children).

LICENSEE, at its sole expense, shall purchase all necessary licenses and permits required by the State of Florida, Broward County, and the City of Pompano Beach, and be responsible to pay any and all sales taxes and other charges of any nature or kind, which may be assessed against LICENSEE's provision of goods and services under this Agreement. Proof of such licenses, approvals and sales tax payments shall be submitted to the CITY's Recreation Programs Administrator upon request.

3. LICENSEE shall give the CITY prompt written notice of any accidents occurring at the Property in which damage to property or injury to a person occurs.

**ARTICLE 5  
RESPONSIBILITIES OF CITY**

A. CITY is responsible to maintain the Property and surrounding outdoor areas, including the building systems (plumbing, electrical, painting, ceilings, walls, floors, roof, public restrooms, etc.) and general maintenance (shrubbery and lawn care, garbage pickup, etc.).

B. CITY shall provide LICENSEE with the use of the Property for the reasons set forth herein at days and times which have been pre-approved in writing by the CITY's Recreation Programs Administrator. Interruptions in availability of the Property due to acts of God or any other circumstance beyond the CITY's control shall not be considered a violation of this paragraph.

C. CITY, at CITY's sole expense, shall be responsible to promptly conduct the background checks on LICENSEE and/or its representatives or agents providing services under this Agreement.

**ARTICLE 6  
COMPENSATION, ACCOUNTING, RECORDKEEPING AND BACKGROUND  
CHECK PROCEDURES**

A. CITY shall collect the registration, admission and/or application fees for all services LICENSEE provides under this Agreement in accordance with the provisions of this Article and Exhibit 2. Thirty percent (30%) of the total Program fees shall be retained by CITY and seventy percent (70%) shall be paid to LICENSEE by CITY as compensation for the services provided as described herein. CITY agrees to pay LICENSEE within thirty (30) days of the close of the month, if fees are collected on a monthly basis, or within thirty (30) days of the date on which fees are due from Program participants, if fees are collected on a one-time basis. LICENSEE shall receive no portion of additional registration, admission or application fees charged in accordance with the CITY's Fee Schedule, to wit, recreation program registration fees of \$10 for CITY residents and \$20 for non-residents.

B. LICENSEE shall be required to record and preserve complete and accurate records for all activities and revenues generated under this Agreement for a period of five (5) years after its termination or as otherwise required by applicable law(s), including the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes. However, if an audit has been initiated and audit findings have not been resolved, the records shall be retained until resolution of the audit findings.

C. LICENSEE shall make available at reasonable time for CITY's examination all membership rosters; attendance, financial and statistical records; federal/state tax returns; and

any other documents attendant to LICENSEE's provision of goods and services under this Agreement.

D. LICENSEE, its employees, volunteers, subcontractors and all other agents providing services under this Agreement shall comply with the CITY's Youth Programs Background Screening Policy as set forth in Exhibit 3. At least one week prior to LICENSEE or any of its agents providing services under this Agreement, LICENSEE shall provide the CITY's Contract Administrator a completed and fully-executed Release on all such persons so that CITY, at its sole cost, can conduct the background checks required hereunder. CITY reserves the right to refuse to permit LICENSEE or any of its agents to provide services under this Agreement based upon the grounds for disqualification as stated in the Youth Programs Background Screening Policy.

**ARTICLE 7  
CITY'S RIGHT TO AUTHORIZE USE OF THE PROPERTY**

The CITY, through its Recreation Programs Administrator, reserves the right to authorize use of the Property for special group functions upon reasonable written notice to LICENSEE.

**ARTICLE 8  
LICENSEE'S INDEMNIFICATION OF CITY**

A. To the extent permitted by Florida law, LICENSEE shall indemnify, defend and save harmless the CITY from and against all claims, demands, losses, costs, damages, suits, judgments, penalties, expenses and liabilities of whatsoever kind arising directly or indirectly out of or in connection with the provision of services and merchandise under this Agreement whether same occurs or the cause arises on or away from the Property.

B. LICENSEE acknowledges and agrees that CITY assumes no responsibility whatsoever for any personal property, stock or inventory of LICENSEE placed at the Property and that LICENSEE is solely responsible for insuring same against damage or loss of any nature or kind. LICENSEE further agrees that CITY is hereby expressly released and discharged from any and all liability for any loss, injury or damage to persons or property which may be sustained by reason of LICENSEE's presence on the Property.

**ARTICLE 9  
INSURANCE**

LICENSEE shall maintain insurance in the amounts and subject to all conditions set forth on the standardized insurance form attached as Exhibit 4. LICENSEE shall not commence operations under this Agreement until certification or proof of insurance detailing terms and provisions of coverage has been received and approved by the CITY's Risk Manager

**ARTICLE 10  
INDEPENDENT CONTRACTOR**

Both CITY and LICENSEE agree that LICENSEE is an independent contractor for all purposes and not in any manner a CITY employee. As such, neither LICENSEE nor any of its agents performing services under this Agreement shall be subject to any withholding for tax, social security or other purposes by CITY nor entitled to sick leave, pension benefits, vacation, medical benefits, life insurance, workers or unemployment compensation, or the like from the CITY.

**ARTICLE 11  
DEFAULT AND DISPUTE RESOLUTION**

A. If either party claims the other is in default of this Agreement, the parties may, but are not required to, timely schedule a conference or meeting and make every reasonable effort to reach an amicable resolution. Both parties shall be entitled to have representatives present at any such meeting or conference.

B. If there is a default of any covenant or obligation under this Agreement, the defaulting party shall be given ten (10) calendar days to cure said default after written notice to the other in accordance with Article 15 herein.

C. If the party receiving written notice of default provides written notice denying same within ten (10) calendar days of receipt or the alleged default has not been remedied within ten (10) calendar days after receipt of written notice and is continuing, either party may appeal in writing to the City Manager for the CITY in accordance with Article 15 herein.

Upon receipt of said written appeal or demand, the City Manager for the CITY may request additional information relating to the dispute from either or both parties which shall be provided within a reasonable time. Upon the City Manager's receipt and timely review of the disputed matter, the City Manager may make a decision regarding the alleged default as he/she deems appropriate under the circumstances. If the City Manager's decision is not implemented within the deadline set forth therein, the forty-five (45) day advance written notice provision set forth in Article 15 herein shall not apply and it shall be lawful for CITY to immediately terminate this Agreement and in addition to any other remedies provided by law, CITY may possess itself of all rights and privileges heretofore enjoyed by LICENSEE.

**ARTICLE 12  
TERMINATION**

Both CITY and LICENSEE may terminate this Agreement, in whole or in part, for convenience, cause, default or negligence upon forty-five (45) days advances written notice to the other in accordance with Article 15 herein. However, CITY may provide LICENSEE verbal notice of termination if, in CITY's sole discretion, termination is necessary to protect the public health, safety or welfare although CITY shall promptly confirm said verbal notice in writing.

In the event of termination without cause, LICENSEE shall be compensated for services prior to the effective date of such termination. In the event LICENSEE abandons this Agreement or otherwise causes it to be terminated by CITY, LICENSEE shall indemnify the CITY against any loss pertaining to this termination. In the event that LICENSEE is terminated by the CITY for cause and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, said termination shall be deemed a termination for convenience.

**ARTICLE 13  
EQUAL OPPORTUNITY EMPLOYMENT**

LICENSEE agrees not to discriminate against any of its or the CITY's employees under this Agreement because of race, color, religion, sex, age, national origin or disability.

**ARTICLE 14  
PUBLIC ENTITY CRIMES ACT**

Through execution of this Agreement and in accordance with Section 287.133, Florida Statutes, LICENSEE certifies that it is not listed on the convicted vendors list maintained by the State of Florida, Department of General Services.

**ARTICLE 15  
NOTICES AND DEMANDS**

Whenever it is provided herein that notice, demand, request, or other communication shall or may be given to, or served upon, either of the parties by the other, it must be in writing, sent by certified United States mail with return receipt requested, addressed to the party to whom it is intended at the places designated below until changed by written notice in compliance with the provisions of this Article. For the present, the parties designate the following respective places for giving of notice, to-wit:

**For CITY:**  
City Manager  
City of Pompano Beach  
P.O. Drawer 1300  
Pompano Beach, Florida 33061  
[dennis.beach@copbfl.com](mailto:dennis.beach@copbfl.com)  
(954) 786-4601 office  
(954) 786-4504 fax

**With a copy to:**  
Recreation Program Administrator  
City of Pompano Beach  
1801 NE 6<sup>th</sup> Street  
Pompano Beach, Florida 33060  
[mark.beaudreau@copbfl.com](mailto:mark.beaudreau@copbfl.com)  
(954) 786-4191 office  
(954) 86-4113 fax

**For LICENSEE:**

**E-Mail:**  
**Phone:**  
**Fax:**

**ARTICLE 16  
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 LICENSEE submit to the jurisdiction of Florida courts and federal courts located in Florida. 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.

**ARTICLE 17  
CONTRACT ADMINISTRATOR**

The CITY's Recreation Program Administrator or his/her designee shall serve as the CITY's Contract Administrator during the performance of services under this Agreement.

\_\_\_\_\_ shall serve as LICENSEE's Contract Administrator during the performance of services under this Agreement.

**ARTICLE 18  
NO CONTINGENT FEE**

LICENSEE warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for LICENSEE, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for LICENSEE any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

In the event of LICENSEE's breach or violation of this provision, the CITY shall have the right to terminate this Agreement without liability and, at CITY's sole discretion, to recover the full amount of such fee, commission, percentage, gift or consideration.

**ARTICLE 19  
ATTORNEY'S FEES**

In the event of litigation between the parties, the prevailing party shall be entitled to recover all costs of collection, including a reasonable attorney's fees and court costs. The provisions of this paragraph shall survive termination of this Agreement.

**ARTICLE 20  
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, war, civil disorder, sabotage, accident, flood, acts of God or by any reason of any other matter or condition beyond the control of either party which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall economic hardship or lack of funds be considered an event of force majeure.

If CITY or LICENSEE are unable to perform, or are delayed in their performance of any obligations under this Agreement by reason of any event of force majeure, such inability or delay shall be excused at any time during which compliance therewith is prevented by such event and during such period thereafter as may be reasonably necessary for either party to correct the adverse effect of such event of force majeure.

In order to be entitled to the benefit of this Article, a party claiming an event of force majeure shall be required to give prompt written notice to the other party specifying in detail the event of force majeure and also diligently proceed to correct the adverse effect of any force majeure. The parties agree that, as to this Article, time is of the essence.

**ARTICLE 21  
WAIVER AND MODIFICATION**

Failure to insist upon strict compliance with any terms, covenants or conditions of this Agreement shall not be deemed a waiver of such, nor shall any waiver or relinquishment of such right or power at any time be taken to be a waiver of any other breach.

CITY and LICENSEE may request changes to modify certain provisions of this Agreement, including increasing or decreasing the scope of services to be provided. However, unless otherwise provided for herein, any such changes must be contained in a written amendment executed by both parties with the same formality of this Agreement.

**ARTICLE 22  
RELATIONSHIP BETWEEN THE PARTIES**

LICENSEE is being contracted by CITY for the purposes and to the extent set forth in this Agreement and, as such, shall be free to dispose of such other portion of LICENSEE's time and skill as does not interfere with LICENSEE's obligations hereunder.

**ARTICLE 23  
MISCELLANEOUS TERMS AND CONDITIONS**

A. LICENSEE shall utilize the Property exclusively for the activities described herein and not allow any part thereof to be used for any immoral or illegal purposes. LICENSEE shall not allow, suffer or permit the Property to be used for any purpose, business, activity, use or function to which the CITY objects, including gambling.

B. LICENSEE, while acting pursuant to this Agreement, shall not discriminate against any worker, employee, patron, or member of the public on the basis of race, creed, religion, age, sex, disability or national origin.

C. The agents and representatives of CITY shall have the right to enter in and/or make inspections of the designated premises at any time for the purpose of securing compliance with the terms and conditions of this Agreement.

D. LICENSEE shall not, at any time, promote any privately owned business or studio without first receiving the express written consent of the CITY as to the method of its promotion. LICENSEE's failure to abide by this condition shall result in the immediate termination of this Agreement and LICENSEE being required to return or refund any portion of any compensation paid hereunder.

E. LICENSEE shall be responsible to maintain a cooperative and good faith attitude in all relations with CITY and shall actively foster a public image of mutual benefit to both parties. LICENSEE shall not make any statements or take any actions detrimental to this effort.

**ARTICLE 24  
SEVERABILITY**

Should any provision of this Agreement or the application of such provisions be rendered or declared invalid by a court action or by reason of any existing or subsequently enacted legislation, the remaining parts or provisions of this Agreement shall remain in full force and effect.

**ARTICLE 25  
APPROVALS**

Whenever CITY approval(s) shall be required for any action under this Agreement, said approval(s) shall not be unreasonably withheld.

**ARTICLE 26  
ABSENCE OF CONFLICTS OF INTEREST**

LICENSEE represents it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with its performance hereunder. LICENSEE further represents no person having any interest shall be employed or engaged by it for said performance.

**ARTICLE 27  
BINDING EFFECT**

The benefits and obligations imposed pursuant to this Agreement shall be binding and enforceable by and against the parties hereto.

**ARTICLE 28  
NO WAIVER OF SOVEREIGN IMMUNITY**

Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by CITY.

**ARTICLE 29  
LICENSE NOT LEASE**

Both parties acknowledge and agree this license shall not be deemed a lease of the Property but rather a license granted to LICENSEE by CITY to provide the services set forth in Exhibit 1.

**ARTICLE 30  
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 LICENSEE 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.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

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:

\_\_\_\_\_  
ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved by:

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

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** 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 is personally known to me.

NOTARY'S SEAL:

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

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

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

**"LICENSEE":**

Witnesses:

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_   
 Print Name

\_\_\_\_\_   
 Print Name

\_\_\_\_\_   
 Print Name

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, by \_\_\_\_\_ who is personally known to me or who has produced \_\_\_\_\_ (type of identification) as identification.

NOTARY'S SEAL:

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

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

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

L:agr/recr/independent contractor instructor's template  
7/6/15



## EXHIBIT 2

### RECORDKEEPING PROCEDURES FOR INSTRUCTOR AGREEMENT Licensee 70%/City 30% Split

#### 1. Recordkeeping, Records Retention, and Audit Access

A. All LICENSEE records directly or indirectly related to this Agreement shall be made available locally, at LICENSEE's expense for inspection and audit by the CITY's Internal Auditor or other designee at all reasonable times and upon reasonable notice during the term of this Agreement.

B. LICENSEE shall make available at reasonable time for CITY's examination, inspection and audit all membership rosters; attendance, financial and statistical records; federal/state tax returns; and any other documents attendant to LICENSEE's provision of goods and services under this Agreement.

LICENSEE's failure to produce records requested by CITY's agents shall be deemed a material breach which entitles CITY to terminate this Agreement as provided herein.

C. If such examination or audit discloses a liability of fees, LICENSEE shall promptly pay the amount due. If such liability exceeds three percent (3%) of the fees, LICENSEE shall pay CITY the amount due and also pay for the cost of the CITY's audit within 10 calendar days.

D. LICENSEE shall be required to record and preserve complete and accurate records for all activities and revenues generated under this Agreement for a period of five (5) years after its termination or as otherwise required by applicable law(s), including the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes. However, if an audit has been initiated and audit findings have not been resolved, the records shall be retained until resolution of the audit findings.

E. CITY shall be required to record and preserve complete and accurate records for all activities and revenues generated under this Agreement for a period of five (5) years after its termination or as otherwise required by applicable law(s), including the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes. However, if an audit has been initiated and audit findings have not been resolved, the records shall be retained until resolution of the audit findings.

F. LICENSEE shall operate and conduct the business covered by this Agreement in accordance with all applicable federal, state and local laws, including the laws of Broward County and the charter, ordinances and other regulations of the CITY as may now exist or as may hereafter be adopted.

G. LICENSEE, at its sole expense, shall purchase all necessary licenses and permits required by the State of Florida, Broward County, and the CITY, and be responsible to pay any and all sales taxes and other charges of any nature or kind, which may be assessed against LICENSEE's

provision of goods and services under this Agreement. Proof of such licenses, approvals and sales tax payments shall be submitted to the CITY's Recreation Programs Administrator upon request.

H. LICENSEE, its employees, volunteers, subcontractors and all other agents providing services under this Agreement shall comply with the CITY's Youth Programs Background Screening Policy. At least one week prior to LICENSEE or any of its agents providing services under this Agreement, LICENSEE shall provide the CITY's Contract Administrator a completed and fully-executed Release on all such persons so that CITY, at its sole cost, can conduct the background checks required hereunder. CITY reserves the right to refuse to permit LICENSEE or any of its agents to provide services under this Agreement based upon the grounds for disqualification as stated in the Youth Programs Background Screening Policy.

## **2. Daily Operations**

A. The RecTrac system shall provide the control capability to separately account for the percentage of revenue designated to LICENSEE and CITY, respectively.

B. CITY shall collect the registration, admission and/or application fees for all services LICENSEE provides under this Agreement. CITY Cashier shall enter complete payment into RecTrac. The instructional program fee, as agreed upon by both Licensee and CITY shall be charged and collected by the CITY. Thirty (30%) of the total program fees shall be retained by the CITY and seventy percent (70%) of the total program fee shall be paid to the Licensee by the CITY as compensation for the services provided as described herein. CITY agrees to pay Licensee within thirty (30) days of the close of the month, if fees are collected on a monthly basis, or within thirty (30) days of the date on which fees are due from participants LICENSEE shall receive no portion of additional registration, admission or application fees charged in accordance with the CITY's Fee Schedule, to wit, recreation program registration fees of \$10 for CITY residents and \$20 for non-residents, if fees are collected on a one-time basis.

C. A receipt should be collected from each participant upon entering the class. Anyone trying to enter the class without a receipt shall be sent back to the Front Desk for payment processing.

D. All class participants shall sign an attendance sheet/log upon entering the class. This shall also include the participants who are a one-time observer where the fee has been waived. The Cashier will keep the new participant waivers in a file at the front desk.

E. The agents and representatives of CITY shall have the right to enter in and/or make inspections of the designated premises at any time for the purpose of securing compliance with the terms and conditions of this agreement.

F. Periodic spot checks of all classes will be performed by Recreation Managers, Supervisors and the Accounting Clerk. Attendance sheet/log will be checked, and head counts or roll call will be taken and compared to the RecTrac Activity Roster, Sales History Report and fee waivers for verification that all participants have paid unless fee was waived.

G. After LICENSEE has been approved by the CITY, and the background check(s) have been completed a CITY I.D. Badge will be issued for each LICENSEE instructor, employee, volunteer, subcontractor, or designee of LICENSEE working with the class /program. This I.D. Badge shall be worn at all times while in the CITY facility and shown upon request.

**Exhibit 3  
City's Youth Programs  
Background Screening Policy**

**CITY OF POMPANO BEACH  
ADMINISTRATIVE POLICY**

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|               |   |                   |         |
|---------------|---|-------------------|---------|
| <b>TITLE:</b> | Youth Program Background Screening Policy | <b>Number:</b>    | 500.06  |
|               |   | <b>Effective:</b> | 3-10-04 |
|               |   | <b>Revised:</b>   | 8-27-07 |
|               |   | <b>Revised:</b>   | 7-23-08 |
|               |   | <b>Revised:</b>   | 8-2-10  |

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In an effort to ensure that the City of Pompano Beach provides a safe place for children to learn and enjoy recreation programs, and in an effort to acquire and retain volunteers and instructors who are more likely to safely interact with participants in programs, the Parks and Recreation Department will conduct criminal background screening on all prospective volunteers and instructors, and based upon the recommended guidelines for credentialing set by the National Recreation and Park Association, shall establish and enforce criteria for disqualification of applicants.

(1) The following shall constitute grounds for disqualification of an applicant:

(a) The applicant has been found guilty of any of the following crimes listed below:

“Guilty” means that a person was found guilty following a trial, entered a guilty plea or entered a no contest plea, accompanied by a court finding of guilt, regardless of whether there was an adjudication of guilt (conviction) or a withholding of guilt. Acquittal, Nolle Prose, or dismissal of charges shall not be included in said definition:

1. **SEX OFFENSES INVOLVING CHILDREN**

>All Sex Offenses and Offenses involving children or the abuse of children – regardless of the amount of time since offense. Examples include but are not limited to child molestation, rape, sodomy, prostitution, indecent exposure.

2. **FELONIES**

>All Felony Offenses involving violence – regardless of the amount of time since the offense. Examples include but are not limited to: murder, attempted murder, manslaughter, aggravated battery, aggravated assault, kidnapping, robbery.

**CITY OF POMPANO BEACH  
ADMINISTRATIVE POLICY**

**PAGE 2**

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|               |   |                 |        |
|---------------|---|-----------------|--------|
| <b>TITLE:</b> | Youth Program Background Screening Policy | <b>Number:</b>  | 500.06 |
|               |   | <b>Revised:</b> | 8-2-10 |

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>All Felony Offenses, other than those for violence, sex, or offenses involving children, within the past seven (7) years of the date of the application. Examples include but are not limited to: drug offenses, theft.

**3. MISDEMEANORS**

>All Misdemeanor offenses involving violence within the past five (5) years of the application date. Examples include but are not limited to: simple battery, assault, domestic violence.

>Any three (3) or more Misdemeanor drug offenses or alcohol offenses, or any combination of same within the past five (5) years of the application date. Examples include, but are not limited to, driving under the influence, possession of marijuana, disorderly conduct, possession of drug paraphernalia.

>Any other Misdemeanor offense within the past five (5) years of the application date that would be considered a potential danger to children or that is directly related to the function of that coach. Examples include but are not limited to contributing to the delinquency of a minor, providing alcohol to a minor, petty theft of money.

- (b) Pending prosecution of offenses listed under subsection (a.) above.
- (c) Falsification of any requested information on the application.

**CITY OF POMPANO BEACH  
ADMINISTRATIVE POLICY**

**PAGE 3**

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|               |   |                 |        |
|---------------|---|-----------------|--------|
| <b>TITLE:</b> | Youth Program Background Screening Policy | <b>Number:</b>  | 500.06 |
|               |   | <b>Revised:</b> | 8-2-10 |

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- (d) Any person who at the time of the application is serving a period of Community Control or probation for any offense. No such person shall be eligible until all supervision has terminated and all provisions of the sentence have become final.

  
Dennis W. Beach, City Manager

## EXHIBIT 4

### INSURANCE REQUIREMENTS

LICENSEE 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 who can be reached by phone (954 786-5555) or email ([eddie.beecher@copbfl.com](mailto:eddie.beecher@copbfl.com)) should you have any questions regarding the terms and conditions set forth in this exhibit. Proof of the insurance coverage required hereunder shall be mailed to Risk Management, PO Box 1300, Pompano Beach, FL 33061.

LICENSEE is responsible to deliver to the CITY's Risk Manager for his 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.

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 LICENSEE, are not intended to and shall not in any way limit or qualify the liabilities and obligations assumed by LICENSEE under this Agreement.

Throughout the term of this Agreement, LICENSEE 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 LICENSEE is obligated to pay compensation to employees engaged in the performance of the work. LICENSEE 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 LICENSEE's negligent acts or omissions in connection with LICENSEE'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 operations hazard | bodily injury and property damage combined                       |
| 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                      |  |
| xx | sexual abuse/molestation             | Minimum \$1,000,000 Per Occurrence and \$1,000,000 Per Aggregate |

**AUTOMOBILE LIABILITY:** Proof of Bodily injury (each person) bodily injury (each accident), property damage, bodily injury and property damage combined, required based on scope of services.

- xx comprehensive form
- xx owned
- xx hired
- xx 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 | \$2,000,000 \$2,000,000 |

**PROFESSIONAL LIABILITY**

|   |   | Per Occurrence | Aggregate   |
|---|---|----------------|-------------|
| — | * Policy to be written on a claims made basis | \$1,000,000    | \$2,000,000 |

C. Employer's Liability. LICENSEE 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 LICENSEE, the LICENSEE 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. LICENSEE 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 LICENSEE 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 LICENSEE enter into such an agreement on a pre-loss basis.