

City of Piedmont
Council Agenda Report

DATE: June 6, 2005

FROM: John C. Speakman, Fire Chief

SUBJECT: Approval of Training Center Agreement with the American Heart Association

RECOMMENDATION:

By motion, approve the attached agreement between the American Heart Association and Piedmont Fire Department creating a regional life support training consortium.

BACKGROUND:

The American Heart Association sets training guidelines for emergency cardiovascular care and training. This agreement between the American Heart Association and five cities including Piedmont will provide approved instructional materials and grant the ability to certify students in basic life support, advanced cardiac life support, and pediatric advanced life support.

The consortium consists of: Albany, Berkeley, Emeryville, Piedmont, and San Ramon Fire District. The partnership of these departments allows cost sharing of instructional supplies and materials.

The agreement has been reviewed and approved by the City Attorney.

Memorandum of Understanding

This agreement is between the American Heart Association, Inc. (“AHA”), and the San Ramon Fire Protection District and the Cities of Berkeley, Emeryville, Albany and Piedmont, through their respective Fire Departments (collectively “AGENCIES”).

Recitals

1. The Alameda County EMS Authority requires all First Responders, EMT’s and Paramedics to be annually certified in Cardiopulmonary Resuscitation (CPR);
 2. AHA is a nonprofit organization dedicated to fighting heart disease and stroke and sets guidelines for emergency cardiovascular care and training (“ECC”) and certifies public and private entities as AGENCIES;
 2. [AGENCIES would like to be certified as entities providing and administering ECC training under AHA guidelines and curricula (“Training Centers”) in order to certify their own employees; AGENCIES
 3. AHA generally certifies only those entities capable of training 500 or more individuals per year, but is willing to certify AGENCIES as Training Centers so long as AGENCIES collectively do so; and
 4. AGENCIES are willing to undertake that obligation.
- NOW THEREFORE, in consideration of the mutual promises set out herein, the parties hereby agree as follows:

1. **Definitions:**

1.1. “AHA Materials” means all ECC materials published by AHA, including, but not limited to, textbooks, instructor’s manuals, tests, keys, evaluation forms, newsletters, course completion cards, and course participation cards.

1.2. “Course Cards” means those cards bearing AHA Servicemarks and ECC logo. AGENCIES may distribute Course Cards to students pursuant to AHA Program Guidelines (defined below) to indicate that the student participated in or successfully completed a Course.

1.3. A “Course” means one of the following classes: Basic Life Support, Advanced Cardiac Life Support or Pediatric Advanced Life Support.

1.3. “Geographic Territory” means _____.

1.4. “Training Sites” means persons or organizations engaged or authorized by AGENCIES to teach Courses and for whom AGENCIES will process course rosters.

1.5. “Instructors” means persons engaged or authorized by AGENCIES or Training Sites to teach Courses.

1.6. “Program Guidelines” means *Guidelines 2000 for Cardiopulmonary Resuscitation and Emergency Cardiac Care, International Consensus on Science*, and the *Emergency Cardiovascular Care Program, Program Administration Manual*, as amended. The Program Guidelines are incorporated herein by

reference as if fully set forth herein. AGENCIES acknowledges receipt of a current set of Program Guidelines.

2. Responsibilities of Agencies:

2.1. *Courses:* AGENCIES shall conduct courses and shall authorize Instructors and/or Training Sites to conduct courses only within the Geographic Territory. AGENCIES shall ensure that all Courses taught by AGENCIES, Training Sites, and/or Instructors conform to the requirements of the Program Guidelines and the curriculum set out in the applicable AHA Instructor's Manuals. AGENCIES acknowledges and agrees that this Agreement is non-exclusive and that AHA may enter into Training Center Agreements with other parties within the Geographic Territory.

2.2. AGENCIES shall support Chain of Survival initiatives in cooperation with AHA in their region and/or community, within available resources as outlined in Program Guidelines. Chain of Survival initiatives are _____.

2.3. AGENCIES shall support local public advocacy Chain of Survival activities, e.g., public access defibrillation. Public access defibrillation is _____.

2.4. Rosters and Course Completion Cards:

2.4.1. AGENCIES shall safeguard Course Cards from unauthorized distribution and shall limit their distribution to TRAINING CENTER students, Training Sites and/or Instructors and who have met the requirements for receipt of Course Cards in accordance with Program Guidelines. Only the approved AGENCIES Coordinator may receive Course Cards from distributors and the AGENCIES will be solely responsible for the control and security of card issuance. This responsibility may not be assigned or transferred to any other organization or individual, including Training Sites or Instructors. AGENCIES shall insure that only the appropriate type of Course Card, as set out in the Program Guidelines, is issued to each student.

2.4.2. AGENCIES shall maintain rosters and records for all Courses conducted by AGENCIES and/or Training Site for at least three (3) years after the date the Course was conducted.

2.4.3. AGENCIES shall submit statistical data and/or reports to AHA as required under the Program Guidelines and as permitted by law.

2.5. Purchase and Sale of AHA Materials:

2.5.1. AGENCIES may purchase AHA Materials from third party distributors subject to the distributor's policies regarding payment terms, prices, shipping, and handling. ¶

2.5.2. AGENCIES may sell AHA ECC textbooks and Instructor's Manuals to students, Instructors, and other third parties. However, it may not sell or distribute to any third party, other than Training Sites and/or Instructors, AHA Course evaluation forms and/or answer keys. AHA Course evaluation forms and/or answer keys may be used only for provision of Courses under this Agreement. AGENCIES shall prohibit Training Sites or Instructors from copying, re-selling or distributing AHA Course evaluation forms and answer keys.

2.6. *Course Coordinators:* AGENCIES shall designate an employee (“AGENCIES Coordinator”) to serve as the primary contact between AGENCIES and AHA regarding all administration of ECC training, including, but not limited to, customer service, Course scheduling, card issuance, and records maintenance and retention. AGENCIES shall ensure that new AGENCIES Coordinators attend an orientation with AHA during the contract period.

3. **AHA Responsibilities**

3.1 AHA shall monitor and/or review AGENCIES’ and Training Sites’ performance and compliance with Program Guidelines and AHA curricula at least once each year through a review of Course records, site reviews, and course audits. AGENCIES shall provide AHA with access, as needed and as permitted by law, to Training Site facilities and records. This shall be in addition to the monitoring of Instructors as a part of their review.

3.2 AHA shall conduct annual audits of AGENCIES to insure compliance as referenced in the AHA Training Center Manual.

4. **Dispute Resolution:**

4.1 AGENCIES agree to first attempt to resolve any disputes regarding Course curricula, compliance with Program Guidelines or other matters regarding delivery of AHA ECC training according to the Dispute Resolution Policy set out in the Program Guidelines. AGENCIES may then in its discretion seek judicial relief.

4.2 Notwithstanding above, any party may terminate its participation in this Agreement at any time under Section 10.

5. **Costs and Fees:** All costs of providing Courses and charging fees to students shall be the responsibility of AGENCIES. AHA shall not have any responsibility for any costs incurred, or fees charged, by AGENCIES or Training Sites. AHA shall not be paid any fees by and shall have no financial interest in AGENCIES, Training Sites or Instructors.

6. **Relationship of the Parties:** The parties acknowledge and agree that the relationship created by this Agreement is that of independent contractors, each is an independent business entity and, as such, neither party may represent itself as an employee, agent, or representative of the other; nor may it incur any obligations on behalf of the other party; nor are the parties joint venturers or partners; nor does the relationship created under this agreement constitute a franchise; nor may any employee of one party be considered an employee of another party. No party shall be responsible for the activities of any other party, including but not limited to the teaching and scheduling of Courses, personnel matters, contractual obligations that exist apart from this Agreement, or any other obligations incurred in the regular course of business.

7. **Proprietary Rights:**

7.1. AGENCIES acknowledge and agree that AHA Materials are copyrighted and owned by AHA. AHA Materials may not be copied in whole or part, and/or adapted without the prior express written consent of AHA, except as necessary to fulfill the obligations of AGENCIES under this Agreement.

7.2. The name “American Heart Association” and the heart-and-torch logo (collectively “AHA Servicemarks”) are servicemarks of the American Heart Association, Inc. AGENCIES acknowledge and agree that they may not use or display them in any fashion whatsoever, except as may be expressly set out in the Program Guidelines, and subject to AHA’s prior review and written approval.7.3 Course rosters and monitoring forms are the property of AHA and shall be delivered to AHA upon request, or upon termination or expiration of this Agreement, whichever comes first. [why? this makes no sense].

7.4 AGENCIES’ use of AHA Servicemarks Materials shall accrue exclusively to AHA’s benefit, and all ownership, copyrights, servicemarks, trademarks, and other rights, titles, and interests in them shall be in AHA’s name and shall belong to AHA. AGENCIES shall not contest the validity of AHA’s copyrights after the expiration or termination of this Agreement.

8. **Intra-Agency Obligations**

9. **Indemnification:**

9.1. Each party shall indemnify, defend and hold harmless each of the other parties, their officers, agents, servants and employees from any and all liability for such losses, expenses, or claims for personal injury, death or property damage arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, or claim for personal injury, death or property damage are caused by or result from the negligent or intentional acts or omissions of the indemnifying party and their officers, agents, servants and employees.

This indemnity obligation shall not extend to claims, damages, liabilities, suits and expenses caused solely from the science content of any AHA Materials when used by AGENCIES and/or Training Sites in full compliance with the Program Guidelines and the curricula set out in the applicable AHA Instructor's Manual.

9.2 For the duration of this Agreement AGENCIES shall each obtain and maintain at its expense commercial general liability insurance from a carrier rated A, VII or better, with limits equal to or greater than \$300,000, if the only Courses conducted under this Agreement are Basic Life Support Courses listed under Section 1.2., and \$1,000,000 if any Course other than Basic Life Support Courses is listed in Section 1.2. of this Agreement. This policy shall specify that it may not be modified or canceled by the insurer, except after thirty (30) days prior written notice by the insurer to AHA. AGENCIES must each provide AHA with a certificate of insurance evidencing this coverage upon execution of the Agreement and upon any renewals hereof.

10. **Term and Termination**

10.1. The term of this Agreement shall be for a one-year period, beginning on _____ and ending on _____. It may only be extended by mutual written agreement of the parties. Each party is free to decline to renew or extend of its participation in this Agreement.

10.2. Upon termination or expiration, with or without cause, all unused Course Cards, rosters, and monitoring forms shall be delivered to AHA.

10.3. If any party breaches any term or condition of the Agreement and fails to cure the breach within ten (10) business days after receipt of written notice describing the breach, then the party providing the notice may terminate its participation in this Agreement forthwith. A breach includes but is not limited to failure by AGENCIES or Training Sites to comply with program and/or curriculum guidelines, or failure by AHA to _____.

10.4. Any party may terminate its participation in this Agreement, without cause, upon thirty (30) days' prior written notice to the other parties.

11. General Terms:

11.1. *Assignment:* This Agreement may not be assigned by any party without the prior written consent of other parties.

11.2. *Entire Agreement:* This Agreement is the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed, and supersedes all prior written or oral agreements or communications between the parties. In the event of any conflict between the terms of this Agreement and the terms of the Program Guidelines, the terms of this Agreement shall prevail.

11.3. Each party warrants and represents that upon execution hereof, this Agreement shall be the legal, valid and binding obligation of that party, enforceable against that party in accordance with its terms. Those signing this Agreement warrant and represent that they are duly authorized to sign this Agreement on behalf of their respective party.

11.4. *Waiver:* No waiver of any term, provision, or condition of this Agreement, whether by conduct or otherwise, shall be deemed to be, and shall not constitute, a waiver of any other provision hereof; nor shall such waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

11.5. *Modification:* No supplement, modification, or amendment of any term, provision, or condition of this Agreement shall be binding or enforceable on either party hereto unless in writing signed by all parties.

11.6. *Parties Named:* Nothing in this Agreement, whether expressed or implied, is intended to confer upon any person, other than the parties identified herein and AHA (and their respective heirs, representatives, successors, and permitted assigns), any rights or remedies under, or by reason of, this Agreement. Nothing in this Agreement is intended to relieve or discharge any liability of any party hereto or any third party. No provision in this Agreement shall give any entity any right of subrogation against any party hereto.

11.7. *Notices:* All notices shall be sent postage prepaid to the intended party at the address set forth below (unless notification of a change of address is given in writing) and two (2) business days following the date of mailing shall be deemed the date notice is given.

American Heart Association

Attn: _____

City of Berkeley

City of Emeryville

City of Albany

City of Piedmont
City Clerk
120 Vista Avenue
Piedmont, CA 94611

San Ramon Fire Protection District

11.8 *Severability*: Should any part, term, or provision of this Agreement be declared to be invalid, void, or unenforceable, all remaining parts, terms, and provisions hereof shall remain in full force and effect, and shall in no way be invalidated, impaired, or affected thereby.

11.9 *Applicable Law*: This Agreement shall be governed by the laws of the State of California without regard to its conflict of laws provisions.

11.10 *Subject Headings*: The subject headings of the sections, paragraphs, and subparagraphs of this Agreement are included herein solely for the purposes of convenience and reference, and shall not be deemed to explain, modify, limit, amplify, or aid in the meaning, construction, or interpretation of any of the provisions of the Agreement.

11.11. *Survival*: The following paragraphs, including their subparagraphs, shall survive termination of this agreement: 4.2, 8, 9, 11.2, 11.6, 11.7, 11.8, 11.9 and 11.11.

American Heart Association

By: _____
Print Name: _____
Title: _____
Date: _____

City of Berkeley

By: _____
Its: City Manager
Date: _____

Approved as to Form:

City Attorney

Countersigned By:

City Auditor

City of Piedmont

By: _____
Its: _____
Date: _____

City of Albany

By: _____
Its: _____
Date: _____

City of Emeryville

By: _____
Its: _____
Date: _____

San Ramon Fire Protection District

By: _____
Its: _____
Date: _____