

Jeff Ellis & Associates, Inc.

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Client Status Notification**Date: 11/13/2019****Client Name: PDRMA - Wheaton Park District****Client Address: 1777 Blanchard Rd., Wheaton, IL 60189****From: Richard A. Carroll Sr. VP/COO****Subject: 2020 Agreement Fees****Traditional Price Structure:**

The following standard fees apply to the 2020 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 2020:**

- 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, 2020 through December 31, 2020

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. Benard
Sign Name:	
Position:	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 Schedule, located at the address stated on the Client Schedule ("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 Schedule 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 as set forth in the attached Client Schedule:

- (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 Schedule for the fees specified in the Client Schedule. These audits shall include video record and written documentation in support of evaluations rendered to Client regarding aquatic risk management issues and same shall be delivered to Client upon completion of the audit.

(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 Client.

(E) **ADDITIONAL SERVICES AS REQUESTED.** Consultant shall provide additional services as requested by Client for the prices as set forth on the attached Client Schedule ("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 carry professional liability insurance coverage in the amount of at least two million dollars (\$2,000,000.00) and Workers Compensation coverage in the amount of one million dollars (\$1,000,000).

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 Schedule in addition to the out-of-pocket costs and expenses stated in this Agreement. Client shall pay the Annual Retainer Fee, 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 Schedule.

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):

- (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; 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) **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 Schedule), 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 remain the property of Client and 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.

(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, ILTPM, 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.

(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 is required by court order, provided that a reasonable opportunity is given to review the disclosure before it is made and to interpose any 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 Texas, 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 Harris County, Texas, if in the state court, and the United States District Court, Southern District of Texas, 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) **WAIVER OF JURY TRIAL.** THE PARTIES HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER REGARDING ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE RELATIONSHIP OF THE PARTIES CREATED HEREBY, AND/OR A CLAIM FOR INJURY OR DAMAGE. CLIENT ACKNOWLEDGES AND AGREES THAT CONSULTANT HAS BEEN MATERIALLY INDUCED TO ENTER INTO THIS AGREEMENT BY THE INCLUSION OF THE PROVISIONS OF THIS PARAGRAPH IN THIS AGREEMENT.

(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: Patrick N. Smith, Bush Ramirez, PLLC, 5615 Kirby Dr., Suite 900, Houston, Texas 77005.

(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) **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:** The terms, duties and conditions imposed by this Agreement are intended to be applicable solely to the parties to this Agreement. It is not the intent of the parties to create any third- party beneficiaries to this Agreement. Nothing contained in this Agreement shall be deemed or interpreted to constitute the creation of a partnership, agency, joint venture or joint enterprise, nor shall either party have any authority to bind the other. Neither party shall suggest, imply, or hold itself out as having any affiliation or authority as an agent, partner, affiliate, or associate of the other. The parties agree to take any and all reasonable measures necessary to ensure compliance with the provisions in this paragraph with respect to any such third parties.

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 PRUSUANT 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 IT SERVICES PURSUANT TO THIS AGREEMENT. "THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE THEREOF."

11. **CLIENT AUTHORTIY 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

PDRMA - Wheaton Park District,
a IL, US corporation

CONSULTANT

Jeff Ellis & Associates, Inc.,
a Texas corporation



✍By:

RICHARD A. CARROLL, Senior Vice President/COO

✍Date:

Date: January 01, 2020

Electronic Signature Agreement

By checking the electronic signature box, I agree that the signature will be the electronic representation of my signature for all purposes when I (or my agent) use them on documents, including legally binding contracts - just the same as a pen-and-paper signature.

Account Name: PDRMA - Wheaton Park District

Name:

Title:

Signature:

Company: Park District Risk Management Agency

State/Country of incorporation: IL, US