



Aquatic Examiner Service Agreement

This **Aquatic Examiner Service Agreement** (“Agreement”) is made by and between the American National Red Cross (“Red Cross”) and **City of Clearwater-The Long Center** (“Facility”) (each a “Party” and together the “Parties”), effective as of the last date of signature (“Effective Date”), in order for Red Cross to provide services as outlined in Appendix C (each a “Service” and together the “Services”) by Red Cross certified examiners (“Examiners”).

I. RED CROSS AGREES TO:

Provide to the Facility one or more parts of the American Red Cross Aquatic Examiner Service as described below. For the purpose of this Agreement, the Aquatic Examiner Service shall mean the four service options identified in sections A – D below and more fully described in the *Aquatic Examiner Service Client Get Started Guide*, published in 2018, and as amended from time to time, a copy of which has been provided concurrently with this Agreement and the provisions of which are incorporated herein by reference. In Appendix C, the Parties have identified specific services that the Red Cross will provide to each Facility location. However, the parties may agree to different or additional locations and/or different or additional service options with respect to each location after the execution of this Agreement, provided that any such agreement will be in writing.

A. Annual Lifeguarding Operations Assessment:

- **In-person** - Red Cross Aquatic Examiner Service personnel will tour the aquatic Facility and review whether certain policies, procedures, protocols, emergency action plans and lifeguarding safety and rescue equipment are present, as described in the *Aquatic Examiner Service Client Get Started Guide*. The Red Cross will provide a written report identifying the results of the Lifeguarding Operations Assessment and suggestions for improvement.
- **Self-Guided** - With the self-guided option, a representative from the Facility fills out a detailed questionnaire and returns it to the Aquatic Examiner Service personnel. The Aquatic Examiner Service personnel may schedule a follow up call to clarify any information from the questionnaire. The Aquatic Examiner Service personnel will then generate a report based on the information submitted by the Facility. This report will contain recommendations based on the American Red Cross Lifeguarding Program benchmarks and is shared and reviewed with the Facility prior to their first visit.

B. On-site Lifeguard Observations and Evaluations:

The Red Cross will administer unannounced, on-site evaluations of the activities identified in the *On-Site Lifeguard Observation and Evaluation Checklist*. A copy of this checklist has been provided concurrently with this Agreement and the provisions of which are incorporated herein by reference.

C. In-Service Trainings

D. Aquatic Emergency Action Plan Drills

II. THE FACILITY AGREES TO:



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Comply with all facility Aquatic Examiner Service requirements as set forth in the *Aquatic Examiner Service Client Get Started Guide* including, but not limited to:

- A. Accepting responsibility for all activities associated with developing and implementing its own operational and emergency procedures.
- B. Maintaining on a current basis all applicable government permits or licenses to operate the Facility.
- C. Granting permission for Red Cross access to the Facility as necessary in order to conduct the annual life-guarding operations assessment, on-site lifeguarding observations and evaluations, and lifeguard and support personnel training as applicable.
- D. Assuring that, to the extent the Facility has elected annual or preseason orientation and training, annual Red Cross training, in-service training, and/or Aquatic Emergency Action Plan Drills, that the relevant Aquatic Examiner Service requirements as outlined in the Aquatic Examiner Service Client Get Started Guide are provided to Facility staff.

III. COMPENSATION

- A. The Facility will pay the Red Cross for Aquatic Examiner Service the fees listed in Appendix B.
- B. Facility will remit payment by credit card or will be invoiced, if approved.
- C. Red Cross may approve or deny Facility's request to be invoiced at Red Cross's sole discretion. If approved for invoicing, Facility will receive an invoice upon provision of Service. Invoices may be issued up to four (4) times per month and will include all transactions submitted in that billing period. Payment in full is due thirty (30) days from the date of each invoice. Past-due amounts will be subject to collections actions and may be referred to an external collections agency. In such an event, Red Cross will be entitled to all costs of collection including interest, reasonable attorney's fees and litigation expenses, and collection agency fees and expenses. Late payments may also result in the suspension or termination of Facility's invoicing privileges at Red Cross's sole discretion. Credit card payment will be required if invoicing privileges are suspended or terminated, and such payment will be a condition to Red Cross's further rendering of Services from and after such suspension or termination.
- D. 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 Facility account name, customer number and invoice number and send to:

American Red Cross - Training Services
25688 Network Place
Chicago, IL 60673-1256
- E. If approved for invoicing, Facility may elect to have invoices delivered electronically. Facility will provide Red Cross a single valid email address for electronic invoice delivery. Facility will receive a link in the email to a PDF copy of the invoice, which link will expire after thirty (30) days. Facility understands that Facility will not receive an invoice via postal mail after enrollment in electronic invoice delivery.
- F. If Facility desires that invoices issued by Red Cross reflect Facility-issued purchase order numbers, then any such purchase order must be received by Red Cross at least ten (10) business days prior to the initial date of Services; it being understood that under no circumstance will the absence of a Facility-issued purchase order on any invoice excuse Facility's timely payment of that invoice.
- G. If Facility desires that Red Cross use Facility's vendor payment portal, Red Cross will not be obligated to pay Facility 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. Facility will, on demand, promptly reimburse Red Cross for any such fee or expense.
- H. For questions or concerns about your invoice, immediately upon receipt please email billing@redcross.org or call 888-284-0607 to report and resolve the inquiry.



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I. Facility warrants that as of the date of this Agreement, it has no overdue balances with the Red Cross.

IV. USE OF RED CROSS NAME AND LOGO

Conditioned upon the full and successful completion of the Aquatic Examiner Service, Red Cross grants Facility, 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 Facility by Red Cross (the "Authorized Mark") solely to acknowledge that the Facility has participated in the Red Cross Aquatic Examiner Service. Such acknowledgment must state, and shall only state: **"Proud participant of the American Red Cross Aquatic Examiner Service."**

With the exception of the foregoing paragraph, the Facility acknowledges and agrees that nothing in this Agreement shall constitute a license or permission for the Facility to use the Authorized Mark or the name or any other trade or service mark of Red Cross in connection with the Facility's business, facilities, employees or any Facility informational, marketing or advertising materials (whether in print, electronic or digital form). Facility'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. Facility shall not state or imply that that Red Cross sponsors or endorses Facility's business, products or services generally, or that any other services other than the Aquatic Examiner Service are owned or endorsed by or otherwise associated or affiliated with Red Cross.

Facility shall not (i) create a compound mark with the Authorized Mark or (ii) use the Authorized Mark with any other design, slogan or mark when such combination would tend to cause confusion as to source or affiliation. Facility shall not in any instance, use a Greek red cross design in association with its business, goods and/or services.

Red Cross reserves all rights not expressly granted herein, in its registered and common law trademarks, service marks, names, emblems, logos and designs including without limitation, the Authorized Mark (the "Red Cross Marks"). Facility acknowledges and agrees that the Red Cross Marks is and shall remain the property of Red Cross, and that the license granted under this Agreement does not constitute a transfer to Facility of any ownership rights in the Red Cross Marks. Further, the parties agree and acknowledge that Facility's use of the Red Cross Marks shall inure solely to the benefit of Red Cross.

Facility shall not commit, or cause any third party to commit, any act challenging, contesting or in any way impairing or attempting to impair Red Cross's right, title and interest in and to the Red Cross Marks, including seeking registration of the Red Cross Marks in whole or in part, or of any confusingly similar trademark or service mark anywhere in the world or incorporating Facility's business under the Red Cross Marks or any aspect of the Red Cross Marks or any name confusingly similar to the Red Cross Marks.

V. 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.

VI. ASSIGNMENT

This Agreement shall not be assigned, or the services subcontracted by either Party without the prior written consent of the other Party; provided, however, that Red Cross's use from time to time of Individuals who are volunteers or employees of third parties to furnish the Aquatic Examiner Service under this Agreement does not constitute a delegation of Red Cross's obligations under this Agreement and will not require Facility's advance consent.

VII. CONFIDENTIALITY

Red Cross and the Facility acknowledge and agree that if during the term of this Agreement confidential information (as identified by the Party providing the information) is disclosed by one Party to the other, each Party shall hold all such confidential information in the strictest confidence and shall not voluntarily sell, transfer, publish, disclose, display or otherwise make available to any third persons such confidential information or any portion thereof without the express written consent of the other Party or unless compelled by subpoena, court order or other lawful means.

VIII. TERM

Subject to sections IX and XII below, this Agreement shall be in effect for twelve (12) months from the Effective Date. This Agreement shall not be renewed without the written consent of the Red Cross.

IX. CANCELLATION

Either Party may terminate this Agreement for any reason by providing thirty (30) days advance written notice to the other Party. 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.

X. INDEMNITY AND HOLD HARMLESS

Facility 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 Facility, its operations, or the performance or breach of this Agreement. The foregoing notwithstanding, Facility 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.

The City's liability is subject to the monetary limitations and defenses imposed by Section 768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity by the City beyond what is provided



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for under Section 768.28, Florida Statutes, nor shall anything herein be construed as consent by the City to be sued by any third party for any cause or matter arising out of or related to this Agreement.

XI. LIMITATION OF RED CROSS LIABILITY

Each Party understands and agrees that:

- A. The Red Cross is not undertaking to approve, certify or take responsibility for the safe design, operation or function of the Facility or its equipment, nor is it undertaking to identify all risks, errors, gaps, defects or omissions of the Facility. The Facility's participation in the Aquatic Examiner Service does not guarantee that (i) the Facility will be accident free; (ii) the operations of the Facility are safe, or (iii) the Facility is in compliance with any laws, codes or ordinances. The Red Cross is not responsible for the acts or omissions of the Facility, 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 Facility users or others not a party to this Agreement.
- B. The Red Cross is not responsible for the activities or operations of the Facility. The Red Cross has no authority, obligation or ability to make changes to the Facility or its operations or implement suggestions for improvement.
- C. The assessments and evaluations that the Red Cross provides to the Facility are based solely on observations made on the dates of the visits. It is the Facility's sole responsibility to decide whether or not to implement any suggestions made by the Red Cross in the context of Aquatic Examiner Service.

XIII. 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 is not 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.

XIV. NOTICES. Each Party's contact for legal notices under this Agreement is listed on [Appendix A](#).

XV. ENTIRE AGREEMENT; MODIFICATIONS AND WAIVERS.

This Agreement constitutes the entire agreement between the Parties and 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.



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XVI. Insurance

Throughout the Term of this Agreement, the Parties shall maintain Commercial General Liability, Workers Compensation, and Automobile Insurance or self-insurance, and shall furnish a certificate or memorandum of insurance to the other party upon request.

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

Facility Name: City of Clearwater-The Long Center	The American National Red Cross
Facility Signature:	Red Cross Signature: 
Name:	Name: Patrick Beason
Title:	Title: Territory Aquatics Executive
Date:	Date: 1/16/2020

Countersigned:

CITY OF CLEARWATER

George N. Cretekos
Mayor

William B. Horne II
City Manager

Approved as to form:

Attest:

Owen Kohler
Assistant City Attorney

Rosemarie Call
City Clerk



**Aquatic Examiner Service Agreement
Appendix A – Contact Information**

Facility Information

Facility: **City of Clearwater-The Long Center**

Facility Address: **1501 N Belcher Road
Clearwater, FL 33765**

Facility Fax: _____

US

Organization ID: **LTSLCFL**

Facility Contact: **Mark Roberson**

Facility Contact Email: **mark.roberson@myclearwater.com**

Facility Contact Phone: **(727) 793-2320**

Extension: **107**

(NOTE: Billing Contact information MUST be for a specific individual; not a system or generic email)

Billing Contact Name: **Mark Roberson**

Billing Contact Phone: **(727) 793-2320**

Extension: **107**

Billing Contact Email: **mark.roberson@myclearwater.com**

Billing Address: **1501 N Belcher Road**

Clearwater, FL 33765

US

Notices to be delivered to Facility Contact, above.

Email Address for Invoice Delivery (if electing eInvoicing):

Red Cross Strategic Account Executive

Name: **Patrick Beason**

Phone: **305-205-8712**

Extension: _____

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

Legal Notice 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.



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Appendix B – Service Packages and Price List

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Service Packages(s)

City of Clearwater The Long Center // \$ Discount



American Red Cross
Training Services

Price List

GeneralStore : City of Clearwater The Long Center // \$ Discount

Number of Items: 6

SKU	Product	UOM	Price
FS-HSSAQU540	Annual Lifeguarding Operations Assessment	Each	1080.00
FS-HSSAQU540 -PSCF	Per Student Course Fee	Student	1080.00
FS-HSSAQU541	On-site lifeguard observations and evaluations	Each	585.00
FS-HSSAQU541 -PSCF	Per Student Course Fee	Student	585.00
FS-HSSAQU544	AES In-Service Standalone	Each	450.00
FS-HSSAQU544-PSCF	Per Student Course Fee	Student	450.00



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Appendix C – Services and Facility Locations

Facility Location (Facility Name & Full Physical Address)	Number of Lifeguard Operations Assessment(s)		Number of On-Site Observations & Evaluations	Number of In-Service Trainings	Number of Aquatic Emergency Action Plan Drills	Dates of Operation	Seasonal? (Y/N)	Indoor or Outdoor Facility or Both (I/O/B)
	Self-Guided	In-Person						
The Long Center 1501 N Belcher Road Clearwater FL 33765		**1	**2	*5		Year round	N	I
*Denotes 5 units (hours) of staff in-service trainings split over 2 days for rotating small groups of Lifeguards.								
**Two visits in total: 1 Annual Lifeguarding Operations Assessment with facility tour, written report, and observation/testing of 3 lifeguards. Follow up visit includes Facility Quickcheck and observation/testing of 3 lifeguards.								



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