



Legislation Details (With Text)

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Title:	CONSIDER APPROVING A LICENSED TRAINING PROVIDER AGREEMENT WITH THE AMERICAN RED CROSS (CITY COUNCIL)				
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Attachments:	1. Exhibit 1 - License Trainer Agreement ARC				

Date	Ver.	Action By	Action	Result
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Report to Mayor and City Council

Tuesday, April 05, 2022

Consent

SUBJECT:

CONSIDER APPROVING A LICENSED TRAINING PROVIDER AGREEMENT WITH THE AMERICAN RED CROSS (CITY COUNCIL)

I. SUMMARY

The City’s current Licensed Training Provider Agreement with the American National Red Cross (ARC) is scheduled to expire on May 21, 2022. The City requires the continued services of the ARC, as there are over 200 Community Services employees whose certifications lapsed due to the COVID shutdown, and with the return to more normal programming, need re-certification. The service did not go to bid as: (1) the ARC has its own unique and nationally recognized training method; (2) City personnel have been taught this method for over 20 years; (3) ARC provides discounts to the City based on the number of enrollees; and (4) the overall prices available from the ARC are lower and more cost effective than the alternatives. The City Council is asked to approve a new three-year agreement with ARC.

II. RECOMMENDATION

TAKE the following actions:

1. APPROVE a waiver of the bidding requirements as stated in Chapter 6 (Purchasing

System) of Article II (Administration) of the Carson Municipal Code (CMC), pursuant to CMC 2611(e) (Sole Source Purchasing).

2. APPROVE the Licensed Training Provider Agreement with ARC (Exhibit No. 1; "Agreement").
3. AUTHORIZE the Mayor to execute the Agreement following approval as to form by the City Attorney.

III. ALTERNATIVES

TAKE another action the City Council deems appropriate, subject to the requirements of applicable law.

IV. BACKGROUND

For approximately 20 years, certified staff trainers - the Aquatics Supervisor and senior Aquatics staff - have been training employees and the public on various life-saving measures. They are also able to certify lay responders (non-lifesaving professionals) and professional lifesaving personnel. Finally, the Aquatics Supervisor can certify individuals to become Swim Instructors. During this time, they have only utilized the American Red Cross training method.

The proposed Agreement is to license (i.e., grant City access to and use of) American Red Cross course training materials and curriculum in order to permit individuals who are (i) either employees or volunteers of City, or (ii) who are also Red Cross-certified instructors in good standing, to deliver the training courses specified in the agreement. Subjects include CPR, AED, First Aid, Lifeguarding, Basic Water Rescue, and Water Safety.

The City will pay specified per-person fee rates for access to Red Cross' course training materials and curriculum. There is also a specified per-pool Learn-to-Swim Facility Fee, which is required for City to teach the Learn-to-Swim Program. The City receives a discount in the fee rates as the volume of enrollees/certifications increases.

Legal Discussion

The proposed Agreement uses ARC's form. The City Attorney was able to negotiate certain modifications; however, there are a few provisions meriting the Council's attention.

Section 1.6 provides for City to enter course records into ARC's online Learning Management System (LMS) within 10 days of completion of each class, and to comply with terms and conditions of the LMS during such use. ARC's terms of use are available at: <https://www.redcross.org/terms-of-use.html>. The terms of use apply to any person's access to and use of the web sites, media, apps, in-app services and any other cloud services offered by ARC including without limitation its specified web sites and any media,

software, programs, services, tools, features, databases, materials, content, features, products, apps, in-app services, or information available or sold on or through it or used in connection with it. The terms of use include a warranty disclaimer (Section 10), limitation of liability and waiver of consequential damages (Section 12), and indemnification provision related to any claims and liabilities arising out of the user's use of the foregoing (Section 17), all in favor of ARC. The proposed approval of the Agreement would include agreement and authorization for City staff to enter course records into ARC's LMS pursuant to Section 1.6 and to comply with ARC's terms of use during such use.

Section 2.5 of the Agreement provides that City may elect to participate in ARC's Class Posting Service (CPS), allowing it to advertise availability of courses to prospective students on ARC's online store, for additional fees, and that any City participation in the CPS would be subject to the terms and conditions contained in ARC's CPS User Guide. However, City staff does not intend to use this feature under the proposed Agreement. Use of this feature, which would carry an additional cost and be subject to ARC's terms and conditions, would require an additional City approval.

Section 5.2 of the Agreement provides that payment of all undisputed ARC invoices or portions thereof is due 30 days from the date of the invoice, and that past due amounts will be subject to collections actions and may be referred to an external collections agency, provided ARC shall first notify City of the past due amounts in writing, and City shall have no less than 30 days from the date of receipt of such notice to pay the past due amounts before ARC may refer any such past due amounts to an external collections agency or terminate the Agreement for breach of City. In the event City fails to pay the past due amounts following said 30-day cure period, then ARC will be entitled to reasonable external collections agency costs of collection, including interest on the delinquent amounts at a rate not to exceed 3% per year.

Bidding Requirements - Findings for Sole Source Exemption

There are three organizations that provide this training - the American Red Cross, the American Heart Association, and Ellis & Associates. However, City staff have 20 years of experience using the American Red Cross method, and any changes would require all employees, including the instructors, to be retrained in the new method, as each agency has its own standard. Also, an external trainer will need to be contracted.

CMC 2611(e) states: "The City Manager may dispense with this Chapter's bidding requirements if he or she finds that the materials, supplies, equipment, or services are unique because of their quality, durability, availability, or fitness for a particular use and are available only from one (1) source, or, if available from more than one (1) source, can be purchased from the manufacturer or service provider for a lower price. If the cost of such sole source purchasing is \$25,000 or greater, then the City Council's approval shall be required."

Staff recommends City Council approval of the sole source exemption for the Agreement based on the following:

- American Red Cross has its own unique and nationally recognized method;
- City Personnel have been taught the American Red Cross method for over 20 years;
- American Red Cross provides discounts to the City based on the number of enrollees;

and

- The overall prices available from the American Red Cross are lower and more cost effective than the alternative.

V. FISCAL IMPACT

Should the City Council approve staff's recommendations, approximately \$57,000 has been requested in the FY 2022/23 Community Services Proposed Budget for this service. As this is a pay-per-training agreement, there is no stated maximum contract amount.

VI. EXHIBITS

Exhibit 1 - ARC Licensed Training Provider Agreement (pg. 5-57)

Prepared by: Bobby Grove, Recreation Program Manager and Michael Whittiker Jr., Community Services Director