

## LICENSE AGREEMENT

License agreement made this 8th day of February, 2010, between the City of San Luis, Arizona, 1090 E. Union Street, P.O. Box 1170, San Luis, Arizona ("licensor"), and Portable, Practical, Educational Preparation, Inc., 802 E. 46<sup>th</sup> Street, Tucson, Arizona 85713, ("licensee").

In consideration of the mutual promises contained in this agreement, the parties agree as follows:

### SECTION ONE.

#### GRANT OF LICENSE; DESCRIPTION OF PREMISES

Licensor grants to licensee a license to occupy and use, subject to all of the terms and conditions of this agreement, the building which was formerly the public library located at 731 N. First Ave., San Luis, Arizona.

### SECTION TWO.

#### LIMITATION TO DESCRIBED PURPOSE

The above-described property may be occupied and used by licensee solely for the purpose of providing programs and educational services for persons residing within the City of San Luis as well as providing human services, educational programs, business development programs, and other services and for incidental purposes related to these purposes during the period beginning on the 1<sup>st</sup> day of March, 2010 and continuing until this agreement is terminated as provided in this agreement. In making this promise it is understood that licensee is a non-profit corporation and is performing the public purpose of providing the above-described services to the residents of the City of San Luis, and the provision of these services to the residents of San Luis is part of the consideration of this agreement. The use of the facility is non-exclusive and licensor reserves the right to permit other persons or entities to use the facility at any time. The use of the facility is specifically limited to the uses described above and may not be used for any other purpose. Use of the premises shall at all times conform to all federal, state and local legal requirements.

Licensee shall, at all times during the term of this agreement and at its own cost and expense, repair, replace, and maintain in a good, safe, and substantial condition the building and any furniture, fixtures, equipment, appliances, improvements, additions, and alterations to or located in such building, on the described premises, including, but not limited to, utility services, and parking lot, and shall use all reasonable precaution to prevent waste, damage, or injury to the premises, property, fixtures, furnishings, appliances, or equipment. Licensor shall keep the exterior walls and roofs of the demised premises in good repair. With respect to the HVAC systems, Licensee shall be responsible for normal maintenance such as filter replacement, but Licensor shall be responsible for major repairs.

SECTION  
THREE.  
PERIODIC PAYMENTS

Licensee shall pay licensor for this license at the rate of \$1,911.00 per month payable in advance. The first payment shall be made on the date of the beginning of the period specified above. Subsequent payments shall be made in advance promptly on the first day of each month during the continuation of this agreement.

SECTION  
FOUR  
UTILITIES

Licensee shall be responsible for any and all utility charges.

SECTION  
FIVE.  
TERMINATION

Either party may terminate this agreement at any time by giving written notice to the other, specifying the date of termination, such notice to be given not less than fourteen days prior to the date specified in such notice for the date of termination.

SECTION  
SIX.  
SURRENDER OF PREMISES ON TERMINATION

A. Licensee shall quit and surrender peaceably and quietly, to Licensor, its agent or attorney, possession of the Premises at the expiration or other termination of this License Agreement, in good order and condition, except for ordinary wear and tear, and free of all of Licensee's personal property. If upon termination of this Agreement or abandonment of the Premises by Licensee, Licensee abandons or leaves any personal property or equipment at the Premises, such equipment or property shall be conclusively deemed abandoned, and Licensor shall have the right, without notice to Licensee, to store or otherwise dispose of the property or equipment at Licensee's sole cost, expense and risk, without being liable in any respect to Licensee.

B. On any termination of this agreement, Licensee, shall quit the above-described property, and shall remove from such property all property installed in, on, or attached to the above-described property. Licensee shall surrender the above-described property to Licensor upon the expiration or termination of this license free of debris, waste, or hazardous materials placed on or about the property by Licensee or its agents, employees, contractors, or invitees, and in a condition which complies with all environmental laws.

C. Any termination of this agreement, howsoever caused, shall be entirely without prejudice to the rights of licensor that have accrued under this agreement prior to the date of such termination.

SECTION  
SEVEN.  
NO WARRANTIES

Licensor does not, in any way, represent or warrant the fitness of the Premises for the use contemplated by Licensee. Licensee acknowledges that it has inspected the Premises and accepts the same in their present condition "as is."

SECTION  
EIGHT.  
REPAIRS

Licensor shall not be required to render any services to Licensee or to make any repairs or replacements to the Premises.

SECTION  
NINE.  
INDEMNIFICATION

Licensee agrees to defend, indemnify and hold Licensor and Landlord, their respective affiliates, officers, directors, employees and agents harmless from and against any and all losses, claims, demands, suits, actions, judgments, fines or payments for, or in connection with, any accident, injury or damage whatsoever caused to any person or property arising, directly or indirectly, out of Licensee's use of the Premises. Licensee's obligations under this paragraph shall survive expiration or termination of this License Agreement. Licensor shall have no responsibility whatsoever for any damage, vandalism or theft of Licensee's property.

SECTION  
TEN.  
INSURANCE

Licensee shall, during the full term of this lease agreement, at the expense of licensee: (1) insure the fixtures and equipment belonging to licensee against loss or damage by fire; (2) carry public liability insurance providing for a minimum of \$1,000,000.00 per person, \$2,000,000.00 per occurrence and/or accident, \$2,000,000.00 aggregate, and \$1,000,000.00 for property damage; and (3) procure a policy for accident or damages on or to the demised premises, on sidewalks in front of the demised premises, and in entrance ways and other parts of the building under the control or use of licensee, in the amounts set forth in item (2) above.

Licensee shall also provide insurance against loss or damage to all window glass in the premises, including glass in the entrances. City will accept from licensee, in lieu of plate glass insurance, the written guaranty of licensee that licensee will replace, at the expense of licensee, all broken and damaged glass on the demised premises.

During any construction or equipping of the demised premises by licensee, licensee shall, at the expense of licensee, carry the types and amounts of insurance that City may request to insure City against loss or damage by reason of accident, fire, damage, or other casualty during any construction.

Licensee shall procure, pay for, and deliver to City the policies of insurance covering the risks described in the preceding paragraphs. All insurance companies issuing such policies shall have what is commonly known as an "A" rating with A.M. Best Company and shall insure City. Certificates of insurance shall be delivered to City before the effective date of this agreement, and new policies shall be delivered fourteen (14) days before the old policies expire. If licensee fails to deliver the policies in the manner stated to City, City may, after ten (10) days' notice to licensee, obtain the required policies and charge their costs to licensee, to be paid by licensee on the first day of the month following the date on which City obtains the policies and sends notice to licensee demanding payment. If the policy or policies of insurance is/are a "claims made" policy, it/they shall be maintained for two (2) years following termination of this agreement.

All such insurance policies shall be first payable in case of loss by means of a standard noncontributory clause, shall be written by such companies, on such terms, in such form and for such periods and amounts as the City shall from time to time designate or approve, shall be primary and without right of contribution from other insurance which may be available, shall waive any right of setoff, counterclaim, subrogation, or any deduction in respect of any liability of the licensee or City, shall provide that with respect to the City, the insurance shall not be invalidated by any action or inaction by the licensee, including but not limited to any representations made by the licensee in the procurement of such insurance, and shall provide that they shall not be cancelled or amended without at least [30] days' prior written notice to the City. The licensee grants the City full power and authority as attorney irrevocable of the licensee to cancel or transfer such insurance, to collect and endorse any checks issued in the name of the licensee and to retain any premium and to apply the same to the obligations promised by this agreement.

SECTION  
ELEVEN.  
NO WAIVER

No waiver, modification, change or alteration of the provisions of this License Agreement, or any of the rights or remedies of either of the parties to this Agreement, shall be valid unless such waiver, modification, change or alteration is in writing and signed by the party against whom enforcement is sought.

SECTION  
TWELVE.  
NOT A LEASE

Licensor and Licensee agree that this License Agreement is only a license and shall not be construed as a lease, or confer any rights of a lease. Licensee shall not record this License Agreement or any notice or memorandum of this Agreement.

SECTION  
THIRTEEN.  
NOTICES

Any notice provided for or concerning this agreement shall be in writing and shall be deemed sufficiently given when sent by certified or registered mail if sent to the respective address of each party as set forth at the beginning of this agreement.

SECTION  
FOURTEEN.  
GENERAL PROVISIONS

- A. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the Licensor or Licensee of the breach of any covenant of this agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this contract.
- B. Attorneys' Fees. In the event any party finds it necessary to bring any action at law or other proceeding, including arbitration, against the another party to enforce any of the terms, covenants or conditions hereof, or by reason of any breach or default hereunder, the party prevailing in any such action or other proceeding shall be paid all reasonable costs and reasonable attorneys' fees by the other party, and in the event any judgment is secured by said prevailing party, all such costs and attorneys' fees shall be included therein, such fees to be set by the court and not by jury.
- C. Counterparts. This agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signature of all parties may be physically attached to a single document.

D. Headings. The descriptive headings of the paragraphs of this agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

E. Further Acts. Each of the parties hereto shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this contract.

F. Time of the Essence. Time is of the essence of this contract.

G. No Partnership and Third Parties. It is not intended by this agreement to, and nothing contained in this agreement shall, create any partnership, joint venture or other similar arrangement between Licensor and Licensee. No term or provision of this agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

H. Entire Agreement. This agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are hereby superseded and merged herein.

I. Amendment. No change or additions are to be made to this agreement except by a written amendment executed by the parties hereto.

J. Governing Law. This agreement is entered into in Arizona and shall be construed and interpreted under the laws of the State of Arizona. In particular, this agreement is subject to the provisions of A.R.S. § 38-511.

K. Reformation. Should any term, provision, covenant or condition of this agreement be held to be void or invalid, the parties shall reform this agreement to conform as closely as possible to the original intent thereof.

L. Venue. Any legal action relating to this agreement shall be brought in either the Yuma County Superior Court or in the United States District Court for the district of Arizona at the election of the plaintiff in such legal action, provided, however, that nothing in this paragraph will be deemed to have authorized the bringing of any legal action in a court which does not otherwise have jurisdiction to adjudicate the legal action.

M. Severability. Every provision of this agreement is, and will be construed to be, a separate and independent covenant. If any provision of this agreement or the application of the same is, to any extent, found to be invalid or unenforceable, then the remainder of this agreement or the application of that provision to circumstances other than those to which it is invalid or unenforceable, will not be affected by that invalidity or unenforceability, and each provision of this agreement will be valid and will be enforced to the extent permitted by the law, and

the parties will negotiate in good faith for such amendments of this agreement which may be necessary to achieve its intent, notwithstanding such invalidity or unenforceability.

N. No Personal Liability. No member, official or employee of the City shall be personally liable to Licensee, or any successor or assignee, (a) in the event of any default or breach by the Licensor, (b) for any amount which may become due to the Licensee or its successor or assign, or (c) pursuant to any obligation of the Licensor under the terms of this contract.

O. Employment Eligibility. Licensee hereby warrants, and shall require its subcontractors to warrant, that it is in compliance with all federal immigration laws and regulations that relate to its employees and with A.R.S. §23-214 relating to verification of employment eligibility. A breach of this warranty shall be deemed a material breach of the agreement and is subject to penalties up to and including termination of this agreement. Licensor retains the legal right to inspect the papers of Licensee and any contractor or subcontractor employee of Licensee to ensure that Licensee and any of its contractors or subcontractors are compliant with this warranty.

P. Sudan/Iran Investments and Business Operations. By entering into this agreement, Licensee certifies that it does not have scrutinized business operations in Iran or Sudan as those terms are defined in A.R.S. §35-391 et seq. and §35-393 et seq.

Q. Compliance with Law. Licensee agrees that in the distribution of food it will comply with all federal, state, and local statutes, laws, ordinances, rules and regulations, including, but not limited to, all rules and regulations of the Yuma County Health Department regarding the preparation and distribution of food.

R. Assignment. The rights of each party under this agreement are personal to that party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other party.

**IN WITNESS WHEREOF**, we have hereunto set our hands and seals on the date and year first above written.

Each party to this agreement has caused it to be executed on the date pursuant to the verifications below.

**Portable Practical Educational  
Preparation, Inc.**

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

Licensee

**City of San Luis**

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

City Manager  
Licensor

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

State of Arizona        )  
                                  ) ss.  
County of Yuma         )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by Ralph Velez, City Manager of the City of San Luis, Arizona, a municipal corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

State of Arizona        )  
                                  ) ss.  
County of Yuma         )

The foregoing instrument was acknowledged before me this 8 day of FEBRUARY, 2010 by John David Arnold, authorized representative of the Portable Practical Educational Preparation, Inc, a nonprofit corporation.

*Connie Martinez*  
\_\_\_\_\_  
Notary Public

My Commission Expires: Oct 24, 2011

