

Client Status Notification

Jeff Ellis & Associates, Inc.
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 business@jellis.com



Date: November 4, 2013

Client Name: PDRMA - Wheaton Park District

Client Address: 1777 Blanchard Rd., Wheaton, IL, 60189

From: Richard A. Carroll Sr. VP/COO

Subject: 2014 Comprehensive Program Options

I am pleased to invite your company/agency/organization to participate in the Ellis & Associates, Inc. Comprehensive Aquatic Risk Management Program. This document is included by reference to the Client Agreement by and between Client and Jeff Ellis Associates, Inc.

This form outlines Client Options for Comprehensive Program participation. If you choose the Traditional Option your pricing structure will not change. If you would like to accept the Flat Fee Service Plan options please check the box next to that option.

<input checked="" type="checkbox"/> Option 1: Traditional Price Structure (please check to select)	
Client Retainer Fee: PDRMA	Consulting Fee: \$175.00 per hour
# of Audits per Year: 3	Audit Fee: \$850.00
Lifeguard License Fees 2014 (unless otherwise stated otherwise by signed contract or service proposal) Shallow Water- \$85.00 Pool- \$85.00 Special Facilities-\$85.00 Renewal- \$70.00	
TERMS: All invoices will carry a Net 30 term from time of order or invoice for all orders including Licenses, Audit fee and Retainer fee. Finance Charges pursuant to consulting agreement apply. Failed Audit Follow-Up: \$1,500.00 each	

<input checked="" type="checkbox"/> Option 2: Flat Fee Service Plan (please check to select)	
# of Monthly Payments: 8	Monthly Payment: \$1,275.00
Total Payment Amount: \$10,200.00	Lump Sum payment less 2% NET 10 days
Flat Fee Service Plan includes: Annual Retainer Fee, Audit fees, Unlimited use of Lifeguard Licenses (calendar year), \$50 ILTP Kit price. E&A owns the license inventory.	
Flat Fee Service Plan does not include Failed Audit Follow up, Lifeguard Instructor Tuition, Lifeguard textbooks/online codes or IASS tuition. Shipping and handling charges apply to all shipped orders.	
TERMS: Finance charges pursuant to Consulting Agreement. Additional Standard Administrative Fee for late payments of \$100 per invoice/per month. Failed Audit Follow-Up: \$1,500.00 each	

Term of Agreement: January 1, 2014 through December 31, 2014

If you agree with the terms, please print your name, sign your name and enter your title below and return along with the executed E&A Standard Agreement. Your signature acknowledges acceptance of the additional payment terms noted above and those specified in the Consulting agreement.

Print Name:	Michael J. Berard
Sign Name:	<i>Michael J. Berard</i>
Title:	Executive Director

**CONSULTING AGREEMENT FOR PROFESSIONAL AQUATIC SAFETY
AND RISK MANAGEMENT SERVICES**

THIS CONSULTING AGREEMENT FOR PROFESSIONAL AQUATIC SAFETY AND RISK MANAGEMENT SERVICES ("Agreement") made and entered into as of the day and year last written herein below, by and between the client named in the Client Status Notification, located at the address stated on the Client Status Notification ("Client"), and JEFF ELLIS & ASSOCIATES, INC., a Texas corporation, with corporate offices located at 3506 Spruce Park Circle, Kingwood, Harris County, Texas 77345-3033 ("Consultant").

RECITALS:

- A. Client owns and operates facilities that provide, amongst other things, aquatic activities.
- B. Consultant is in the business of providing a Lifeguard Training Program, Comprehensive Aquatic Safety Program and Services related to aquatic activities.
- C. Client desires Consultant to provide the aforementioned services to Client.

NOW, THEREFORE, for and in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, each intending to be legally bound, do hereby represent, warrant, covenant and agree as follows:

1. **RECITALS:** The foregoing recitals and Client Status Notification are reaffirmed and made an integral part of this Agreement.

2. **CONSULTANT SERVICES:** The following services shall be performed by Consultant:

(A) **INTERNATIONAL LIFEGUARD TRAINING PROGRAM™.** Consultant shall provide authorization to Client for purposes of training lifeguards in the International Lifeguard Training Program™ on an "as needed" basis which shall include the following:

- (i) Aquatic rescue technology;
- (ii) Guest in Distress identification training;
- (iii) Spinal injury management and extrication training for aquatic environments;
- (iv) Prevention/Scanning technology training;
- (v) Professional Lifeguard Development training;
- (vi) Intentionally blank;
- (vii) Consultant/Nationally Recognized Healthcare Provider CPR Training;
- (viii) Consultant/Nationally Recognized Lifeguard First Aid Training; and
- (ix) ILTP™ lifeguard licensing to be provided upon successful completion of training course for lifeguards employed

at Client's facility.

(B) **INTERNATIONAL LIFEGUARD TRAINING PROGRAM™ INSTRUCTOR.** Consultant shall provide Instructor level training programs for the International Lifeguard Instructor Training Program™ on an "as needed" basis for Client's employees, which shall include the following:

- (i) Teaching methodology which includes communication and presentation techniques;
- (ii) Rescue skills enhancement training to develop "Instructor level" quality for ILTP™ course demonstrations;
- (iii) ILTP™ course philosophy;
- (iv) Course management and administrative procedures; and
- (v) Testing and evaluation procedures.

(C) **CONSULTANT AQUATIC SAFETY OPERATIONAL AUDITS.** Consultant shall perform its aquatic safety operational audits regarding each of the aquatic facilities operated by Client. Each year Consultant shall perform the number of audits stated in the Client Status Notification for the fees specified in the Client Status Notification. These audits shall include videotape and written documentation in support of evaluations rendered to Client regarding aquatic risk management issues. In the case of any failed audit, E&A shall meet in person with the Client's aquatic supervisory staff to discuss the reason(s) for the failed audit and any recommendations to correct the failure, and the Client shall provide written confirmation to E&A that (i) E&A has discussed the failed audit and its recommendations with the Client; and (ii) the Client hereby designates PDRMA as its sole agent and custodian for receiving all written and video records regarding all such failed audits. In addition, any failed audit video support documentation and written documentation will be forwarded solely to PDRMA's Director of Claims and Legal Services, Edward F. Dutton, Esq. edutton@pdrma.org within 3 days for the written report and 10 days for the video following the completion of the on-site audit, for the purpose of allowing additional follow-up by PDRMA with the Client regarding the failed audit and any risk management recommendations. Passing audits shall be delivered to Client and failed audits shall be delivered to Park District Risk Management Agency's (PDRMA's) Director of Claims and Legal Services upon completion of the grading process.

(D) **ACCIDENT INVESTIGATION AND LITIGATION SUPPORT.** In the event of the occurrence of a fatal or catastrophic accident or any other legal proceeding regarding aquatic safety issues involving Client, Consultant shall make its records and documentation of the safety and training standards available to PDRMA. Said records transmitted by Consultant to PDRMA shall be privileged from disclosure to any person or entity other than PDRMA. Consultant shall provide litigation support, if requested by PDRMA, to Client and PDRMA. The fees and expenses for such litigation support shall be as set forth in the Agreement for Professional Services between PDRMA and Consultant.

(E) **CONSULTANT'S INSURANCE.** Consultant 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 Consultant, its agents, representatives, employees or subcontractors.

Consultant shall also procure and maintain in force at all times during the terms of this Agreement and shall provide a Certificate of Insurance evidencing professional liability insurance in the amount not less than \$2,000,000 per occurrence which shall provide coverage for any damages or losses suffered by the Client as a result of any error or omission or neglect by Consultant which arises out of the professional services required by this Agreement.

Consultant shall procure and maintain in force at all times during the term of this Agreement workers' compensation and employers' liability insurance. The commercial umbrella and/or employers' liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

3. **CLIENT'S RESPONSIBILITIES:** Client's duties and responsibilities under this Agreement are as follows:

(A) Exercise commercially reasonable efforts in good faith to adhere to and comply with the International Lifeguard Training Program™ standard of care for lifeguarding, CPR, safety and emergency procedures;

(B) Exercise commercially reasonable efforts in good faith to adhere to and comply with the aquatic risk management guidelines provided in the Comprehensive Aquatic Risk Management Handbook to Client for the protection of Client's guests;

(C) Exercise commercially reasonable efforts in good faith to implement auditor recommendations in accordance with the aquatic risk management protocols provided by Consultant;

(D) Make available all emergency action plans and staff certification and training records to Consultant's auditors within ten (10) days of Client's receipt of a written request for same from Consultant or at time of the audit;

(E) Exercise commercially reasonable efforts in good faith to adhere to and comply with all aspects of the Comprehensive Aquatic

Risk Management Program Handbook ("the Handbook") provided by Consultant. Client must submit, in writing, any planned variance request to Consultant to be exempt from any requirements set forth in the Handbook;

(F) Intentionally blank;

(G) Consultant's Fees. Client shall pay Consultant the fees set forth in the Client Status Notification in addition to the out-of-pocket costs and expenses stated in this Agreement. Client shall pay the Audit Fees, Facility Inspection Fee, all remaining billed hourly fees, lifeguard/lifeguard instructor fees, other fees and/or costs and expenses on a NET 30 basis from date of invoice in accordance with the business practices of Consultant. All amounts owed and unpaid shall bear interest at the rate of one and one-half percent (1½%) per month (eighteen percent (18%) per annum) until paid in full.

4. **TERM:** The Term of this Agreement shall be as stated in the Client Status Notification.

5. **DEFAULT AND TERMINATION:**

(A) Events of Default. Each of the following shall be an event of default ("Event of Default") under this Agreement for which the defaulting party shall be liable to the non-defaulting party for damages directly arising out of the default. In no circumstance, however, shall the defaulting party be liable for consequential or incidental damages of any kind whatsoever:

(i) if Client fails to make any payment due under this Agreement within thirty (30) days from the date said payment is due;

(ii) if either party shall default in the substantial performance of any term, covenant or condition of this Agreement (other than those relating to the payment of monies by Client) and the defaulting party fails to remedy such default within twenty-one (21) days after receipt of written notice from the non-defaulting party of such default, or if such default is of such nature that it cannot be reasonably remedied within said twenty-one (21) days (but is otherwise susceptible to cure), the defaulting party shall within said twenty-one (21) days advise the non-defaulting party of its intention to institute all steps necessary to remedy such default and thereafter diligently pursue to completion all such steps necessary to remedy such default;

(iii) to the extent permitted by law, if either party admits, in writing, that it is generally unable to pay its debts as such become due;

(iv) to the extent permitted by law, if either party makes an assignment for the benefit of creditors; or

(v) to the extent permitted by law, if either party files a voluntary petition in bankruptcy, voluntarily or involuntarily goes into a liquidation, or a receiver is appointed with respect to substantially all of its assets, and the foregoing are not stayed or dismissed within one hundred and fifty (150) days after such filing or other action.

(B) NOTICE OF EVENT OF DEFAULT. The foregoing events of default shall not become effective and actionable (i.e., become an "Event of Default") until the non-defaulting party first sends written notice of same with sufficient detail regarding the nature of the default to the defaulting party and the defaulting party fails to cure said default within twenty-one (21) days from its receipt of said notice subject to the provisions of subparagraph 5(A)(ii) herein.

(C) Ownership of Documents. Subject to Consultant's professional work record retention policy, all documents and data produced by Consultant pursuant to the terms of this Agreement shall be the property of PDRMA.

(D) Termination of Agreement. In addition to the Default and Termination provisions set forth above, this Agreement may be terminated by either party, with or without cause, at any time prior to the expiration date specified in the Term section of this Agreement. In such event, all finished and unfinished documents, data, studies, surveys, drawings, maps, models and aquatic safety auditing reports prepared by Consultant under this Agreement shall become PDRMA's property. Consultant shall be entitled to receive equitable compensation for any finished and/or unfinished work and services provided up to the date of termination. Notwithstanding anything to the contrary contained in this Agreement, the parties to this Agreement agree that the ILTP™ Lifeguard Licenses and the Handbook shall remain the property of, and must be returned to, Consultant. However, PDRMA member clients shall be able to convert existing lifeguard licenses into Course Completion cards.

6. **NON-DISCLOSURE OF CONFIDENTIAL INFORMATION:**

(A) CONFIDENTIAL INFORMATION. For purposes of this Agreement, "Confidential Information" shall include all information or material that has or could have commercial value or other utility in the business or prospective business of Client and Consultant. By example and without limitation, Confidential Information includes, but is not limited to, any and all information of the following or similar nature, whether or not reduced to writing: documents, client memos, newsletters, data, studies, surveys, drawings, maps, models, and aquatic safety auditing reports prepared by Consultant under this Agreement, and any other information or procedures that are treated as or designated secret or confidential by Consultant.

(B) EXCLUSIONS. Confidential Information does not include information that Client can demonstrate: (i) is now, or hereafter becomes, through no act or failure to act on the part of Client, generally known to the public; (ii) is rightfully obtained by Client from a third party, without breach of any obligation to Consultant; (iii) is independently developed by Client without use of or reference to the Confidential Information; or (iv) is either permitted or required to be disclosed as set forth below.

(C) CONFIDENTIALITY. Client and Client's representatives shall not disclose any of the Confidential Information in any manner whatsoever, except as provided in paragraphs 6(D) and 6(E) of this Agreement, and shall hold and maintain the Confidential Information in strictest confidence.

(D) PERMITTED DISCLOSURES. Client may disclose Consultant's Confidential Information to Client's responsible representatives and employees with a bona fide need to know such Confidential Information to the extent necessary to perform their employment responsibilities.

(E) REQUIRED DISCLOSURES. Client may disclose Consultant's Confidential Information if and to the extent that such disclosure furthers the Client's legal defense, or is subject to disclosure under either the Illinois Freedom of Information Act, the Illinois Code of Civil Procedure or the Rules of the Illinois Supreme Court (or similar federal statutes and rules), or is required by court order. Where practicable, Client will provide Consultant with notice within 10 days of receipt of request and a reasonable opportunity to review the disclosure before it is made and to interpose its own objection to the disclosure.

(F) USE. Except as provided in paragraphs 6(D) and (E), Client and Client's representatives shall use the Confidential Information solely for the purpose of operating under this Agreement as it applies to the operation of Client's business and shall not in any way use the Confidential Information to the detriment of Consultant. Nothing in this Agreement shall be construed as granting any rights to Client, by license or otherwise, to any of Consultant's Confidential Information.

7. **MISCELLANEOUS:**

(A) GOVERNING LAW AND VENUE. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Illinois, both substantive and remedial, without regard to principles of conflict of laws. The exclusive venue for any litigation arising out of this Agreement shall be Illinois, if in the state court, and the United States District Court, Illinois, if in the federal court.

(B) CAPTIONS AND PARAGRAPHS. Captions and paragraph headings in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement nor the intent of any provision hereof.

(C) ENTIRE AGREEMENT; AMENDMENT; WAIVER. This Agreement and any attachments hereto, if any, contain the entire agreement between the parties. There are no promises, agreements, conditions, undertakings, warranties, or representations, oral or written, express or implied, between the parties other than as herein set forth. No amendment or modification of this Agreement shall be valid unless the same is in writing and signed by the parties hereto. No waiver of any provision of this Agreement shall be effective unless it is in writing, signed by the party against whom it is asserted and any such written waiver shall only be applicable to the specific instance to which it related and shall not be deemed to be a continuing or future waiver.

(D) SEVERABILITY. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting

such provision it would become valid and enforceable, then such provision shall be deemed to be written and enforced as so limited.

(E) INDEPENDENT CONTRACTOR. Consultant, in performing its functions, duties and obligations herein, shall at all times be and act as an independent contractor. Nothing in this Agreement shall be construed as creating a partnership or joint venture between Client and Consultant, or as constituting Consultant as an agent or employee of Client.


(F) NOTICES. All notices, requests, demands, or other communications hereunder shall be in writing and deemed to have been given only if and when hand delivered or sent by nationally recognized overnight courier service (e.g., Federal Express, UPS) to the parties hereto at their respective addresses set forth at the outset of this Agreement or such other address as either party shall designate by notice pursuant to this paragraph. Copies of all notices, requests, demands or other communications hereunder to Consultant shall also be sent to Consultant's counsel: Joel N. Minsker, Esq., Bloom & Minsker, P.L., 1110 Brickell Avenue, Suite 700, Miami, Florida 33131-3107.

(G) CLIENT. The term "Client" shall mean the entity named in this Agreement and shall also include its officers, directors, employees, agents, representatives and the like.

(H) No Duty to Third Party. This Agreement is entered into solely for the benefit of Consultant, Client and, indirectly, PDRMA, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person or entity who is not a party to this Agreement, or to acknowledge, establish or impose any legal duty to any third party.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year last written herein below.

ACLIENT@


a Michael corporation

ACONSULTANT@

JEFF ELLIS & ASSOCIATES, INC.,
a Texas corporation

By: 



By:
RICHARD A. CARROLL, Senior Vice President/COO

Date: November 8, 2013

Date: January 1, 2014