

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: June 4, 2019

Consent
 Ordinance

Regular
 Public Hearing

Department: Parks and Recreation

Submitted By: Parks and Recreation Department

Submitted For: Parks and Recreation Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: Second Addendum to Authorized Provider Agreement, R2016-1888 dated December 20, 2016, with the American National Red Cross ("Red Cross") to allow the County to participate as one of 50 communities nationwide in the Red Cross Aquatic Centennial Initiative program to provide swimming lessons to underserved populations.

Summary: The Red Cross is celebrating 100 years of Water Safety. Palm Beach County was identified by the Red Cross in 2014 as a target market for the Aquatic Centennial Initiative to reduce the number of drownings in America. This program is designed to promote awareness of and access to the Red Cross Water Safety education and training in identified communities where the drowning rate is above the national average. Over the past couple of reporting cycles, there has been a slight, but steady decrease in reported drownings countywide per 100,000 residents even with a growing population. Although we are unable to determine the exact percentage this program has contributed to the decline in drownings, we do know this agreement with the Red Cross has allowed us to conduct approximately 200 additional lessons annually and people who learn to swim are much less likely to drown. This Second Addendum allows Palm Beach County to continue to participate in the final year of the three-year Red Cross Aquatics Centennial Initiative. Participation in this initiative will help generate and retain enrollment in our swimming lessons, provide hands-on CPR and rescue skills to parents and caregivers, and ultimately help reduce the number of drownings in our community. . The Red Cross Program not only teaches how to swim, but also teaches safe ways to help others who may be in trouble in the water. As a participant in the initiative, the County will receive support for program fees for participants in swimming lessons as well as lifeguard training and water safety instructor programs. The Red Cross will also provide the teaching and marketing materials at no cost to the County. Countywide (AH)

Background and Justification: The Parks and Recreation Department entered into an Authorized Provider Agreement with the American Red Cross on December 20, 2016, R2016-1888, to provide Red Cross swimming lessons at the six traditional swimming pools and two waterparks, as well as Lifeguarding, First Aid, CPR, AED, and Oxygen Administration certifications for all Aquatics staff. Palm Beach County was identified by the Red Cross in 2014 as a target market for the Aquatic Centennial Initiative to reduce the number of drownings in America. (continued)

Attachments:

1. Second Addendum to Authorized Provider Agreement
2. American Red Cross Centennial Campaign Information Sheet
3. American Red Cross Authorized Provider Agreement

Recommended by: 
Department Director

5/24/19
Date

Approved by: 
Assistant County Administrator

5/24/19
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2019	2020	2021	2022	2023
Capital Expenditures	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>(900)</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>(12,725)</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Program Income (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
In-Kind Match (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
NET FISCAL IMPACT	<u>(13,625)</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>

Is Item Included in Current Budget? Yes X No
 Does this item include the use of federal funds? Yes No X

Budget Account No.: Fund 0001 Department 580 Unit various
 Revenue Source 4724 / Object 4909 Program

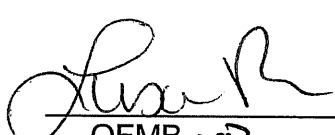

B. Recommended Sources of Funds/Summary of Fiscal Impact:

This Addendum reduces expenditures by \$900 for training and increases revenue due to additional swim lessons at various aquatic facilities.

C. Departmental Fiscal Review:  _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development & Control Comments:

 OFMB RD <u>5/16/19</u> 5/16	SP 5/13 BR 5/13	 Contract Development & Control <u>5/21/19</u>
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B. Legal Sufficiency:


 Assistant County Attorney

C. Other Department Review:

 Department Director

REVISED 10/95
 ADM FORM 01

This summary is not to be used as a basis for payment

Background and Justification continued.

This program is designed to promote awareness of and access to the Red Cross Water Safety education and training in identified communities where the drowning rate is above the national average. This Second Addendum allows Palm Beach County to continue to participate in the Red Cross Aquatics Centennial Initiative. In accordance with Chapter 2, Article III, Division 2, Part A, Section (f) of the County Code, the purchasing code shall not apply to agreements between the Board of County Commissioners and nonprofit organizations. The County has the right to terminate the Agreement for any reason upon thirty days written notice.



SECOND ADDENDUM TO LICENSED TRAINING PROVIDER AGREEMENT

This **SECOND ADDENDUM TO LICENSED TRAINING PROVIDER AGREEMENT, R2016-1888** ("Second Addendum") is effective as of the date of execution ("Addendum Date") by and between the American National Red Cross ("Red Cross") and Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of Commissioners (the "LTP").

WHEREAS, Red Cross and LTP are parties to a Licensed Training Provider Agreement dated as of December 20, 2016 (the "Agreement"); and

WHEREAS, Capitalized terms used in this Second Addendum and not otherwise defined herein shall have the meaning assigned to them in the Agreement; and

WHEREAS, the first addendum, which expired in accordance with its terms on December 31, 2017, added LTP's participation to the Aquatics Centennial Program to the Agreement; and

WHEREAS, LTP has been permitted to teach Red Cross courses under the Agreement, and LTP would now like to participate in a program in connection with the American Red Cross's Centennial Campaign, which is designed to promote awareness of and access to the American Red Cross Water Safety education and training in identified communities ("Centennial Campaign"), which is intended to (1) teach people to swim in identified communities where drowning rate is above national average, (2) motivate children and families to "come to the water" to become competent in the water and learn about water safety at a local facility, and (3) create a sustainable ecosystem of water safety to help make communities safer; and

WHEREAS, the Parties desire to modify certain terms to the Agreement in order facilitate LTP's participation in the Centennial Campaign and to memorialize each Party's rights and responsibilities in connection therewith.

NOW THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. In connection with the Centennial Campaign, LTP agrees that it will:
 - a. Expand its existing Learn-to-Swim program ("LTS") and Junior Lifeguarding offerings to reach additional program participants who are not otherwise receiving aquatics lessons ("Program Participants");
 - b. Expand its existing Water Safety Instructor and Lifeguarding training to develop adequate infrastructure to offer the additional LTS and Junior Lifeguarding offerings;
 - c. Provide Program Participants opportunities to take LTS courses through at least the Red Cross Learn-to-Swim Level 3, of the Red Cross Swimming and Water Safety program;
 - d. Provide opportunities for parents of Program Participants to participate in Red Cross water safety and CPR/AED training courses;
 - e. Use reasonable, good faith efforts to participate in promotional and media opportunities to inform the local community of the goals of the Centennial Campaign, including the importance of swimming and water safety training; provided, that LTP will obtain Red Cross's prior consent to any promotional or media opportunities involving use of the Red Cross name or emblem pursuant to Section 6 of this Second Addendum and the Agreement;
 - f. Reasonably participate in, and provide information in support of, a research study to evaluate the

- effectiveness of the Centennial Campaign education and training;
- g. Report the progress and results of the Centennial Campaign education and training courses to the Red Cross in the manner and format reasonably requested by the Red Cross; and
 - h. Provide accurate and timely documentation of costs related to the expanded programming as a result of the Centennial Campaign, including providing invoices if requested by the Red Cross.
2. Red Cross agrees that it will:
- a. Assist in offsetting additional expenses for expanded programming as a result of LTP's participation in the Centennial Campaign and fulfillment of its obligations to Program Participants described in Section 1. LTP's expenses that will be funded by the Red Cross for the first year of participation in the Centennial Campaign are listed on Exhibit C attached to this Second Addendum. The Parties will meet on at least an annual basis to mutually determine and agree upon the scope and amount of Centennial Campaign funding assistance, if any, to be provided by the Red Cross to LTP in subsequent years;
 - b. Provide LTP printed and video training materials required to allow Program Participants to complete the Red Cross training contemplated under this Second Addendum;
 - c. Provide promotional materials to inform the local community of the Centennial Campaign;
 - d. Provide requirements, processes and mechanisms to report the process and results of the Centennial Campaign education and training courses; and
 - e. Provide tools, resources and staff training required to implement the research study intended to evaluate the effectiveness of the Centennial Campaign education and training.
3. Term and Termination. Unless terminated consistent with this Section 3, the term of this Second Addendum shall begin on the Addendum Date and shall continue thereafter for thirty-six (36) consecutive months. Either Party may terminate this Second Addendum, without cause, upon thirty (30) calendar days advance written notice to the other Party. Either Party may immediately terminate this Second Addendum upon the other Party's breach of its obligations under this Second Addendum. Termination of this Second Addendum will not automatically terminate the Agreement, but in the event the Agreement is terminated by either Party, this Second Addendum will automatically terminate. The Red Cross shall have the right to terminate the Agreement in the event of a default by LTP of its obligations hereunder upon ten (10) days' written notice, or such shorter period as the Red Cross reasonably deems necessary under the circumstances.
4. Compliance, Representations and Warranties.
- a. The Parties will comply with all applicable laws and regulations during performance under the Agreement. Neither Party will discriminate against any employee, applicant or Program Participant in connection with this Second Addendum because of any characteristic protected by applicable law or regulations.
 - b. LTP represents, warrants and certifies: (i) compliance with all U.S. economic sanctions, anti-terrorism laws and anti-money laundering laws, including but not limited to the USA PATRIOT Act, the laws administered by the United States Treasury Department's Office of Foreign Assets Control, Executive Order 13224, and any local laws that apply in the jurisdiction in which LTP is operating and (ii) no child, indentured or forced labor or unauthorized workers will be used in any aspect of the Red Cross Courses or Centennial Campaign.
5. Conflict of Interest; Business Ethics. LTP represents that no employee, principal, or affiliate of LTP holds any office in, or is an employee of, or is a member of the board of directors of, Red Cross or any Chapter or unit of Red Cross, except as shall have been disclosed by notice to Red Cross and for which Red Cross has waived any potential conflict of interest by notice to LTP. During the course of pursuing contracts with Red Cross and while performing services in accordance with this Second Addendum, LTP agrees to maintain business ethics standards which are aimed at avoiding any real or apparent improprieties or conflict of interest which could be construed to have an adverse impact on the dealing with the Red Cross. LTP shall take reasonable actions to prevent any actions or conditions which could result in a conflict with Red Cross's best interests. These obligations shall apply to the activities of LTP's employees, agents, and subcontractors in their dealings and relations with Red Cross' current and former employees and relatives.

6. Intellectual Property and Data Use.

a. Definitions:

- i. "Centennial Campaign Materials" will include everything used, or provided to LTP for use by Red Cross, in connection with the Centennial Campaign, including without limitation, reports, creative and other materials, manuals, photographs and all other documents or materials.
- ii. "Intellectual Property" means (i) inventions, discoveries, techniques, processes, methods, formulae, ideas, technical data and specifications, testing methods, research and development activities, computer programs and designs (including improvements and enhancements thereto and regardless of patentability), (ii) trade secrets and know-how, (iii) copyrightable material, (iv) trademarks and service marks (v) data related to the Centennial Campaign, and (vi) all other forms of intellectual property. Intellectual Property may take any form, including without limitation, written, oral, electronic, digital or other form.
- iii. "LTP Marks" means LTP's trademark and tradenames set forth on Exhibit A hereto and subject to any use guidelines contained in such Exhibit.
- iv. "Red Cross Marks" means Red Cross's trademark and tradenames set forth on Exhibit B hereto and subject to any use guidelines contained in such Exhibit.

b. Centennial Campaign Materials.

- i. Subject to the terms and conditions of this Second Addendum, LTP grants Red Cross a fully paid-up, royalty-free, non-transferable, non-exclusive right and license to use and display the LTP Marks in the United States solely on and in conjunction with the Centennial Campaign Materials. Red Cross acknowledges that LTP is the sole owner of the LTP Marks and the goodwill associated therewith and that all rights not expressly granted herein remain the sole and exclusive property of LTP. Red Cross will use the LTP Marks in accordance with LTP's guidelines set forth on Exhibit A.
- ii. Subject to the terms and conditions of this Second Addendum and the Agreement, Red Cross grants LTP a fully paid-up, royalty-free, non-transferable, non-exclusive right and license to use and display the Red Cross Marks only in the continental United States solely on and in conjunction with the Centennial Campaign Materials produced by the Red Cross. LTP acknowledges that Red Cross is the sole owner of the Red Cross Marks and the goodwill associated therewith and that all rights not expressly granted herein remain the sole and exclusive property of Red Cross. LTP will not take any action inconsistent with Red Cross's ownership rights and will cooperate with Red Cross in the protection thereof. LTP will use the Red Cross Marks in accordance with Red Cross's guidelines (as may be amended, from time to time) set forth on Exhibit B.
- iii. LTP acknowledges that all Centennial Campaign Materials will be owned exclusively by the Red Cross. LTP will not use or allow the use of the Centennial Campaign Materials for any purpose other than LTP's performance under this Second Addendum without the prior written consent of the Red Cross. Immediately upon request, LTP will deliver to the Red Cross all Centennial Campaign Materials and the Red Cross Marks, and LTP will cease any use and will not permit the use of the Centennial Campaign Materials and Red Cross Marks.
- iv. The foregoing license shall terminate upon termination or expiration of this Second Addendum, and unless otherwise agreed in writing or permitted by law, a Party shall cease all use of the other Party's Intellectual Property licensed hereunder upon such termination or expiration.
- v. Except as expressly provided in this Second Addendum, no Party shall use the Intellectual

Property (including, without limitation, trademarks or tradenames) of the other Party in any public statements (including any promotional or media opportunities) or in any other manner whatsoever, without obtaining such other Party's prior written consent for each use.

c. Centennial Campaign Data.

- i. With respect to any data collected in connection with the Centennial Campaign (including data regarding program offerings, LTP participants, course participants and community preparedness), as well as any other research projects or assessments undertaken by the Red Cross related to the Centennial Campaign, LTP hereby acknowledges and agrees that it shall not have any rights in Intellectual Property or data generated therein, nor shall it have any publication rights related to such Intellectual Property or data without the express consent of the Party that is the owner of such Intellectual Property and/or data.
- ii. With respect to any evaluation efforts of the Red Cross in connection with the Centennial Campaign, the evaluator will work with an institutional review board ("IRB") to ensure that the research conducted on human subjects are scientific and ethical. Data will be maintained in accordance with the IRB's consent (which shall not be unreasonably withheld, delayed or conditioned), if any.

7. Miscellaneous.

- a. The Agreement is incorporated herein by reference and, except to the extent modified by this Second Addendum, the Agreement remains in full force and effect.
- b. The Parties specifically agree and acknowledge that the Agreement shall continue to govern all aspects of LTP's conduct of American Red Cross Courses, including any courses offered in connection with the Centennial Campaign.
- c. The Parties are independent principals in all relationships and actions under and contemplated by this Second Addendum. This Agreement does not create a partnership or joint venture, and no Party has the authority to bind the other Party.
- d. In the event of any conflict between the terms of this Second Addendum and the terms of the Agreement, the terms of the Agreement shall control.
- e. This Agreement is binding upon and inures to the benefit of the parties hereto and their successors and assigns. Notwithstanding the foregoing, neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party.
- f. If any provision of this Agreement is held to be invalid, illegal or unenforceable, then, to the extent that such invalidity, illegality or unenforceability shall not deprive any Party hereto of any material benefit intended to be provided hereby, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or remaining provisions of this Agreement, and such provision shall be deemed to be severed from this Second Addendum.

Signature and Exhibit Pages Follow

The Parties, acting through their respective duly authorized representative, have executed this Second Addendum to Licensed Training Provider Agreement, which shall come into force as of the Addendum Date.

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

THE AMERICAN NATIONAL RED CROSS

Signature: _____

Signature: ^{DocuSigned by:} Patrick Beason

Print Name:

Print Name: ^{A17CAFF46078420...} **PATRICK BEASON**

Title:

Title: **AQUATICS TERRITORY REPRESENTATIVE**

Date:

Date: **4/10/2019**

WITNESS:


Signature _____ Date _____


Signature _____ Date _____

Kamar Williams
Print

James Davis
Print

**ATTEST:
SHARON R. BOCK
CLERK AND COMPTROLLER**

Signature _____ Date _____

**APPROVED AS TO
FORM AND LEGAL SUFFICIENCY:**

County Attorney

Signature _____ Date _____

**APPROVED AS TO
TERMS & CONDITIONS:**

Department Director

 05-07-19
Signature _____ Date _____

EXHIBIT A
LTP MARKS



Palm Beach County
Board of County
Commissioners



**EXHIBIT B
RED CROSS MARKS**



American Red Cross



To download camera-ready marks, complete the web form at redcross.org/brand.
List Connie Harvey as the Red Cross contact.

**CENTENNIAL ADDENDUM
EXHIBIT C- Year 4: JANUARY - DECEMBER 2019
PALM BEACH COUNTY, FL
LTP EXPENSES FUNDED BY RED CROSS**

Annual LTS facility fees waived: 3 @\$300 - Santaluces, Lake Lytal, Aqua Crest

Facility Staffing

Enrollees	Course	Fees
Up to 6	Water Safety Instructors /Basic Swim Instructors	Books & Certification fees to be waived by Red Cross
Up to 6	Lifeguards	Books & Certification fees to be waived by Red Cross
Up to 3	Lifeguard Management	Online course fee to be waived by Red Cross

Community Participants

Enrollees	Course	Fees
Up to 600	Learn-to-Swim enrollees through LTS Level 3 Pre-school and Adult Swim- Learning the Basics	\$155.00 WSI staff fee per class, "Not to exceed \$3,600 annually" (\$31.00 per hour) \$35.00 per hour, Administrative fee, "Not to exceed \$500.00 annually" LTS Facility fee waived at participating sites
Up to 200	Scholarship Lessons for Individuals	\$40.00 paid by Red Cross, balance paid by participant
Up to 50	Pediatric CPR/AED	Books & Certification fees to be waived by Red Cross
Up to 50	Hands on Water Safety Education For Parents	Books & Certification fees to be waived by Red Cross
Up to 15	Junior Lifeguarding	Books & Certification fees to be waived by Red Cross

The following supplies will also be provided:

- 250 swim caps and goggles
- 400 LTS Achievement Booklets
- 8 packs of Longfellow's WHALE Tales Sticker