

American Red Cross

Authorized Provider Agreement

This Authorized Provider Agreement ("Agreement") effective as of May 1, 2004 ("Effective Date") is between

Black Hills Area Chapter
(The "Chapter")

LF051204-12

and

City of Rapid City

(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 1221 N Maple Avenue, Rapid City, SD. 57701, 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 300 6th Street, Rapid City, SD 57701;

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 at the fees set forth in Appendix A ("Courses"). The guaranteed Course fees set forth in Appendix A shall include record keeping, certificate processing, administration, promotional assistance, and support services ("Course Fees"). Any additional services may be available for additional fees as outlined in Appendix A ("Additional Services"). Fees in Appendix A may change pursuant Section 3.0.
- 1.2 Train all potential instructors from the AP to teach the Courses ("Training") at the Training fees set forth in Appendix A ("Training Fees") 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 ("Course Instructor"). A complete list of the AP's Course Instructors is set forth in Appendix B, which shall be unilaterally modified by the Chapter in the event Course 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 a Course 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 90 days prior to implementation. Fees in Appendix A may change pursuant Section 3.0.
- 1.4 Maintain all Course records provided to the Chapter by a Course Instructor ("Course Records") for a period of five (5) years following the date of the Course.
- 1.5 Support and evaluate the Course Instructors by providing them with the following: (a) Applicable policies and procedures and any revisions or modifications thereto; (b) upon expiration of a Course 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 15 days unless otherwise specified in Appendix A, for the fees related to the Courses, Equipment rental, and Course Materials, Additional Services, Training, and retraining of courses ("Fees") set forth in section 1.9 below.
- 1.7 Verify all Course Instructor authorizations and notify the AP in the event a Course 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 Course Instructors by contacting the AP a minimum of 2 times per year. Contact for a National Account Network AP is quarterly.
- 1.9 If during any phase of evaluation, the training conducted by an AP's Course 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 ("Course Participants") 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.
- 1.10 Designate Deb Byers 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 Course Instructors and inform the Chapter when it becomes aware of any modifications that should be made to Appendix B.
- 2.2 Support each Course Instructor's compliance with American Red Cross policies and procedures by ensuring that such Course 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 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 or the training price minus the cost of books and materials the Course Participants may already have.
- 2.5 Provide payment to the Chapter within 10 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 a Course Instructor.
- 2.7 Notify the Chapter of dates, times, and locations for each Course at least 10 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 ("ANRC"). 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 his or her own copy. Course workbooks and textbooks cannot be used for more than one Course participant unless permission to do so is granted by the Chapter in writing. National Account Network APs will not be granted rights to reuse workbooks and textbooks 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 and its Course Instructors. Therefore, it is the responsibility of the AP to obtain adequate insurance to cover its operations and course instruction.
- 2.12 Designate Duncan Olney 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 Course 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 Course 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 60 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
Black Hills Area	Western South Dakota

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, e.g., notice of termination of this Agreement, shall be given to each of the Parties in writing and delivered by certified U.S. first-class mail, return receipt requested, to the names and addressees as follows:

If to the chapter:	
Chapter Name:	Black Hills Area Chapter
Address:	1221 N Maple Avenue, Rapid City, SD 57701
Attn:	Deb Byers, Health and Safety Services Manager
Phone Number:	605-342-4010
Fax Number:	605-342-2161
E-mail Address:	dbyers@rapidnet.com

If to the AP:	
AP Name:	Rapid City Swim Center

Address:	125 Waterloo Street, Rapid City, SD 57701
Attn:	Duncan Olney-Aquatics Manager
Phone Number:	605-394-5223
Fax Number:	605-394-5226
E-mail Address:	duncan.olney@rcgov.org

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 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

SIGNATURE: Deb Byers
DATE: May 17, 2004

PRINTED NAME: Deb Byers
TITLE: Health and Safety Services Manager
PHONE NUMBER: 605-342-4010
FAX NUMBER: 605-342-2161
E-MAIL: dbyers@rapidnet.com

AUTHORIZED PROVIDER REPRESENTATIVE

SIGNATURE: _____
DATE: May 17, 2004

PRINTED NAME: City of Rapid City
TITLE: Mayor
PHONE NUMBER: 605-394-4110
FAX NUMBER:
E-MAIL:

City of Rapid City
By _____
Jim Shaw, Mayor
Date _____

Attest _____
Finance Officer

Date _____ (Seal)

**APPENDIX A
COURSES, EQUIPMENT, MATERIALS AND FEES**

A. Courses: First Aid, CPR/AED, CPR for the PR, Lifeguarding, Water Safety, Oxygen Administration, Bloodborne Pathogens Training

B. Equipment and Fees:

Equipment	Rental Fee	Per
5 Pack of Adult or Infant/Child Manikins	7.50	3 days
10 Pack of Adult or Infant/Child Manikins	15.00	3 days
AED Trainer	10.00	3 days
Video rentals	10.00	3 days

C. Course Materials:

Item Description/Stock Number	Cost	Unit
Lifeguard Training Manual 655720	35.00	each
CPR/AED for the Professional Rescuer Participant Manual 652110	12.00	each
Bloodborne Pathogens:Participant Manual 655107	4.50	each
Water Safety Instructor Candidate's Kit 651311	45.00	each
Water Safety Instructors Manual w/CD-ROM 651301	21.00	each
Swimming and Diving Skills Video 651302	85.00	each
Teaching Swimming and Water Safety Video 651303	70.00	each
Swimming and Diving Skills DVD 651304	80.00	each
Swimming and Diving Skills & Teaching Swimming and Water Safety DVD set 651305	120.00	each
Water Safety Handbooks 651306	4.50	each
Raffy Learns to Swim Levels 1 & 2 651307	.75	each
Waddles in the Deep: Levels 3 & 4 651308	.75	each

D. Training Fees:

Fee Description	Fee	Unit
Authorized Provider Fee is based on enrolled basis NOT pass/fail basis. The fee includes course records/course record addendums. Entering of all data in to Nation data base and certification.		
Learn to Swim Levels I-VI	3.00	participant
CPR/First Aid, CPR for the PR, AED	4.00	participant
Water Safety Instructor and Lifeguarding	4.00	participant
Lifeguard Instructor	4.00	participant
Instructor Course Tuition		

Instructor Course Tuition		
Instructor Course Tuition		
Instructor Course Tuition		

E. Special billing or payment instructions (Optional):The above mentioned Learn to Swim programs I thru IV will also include either the Raffy Learns to Swim workbook or Waddles In the Deep as part of the authorized provider fee of \$3.00 per participant.

**APPENDIX B
COURSE INSTRUCTORS**

Name	Address	Chapter of Authorization	Current Instructor Authorization
Duncan Olney	4020 Canyon Lake Dr. Rapid City SD 57702	Black Hills Area	FA/CPR/AED WSIT/LGIT/CPR for the Prof. Res. WSI and LGI
Liz Willis	1004 1/2 Joy Avenue Rapid City, SD 57701	Black Hills Area	LGI, WSI, FA/CPR/AED/ CPR for the PR
Jennifer Wales	4747 Carol Street Rapid City, SD 57703	Black Hills Area	WSI
Nikki Murphy		Black Hills Area	WSIT, LGIT, CPR for the PR
Barbara J. Iwan		Black Hills Area	WSIT, LGIT

**APPENDIX C
MULTIPLE FACILITY CONTACTS**

Facility Name and Address	Contact Name	Phone Number Fax Number E-mail Address
City Recreation 125 Waterloo Street Rapid City, SD 57701	Doug Lowe Recreation Division Manager	394-4168 394-5226
Horace Mann Pool 818 Anamosa Street Rapid City, SD 57701	Duncan Olney Aquatics Director	394-1891 394-5226
Jimmy Hilton Municipal Pool 900 Sheridan Lake Road Rapid City, SD 57702	Duncan Olney Aquatics Director	394-1894 394-5226
Parkview Pool 4221 Parkview Drive Rapid City, SD 57702	Duncan Olney Aquatics Director	394-1892 394-5226
Roosevelt Park Ice Arena 235 Waterloo Street Rapid City, SD 57701	Ice Arena Manager	394-1879
Rapid City Swim Center 125 Waterloo Street Rapid City, SD 57701	Duncan Olney Aquatics Director	394-5223 394-5226