

MODEL AGREEMENT FOR SALESFORCE PARK PROGRAMMING

THIS AGREEMENT FOR SALESFORCE PARK PROGRAMMING (“Agreement”) is entered into as of the ____ day of _____, ____ (“Effective Date”), by and between the TRANSBAY JOINT POWERS AUTHORITY (“TJPA”) and _____ (hereinafter, “Contractor”).

- 1) **Services:** TJPA agrees to engage Contractor to perform park programming services (“Services”), which Services are described generally as leading programming/teaching class(es) for the public in the Salesforce Park under the terms and conditions set forth in this Agreement, and which Services are described with more particularity in Attachment A hereto.
- 2) **Term:** The term of the Agreement shall commence on the Effective Date and end on _____, unless extended or terminated as provided herein.
- 3) **Compensation:** TJPA will pay Contractor for satisfactory performance of the Services an amount that will not exceed \$ _____, in accordance with the terms and conditions described in Attachment B hereto.
- 4) **Independent Contractor:** The parties intend that Contractor and any subcontractor, in performing the Services, shall act as an independent contractor and shall have control of their work and the manner in which it is performed. Contractor shall create its own curriculum, provide its own supplies, appropriately staff delivery of the Services, set its own hours and budget, and shall be free to contract to provide similar services for other employers while Contractor is under contract with TJPA. Contractor is not to be considered an agent or employee of TJPA, and is not entitled to participate in any pension plans, bonus, medical benefits, workers compensation, or similar benefits that TJPA may provide for its employees.

Contractor shall superintend, either personally or through a representative, the execution of all Services under this Agreement. If Contractor uses a representative or subcontractor, Contractor agrees that such individual shall be competent and qualified, and shall give their personal attention of the Services hereunder at all times, and shall represent Contractor with full power to act on matters pertaining to this Agreement.

Contractor, as an independent contractor, shall have the authority to control and direct the performance of the Services under this Agreement. However, the Services shall be subject to TJPA’s general right of inspection and supervision to secure the satisfactory completion thereof.

Contractor is solely responsible for compliance with all federal, state, and local laws and regulations relating to businesses, including the payment of employment taxes incurred under this Agreement, and any similar federal or state taxes.

- 5) **Assumption of Risk; Indemnity:** Contractor shall be responsible for performing the Services under this Agreement in a safe, skillful, and workmanlike manner, and shall be liable for their own acts and omissions, as well as those acts and omissions of their employees, subcontractors, and representatives. TJPA shall have no right of control over the manner in which the work is to be done, and shall therefore not be charged with the responsibility of preventing risk to Contractor or their employees, subcontractors, or representatives.

Contractor shall indemnify TJPA, its directors, officers, employees, agents, and member agencies, against any and all liability or loss, and against any and all claims or actions based upon or arising out of injury to or death of persons, or damage to or loss of property, arising out of this Agreement, the performance of the Services under this Agreement, the use of Contractor's equipment in connection with the Services, and/or the acts or omissions of Contractor or their employees, subcontractors, or representatives, except to the extent such loss arises solely from the gross negligence or willful misconduct of TJPA.

Contractor shall furnish all equipment to be used by Contractor or their employees, subcontractors, or representatives in carrying out the terms of this Agreement, and shall be held liable for any personal injury or property damages resulting from the use, misuse, or failure of such equipment. All equipment shall be maintained by Contractor.

If an incident occurs that results in injury to a program participant or damage to or loss of property, Contractor shall make a report to TJPA within 24 hours, and cooperate with TJPA in the investigation of same.

This Section shall survive termination of the Agreement.

- 6) **Insurance:** *[Include the first paragraph if Contractor's program is covered. If it is not, delete the first paragraph. In either case, keep the second paragraph:]*
TJPA maintains an insurance program which provides certain coverage for TJPA in the event of certain third party claim against TJPA related to the Services. TJPA's insurance program provides no coverage or protection for Contractor or their employees, subcontractors, or representatives. Contractor is encouraged to procure insurance coverage for itself and its employees, subcontractors, and representatives. TJPA's election to maintain certain insurance for itself in no way limits Contractor's indemnification obligations under this Agreement.

Contractor shall comply with the insurance requirements in Attachment C.

- 7) **Termination.** TJPA may terminate this Agreement, in its sole and absolute discretion, by delivering to Contractor written notice of termination. Examples of why TJPA may need to terminate include, but are not limited to: (a) Inadequate budget authority; (b) Exposure to liability to others for personal injury or property damage as a result of the program; (c) Health order or regulation making delivery of the programming imprudent; (d) Weather conditions making delivery of the programming impractical; (e) Facility security,

maintenance, or operations activities making delivery of the programming impractical; or
(f) Inadequate attendance.

TJPA may cancel one or more classes/sessions within a program series, in its sole and absolute discretion, by delivering to Contractor notice. In the interest of time, such notice of class/session cancellation may be made telephonically or by electronic mail in lieu of mailed notice. TJPA will work in good faith with Contractor to attempt to reschedule the cancelled class/session, if possible.

- 8) **Compliance with Law and Other TJPA Requirements.** Contractor, on behalf of itself, and its employees, subcontractors, and representatives, declares that they have and will continue through the term of the Agreement to comply with all federal, state, and local laws relating to the Services under this Agreement. Among other things Contractor shall comply with: (a) local, state and federal laws and regulations prohibiting discrimination, including Title VII of the Civil Rights Act of 1964, the California Fair Employment Practices Act, the Americans with Disabilities Act of 1990, and other laws that pertain to fair employment and anti-discrimination practices; (b) City and County of San Francisco laws requiring a business license for certain work completed within the jurisdiction; and (c) labor laws pertaining to prevailing wages, working hours, overtime, payroll records, and other requirements imposed by the Department of Industrial Relations.

Contractor acknowledges that it must comply with any restrictions or requirements set forth in any health order issued by any local, state, or federal authority, particularly in response to the COVID-19 pandemic.

By executing this Agreement, Contractor acknowledges and agrees to adhere to TJPA's Principles and Standards for Public Programming, as described in Attachment D. Additionally, Contractor shall adhere to all TJPA rules, regulations, and directions related to use of TJPA facilities.

- 9) **Assignment; Subcontracting.** This Agreement is personal to Contractor and may not be assigned without the prior written consent of TJPA, which TJPA may grant or withhold in its discretion.

[Include the following if there will be subcontractors; otherwise delete. Contractor should not subcontract any work except as described here.] Contractor is permitted to subcontract portions of the Services to be performed under this Agreement. Contractor shall provide TJPA written notice of the name and contact information for any subcontractor at least 7 days in advance of a scheduled date for such subcontractor to provide Services. Subcontractors shall be solely responsible to Contractor throughout the performance of the Services. Subcontracts shall not relieve Contractor of any obligation to TJPA for the work performed. Contractor is responsible for ensuring subcontractors comply with all provisions of this Agreement.

- 10) **Notice.** Notices under this Agreement shall be provided via US mail, effective on the third calendar day after deposit, as follows: to TJPA at its offices (425 Mission Street,

Suite 250, San Francisco, CA 94105, Attn: Executive Director) and to Contractor at its business address as listed below.

- 11) **Electronic Signature.** Unless otherwise prohibited by law or TJPA policy, the parties agree that an electronic copy of this Agreement, or an electronically signed Agreement, has the same force and legal effect as the Agreement executed with an original ink signature. The term “electronic copy of this Agreement” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of the original signed Agreement in a portable document format. The term “electronically signed Agreement” means the Agreement that is executed by applying an electronic signature using technology approved by the TJPA.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day first mentioned above.

TRANSBAY JOINT POWERS AUTHORITY

Approved as to Form by:

Adam Van de Water, Executive Director

TJPA Legal Counsel

CONTRACTOR

Authorized Signature

Business Address

Printed Name

City, State, Zip Code

Title

Business Phone Number

Contractor Business Name (if applicable)

Tax ID Number: Refer to W9

**Attachment A
Scope of Services**

Program Details:

Contractor agrees to perform programming in the Salesforce Park as follows: _____

Program Start Date: _____ Program End Date: _____

Exception Date(s) (e.g., holidays): _____

Day(s) of the Week: _____

Time: _____AM/PM to _____AM/PM. Contractor shall arrive at least 10 minutes prior to each scheduled class/session start time to ensure timely start to programming.

Location/Meeting Location of Class: _____

Class Size (# of Participants): Minimum: _____ Maximum: _____

Eligible Participants Include Minors (persons under age 18) (Yes or No): _____

Supplies and Equipment Supplied by Contractor: _____

TJPA does not provide storage for Contractor's supplies or equipment.

Set Up Requested of TJPA: _____

Services Expectations:

- Timeliness: Contractor shall arrive at the program site on time, with all necessary supplies or equipment, and prepared to provide instruction.
- Clean Up: Contractor shall be responsible for cleaning up after each class/session, including supplying trash bags as necessary.
- Marketing: TJPA advertises all programming through the Salesforce Transit Center website. TJPA may also advertise programming through social media channels or create additional marketing materials highlighting specific classes or programs. Contractor consents to these marketing efforts by TJPA. Contractor may advertise and market Contractor's program at their own expense; however, Contractor's marketing materials

must be approved by TJPA prior to distribution. Use of TJPA's logo or the Salesforce Park's logo is prohibited, without TJPA's express written consent.

- Photos/Videos: Contractor shall not take photos or videos of participants, without the express written consent of participants, their parent/guardian (for minors), and TJPA.
- Business Uses Prohibited: Contractor shall not use TJPA programs to recruit for their personal business or promote their business during class hours or on TJPA premises, without TJPA's express written consent. Contractor shall not market products that are sold as part of their business. Contractor shall not utilize TJPA class rosters or program participant rolls for their business promotional or marketing purposes. Contractor shall not accept payments of any kind from participants for TJPA programs. Contractor shall not provide private instruction on TJPA premises, without TJPA's express written consent.
- Monitoring and Evaluations: TJPA may observe and monitor Contractor's programming to secure the satisfactory completion thereof. If requested by TJPA, Contractor shall actively solicit feedback from program participants and submit feedback forms to TJPA.

Attachment B Compensation

Amount: TJPA will pay Contractor for satisfactory performance of the Services an amount that will not exceed \$ _____ (“Compensation”), in accordance with the following:

The Compensation includes all costs, expenses, and reimbursements.

Invoices: Contractor must submit invoices and the information required herein in order to receive payment. TJPA will compensate Contractor within ____ days of receipt of invoice.

Invoices are subject to review and audit by TJPA during regular business hours upon 24 hours’ notice. Contractor must maintain complete and accurate records of payrolls, expenditures, disbursements, and other cost items charged to TJPA or establishing the basis for an invoice, for a minimum of 5 years after the date of the final payment.

Program/Class Cancellation: Contractor will only receive compensation for a program/class that is performed. If a program is cancelled before instruction begins, Contractor will not receive compensation for the program. If one or more classes/sessions within a program series are cancelled before that class/session begins, Contractor will only receive compensation for those meetings of the class/session that are performed. In the event Contractor unilaterally cancels performance of a class/session without TJPA written approval, TJPA reserves the right to immediately and without notice cancel the remainder of the program.

[Use this attachment if Contractor IS covered by TJPA's special event insurance policy and delete the following attachment]

**Attachment C
Insurance**

Without in any way limiting Contractor's other indemnification obligations under this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance with coverages at least as broad as the following with insurance companies with a Best's Insurance Rating of A:VII or better, as follows:

Workers' Compensation and Employers Liability Insurance.

If required under California law, Worker's Compensation and Employers' liability insurance, in statutory amounts, with Employers' liability limits not less than \$1,000,000 each accident, injury, or illness. Contractor and any subcontractor hereby agrees to waive subrogation which any insurer of Contractor or subcontractor may acquire from Contractor or subcontractor by virtue of the payment of any loss. Contractor and any subcontractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of TJPA for all work performed by Contractor, and its employees, subcontractors, and representatives.

If Contractor has no employees, it may file an affidavit in the form attached hereto in lieu of providing the insurance specified above.

Automobile Liability Insurance.

Business Automobile Liability Insurance with limits not less than \$1,000,000 per accident for Bodily Injury (including death), Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

If Contractor does not use an automobile in any manner whatsoever to provide the Services, it may file an affidavit in the form attached hereto in lieu of providing the insurance specified above.

[Use this attachment if Contractor is NOT covered by TJPA's special event insurance policy and delete the prior attachment]

**Attachment C
Insurance**

- a. Without in any way limiting Contractor's other indemnification obligations under this Agreement, Contractor and any subcontractor must maintain in force, during the full term of the Agreement, insurance with coverages at least as broad as the following with insurance companies with a Best's Insurance Rating of A:VII or better, as follows:
- (1) Workers' Compensation and Employers Liability Insurance. If required under California law, Worker's Compensation, in statutory amounts, with Employers' liability limits not less than \$1,000,000 each accident, injury, or illness. If Contractor has no employees, it may file an affidavit in the form attached hereto in lieu of providing the insurance specified above.
 - (2) General Liability Insurance. Commercial General Liability Insurance on an occurrence basis, with limits not less than \$1,000,000 each occurrence for Bodily Injury, Property Damage, Contractual Liability, Personal and Advertising Injury, Products and Completed Operations.
 - (3) Automobile Liability Insurance. Business Automobile Liability Insurance with limits not less than \$1,000,000 per accident for Bodily Injury (including death), Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
- b. Commercial General Liability and Business Automobile Liability Insurance policies must provide the following: (1) Name as additional insured TJPA, its member agencies, salesforce.com, and all of the officers, directors, agents, permitted assigns, and employees of each, on the Commercial General Liability policy with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used). (2) That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.
- c. Contractor shall provide thirty (30) days' advance written notice to TJPA of material change in coverages, reduction or nonrenewal of coverages, or cancellation of coverages for any reason.
- d. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement, and

without lapse, for a period of five (5) years beyond the expiration of this Agreement, to the effect that, should occurrences during the agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

- e. Should any of the required insurance be provided under a form of coverage that include a general annual aggregate limit or provides that claims investigation or legal defense costs are included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.
- f. Should any required insurance lapse during the term of this Agreement, requests for payment originating after such lapse shall not be processed until TJPA receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, TJPA may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.
- g. Before commencing any operations under this Agreement, Contractor shall do the following: (a) furnish to TJPA certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A.M. Best A-, VII or higher, that are authorized to do business in the State of California, and that are satisfactory to TJPA, in form evidencing all coverages set forth above, and (b) furnish complete copies of policies promptly upon TJPA request. Failure to maintain insurance shall constitute a material breach of this Agreement.
- h. Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of TJPA for all work performed by Contractor, its employees, agents and subcontractors.

AFFIDAVIT OF NO EMPLOYEES

State of California
City and County of San Francisco

I, the undersigned, declare as follows:

I am an independent contractor. I wish to enter into a services contract with the Transbay Joint Powers Authority. I am fully aware of the provisions of section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage for employees in accordance with the provisions of that Code. I am also aware that I must provide proof of workers' compensation insurance to the Transbay Joint Powers Authority for any and all employees I may have, pursuant to Section 6 of my agreement with the agency.

I hereby certify that I do not have any employees nor will I have any employees working for me or my business during the term of any service contract with the Transbay Joint Powers Authority. I am not required to have Workers' Compensation insurance.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this ____ day of _____, _____, at _____, California.

PRINT NAME

SIGNATURE

COMPANY NAME if Applicable

AFFIDAVIT OF NO AUTOMOBILE OWNERSHIP OR USE TO PROVIDE SERVICES

State of California
City and County of San Francisco

I, the undersigned, declare as follows:

I am an independent contractor. I wish to enter into a services contract with the Transbay Joint Powers Authority. I hereby certify that I do not own or use, and will not own or use during the term of any service contract with the Transbay Joint Powers Authority, any automobile (owned, non-owned, or hired) directly or indirectly to provide the services.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this ____ day of _____, _____, at _____, California.

PRINT NAME

SIGNATURE

COMPANY NAME if Applicable

Attachment D

Principles and Standards for Public Programming

TJPA is committed to fostering a safe, welcoming, and positive environment for the physical, emotional, cultural, educational, and social development of all participants in public programming in the Salesforce Park. It is the individual responsibility of each Contractor and their employees, subcontractors, and representatives to achieve the highest standards of conduct consistent with the following principles and standards:

Competence: Contractors must strive to maintain high standards of excellence in their work. Contractors should not undertake the duties of teaching until they have first obtained the proper training. Contractors should maintain a level of expertise through continued education and experience.

Professional Responsibility: Contractors should uphold professional standards of conduct, clarify their roles and obligations, accept appropriate responsibility for their actions, and adapt their methods to the needs of different students. Contractors must hold, in good standing, any required certifications or licenses required for their work.

Integrity and Dignity: Contractors should always be honest, fair, and respectful of others. Contractors should respect the rights of others' values, opinions, and beliefs, even if they differ from Contractor's own.

Nondiscrimination: Contractors must treat all participants equally, and shall not discriminate against program participants on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height, or Acquired Immune Deficiency Syndrome or Human Immunodeficiency Virus (AIDS/HIV) status, or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

Concern for Others' Welfare: Contractors should consider the welfare and rights of all program participants. Any statement made in the presence of Contractor that is reasonably perceived as threatening should be immediately reported to local law enforcement.

Independent Contractor: Contractors must be honest and transparent in their role as independent contractors providing services to TJPA, and not represent that they are employees of TJPA or speak on behalf of TJPA.

