



RECREATION INSTRUCTOR AGREEMENT

Class

This Agreement is entered into this **day** day of **month**, **year** (“Effective Date”) by and between the **City of Richland** (“**City**”), a Washington municipal corporation located at 625 Swift Blvd. Richland, WA 99352, and **business name** (“**Instructor**”), a **business entity type** with service at **registered address**. **City** and **Instructor** are referred to individually herein as a “Party” and collectively herein as the “Parties.”

P&PF Coordinator: **Name and Contact Info**

WITNESSETH

WHEREAS, the City operates special recreation programs for the purpose of providing recreation and education to the general public; and

WHEREAS, Instructor possesses the expertise and skill-set necessary to lead a special recreation program for the City’s Park & Public Facilities Department; and

WHEREAS, the operation of said program will mutually benefit the Parties hereto and the residents of the City of Richland.

NOW, THEREFORE, in consideration of the covenants herein contained, it is mutually agreed between the Parties as follows:

1. **Recreation Program**

- a. Instructor is hereby authorized to conduct the following special recreation program (the “Program”) for the City’s Parks & Public Facilities Department for the period commencing **date** and terminating on **date**.

Name of Program

- b. Instructor will provide a copy of its City of Richland Business License.
- c. The Program shall be conducted strictly in accordance with this Agreement and the detailed list of expectations and responsibilities set forth in **Exhibit A**.
- d. The instruction of this Program is: Live/In-Person; Virtual over a video conferencing platform.¹ Instructor warrants that the programming will be consistently high quality whether the Program is live or virtual.

¹ During the COVID-19 pandemic, instructors are authorized to provide approved programming from a non-city venue. All non-city venues must be approved in advance by City. Instructor will ensure that the venue is size appropriate, and that the environment viewable by class participants is at all times “family friendly”, meaning that it shall not display profanity, nudity, obscenity, racism/racial slurs, bigotry, hatred, violence, horror, innuendo, blasphemy, taunting, bullying, gang symbolism, or other content that is inappropriate for an all ages event.

- (i) If virtual, the Program will be broadcast: from the Richland Community Center using City's technology; from a non-city venue using borrowed City technology; or from a non-city venue using Instructor's technology.

2. Payment

For services rendered under this Agreement, the City shall pay the Instructor **enter percentage** of the total "resident rate" tuition amount collected by the City from this class. Payment as identified in this section shall be full compensation for all work performed or services rendered, and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in **Exhibit A**. In no event shall registration be closed and sessions for the Program commence until such a time as the minimum number of registrants designated in the Parks & Public Facilities Activity Guide have registered and their fees received by the City.

3. Registration and Collection of Fees

The City assumes sole responsibility for the registration of participants, collection of the City's Authorization, Release and Waiver of Liability and Indemnity, collection of the City's Registration Form and the collection of fees for the Program. The City shall also be responsible for the collection and/or payment of any sales tax or other tax that may be required by federal, state, or local laws.

4. Right to Audit

Instructor shall keep books, records, and accounts of all activities related to this Agreement. Instructor will allow access to the City, State of Washington, Federal Grantor Agency, Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions. Unless otherwise provided, said records must be retained for three (3) years from the date of receipt of final payment. If any litigation, claim, or audit arising out of, in connection with, or relating to this Agreement is initiated before the expiration of the three-year period, the records shall be retained until such litigation, claim, or audit involving the records is completed.

5. Obligations of Instructor

Instructor agrees as follows:

- a. To conduct all sessions for the Program described herein in accordance with the Guidelines.
- b. Unless otherwise provided for herein, to be responsible for all costs and expenses for all materials, technology and labor relating to or arising from performance of the Program. If Instructor borrowed City technology to provide virtual programming from a non-city venue, Instructor shall promptly return the technology in good working order at the conclusion of the class. If Instructor returns damaged equipment, or fails to return the equipment, Instructor agrees to pay City the replacement cost of the equipment upon receipt of an invoice.
- c. To secure and maintain, without cost to the City, all licenses required and to pay when due all taxes and assessments which shall be imposed by any governmental body in connection with the Program described herein, and to otherwise comply with all applicable laws, ordinances, rules, regulations, policies and procedures established by the City of Richland or any other local, state, or federal governmental agency.

- d. In no event shall any person other than Instructor or an authorized agent of Instructor from Instructor's company conduct any session of the Program unless and until specifically authorized by the City.
- e. To maintain good public relations; to conduct the Program in a manner which is courteous and fair to the public; and to be responsive to public requests and complaints.
- f. To cooperate fully with City officials in all matters relating to the Program.
- g. To immediately advise the City of any convictions for felonies, misdemeanors or other violations of law where incarceration (jail or prison) can be imposed as punishment or sanction even though jail or prison time is not imposed. For the purpose of this Agreement, "conviction" includes stipulated orders for continuance, deferred sentences, diversion, or any other form of withholding of adjudication.
- h. Additional responsibilities as outlined in **Exhibit A**.

6. City's Obligations

City agrees as follows:

- a. Unless otherwise set forth, to provide the facilities (the "Facilities") and pay all utility charges required for the Program.
- b. To provide Instructor, on or before the first day of class, with a roster for the Program which will include the participants' names, contact information and payment status.
- c. If the Program is virtual, to provide a Recreation staff member who will host the virtual class by monitoring admittance/attendance and resolving issues to the extent possible.
- d. Additional responsibilities as outlined in **Exhibit A**.

7. Independent Contractor

Instructor, and any and all employees or volunteers of Instructor or other persons engaged in the performance of any work or services required of Instructor under this Agreement, are independent contractors and shall not be considered employees of the City. Any and all claims that arise at any time under any Workers' Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of Instructor's employees or other persons engaged in any of the work or services required to be provided herein, shall be the sole obligation and responsibility of Instructor.

8. National Criminal Background Check & Reference Check

Instructor acknowledges that Instructor has submitted (or will promptly submit) to a national criminal background check and reference check, both administered by the City or a vendor of City's choosing, and has (or will have) a "successful passage" as defined in this section. In addition, Instructor hereby warrants that Instructor has conducted a national criminal background check and reference check for any employee, agent or other person performing services for City on behalf of the Instructor pursuant to this Agreement, and hereby warrants the successful passage of said criminal background check and reference check of the employee, agent or other person. The criminal background and reference checks required hereby shall occur no later than thirty (30) days prior to the first day of the Program. For purposes of this section, "successful passage" means that the national criminal background check revealed no conviction or other adverse disposition for any crime against persons, including but not limited to murder, kidnapping, manslaughter, assault, battery, rape, arson, robbery, burglary, child molestation, indecent liberties, harassment or stalking. In addition, "successful passage" means that the

national criminal background check revealed no findings against Instructor or Instructor's employee, agent or other person performing services on behalf of Instructor in a civil adjudication proceeding as defined in RCW 43.43.830. Further, "successful passage" means the references listed by the Instructor or Instructor's employee, agent or other person were legitimate, and the feedback received was favorable.

9. Music Performance

Instructor shall not use, play or perform copyrighted music without appropriate licensing or other permission. The Instructor is solely responsible for obtaining appropriate licensing or permission to use, play or perform copyrighted music not otherwise covered by City's licensing agreements with ASCAP, BMI and SEASAC. The use or performance of copyrighted music without appropriate licensing or other permission shall constitute a breach of this Agreement. The Instructor agrees to indemnify and hold harmless the City of Richland from damages for unauthorized use or performance of copyrighted music, including the defense of the City in any resulting litigation.

10. Copyright

Instructor hereby grants to the City of Richland a non-exclusive perpetual right to use any and all reports, data, or promotional materials produced, in whole or in part for the benefit and use of the City, under this Agreement which are or shall become subject to copyright by Instructor in the United States or any other country.

11. Availability Of Records For Public Inspection

- a. As a public contract, all records prepared, generated or used by Instructor or its agents, employees and subcontractors relating to this Agreement and associated work (hereinafter "public records") may be subject to disclosure under the Washington State Public Record Act, Chapter 42.56 RCW.
- b. Instructor shall maintain and retain all such public records in a manner that is readily accessible for a minimum term of no less than three (3) years following completion of the Program. City shall have the right to timely review all such public records upon request. Instructor shall provide copies of any public records requested by City within thirty (30) calendar days of City's request. If City requests that copies of public records be provided to City in an electronic format, said records shall be provided at no cost to City. If paper copies are requested by City, City shall pay \$.10 per page. Payment for paper copies shall be rendered to Instructor within twenty (20) calendar days of receipt.
- c. All records subject to a public disclosure request will be provided to a requester unless exempted from disclosure by law. The City's decision to exempt or redact any public record shall be based only upon valid exemptions that apply to the City. City will not refrain from disclosing any record under an exemption that may be personal to Instructor. In the event Instructor objects to release of any public record under this Agreement, Instructor may seek judicial approval to prevent such disclosure at Instructor's sole expense. City shall neither aid nor interfere with Instructor's request for an injunction to prevent disclosure of any public record under this Agreement.
- d. Instructor shall insert this provision in all contracts with subcontractors or agents providing services relating to this Agreement.

12. Dispute Resolution

- a. The City and Instructor agree to negotiate in good faith for a period of thirty (30) days from the date of notice of all disputes between them prior to exercising their rights under this Agreement, or under law.
- b. All disputes between the City and Instructor not resolved by negotiation between the Parties may be arbitrated only by mutual agreement of the City and Instructor. If not mutually agreed to resolve the claim by arbitration, the claim will resolve by legal action.

13. Debarment Certification

Instructor certifies that neither Instructor nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this contract by any federal or state department or agency. Further, Instructor agrees not to enter into any arrangements or contracts related to completion of the work contemplated under this Agreement with any party that is on the "General Service Administration List of Parties Excluded from Federal Procurement or Non-Procurement Programs" which can be found at:

www.sam.gov and
<http://www.lni.wa.gov/TradesLicensing/PrevWage/AwardingAgencies/default.asp>

14. Termination

- a. This Agreement may be terminated by either Party upon thirty (30) days' written notice. In the event this Agreement is terminated by Instructor, the City shall be entitled to reimbursement of costs occasioned by such termination. In the event the City terminates this Agreement, the City shall pay Instructor for the work performed, which shall be an amount equal to the percentage of completion of the work as mutually agreed between the City and Instructor.
- b. If any work covered by this Agreement shall be suspended or abandoned by the City before Instructor has completed the assigned work, Instructor shall be paid an amount equal to the costs incurred up to the date of termination or suspension as mutually agreed upon between the City and Instructor.

15. Venue, Applicable Law and Personal Jurisdiction

In the event that either Party deems it necessary to initiate a legal action to enforce any right or obligation under this Agreement, the Parties agree that any such action shall be initiated in the Superior Court of the State of Washington situated in Benton County. The Parties agree that all questions shall be resolved by application of Washington law, and that the Parties to such action shall have the right of appeal from such decision of the Superior Court in accordance with the laws of the State of Washington. Instructor hereby consents to the personal jurisdiction of the Superior Court of the State of Washington situated in Benton County.

16. Attorney's Fees

The Parties agree that should legal action be necessary to enforce any of the provisions of this Agreement, that the substantially prevailing Party will be awarded its reasonable attorney's fees and costs in action, including costs and attorney's fees on appeal if appeal is taken. This provision shall survive termination of this Agreement.

17. Insurance

Instructor shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damage to property which may arise from or in connection

with the performance of the work hereunder by Instructor, its agents, representatives, or employees. *City may waive any or all of these requirements based on the specific nature of the Program to be provided under this Agreement. Any such waiver must be noted in this Agreement to be valid.*

a. No Limitation. Instructor's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of Instructor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

b. Minimum Scope of Insurance. Instructor shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage.

Automobile Liability Insurance waived by P&PF Director: _____(initials)

2. Commercial General Liability insurance shall be as least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors and personal injury and advertising injury. The City shall be named as an insured under the Instructor's Commercial General Liability insurance policy with respect to the work performed for the City using an additional insured endorsement at least as broad as ISO CG 20 26.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

Workers' Compensation coverage waived by P&PF Director: _____(initials)

4. Professional Liability, Errors or Omissions insurance appropriate to the Instructor's profession. Coverage shall be provided if Instructor is providing services under this Agreement as a licensed professional, including, but not limited to, engineers, architects, accountants, surveyors, and attorneys.

Professional Liability Insurance waived by P&PF Director: _____(initials)

c. Minimum Amounts of Insurance. Instructor shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

2. Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate.

3. Professional Liability insurance shall be written with limits no less than \$2,000,000 per claim and \$2,000,000 policy aggregate limit.

d. Other Insurance Provisions. Instructor's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be

primary insurance with respect to the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of Instructor's insurance and shall not contribute with it.

- e. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.
- f. Verification of Coverage. Instructor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to, the additional insured endorsement, evidencing the insurance requirements of Instructor before commencement of the work.
- g. Notice of Cancellation. Instructor shall provide the City with written notice of any policy cancellation within two (2) business days of Instructor's receipt of such notice.
- h. Failure to Maintain Insurance. Failure on the part of Instructor to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five (5) business days' notice to Instructor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due Instructor from the City.
- i. Public Entity Full Availability of Instructor Limits. If Instructor maintains higher insurance limits than the minimum shown above, the City shall be insured for the full available limits of the Commercial General and Excess or Umbrella liability maintained by Instructor, irrespective of whether such limits maintained by Instructor are greater than those required by this contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by Instructor.

18. Indemnification / Hold Harmless

- a. Instructor shall defend, indemnify, and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the willful or negligent acts, or alleged willful or alleged negligent acts, errors or omissions of the Instructor or the Instructor's employees or agents in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.
- b. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Instructor and the City, its officers, officials, employees, and volunteers, the Instructor's liability, including the duty and cost to defend, shall be only to the extent of the Instructor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Instructor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties. The provisions of this section shall survive the expiration or termination of this Agreement.

19. Emergencies

In the case of a declared state of emergency by the City of Richland or the State of Washington, City retains the right to immediately resume occupation, management, and maintenance of the Facilities, to use the Facilities to meet any emergency needs of the residents of the State of Washington for the duration of the emergency and a reasonable period of time thereafter as deemed necessary by the City in its absolute and sole discretion.

20. Standard of Care

The professional services will be furnished in accordance with the care and skill ordinarily used by members of the same profession practicing under similar conditions at the same time and in the same locality.

21. Successors or Assigns

All of the terms, conditions and provisions hereof shall inure to the benefit of and be binding upon the Parties hereto, and their respective successors and assigns; provided, however, that no assignment of the Agreement shall be made without written consent of the non-assigning Party, which may be given in the non-assigning Party's sole discretion.

22. Notices

Any notices required under this Agreement will be in writing, addressed to the appropriate Party at the address which appears below (as modified in writing from time to time by such party), and given by electronic submission, by facsimile personally, by registered or certified mail, return receipt requested, or by nationally recognized overnight courier service. All notices shall be effective upon the date sent.

Recreation Manager
City of Richland
625 Swift Blvd., MS-13
Richland, WA 99352
Email: jjackson@ci.richland.wa.us
Phone: (509) 942-7501

Contact Name: [Click here to enter text.](#)
Name of Firm: [Click here to enter text.](#)
Address: [Click here to enter text.](#)
Address: [Click here to enter text.](#)
Email: [Click here to enter text.](#)
Phone Number: [Click here to enter text.](#)

23. Equal Opportunity Agreement

Instructor agrees that Instructor will not discriminate against any Program participants for reasons of race, sex, nationality, religious creed, or sexual orientation.

24. Severability

If any provision of this Agreement conflicts with applicable law, or its application is found to be invalid by a court of competent jurisdiction, the remainder of this Agreement shall not be affected, and to this end, the terms of this Agreement are declared to be severable.

25. Amendments

All amendments must be in writing and be approved and signed by both Parties.

26. Change in Law

The Parties hereto agree that in the event legislation is enacted or regulations are promulgated, or a decision of court is rendered, or any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation is published that affects or may affect the legality of this Agreement or any part thereof or that materially and adversely affects the ability of either Party to perform its obligations or receive the benefits intended hereunder ("Adverse Change in Law"), then within fourteen (14) calendar days

following written notice by either Party to the other Party of such adverse change in law, the Parties shall meet to negotiate in good faith an amendment which will carry out the original intention of the Parties to the extent possible. If, despite good faith attempts, the Parties cannot reach agreement upon an amendment within sixty (60) calendar days after commencing negotiation, then this Agreement may be terminated by either Party as of the earlier of: (i) the effective date of the adverse change in law, or (ii) the expiration of a period of sixty (60) days following written notice of termination provided by one Party to the other.

27. Headings

Headings used herein are for convenience only and do not constitute a substantive part of this Agreement.

28. Entire Agreement

This Agreement contains the entire agreement of the Parties hereto and supersedes all previous understandings and agreements, written and oral, with respect to this transaction. Neither Party shall be liable to the other for any representations made by any person regarding the terms of this Agreement, except to the extent that the same are expressed in this Agreement.

29. Authority to Execute

Each person executing this Agreement on behalf of another person, corporation, partnership, company, or other organization or entity represents and warrants that he or she is fully authorized to so execute and deliver this agreement on behalf of the entity or party for which he or she is signing. The parties hereby warrant to each other that each has full power and authority to enter into this agreement and to undertake the actions contemplated herein, and that this agreement is enforceable in accordance with its terms.

30. Counterpart Originals

Execution of this Agreement and any amendment or other document related to this Agreement may be by electronic signature and in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one whole agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

CITY OF RICHLAND

INSTRUCTOR

Joseph J. Schiessl, Director
Parks & Public Facilities

Signature

Printed Name

Approved as to form:

Title (if contracting with an entity)

Heather Kintzley, City Attorney

EXHIBIT A: Detailed List of Expectations and Responsibilities

Program name

This class provides description of class

1. Instructor Responsibilities:

- a. Prior to the start of each scheduled class series, Instructor shall submit to the City for approval a copy of the curriculum, class handouts, and a materials list.
- b. Instructor shall check with City three (3) days prior to start of each class series to ensure minimum enrollment of enter number is met. If minimum enrollment has not been met, class series shall be cancelled with no cost owing to Instructor.
- c. Instructor shall review the class registration roster prior to start of the scheduled class series to ensure those in attendance have formally registered. Participants attending class who do not appear on the roster, if any, shall immediately be directed back to City staff for formal registration.
- d. Instructor shall promptly begin and end the scheduled class series as posted on the recreation section of the Parks & Public Facilities website. In the case of illness or unscheduled absence, Instructor shall notify City prior to the start of class, or as soon as possible. City will determine if a “make-up” class or a refund is appropriate. In the event inclement weather causes class cancellation at City’s direction, City will offer a “make-up” class opportunity. Instructor shall not receive compensation for cancelled class(s), or for participants’ inability to attend any scheduled make-up classes.
- e. Upon completion of the scheduled session of classes, Instructor shall review and sign the invoice for payment as prepared by City. Payment is not made for students who have received a refund.
- f. Instructor shall comply with all Benton-Franklin Health Department rules and regulations. For reference, see <http://www.bfhd.wa.gov/eh/ehfs.php>
- g. Sales of any product, information or equipment by Instructor are not permitted. Instructor shall not solicit participants for economic gain.
- h. Instructor shall not take disciplinary or corrective action of any kind against participants who are uncooperative or disruptive. If an issue arises, Instructor shall immediately contact City staff. For medical emergency, dial 911.

2. City Responsibilities:

- a. Unless otherwise provided herein, City shall provide room and furniture set-up for the scheduled class series.
- b. City shall collect registrations online or in-person and provide Instructor with a class roster prior to the start of the class series.
- c. City shall provide advertising and promotion through flyers, posters, social media, E-Activity Guide and email.
- d. The City shall provide a limited number of class “hand-out” copies not to exceed the number of students registered.
- e. The City shall perform audits and distribute class evaluations.

- f. For in-person or virtual programs held at the Richland Community Center, City shall provide equipment (audio/visual equipment, whiteboard markers, broadcasting technology, etc.) as available, and handouts as described herein. Instructor is responsible for all other supplies for class use, including but not limited to the provision of music if music is a component of the course.
- g. The City shall provide Instructor with a map indicating the location of emergency exits, restrooms, fire extinguishers, first aid supplies and AED.

SAMPLE