



Training Services

Aquatic Examiner Service Agreement

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This **Aquatic Examiner Service Agreement** ("Agreement") is made by and between The American National Red Cross ("Red Cross") and **City of North Port, Florida** (the "Customer"), (each a "Party" and together the "Parties"), effective as of the date ratified as set forth below ("Effective Date"), in order for Red Cross to provide services that are included within the service package(s) listed in Appendix B at the locations listed in Appendix C (each a "Service" and together the "Services") by Red Cross certified examiners ("Examiners").

1.0 Red Cross Responsibilities. The Red Cross will:

- 1.1 Provide to the Customer the Service(s) included in Appendix B, which is attached and incorporated into this Agreement, and more fully described in the *Aquatic Examiner Service Client Get Started Guide* and the *Aquatic Examiner Service Get Started Information Presentation*, as amended from time to time, a copy of the most recent version of which has been provided to Customer concurrently with this Agreement, and the provisions of which are incorporated herein by this reference.

2.0 Customer Responsibilities. The Customer will:

- 2.1 Comply with all Customer requirements set forth in the *Aquatic Examiner Service Client Get Started Guide* and the *Aquatic Examiner Service Get Started Information Presentation* including, but not limited to:
 - A. Accepting responsibility for all activities associated with developing and implementing their own operational and emergency procedures.
 - B. Maintaining on a current basis all applicable government permits or licenses to operate each aquatics facility.
 - C. Granting permission for Red Cross access to the location(s) as necessary in order to conduct Services.
 - D. Assuring that, for each selected Service, the relevant Service requirements as outlined in the *Aquatic Examiner Service Client Get Started Guide* and the *Aquatic Examiner Service Get Started Information Presentation* are provided to Customer's staff.
- 2.2 Cooperate with the Red Cross in scheduling Services on dates and at times and locations that are mutually acceptable to both Customer and Red Cross.
- 2.3 Only schedule Services to be conducted, and otherwise perform under this Agreement, within the United States of America and its territories ("U.S."), as the Red Cross is only permitted to deliver services within the U.S.
- 2.4 Confirm Service details with the Red Cross' point of contact no fewer than thirty (30) business days prior to any desired Service date, including the name and telephone number of a Customer point of contact for each Service location.
- 2.5 Identify the number of participants for in-service training sessions ("Training" or "Trainings") at the relevant location(s) on each requested Training date. For each scheduled Service, Customer will receive an email confirmation from Red Cross (each a "Confirmation") confirming the Service details.
 - A. In order to maintain a sufficient Examiner to Training participant ratio, one Examiner will be assigned for every fifteen (15) participants listed on the Confirmation for each Training session. Customer will be charged a Training fee as indicated on Appendix B for each Examiner needed, based on the number of participants for each assigned Examiner as listed below and continuing in multiples of fifteen (15), as applicable:
 - Examiner 1 (8-15 students)
 - Examiner 2 (16-30 students)
 - Examiner 3 (31-45 students)



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Any additional fees are outlined on [Appendix B](#). Customer acknowledges that certain Trainings may require Customer's purchase of additional items, either through the Red Cross or a third-party supplier, the cost of which items is not included under this Agreement. Red Cross will advise Customer in advance if any such items are required for a Training.

- 2.6 Update the number of Training participants, as needed, at least thirty (30) business days before the Training date; provided, however, that if additional Examiners are required due to increased enrollment, Red Cross will schedule one or more additional Trainings if needed to preserve the ceiling, noted in section 2.5 above, on the number of participants for each session.
- 2.7 Comply with, and communicate to Training participants, any requirements for participation which may be communicated by Red Cross to Customer from time to time, including (without limitation) health and safety precautions and active participation and completion requirements.
- 2.8 Provide facilities for each Training having clean, safe and otherwise adequate space and conditions for participation and to practice skills, and adequate training equipment. If the Customer does not have standard training equipment, it will inform the Red Cross point of contact when the Training is scheduled.

3.0 Fees and Invoicing.

- 3.1 Services are included within the service package(s) listed on [Appendix B](#). Fees for Services are set forth in the price list attached to [Appendix B](#). Customer will pay fees that are applicable to each of the Services.
- 3.2 Customer will be invoiced. Invoices will be sent via postal mail, may be issued up to four (4) times per month, and will include all transactions submitted in that billing period. In accordance with the Local Government Prompt Payment Act, Florida Statutes Sections 218.70, *et seq.*, Customer's payments shall be due forty-five (45) days after receipt of invoice. Overdue amounts shall bear interest from thirty (30) days after the due date at the rate of one percent (1.0%) per month on the unpaid balance. Red Cross must invoice Customer for any interest accrued in order to receive the interest payment.
- 3.3 Customer may elect to have invoices delivered electronically to one (1) email address. Customer will provide Red Cross a single valid email address for electronic invoice delivery. Customer will receive a link in the email to a PDF copy of the invoice, which link will expire after thirty (30) days. Customer understands that Customer will not receive an invoice via postal mail after enrollment in electronic invoice delivery.
- 3.4 If Customer desires that invoices issued by Red Cross reflect Customer-issued purchase order numbers, then any such purchase order must be received by Red Cross at least ten (10) business days prior to the scheduling of a Service date; it being understood that under no circumstance will the absence of a customer-issued purchase order number on any invoice excuse Customer's timely payment of that invoice.
- 3.5 To pay an invoice by credit card, or to establish ACH payments, call 888-284-0607. To pay an invoice by check, include the remittance advice showing the Customer account name, number and invoice number and send to:

American Red Cross - Training Services
25688 Network Place
Chicago, IL 60673-1256

- 3.6 If Customer desires that Red Cross use Customer's vendor payment portal, Red Cross will not be obligated to pay Customer or any third party any fee or expense for such use, regardless of any provision to the contrary in such portal's terms of use. Customer will, on demand, promptly reimburse Red Cross for any such fee or expense.
- 3.7 If Customer has account balance or invoice questions or concerns, immediately upon receipt of invoice, Customer may email billing@redcross.org or call 888-284-0607 to report and resolve the inquiry.
- 3.8 Customer warrants that as of the date of this Agreement, it has no overdue balances with the Red Cross.



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4.0 Cancellation and Rescheduling.

A Service may be rescheduled or canceled without charge if Red Cross is notified at least thirty (30) business days in advance of the first day of the scheduled Service. Red Cross is authorized to charge a \$300.00 cancellation fee for each occurrence of the Customer rescheduling or canceling a Service with fewer than thirty (30) business days' notice.

5.0 Examiner Expenses.

If the Red Cross incurs unusual expenses ("Expenses") associated with conducting a Service, the Red Cross may request reimbursement for the Expenses (e.g. Examiner mileage to a remote location or overnight lodging, or accommodations for students with disabilities). The Expenses must have prior written approval from each of the Parties and will be invoiced to Customer.

6.0 Term and Termination.

- 6.1 This Agreement will be effective as of the Effective Date, and ends on the day before the twelve (12) month anniversary thereof, unless earlier terminated as provided below.
- 6.2 Red Cross may immediately terminate this Agreement if Customer breaches this Agreement, and, to the extent such breach is reasonably curable, is unable to cure the breach within ten (10) days of Customer's receipt of notice of the breach.
- 6.3 The Red Cross or the Customer's City Manager or designee may terminate this Agreement with or without cause, in whole or in part, with advance written notice to the other Party of at least thirty (30) days before the effective date of such termination.
- 6.4 Upon termination or expiration of this Agreement, Red Cross will immediately cease delivery of the Services, and the Customer will be responsible for payment for all fees and reimbursable expenses incurred up until such termination or expiration date. Under no circumstances shall the Customer make any payment to the Red Cross for services that have not been performed or that are performed subsequent to the termination date.
- 6.5 Notwithstanding expiration or any termination of this Agreement, the provisions of this Agreement will continue to govern with respect to any amounts payable to Red Cross for Services completed prior to such expiration or termination. The Parties' obligations under section 10, below, will also survive any expiration or termination of this Agreement.

7.0 Force Majeure.

Should performance of any obligation created under this Agreement become illegal or impossible by reason of:

- A. A strike or work stoppage, unless caused by a negligent act or omission of either Party;
- B. An act of God, tornado, hurricane, flood, sinkhole, fire, explosion, landslide, earthquake, epidemic, pandemic, quarantine, pestilence, or extremely abnormal and excessively inclement weather;
- C. An act of a public enemy, act of war, terrorism, effect of nuclear radiation, blockage, insurrection, riot, civil disturbance, state of martial law, or national or international calamity;
- D. A declared emergency of the federal, state, or local government; or
- E. Any other like event that is beyond the reasonable control of the non-performing party;

then the performance of any such obligation is suspended during the period of, and only to the extent of, such prevention or hindrance, provided that:

- F. The non-performing party provides written notice within five (5) days of the event of *force majeure*, describing the event in sufficient detail, including but not limited to: the nature of the occurrence, a good faith estimate of the duration of the delay, proof of how the event has



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precluded the non-performing party from performing, and the means and methods for correcting the delay; and continues to furnish timely reports of all actions required for it to commence or resume performance of its obligations under this Agreement;

- G. The excuse of performance is no greater in scope or duration than required by the event of *force majeure*;
- H. No obligations of either party that arose before the *force majeure* are excused as a result of the event of *force majeure*; and
- I. The non-performing party uses all reasonable diligence to remedy its inability to perform.

Economic hardship of a Party does not constitute an event of *force majeure*. A Party will not be excused from performance due to forces that it could have reasonably prevented, removed, or remediated prior to, during, or immediately after their occurrence.

The non-performing Party's affected obligations under this Agreement will be temporarily suspended during, but not longer than, the continuance of the event of *force majeure* and a reasonable time thereafter as may be required to commence or resume performance of its obligations. Notwithstanding the above, performance shall not be excused under this Section for a period exceeding two (2) months, provided that in extenuating circumstances, the Customer may excuse performance for a longer term.

The term of the Agreement will be extended by a period equal to that during which the non-performing Party's performance is suspended under this Section.

8.0 Notices. Each Party's contact for notices and billing under this Agreement is listed on Appendix A, which is attached and incorporated into this Agreement.

9.0 Use of Names and Marks.

- 9.1 Conditioned upon the full and successful completion of the Service, Red Cross grants Customer, for the term of the Agreement, the limited, non-exclusive, non-transferable and non-assignable license in the U.S. to use the name and logo of the Red Cross in the format provided to the Customer by Red Cross (the "Authorized Mark") solely to acknowledge that the Customer has participated in the Red Cross Aquatic Examiner Service. Such acknowledgment may only state: "Proud participant of the American Red Cross Aquatic Examiner Service." Customer's use of the Authorized Mark shall at all times be consistent with the American Red Cross Brand Standards guidelines available at www.redcross.org/brand, which Red Cross may update from time to time.
- 9.2 Except as expressly provided in this Agreement, neither Party may use the other Party's name(s), logos trademarks or other intellectual property in marketing materials, press releases, presentations, or otherwise without the advance written consent of the other Party, which consent may be granted or withheld in the other Party's sole discretion.
- 9.3 Customer shall not state or imply that that Red Cross sponsors or endorses Customer's business, products or services generally, or that any other training courses and services other than the Services, are owned or endorsed by or otherwise associated or affiliated with Red Cross.
- 9.4 Customer shall not (i) create a compound mark with the Authorized Mark, or (ii) use the Authorized Mark with any other design, slogan, or trademark when such combination would tend to cause confusion as to source or affiliation.
- 9.5 Customer shall not in any instance, use a Greek red cross design in association with its business, goods and/or services.



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10.0 Confidentiality.

10.1 Except as required by Florida's public records law or as otherwise provided herein, each Party will maintain the confidentiality of all provisions of this Agreement or other confidential information, documents and materials received for the purposes of this Agreement.

10.2 IF THE RED CROSS HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE RED CROSS'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CUSTODIAN OF PUBLIC RECORDS, 4970 CITY HALL BOULEVARD, NORTH PORT, FLORIDA 34286, (941) 429-7056 OR HOTLINE (941) 429-7270; E-MAIL: publicrecordsrequest@cityofnorthport.com.

11.0 Indemnity and Hold Harmless

Customer agrees to indemnify, defend, and hold harmless the Red Cross and its directors, officers, agents, volunteers, and employees against any and all claims, demands, damages, lawsuits, penalties, administrative proceedings, judgments, costs or expenses, including attorneys' fees, resulting from, or arising out of the acts or omissions of either Party in connection with the Customer, its operations, or performance or breach of this Agreement. The foregoing notwithstanding, Customer shall have no obligation to indemnify or hold harmless the Red Cross, its directors, officers, agents, volunteers and employees if it has been determined by the final order of a court of competent jurisdiction that a proportion of the liability thereof was caused by the willful misconduct or negligent activity of the Red Cross, its directors, officers, employees, volunteers or agents, in which case, the Red Cross shall be responsible solely for its proportionate share of the liability. This clause survives termination of this Agreement. NOTHING IN THIS AGREEMENT SHALL BE DEEMED TO AFFECT THE RIGHTS, PRIVILEGES, AND IMMUNITIES OF THE CUSTOMER AS SET FORTH IN FLORIDA STATUTES, SECTION 768.28.

12.0 Limitation of Red Cross Liability. Each Party understands and agrees that:

12.1 The Red Cross is not undertaking to approve, certify, or take responsibility for the safe design, operation, or function of the Customer or its equipment, nor is it undertaking to identify all risks, errors, gaps, defects or omissions of the Customer. The Customer's participation in the Aquatic Examiner Service does not guarantee that (i) the Customer will be accident free; (ii) the operations of the Customer are safe, or (iii) the Customer is in compliance with any laws, codes, or ordinances. The Red Cross is not responsible for the acts or omissions of the Customer, its agents, contractors, or employees. The Red Cross's provision of Aquatic Examiner Service shall not constitute an undertaking on behalf or for the benefit of Customer users or others not a party to this Agreement.

12.2 The Red Cross is not responsible for the activities or operations of the Customer. The Red Cross has no authority, obligation, or ability to make changes to the Customer or its operations or implement suggestions for improvement.

12.3 The assessments and evaluations that the Red Cross provides to the Customer are based solely on observations made on the dates of the visits. It is the Customer's sole responsibility to decide whether or not to implement any suggestions made by the Red Cross in the context of Aquatic Examiner Service.

13.0 Limitation of Warranties and Damages.

With respect to the Red Cross, the foregoing is in lieu of all other warranties of merchantability and fitness for a particular purpose. The Red Cross will not be liable for special, indirect, or consequential damages, including lost income or profits, even if the Red Cross has been advised of the possibility of such damages.



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14.0 Miscellaneous.

- 14.1 Severability. In the event any provision of this Agreement is held invalid, illegal, or unenforceable (any such provision, an "Invalid Provision") in any jurisdiction, the Red Cross and the Customer will promptly negotiate in good faith a lawful, valid, and enforceable provision that is as similar in terms to such Invalid Provision as may be possible while giving effect to the future benefits and burdens accruing to the Parties hereunder. But, in no way will the Invalid Provision affect the validity or enforceability of any other portion or provision of this Agreement, regardless of the ability of the Parties to negotiate a new provision. One or more waivers by either Party of any breach of any provision, term, condition or covenant shall not be construed as a waiver of a subsequent breach by the other Party.
- 14.2 Independent Contractors. Each Party is an independent contractor with respect to the other, and nothing herein shall create any association, partnership, franchise, or joint venture between the Parties or an employer-employee relationship. No agent, employee or servant of any Party will be, or will be deemed to be, the employee, agent or servant of the other Party, and each Party will be solely and entirely responsible for its acts and the acts of its agents, employees and servants.
- 14.3 Assignment. Neither Party's rights under this Agreement may be assigned, or its obligations delegated, in whole or in part without the prior written consent of the other Party; provided, however, that Red Cross's use from time to time of Instructors who are volunteers or employees of third parties to furnish Course instruction under this Agreement does not constitute a delegation of Red Cross's obligations under this Agreement and will not require Customer's advance consent. Any attempted assignment or delegation in violation of the foregoing will be null and void.
- 14.4 Governing Law. The laws of the State of Florida govern the rights, obligations, and remedies of the Parties under this Agreement. The exclusive venues for any legal or judicial proceedings in connection with the enforcement or interpretation of this Agreement are the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida and the United States District Court for the Middle District of Florida.
- 14.5 Authority to Execute Agreement. The signature by any person to this Agreement shall be deemed a personal warranty that the person has the full power and authority to bind any corporation, partnership, or any other business or governmental entity for which the person purports to act hereunder.
- 14.6 Binding Effect/Counterparts. By the signatures affixed hereto, the Parties intend to be bound by the terms and conditions hereof. This Agreement is binding upon and shall inure to the benefit of the Parties and their respective heirs, executors, administrators, successors and assigns. It may be signed in counterparts.
- 14.7 No Agency. Nothing contained herein shall be deemed or construed as creating the relationship of principal and agent, or of partnership or joint venture, between the Parties, it being understood and agreed that no provision contained herein, or any acts of the Parties shall be deemed to create any relationship between them other than that as detailed herein.
- 14.8 Headings. The descriptive titles appearing in each respective paragraph thereof are for convenience only and are not a part of this Agreement and do not affect its construction.
- 14.9 Non-Discrimination. The City of North Port, Florida does not discriminate on the basis of race, color, national origin, sex, age, disability, family or religious status in administration of its programs, activities, or services. The Red Cross shall not administer this Agreement in an unlawfully discriminatory manner, nor deny participation in or the benefits of same to any individual based on that individual's race, color, national origin, sex, age, disability, family or religious status, marital status, sexual orientation, gender identity or expression, or physical characteristic.

15.0 Entire Agreement and Modifications.

This Agreement incorporates and includes all prior negotiations, correspondence, agreements, or understandings between the Parties, and the Parties agree that there are no commitments, agreements, or



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understandings concerning the subject matter of this Agreement that are not contained in this document. This Agreement supersedes all prior agreements, understandings and representations, both written and oral, between the Parties with respect to the subject matter of this Agreement. Amendments, addenda and waivers to this Agreement will be effective only if made, in each case, by a non-preprinted document clearly understood by both Parties to be an amendment, addendum or waiver, as the case may be. Any additional or different terms or conditions contained in any purchase order, confirmation, receipt, invoice, click-through agreement, or similar documents will not be binding on either Party, whether or not such terms and conditions would materially alter this Agreement (and even if the receiving Party has signed or otherwise acknowledged such purchase order, confirmation, receipt, invoice, click-through agreement, or similar document), and each Party hereby rejects all such additional or different terms and conditions.

The Parties, acting through their duly authorized officers, have executed this Agreement, which will come into force as of the Effective Date.

The American National Red Cross

DocuSigned by:
Patrick Beason
Name: Patrick Beason
Title: Territory Aquatics Specialist
Date: 11/30/2020

Approved by the City Commission of the City of North Port, Florida on _____, 2021.

City of North Port, Florida

Jason Yarborough, Interim City Manager

ATTEST

Heather Taylor, CMC
City Clerk

APPROVED AS TO FORM AND CORRECTNESS

Amber L. Slayton
City Attorney

**Appendix A – Contact Information****Customer Information**Customer: **City of North Port, Florida**Customer Address: **4970 City Hall Blvd
North Port, FL 34286
US**

Customer Fax:

Customer Account Number: **CITYOFNPORQAQ**Customer Contact: **Patricia Sturgess**Customer Contact Email: **psturgess@cityofnorthport.com**Customer Contact Phone: **(941) 661-8905** Extension:*(NOTE: All Billing Contact information MUST be completed for a specific individual; not a system/generic email)*Billing Contact Name: **Patricia Sturgess**Billing Contact Phone: **(941) 661-8905** Extension:Billing Contact Email: **psturgess@cityofnorthport.com**Customer Billing Address: **4970 City Hall Blvd
North Port, FL 34286
US**

Customer DUNS Number:

Email for Invoice Delivery (if electing electronic invoice delivery):

Notices to be delivered to Customer Contact, above.

Red Cross Strategic Account ExecutiveName: **Patrick Beason**Phone: **954-245-2469**

Extension:

Email: **patrick.beason@redcross.org**

Notices to be delivered to your Red Cross Strategic Account Executive with a copy to The American National Red Cross, Office of the General Counsel at 431 18TH Street NW, Washington, DC 20006.