

Jeff Ellis & Associates, Inc.

Business Office: 5979 Vineland Rd. Suite 105, Orlando, FL 32819
Phone: 1-800-742-8720 Facsimile: 407-654-1723 Email: business@jellis.com

Client Status Notification**Date:** 01/29/2019**Client Name:** PDRMA - Wheaton Park District**Client Address:** 1777 Blanchard Rd., Wheaton, IL 60189**From:** Richard A. Carroll Sr. VP/COO**Subject:** 2019 Agreement Fees**Traditional Price Structure:**

The following standard fees apply to the 2019 Consulting Agreement unless separate fees have been established in a custom agreement and/or client schedule. The Client Retainer fee is due (net 30), upon acceptance and execution of the agreement. Lifeguard Training and other course fees will be billed upon completion of classes conducted by the facility as applicable for each successful student. IASS and Instructor course fees are collected at the time of registration.

Client Retainer Fee:**Audit Fee:** \$925.00**Number of Standard Audits per year:** 3**Lifeguard Training Fees 2019:**

- New Lifeguard License Fee: \$105 (includes unlimited access to electronic textbook media)
- Renewal Lifeguard License Fee: \$75 (includes unlimited access to electronic textbook media)

Additional Services:


- Additional Consulting Fee: \$175/hour (for other consulting, litigation support, or accident investigation if requested)
- Non-employee lifeguards and community training: \$55 for new, \$45 for renewals
- Instructor Course Fees: \$425 for new instructors; \$325 for renewal instructors
- IASS registration: \$1,500 per student (multiple student and other discounts may be available)
- Safety & Health Healthcare Provider student: BLS/FA: \$11.00; HCPBLS: \$9.00; FA: \$8.00
- Safety & Health Community Training student: CPR/AED/FA: \$9.00; BBP: \$7.00; CPR/AED: \$8.00
- vanGUARD Aquatics Leadership Training student: Traditional: \$30; Blended: \$35; eLearning: \$50
- Water Slide Dispatch Operator eLearning student: \$30
- Train the Trainer student: \$30
- Any other course or training not listed is offered at standard fees

Invoices:

All invoices provided at net 30 from the time of the order of any products or service provided by Ellis & Associates. All amounts owed and unpaid after 30 days will be assessed a \$100 late fee per invoice per month until paid in full, pursuant to the payment terms associated with all client service agreements. While all course materials are electronically delivered, if an item needs to be shipped, shipping fees will be assessed based upon speed of delivery requested.

Term of Agreement: January 1, 2019 through December 31, 2019

If you agree with the terms, please sign this document below by hand or by electronic signature. Your signature by hand or electronic acknowledges acceptance of the fee terms noted on this document and those specified in the consulting agreement.

| | |
|--------------------|--|
| Print Name: | Michael J. Bernard |
| Sign Name: |  2/1/19 |
| Position: | Exec Dir |

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Subject: 2019 Agreement Fees

**Flat Fee Service Plan:**

The following flat fee service plan is provided in lieu of a traditional fee structure. The flat fee service plan includes: annual client retainer fee; all standard audits; lifeguard licenses and lifeguard related electronic course materials. The flat fee service plan does not include any of the "Additional Services" detailed on this document. Course fees detailed in "Additional Services" will be billed upon completion of classes conducted by the facility as applicable for each successful student. IASS and Instructor course fees are collected at the time of registration. Client may pay the total flat fee at the start of the term or may opt for a divided payment plan for the amount and number of months indicated on this form. The Flat fee is in part determined by quantity of lifeguard licenses used the previous year. If Client changes from the Flat Fee Payment Plan to the Traditional Payment Plan, Client may incur additional License charges to settle the Flat Fee service. License usage in excess of the Flat Fee allowance for the current year (which would be the basis for an increased Flat Fee Plan in the subsequent year) will be invoiced when moving from the Flat Fee Payment Plan to the Traditional Payment Plan.

Total Flat Fee: \$11,010.00

Payment Plan number of months: 8

Monthly Payment: \$1,376.25

Number of Standard Audits per year: 3

Monthly Fee (if paying monthly): \$1,376.25

Additional Services:

- Additional Consulting Fee: \$175/hour (for other consulting, litigation support, or accident investigation if requested)
- Non-employee lifeguards and community training: \$55 for new, \$45 for renewals
- Instructor Course Fees: \$425 for new instructors; \$325 for renewal instructors
- IASS registration: \$1,500 per student (multiple student and other discounts may be available)
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| | |
|--------------------|--|
| Print Name: | |
| Sign Name: | |
| Position: | |

**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/Lifeguard Instructor Training Program and aquatic safety consulting related to aquatic activities.
- C. Client desires Consultant to provide the services to Client, as specifically set forth in this Agreement.

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 at the prices or fees set forth in the Agreement for Professional Services between PDRMA and Consultant, and as provided in the attached Client Status Notification:

(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) Victim identification training;
- (iii) Spinal injury management and extrication training for aquatic environments;
- (iv) Prevention/Scanning technology training;
- (v) Professional Lifeguard Development training;
- (vi) Consultant/Nationally Recognized Healthcare Provider CPR Training;
- (vii) Consultant/Nationally Recognized Lifeguard First Aid Training; and
- (viii) ILTP™ lifeguard credentials 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 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;
- (v) Testing and evaluation procedures; and
- (vi) Aquatic Supervisor/Leadership Training

(C) **AQUATIC SAFETY OPERATIONAL AUDITS.** Consultant shall perform its aquatic safety operational audits regarding 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. There

audits shall include video record 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., within 3 days 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 provided to the Client.

(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 arising 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) ADDITIONAL SERVICES AS REQUESTED. Consultant shall provide additional services as requested by Client for the prices as set forth on the attached Client Status Notification ("Additional Services"). Consultant does not make any recommendation or endorsement as to Client's necessity to request any Additional Service. The providing of any Additional Service to Client shall be at the sole discretion and request of Client. Client shall be solely responsible for the selection(s) and timing of any Additional Services made by Client. Consultant shall provide the Additional Services within a reasonable time following Client's request.

(F) 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) Adhere to and comply with the International Lifeguard Training Program™ standard of care for lifeguarding, CPR, safety and emergency procedures;

(B) 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 after 30 days will be assessed a \$100.00 late fee per invoice per month 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 (the defaulting party shall not be liable for consequential or incidental damages of any kind whatsoever):

- 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; and
 - (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.

(i) In the event this Agreement is terminated by operation of law or otherwise prior to the expiration of its Term (as defined in the Client Status Notification), then, in that event, all finished documents, manuals, 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 such 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 Risk Management Resource Guide 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.

(ii) At the end of the Term of this Agreement, this Agreement shall terminate and all ILTP lifeguard licenses shall become void and any inventory will remain the property of Consultant and shall be immediately returned by Client to Consultant.

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 Consultant and Client. Confidential Information also includes all information of which unauthorized disclosure could be detrimental to the interest of Consultant whether or not such information is identified as Confidential Information by 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: the Risk Management Resource Guide and documents, client memos, newsletters, manuals, financial information, contracts, data, studies, surveys, drawings, maps, models, ILTP™, lifeguard licenses 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 and Client.

(B) EXCLUSIONS. Confidential Information does not include information that Consultant or Client can demonstrate: (i) is now, or hereafter becomes, through no act on the part of Client, generally known to the public; (ii) is rightfully obtained by Consultant or Client from a third party without breach of any obligation to Client or Consultant

respectively, or (iii) is independently developed by Consultant or 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, Consultant and their 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. Consultant and Client hereby agree to indemnify and hold harmless the other party against any and all losses, damages, claims, expenses, and attorney's fees, including those for appeals, incurred or suffered by the other party as a result of a breach of this Agreement by Client, Consultant or their representatives.

(D) PERMITTED DISCLOSURES. Consultant and Client may disclose Confidential Information to 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. Consultant and Client may disclose 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. Client, Consultant and their 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 the other party. Nothing in this Agreement shall be construed as granting any rights to the other party, by license or otherwise, to any of the other party'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 principals 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) 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: Patrick N. Smith, Bush & Ramirez, PLLC, 5615 Kirby Dr., Suite 900, Houston, Texas 77005.

include its officers, directors, employees, agents, representatives and the like.

(G) 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.

8. NO THIRD-PARTY BENEFICIARIES: 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.

9. INDEMNITY:

(A) INDEMNITY BY CLIENT: TO THE FULLEST EXTENT PERMITTED BY LAW AND AS A CONDITION TO CONSULTANT ENTERING INTO THIS AGREEMENT, CLIENT SHALL INDEMNIFY CONSULTANT, ITS SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, AFFILIATES, SUBSIDIARIES, PARTNERS, SERVANTS, AND REPRESENTATIVES, FROM AND AGAINST ALL CLAIMS, INCLUDING CLAIMS FOR PROPERTY DAMAGE, BODILY INJURY OR DEATH, ARISING FROM OR ALLEGED TO ARISE, DIRECTLY OR INDIRECTLY, FROM THE NEGLIGENCE, FAULT, INTENTIONAL ACTS, BREACHES OF CONTRACT OR BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, BY CLIENT OR ITS AGENTS, EMPLOYEES OR ANYONE FOR WHOSE ACTS OR OMISSIONS CLIENT MAY BE LIABLE, BUT ONLY FOR THE PERCENTAGE OF RESPONSIBILITY CLIENT OR ITS AGENTS, EMPLOYEES OR ANYONE FOR WHOSE ACTS OR OMISSIONS CLIENT MAY BE LIABLE CAUSED OR CONTRIBUTED TO CAUSE IN ANY WAY.

(B) INDEMNITY BY CONSULTANT: TO THE FULLEST EXTENT PERMITTED BY LAW AND AS A CONDITION TO CLIENT ENTERING INTO THIS AGREEMENT, CONSULTANT SHALL INDEMNIFY CLIENT, ITS SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, AFFILIATES, SUBSIDIARIES, PARTNERS, SERVANTS, AND REPRESENTATIVES, FROM AND AGAINST ALL CLAIMS, INCLUDING CLAIMS FOR PROPERTY DAMAGE, BODILY INJURY OR DEATH, ARISING FROM OR ALLEGED TO ARISE, DIRECTLY OR INDIRECTLY, FROM THE NEGLIGENCE, FAULT, INTENTIONAL ACTS, BREACHES OF CONTRACT OR BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, BY CONSULTANT OR ITS AGENTS, EMPLOYEES OR ANYONE FOR WHOSE ACTS OR OMISSIONS CONSULTANT MAY BE LIABLE, BUT ONLY FOR THE PERCENTAGE OF RESPONSIBILITY THAT CONSULTANT OR ITS AGENTS, EMPLOYEES OR ANYONE FOR WHOSE ACTS OR OMISSIONS CONSULTANT MAY BE LIABLE CAUSED OR CONTRIBUTED TO CAUSE IN ANY WAY.

10. DISCLAIMER OF WARRANTIES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CONSULTANT PROVIDES ITS SERVICES PURSUANT TO THIS AGREEMENT "AS IS", "WITH ALL FAULTS" AND HEREBY DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS, EITHER EXPRESSED, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY (IF ANY) IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY OR COMPLETENESS OF RESPONSES, OF RESULTS, OF WORKMANLIKE EFFORT, AND LACK OF NEGLIGENCE, ALL WITH REGARD TO ITS SERVICES PURSUANT TO THIS AGREEMENT. "THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE THEREOF."

11. CLIENT AUTHORITY TO ACT: By signing below, Client's representative acknowledges and agrees that he/she has read and fully understood all terms and conditions of this agreement, and that he/she has full legal authority

to act on behalf of and to hereby legally bind the Client to all of the terms and conditions contained herein.

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

CLIENT

Wheaton Park District

a _____ corporation

By: [Signature]

Date: 2/1/18, _____.

CONSULTANT

JEFF ELLIS & ASSOCIATES, INC.,
a Texas corporation

[Signature]

RICHARD A. CARROLL, Senior Vice President/COO

Date: _____.