



City of Grand Island

Tuesday, June 12, 2007

Council Session

Item G14

#2007-142 - Approving Authorized Provider Agreement with the Heartland Chapter of the American Red Cross

Staff Contact: Steve Paustian

Council Agenda Memo

From: Steve Paustian, Parks and Recreation Director

Meeting: June 12, 2007

Subject: Approving of Authorized Provider Agreement with American Red Cross

Item #'s: G-14

Presenter(s): Steve Paustian, Parks and Recreation Director

Background

The Parks & Recreation Department in conjunction with the American Red Cross offers classes to the public such as swimming lessons, life guarding, swimming instructor courses, CPR, and First Aid. This is an updated agreement to continue the services we currently provide.

Discussion

In order for the Grand Island Parks & Recreation Department to offer American Red Cross swimming lesson, lifeguard training, and other safety certifications, it is necessary to be authorized by the American Red cross to do so.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council enter into the agreement with the Red Cross.

Sample Motion

Motion to approve agreement with the American Red Cross.

American Red Cross

Authorized Provider Agreement

This Authorized Provider Agreement ("Agreement") effective as of May 16, 2007 ("Effective Date") is between

Central Plains
(The "Chapter")

and

City of Grand Island
(The "Authorized Provider" or "AP")

The Chapter is a unit of the American National Red Cross, a not-for-profit corporation chartered by an act of U.S. Congress, the principal place of business of which is located at 404 East Third Street Grand Island, NE and among other things, provides first aid, CPR, aquatics, water safety, HIV/AIDS prevention education, mission-related caregiving and other health and safety education programs.

The principle place of business of the AP is located at PO Box 1968 Grand Island NE 68802;

The Chapter desires to work with the AP to provide American Red Cross training in the jurisdiction set forth in Section 4 below.

In consideration of the statements, terms and conditions contained within this Agreement, the Chapter and the AP (the "Parties"), intend to be bound by this Agreement and agree to the following:

1.0 Responsibilities of the Chapter:

The Chapter shall:

- 1.1 Support the health and safety education of the AP's employees, members, and/or clients in the AP's provision of American Red Cross training Courses ("Courses") at the fees set forth in Appendix A. The guaranteed AP fees set forth in Appendix A shall include record keeping, certificate processing, administration, promotional assistance, and support services ("AP Fee"). Any Additional Services ("Additional Services") may be available for additional fees as outlined in Appendix A. Fees in Appendix A may change pursuant Section 3.0.
- 1.2 Train all potential instructors from the AP to teach the Courses at the fees ("Training Fees") set forth in Appendix A so long as such instructors meet the American Red Cross training prerequisites. These potential instructors shall be authorized as American Red Cross Health and Safety instructors upon successful completion of the training and upon signing an Agreement to teach the Courses. A complete list of the AP's instructors is set forth in Appendix B, which shall be unilaterally modified by the Chapter in the event instructors are added or deleted. Fees in Appendix A may change pursuant Section 3.0.
- 1.3 Upon request and depending on availability: (a) subject to Paragraph 2.10, use best efforts to provide the AP with equipment that the AP does not possess which is necessary for an instructor to provide the Course(s) as listed, and at the rental fees, set forth in Appendix A ("Equipment and Supplies"); and (b) provide the Course Materials ("Course Materials") and Instructor Materials ("Instructor Materials") as set forth in Appendix A. If the fees in Appendix A change the Chapter will notify the AP a minimum of Minimum of 90 days prior to implementation. Fees in Appendix A may change pursuant Section 3.0.
- 1.4 Maintain all Course Records ("Course Record") provided to the Chapter by an instructor for a period of five (5) years following the date of the Course.
- 1.5 Support and evaluate the instructors by providing them with the following: (a) Applicable policies and procedures and any revisions or modifications thereto; (b) Upon expiration of an instructor's authorization, reauthorize such instructors so long as such instructors meet American Red Cross reauthorization

requirements; and (c) Opportunities for volunteer and professional skill development with the Chapter.

- 1.6 Provide invoice to the Authorized Provider within 30 days unless otherwise specified in Appendix A, for the fees related to the Courses, equipment rental, and Course/Instructor Materials, Additional Services, training, and retraining of Course Participants ("Course Participants") as set forth in Paragraph 1.9 below.
- 1.7 Verify all instructor authorizations and notify the AP in the event an instructor is no longer authorized to teach Courses.
- 1.8 Throughout the term of this Agreement (as defined in Paragraph 5.1), maintain a close and ongoing supportive relationship with the AP and its instructors by contacting the AP a minimum of 4 times per year.
- 1.9 If during any phase of evaluation, the training conducted by an AP's instructor is found to be below minimum American Red Cross standards for that Course and the Chapter determines that retraining is required for the participants that attended the Course where training was found to be below minimum standards, the retraining will be conducted by the Chapter. The AP will be responsible for the cost of retraining as outlined in Paragraph 2.4. The Chapter will invoice the AP for the cost of the training at the amount equal to the published full service contract price or the training price minus the cost of books and materials the Course Participants may already have. The Chapter also reserves the right to suspend or withdraw the authorization of an instructor for due cause. Due cause generally means that the instructor does not or will not abide by the standards, policies, or procedures of the Red Cross and its programs or in some way abuses the position of an authorized Red Cross instructor. Some examples follow here but are by no means exhaustive; each case is reviewed individually, taking into account all relevant circumstances. Examples are—
 - a. An instructor refuses to teach a nationally standardized Course according to the guidelines and Course requirements or is found to be deficient in either knowledge or performance skills.
 - b. An instructor falsifies records or provides false information to the Chapter.
 - c. An instructor consistently fails to communicate his or her teaching activity in an appropriate way to the Chapter (e.g., does not notify the Chapter when a Course is to be taught, does not process Course Record forms within 10 working days, and so forth).
 - d. An instructor exhibits behavior inconsistent with standards established and agreed to in the Instructor Agreement and expected of a Red Cross instructor, as indicated by repeated poor evaluations from participants, or behaves in ways that participants find offensive or insulting (e.g., making sexual advances or telling racially, socially, or sexually insensitive jokes).
 - e. An instructor behaves in ways that do not reflect support for the American Red Cross as an organization and that, in fact, could harm the public perception of the American Red Cross in the community.
 - f. An instructor is convicted of a violent or serious crime, such as sexual molestation, embezzlement, assault, or any crime that calls into question his or her teaching or leadership responsibilities.
- 1.10 Designate Renae Foster, Director of Preparedness as a representative of the Chapter to act as a point of contact to the AP at the address and telephone number set forth in Section 7 below ("Chapter Representative") and notify the AP within 30 days if that individual changes.
- 1.11 Unless otherwise indicated on the Course Record, arrange for completed Course certificates to be delivered to the AP at the address set forth in Section 7 within ten (10) business days after receipt of a properly completed Course Record.
- 1.12 As needed and upon request, provide the AP with any American Red Cross promotional materials for use by the AP in promoting the Courses.

2.0 Responsibilities of the AP:

The AP shall:

- 2.1 Identify qualified instructor candidates to be trained and authorized as instructors and inform the Chapter

when it becomes aware of any modifications that should be made to Appendix B.

- 2.2 Support each instructor's compliance with American Red Cross policies and procedures by ensuring that such Instructors: (a) Are available to participate in periodic training, retraining or other related events throughout the term to gain and maintain sufficient levels of skill, knowledge and understanding to conduct the Courses; (b) Supply only American Red Cross Course Materials for use during the Courses, (c) Provide visual identification of the American Red Cross name and emblem during the Courses using materials provided or approved by the Chapter; and (d) Submit properly completed Course Records and Course evaluation forms to the Chapter within ten (10) business days of Course completion unless special arrangements are made with the Chapter.
- 2.3 With respect to the Course Participants: (a) Notify Course Participants that they will be participating in American Red Cross Courses in accordance with American Red Cross standards; (b) In advance of each Course, provide Course Participants with information about Course prerequisites, completion requirements, and other necessary information; (c) Ensure that Course Participants who have successfully met the Course prerequisites, objectives, and certification requirements receive American Red Cross certificates.
- 2.4 Reimburse the Chapter for retraining of Course Participants conducted pursuant to Paragraph 1.9. The cost of the retraining will be at the amount equal to the published full service contract price minus the cost of books and materials the Course Participants may already have.
- 2.5 Provide payment to the Chapter within 30 days of an invoice date unless otherwise specified in Appendix A.
- 2.6 Provide to the Chapter the names and copies of the authorizations of any previously authorized Red Cross instructors that are new to the AP at least ten (10) days before the instructor teaches a Course in order for the Chapter to ensure that such instructor is qualified to be the instructor.
- 2.7 Notify the Chapter of dates, times, and locations for each Course at least 14 days before the Course start date.
- 2.8 Refrain from revising, editing, or duplicating any materials, in whole or in part, including, but not limited to Course videos, for teaching Courses or for any other purpose, unless specifically approved in writing by the American National Red Cross. Requests for any modifications to the materials are to be channeled through the Chapter. The AP understands and agrees that all such promotional materials must be provided by the Chapter, or approved by the Chapter in advance of publication.
- 2.9 Obtain the materials in quantities sufficient for each Course Participant to have and retain his or her own copy. Course workbooks, textbooks and/or skills cards cannot be used for more than one Course Participant unless permission to do so is granted by the Chapter in writing. Authorized Providers conducting training in more than one Red Cross Chapter jurisdiction will not be granted rights to reuse workbooks, textbooks and/or skills cards for more than one Course Participant.
- 2.10 Maintain responsibility for the equipment and promptly return such equipment to the Chapter in the same condition the equipment was received by the AP. The AP shall be responsible for the cost of any damage to such equipment while in the possession of the AP. Upon receipt and inspection of the equipment, the AP shall report to the Chapter any equipment in need of service, repair, or replacement.
- 2.11 Be responsible for all claims and liabilities of any nature whatsoever that arise out of an AP offered Red Cross Course. Red Cross insurance does not extend to the AP or its instructors. Therefore, it is the responsibility of the AP to obtain adequate insurance to cover its operations and Course instruction.
- 2.12 Designate Todd McCoy, Park and Recreation as a representative of the AP to act as a point of contact to the Chapter at the address and telephone number set forth in Section 7 below and notify the Chapter within 30 days if that individual changes. In the event the AP has multiple facilities, the individuals set forth in Appendix C shall serve as additional points of contact.

- 2.13 Provide classrooms and other facilities to teach the Courses that are safe, conducive to learning and meet the minimum space requirements as set forth in the Instructor Materials. The AP shall allow the Chapter Representative or a designee to inspect the AP's real and personal property used to teach the Courses and to perform random observations of the instructors during the provision of Courses.
- 2.14 Submit any literature or materials using the name and/or emblem of the American Red Cross to the Chapter for written approval before printing or distribution of such literature or materials.
- 2.15 Encourage its instructors to provide volunteer services for the American Red Cross.

3.0 Chapter Fees:

The Chapter reserves the right to change the fees contained in Appendix A at its sole discretion. The Chapter will notify the AP a minimum of 90 days prior to the effective date of any such fee changes. As part of this notice, the Chapter will provide the AP with a new Appendix A. If the AP does not agree to the fee changes, it has the right to terminate the Agreement pursuant to Section 5. Changes to Appendix A will not effect any other provisions contained within this Agreement.

4.0 Jurisdiction of Agreement:

This Agreement is limited to the geographical jurisdiction of the American Red Cross Chapter(s) and at the locations set forth below:

Chapter	Geographical Jurisdiction (County, City, State)
Central Plains Chapter	Cherry, Keya Paha, Boyd, Brown, Rock, Holt, Antelope, Wheeler, Greeley, Sherman, Howard, Merrick, Hall, Hamilton, Adams, Clay, Webster, and Nuckolls

5.0 Term and Termination:

- 5.1 This Agreement shall commence on the effective date with automatic one-year renewals thereafter on the anniversary of the commencement date, unless either Party gives written notice to the other of its desire not to renew at least 30 days prior to the commencement of any renewal period, or unless otherwise terminated sooner in accordance with Paragraph 5.2 of this Agreement (the "Term").
- 5.2 At any time, either Party may terminate this Agreement with thirty (30) days written notice to the non-terminating Party.
- 5.3 Upon termination of this Agreement, the obligations of both Parties, including, but not limited to the provision of payment, shall remain in effect until all scheduled Courses are completed.
- 5.4 In the event of any termination of this Agreement, the Parties are still obligated and committed to follow the provisions of Sections 6, 7, 8, 12 and this Paragraph 5.4 indefinitely.

6.0 Limitation of Liability:

Notwithstanding anything in this Agreement to the contrary, neither Party shall be liable to the other for any loss or damage arising as a result of breach, non-performance or partial performance of its obligations under this Agreement due to any cause beyond that Party's reasonable control and without its fault or negligence.

7.0 Notices:

All notices to include appendices that each Party is required to give to the other Party shall be given to each of the Parties in writing to the names and addressees as follows:

If to the Chapter:

Chapter Name: **Central Plains**
Address: **404 East Third Street Grand Island, NE 68801**
Attn: **Renae Foster**
Phone Number: **308-382-3790**
Fax Number: **308-382-2494**
E-mail Address: **renae@giredcross.org**

If to the AP:

AP Name: **City of Grand Island**
Address: **PO Box 1968**
Attn: **Todd McCoy**
Phone Number: **385-5444 x 290**
Fax Number:
E-mail Address: **tmccoy@grand-island.com**

Notice of termination of this Agreement by either Party must be delivered by certified U.S. First-Class Mail, return receipt requested.

8.0 Confidentiality and Trade Names:

- 8.1 Except as otherwise provided herein, each Party shall maintain the confidentiality of all provisions of this Agreement. Without the prior written consent of the other Party, neither Party shall make any press release or other public announcement of, or otherwise disclose, this Agreement or any of its provisions to any third Party except for such disclosures as may be required by applicable law or regulation, in which case the disclosing Party shall provide the other Party with prompt advance notice of such disclosure so the other Party has the opportunity, if it so desires, to seek a protective order or other appropriate remedy.
- 8.2 Each Party recognizes that the name, logo and marks of the other Party represent valuable assets of that Party and that substantial recognition and goodwill are associated with such assets. Each Party hereby agrees that neither it nor any of its affiliates shall use the other Party's name, logo or marks without prior written authorization from such other Party.
- 8.3 This Agreement grants no rights in any of the American Red Cross or Chapter's Courses or Course Materials or other intellectual property to customer.

9.0 Entire Agreement and Amendments:

- 9.1 Concerning the subject matter hereof, this Agreement constitutes the entire Agreement between the Parties and supersedes all prior Agreements and undertakings, both written and oral, between the Parties.
- 9.2 This Agreement shall not be amended or otherwise modified unless both of the Parties affirmatively and unanimously agree to such amendment and/or modification in writing.

10.0 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 Parties shall promptly negotiate in good faith a lawful, valid and enforceable provision. This new provision must be as similar in terms to the invalid provision as may be

possible in order to keep with the intention of the original Agreement.

11.0 Exculpatory Clause:

It is understood and agreed that wherever in this Agreement the term "Chapter" is used it shall mean the Chapter(s) of The American National Red Cross set forth in Section 4; that said Chapter(s) are duly constituted local unit of The American National Red Cross, a federal instrumentality (36 U.S. Code 1 et seq.); and that all obligations of the "Chapter" under this Agreement shall be undertaken and completed exclusively by said Chapter(s) without resort in any event to, or commitment of, the funds and property of the American National Red Cross or any unit thereof other than the Chapter(s).

12.0 Independent Contractors:

Each of the Parties shall be furnishing its services hereunder as an independent contractor, and nothing herein shall create any association, partnership or joint venture between the Parties or an employer-employee relationship. No agent, employee or servant of either Party shall be, or shall be deemed to be, the employee, agent or servant of the other Party, and each Party shall be solely and entirely responsible for its acts and the acts of its agents, employees and servants.

13.0 Assignment and Subcontracting:

This Agreement shall not be assigned in whole or in part and no Party shall delegate or subcontract all or part of its duties under this Agreement without the prior written consent of the other Party.

IN WITNESS WHEREOF, the Parties hereto, acting through their duly authorized officers, have executed this Agreement as of the Effective Date.

CHAPTER
REPRESENTATIVE

AUTHORIZED PROVIDER
REPRESENTATIVE

SIGNATURE: _____

DATE: _____

PRINTED NAME: Renae Foster

TITLE: Director of Preparedness

PHONE NUMBER: 308-382-3790

FAX NUMBER: 308-382-2494

E-MAIL: renae@giredcross.org

Todd McCoy

Park and Recreation

385-5444 X 290

tmccoy@grand-island.com

APPENDIX A
COURSES, EQUIPMENT, MATERIALS AND FEES

A. Courses: Lifeguarding, WSI, CPR/AED Professional , Swim Lessons

B. Equipment and Supplies:

Equipment	Rental Fee	Per
Manikins	\$5.00	Per item/per day
AED trainers	\$5.00	Per item/per day
BVM	\$5.00	Per day
DVD	\$5.00	Per item/per day

C. Course/Instructor Materials:

Item Description/Stock Number	Cost	Unit
See attached scheduled price list		

D. Training Fees:

Fee Description	Fee	Unit
Authorized Provider Fees \$5.00 or \$3.00 swim lessons	\$5.00	Per student
Instructor Course Fees	\$150.00	Per student
Instructor Course equipment rental Fees	\$5.00	Per item
Instructor Course Fees		
Instructor Course Fees		

E. Special billing or payment instructions (Optional):

F. Additional Services (Optional):

APPENDIX B INSTRUCTORS

Name	Contact Information including address, phone and mail	Chapter of Authorization	Current Instructor Authorization
Mike Nolan		Central Plains	LGI, WSI
Marilyn Jacobson		Central Plains	LGIT, WSIT
Others trained during summer will be added with Mike or Todd's permission			

**APPENDIX C
MULTIPLE FACILITY CONTACTS**

Facility Name and Address	Contact Name	Phone Number Fax Number E-mail Address
City of Grand Island, Island Oasis, Lincoln Pool, City Hall, Red Cross	Mike Nolan or Todd McCoy	385-5444 ext 290

RESOLUTION 2007-142

WHEREAS, the Hall County Chapter of the American Red Cross has historically provided instruction, staffing and other services relating to swimming lessons, lifeguarding, lifeguard instructor training, water safety instructor training, CPR for the professional rescuer, etc. and

WHEREAS, the City of Grand Island is interested in continuing the relationship with the American Red Cross in providing such services; and

WHEREAS, an agreement is required to outline the terms and conditions for each party in providing such services; and

WHEREAS, the proposed Authorized Provider Agreement has been reviewed and approved by the City Attorney's office.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Authorized Provider Agreement between the City and the American Red Cross is hereby approved; and the Mayor is hereby authorized and directed to execute such agreement on behalf of the City of Grand Island.

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Adopted by the City Council of the City of Grand Island, Nebraska, June 12, 2007.

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk