

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: September 12, 2023

Consent Regular
 Ordinance 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 receive and file an executed Independent Contractor Agreement with Jupiter Diving Academy, LLC, US Diving Coach at North County Aquatic Complex, for the period of August 1, 2023 through September 30, 2023 in an amount not to exceed \$7,000. Recreation program fees collected will offset expenses.

Summary: This Independent Contractor Agreement has been fully executed on behalf of the Board of County Commissioners (BCC) by the Director of the Parks and Recreation Department in accordance with Resolution 94-422, amended by Resolutions 2002-2103, 2007-0409, 2012-0168, 2017-0822 and 2021-2049. The Department is now submitting this agreement in accordance with County PPM CW-O-051, which requires all delegated agreements to be submitted by the initiating Department to the BCC as a Receive and File agenda item. District 1 (AH)

Background and Justification: A resolution providing authority to execute Independent Contractor Agreements with recreation instructors and sports officials (Resolution 94-422, amended by Resolutions 2002-2103, 2007-0409, 2012-0168, 2017-0822 and 2021-0249) was adopted by the BCC to streamline the hiring process. The BCC granted the Director of Parks and Recreation authority to execute Independent Contractor agreements and amendments with recreation instructors and sports officials up to \$10,000, with contracts of \$10,000 or more requiring the County Administrator's approval.

Attachment: Independent Contractor Agreement

Recommended by: 
Department Director

8/16/2023
Date

Approved by: 
Assistant County Administrator

8/29/2023
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2023	2024	2025	2026	2027
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	<u>7,000</u>	_____	_____	_____	_____
External Revenues	<u>(10,000)</u>	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>*(3,000)</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____
Is Item Included in Current Budget:		Yes	<u>X</u>	No	_____
Does this item include use of federal funds?		Yes	_____	No	<u>X</u>

Budget Account No.: Fund 0001 Department 580 Unit 5201
 Object 3422 / Revenue Source 4724 Program N/A

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

Contractor	Revenue	Expense	% Split
Jupiter Diving Academy	\$10,000	\$7,000	70/30
Totals	\$10,000	\$7,000	

*Estimated net revenue for this agreement is \$3,000. Actual revenue and operating costs will be determined at the termination of this agreement.

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

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

<p><u>ASTDUE 8/18/23</u> OFMB <u>QA 8/18</u></p>	<p><u>[Signature]</u> <u>8/25/23</u> Contract Development & Control</p>
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B. Legal Sufficiency: OB 8/18

Anne DeGent 8/29/23
 Assistant County Attorney

C. Other Departmental Review:

 Department Director

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

**INDEPENDENT CONTRACTOR AGREEMENT FOR
PALM BEACH COUNTY PARKS & RECREATION DEPARTMENT**

THIS INDEPENDENT CONTRACTOR AGREEMENT, hereinafter referred to as the "Agreement," is made and entered into on 12th day of June, 2023, by and between the Board of County Commissioners of Palm Beach County, Florida, hereinafter referred to as "COUNTY," and Jupiter Diving Academy, LLC, an Independent Contractor, hereinafter referred to as "CONTRACTOR".

WITNESSETH:

WHEREAS, COUNTY, by and through its Parks and Recreation Department, hereinafter referred to as the "Department," organizes and provides programming activities for the benefit and wellbeing of the general public; and

WHEREAS, the COUNTY desires to make available certain recreational programs, services, classes, and/or activities to its residents by entering into agreements with independent contractors for the provision of such recreational programs, services, classes, and/or activities; and

WHEREAS, the COUNTY and CONTRACTOR desire to clarify and define their responsibilities with regard to providing such services; and

WHEREAS, the recreational programs, services, classes, and/or activities will be conducted by CONTRACTOR and governed by the Department pursuant to the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, COUNTY and CONTRACTOR hereby agree as follows:

1. **SCOPE OF SERVICES**

CONTRACTOR shall furnish the instructional services described on Exhibit "A", which is attached hereto and made a part thereof ("Services"). It is acknowledged and agreed that CONTRACTOR has chosen to provide the Services on the dates and times chosen by CONTRACTOR, and that Exhibit "A" contains the dates, times and locations at which such services shall be provided.

CONTRACTOR affirms that he/she has the knowledge and skills, either by training, experience, education or a combination thereof to adequately and competently perform the Services. CONTRACTOR shall conduct these Services in a careful and responsible manner with due regard for the safety of participants and others that may be affected by the Services or the participants. The materials, tools and equipment for the activity shall be supplied by CONTRACTOR in accordance with Exhibit "A".

2. **TERM AND TERMINATION**

This Agreement shall commence on August 1, 2023 and shall terminate on September 30, 2023, and is not subject to extension or renewal. The COUNTY may terminate this Agreement at any time upon written notice to the CONTRACTOR and CONTRACTOR may terminate this Agreement by providing thirty (30) business days advance written notice to the COUNTY. Such notice to be delivered to the Department's authorized representative. The COUNTY shall be liable only for payment for Services performed prior to the effective date of such termination.

3. **COMPENSATION**

The total amount payable by COUNTY under this Agreement for the services to be performed hereunder is not to exceed \$7,000.00 or Seven Thousand dollars.

CONTRACTOR shall be paid on a monthly basis after Services have been rendered in accordance with Exhibit "A" attached hereto. COUNTY will not include any refunded amounts associated with CONTRACTOR'S Services in its payments to CONTRACTOR.

In order to do business with Palm Beach County, CONTRACTOR is required to create a Vendor Registration Account OR activate an existing Vendor Registration Account through the Purchasing Department's Vendor Self Service (VSS) system, which can be accessed at <https://pbcvssp.co.palm-beach.fl.us/webapp/vssp/AltSelfService>. If CONTRACTOR intends to use subcontractors, CONTRACTOR must also ensure that all subcontractors are registered as contractors in VSS. All subcontractor agreements must include a contractual provision requiring that the subcontractor register in VSS. COUNTY will not finalize a contract award until the COUNTY has verified that the CONTRACTOR and all of its subcontractors are registered in VSS.

4. **FEES**

CONTRACTOR shall not charge any fees to the participants other than those in accordance with Exhibit "A" attached hereto. Should CONTRACTOR wish to charge any additional fees to the participants such fees must be approved by the County in advance. CONTRACTOR shall notify the COUNTY of the amount of the additional fees in writing, and if approved by the County such additional fees may be collected by CONTRACTOR. If CONTRACTOR or COUNTY terminates this Agreement prior to the scheduled completion of the Services, the purchased supplies or a pro-rata percentage of the fees collected by CONTRACTOR shall be returned to the participants who had paid such fees.

CONTRACTOR shall not engage in any activity that may result in additional cost to the COUNTY. Any acts or omissions by the CONTRACTOR while performing under this Agreement that create a real or perceived benefit to the COUNTY but have not been accounted for within the COUNTY'S cash management system in accordance with the associated Services shall not entitle the CONTRACTOR to any additional payment. Any and all liability, financial and otherwise, for such acts or omissions shall be at the sole risk of the CONTRACTOR.

5. **REGISTRATION**

The COUNTY, through the Department, shall register all participants for the Services provided by CONTRACTOR and shall collect and record all fees received. In the event of a discrepancy with the amount paid, the decision of the COUNTY is final. CONTRACTOR may request to review any supporting documentation utilized to determine the amount paid.

6. **INDEPENDENT CONTRACTOR RELATIONSHIP**

The CONTRACTOR is, and shall be, in the performance of all work services and activities under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONTRACTOR'S sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR'S relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY. The CONTRACTOR does not have the power or authority to bind the COUNTY in any promise, Agreement or representation.

7. **TAXES**

It is acknowledged and agreed that the service to be provided by CONTRACTOR is a professional service and

that the COUNTY is neither paying Social Security benefits nor withholding taxes from CONTRACTOR'S compensation for said service. CONTRACTOR assumes sole responsibility for the payment of any and all federal, state, and local taxes as now exist or may hereafter come into being as such taxes may be applicable to the payments made by COUNTY to CONTRACTOR in exchange for the services to be performed hereunder.

Additionally, CONTRACTOR is not eligible to benefit from the COUNTY's Tax Exempt Status. As such, CONTRACTOR is not exempt from the payment of sales taxes to suppliers for any materials as may be used in the performance of CONTRACTOR'S obligations under this Agreement.

8. **SUBCONTRACTING**

CONTRACTOR may not, without the advance written consent of the Department, subcontract or assign any rights, responsibilities or obligations under this Agreement.

9. **PERFORMANCE**

a. CONTRACTOR agrees to:

1. perform the Services set forth herein in accordance with all applicable association/governing body rules and regulations, and in a competent, professional, safe, and responsible manner with full regard for the safety of the participants and the facility;
2. assure that no person other than CONTRACTOR or a qualified employee of CONTRACTOR is engaged in the provision of the Services required to be performed hereunder;
3. provide and maintain, in proper working order and condition, all equipment and materials necessary to conduct the Services to be performed hereunder;
4. inspect the area prior to beginning Services to assure safety standards. In the event of a safety concern, CONTRACTOR is to report such concern immediately to the authorized Department representative and postpone the activity until the Department's representative determines that the concern has been addressed;
5. inspect the area following Services rendered to assure that the area remains in good condition and order;
6. utilize instructional methods and procedures conducive with the Department's purpose, intent, and objective in providing the recreational activity;
7. provide the Department's authorized representative five (5) business days advance notice of all schedule conflicts/changes;
8. immediately notify the Department's authorized representative of any unanticipated absences such as personal/family illnesses; and
9. adhere to applicable Department policies and procedures and all federal, state and local laws and regulations, including Palm Beach County Code, Chapter 21, as may be amended, pertaining to Parks and Recreation.
10. assure that all participants have paid the activity fee; and
11. take attendance during each class and reconcile attendees to activity roster.

b. COUNTY agrees to:

1. maintain the area and associated facilities in a safe and clean condition;
2. conduct registration, collect participation fees, and process refunds for program registrants;
3. provide activity rosters to the CONTRACTOR; and
4. provide compensation to CONTRACTOR pursuant to the terms of this Agreement; and
5. publicize, promote, and advertise the activity when feasible.

10. **POSTPONEMENT OR CANCELLATION OF ACTIVITY**

In the event emergency conditions arise which may affect public safety, the activity may be postponed or cancelled. Such emergency conditions include, but are not limited to, acts of God or issuance of an executive order indicating a state of general emergency. COUNTY, in its sole discretion, will determine the necessity to postpone or cancel the activity and will endeavor to provide CONTRACTOR at least four (4) hours notice of such postponement or cancellation prior to the activity start time. Provided, however, COUNTY's notice of such postponement or cancellation may be given at anytime including during the activity.

In the event COUNTY cancels the activity due to any public safety concern or CONTRACTOR elects to cancel the activity rather than accept a delayed start time, the term of this agreement will be extended upon the same terms and conditions provided that within five (5) days following such occurrence, COUNTY and CONTRACTOR agree upon a rescheduled activity date and time. Such term extension will be effective upon COUNTY's delivery to CONTRACTOR of a written notice specifying the agreed upon rescheduled activity date and time and detailing the circumstances leading to the term extension.

In the event COUNTY and CONTRACTOR are unable to agree upon a rescheduled activity date and time as specified above, this Agreement will terminate without further action or payment.

11. **CANCELLATION, RESCHEDULING AND SUBSTITUTION OF ACTIVITY**

In the event CONTRACTOR fails to perform or otherwise cancels the activity for any reason, including illness, at any time, the term of this agreement may be extended upon the same terms and conditions provided that within five (5) days following such cancellation, COUNTY and CONTRACTOR agree upon a rescheduled activity date and time. Such term extension will be effective upon COUNTY's delivery to CONTRACTOR of a written notice specifying the agreed upon rescheduled activity date and time and detailing the circumstances leading to the term extension.

12. **DEPARTMENT REPRESENTATIVE**

The Department's authorized representative for this Agreement is:

Name: Craig Perry Phone Number: 561-745-0839

13. **INSURANCE REQUIREMENTS**

It is the responsibility of CONTRACTOR to provide proof of the required insurance coverages specified in **Exhibit "B"** to this Agreement. Such proof of insurance must be provided to the Department's authorized representative prior to the execution of this Agreement.

14. **INDEMNIFICATION**

CONTRACTOR shall protect, defend, reimburse, indemnify and hold COUNTY, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of their performance of the terms of this Agreement or due to the acts or omissions of CONTRACTOR.

15. **NOTICES**

All notices required in this Agreement are to be hand delivered or sent by certified mail, return receipt requested.

If sent to COUNTY, such notices are to be addressed:

Palm Beach County Parks and Recreation Department
Attn: Aquatic Programs Coordinator
2700 6th Avenue South
Lake Worth, Florida 33461

If sent to CONTRACTOR, such notices are to be addressed:

Jupiter Diving Academy, LLC- Kristin Fuhr
17560 Cinquez Park Rd E
Jupiter, FL 33458
832-470-9818

16. **REMEDIES**

This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement will be held in a court of competent jurisdiction located in Palm Beach County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

17. **NO THIRD PARTY BENEFICIARIES**

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the COUNTY and/or CONTRACTOR.

18. **AVAILABILITY OF FUNDS**

COUNTY's performance and obligation to pay under this Agreement for subsequent fiscal years is contingent upon annual appropriations for its purpose by the Board of County Commissioners.

19. **ARREARS**

CONTRACTOR shall not pledge the COUNTY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. CONTRACTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

20. **PUBLIC ENTITY CRIMES**

As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof,

CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and Contractors who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

21. **CRIMINAL HISTORY RECORDS CHECK**

The CONTRACTOR, CONTRACTOR'S employees, subcontractors of the CONTRACTOR and employees of subcontractors shall comply with Palm Beach County Code, Section 2-371 – 2-377, the Palm Beach County Criminal History Records Check Ordinance ("Ordinance"), for unescorted access to critical facilities ("Critical Facilities") or criminal justice information facilities ("CJI Facilities") as identified in Resolutions R2013-1470 and R2015-0572, as amended. The CONTRACTOR is solely responsible for the financial, schedule, and/or staffing implications of this Ordinance. Further, the CONTRACTOR acknowledges that its Contract price includes any and all direct or indirect costs associated with compliance with this Ordinance, except for the applicable FDLE/FBI fees that shall be paid by the COUNTY.

This Contract may include sites and/or buildings which have been designated as either "critical facilities" or "criminal justice information facilities" pursuant to the Ordinance and above referenced Resolutions, as amended. COUNTY staff representing the COUNTY department will contact the CONTRACTOR(S) and provide specific instructions for meeting the requirements of this Ordinance. Individuals passing the background check will be issued a badge. The CONTRACTOR shall make every effort to collect the badges of its employees and its subcontractors' employees upon conclusion of the contract and return them to the COUNTY. If the CONTRACTOR or its subcontractor(s) terminates an employee who has been issued a badge, the CONTRACTOR must notify the COUNTY within two (2) hours. At the time of termination, the CONTRACTOR shall retrieve the badge and shall return it to the COUNTY in a timely manner.

The COUNTY reserves the right to suspend the CONTRACTOR if the CONTRACTOR 1) does not comply with the requirements of County Code Section 2-371 – 2-377, as amended; 2) does not contact the COUNTY regarding a terminated CONTRACTOR employee or subcontractor employee within the stated time; or 3) fails to make a good faith effort in attempting to comply with the badge retrieval policy.

22. **SEVERABILITY**

If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

23. **ACCESS AND AUDITS**

If applicable, should any portion of the payments made to CONTRACTOR include CONTRACTOR'S charges, expenses, and costs incurred in estimating and performing the services to be performed hereunder, CONTRACTOR will maintain adequate records to justify all such charges, expenses, and costs for at least five (5) years after the expiration or termination of this Agreement. The COUNTY shall have access to all such books, records, and documents for the purpose of inspection or audit during normal business hours at CONTRACTOR'S place of business.

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed COUNTY contracts, transactions, accounts and records, to require the

production of records, and to audit, investigate, monitor, and inspect the activities of the CONTRACTOR, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

24. **ENTIRETY OF CONTRACTUAL AGREEMENT**

COUNTY and CONTRACTOR agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

25. **NONDISCRIMINATION**

The COUNTY is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the CONTRACTOR warrants and represents that throughout the term of the Contract, including any renewals thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, national origin, religion, ancestry, sex, age, familial status, marital status, sexual orientation, gender identity or expression, disability, or genetic information. Failure to meet this requirement shall be considered default of the Contract.

26. **REGULATION; LICENSING REQUIREMENTS**

CONTRACTOR shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. CONTRACTOR is presumed to be familiar with all federal, state, and local laws, ordinances, codes and regulations that may in any way affect the services offered.

27. **PUBLIC RECORDS**

Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the Contractor: (i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2) F.S., the Contractor shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time the Contractor is specifically required to:

- b. Keep and maintain public records required by the County to perform services as provided under this Contract.
- c. Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The Contractor further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.
- d. Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Contract, if the Contractor does not transfer the records to the public agency.
- e. Upon completion of the Contract the Contractor shall transfer, at no cost to the County, all public records in possession of the Contractor unless notified by County's representative/liaison, on behalf of the County's

Custodian of Public Records, to keep and maintain public records required by the County to perform the service. If the Contractor transfers all public records to the County upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically by the Contractor must be provided to County, upon request of the County's Custodian of Public Records, in a format that is compatible with the information technology systems of County, at no cost to County.

- f. Failure of the Contractor to comply with the requirements of this article shall be a material breach of this Contract. County shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. Contractor acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT RECORDSREQUEST@PBCGOV.ORG OR BY TELEPHONE AT 561-355-6680.

28. COUNTERPARTS

This Agreement, including the exhibits referenced herein, may be executed in one or more counterparts, all of which shall constitute collectively but one and the same Agreement. The COUNTY may execute the Agreement through electronic or manual means. CONTRACTOR shall execute by manual means only, unless the COUNTY provides otherwise.

29. E-VERIFY – EMPLOYMENT ELIGIBILITY

CONTRACTOR warrants and represents that it is in compliance with section 448.095, Florida Statutes, as may be amended, and that it: (1) is registered with the E-Verify System (E-Verify.gov), and uses the E-Verify System to electronically verify the employment eligibility of all newly hired workers; and (2) has verified that all of CONTRACTOR's subcontractors performing the duties and obligations of this Agreement are registered with the E-Verify System, and uses the E-Verify System to electronically verify the employment eligibility of all newly hired workers.

CONTRACTOR shall obtain from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an Unauthorized Alien, as that term is defined in section 448.095(1)(k), Florida Statutes, as may be amended. CONTRACTOR shall maintain a copy of any such affidavit from a subcontractor for, at a minimum, the duration of the subcontract and any extension thereof. This provision shall not supersede any provision of this Agreement which requires a longer retention period.

COUNTY shall terminate this Agreement if it has a good faith belief that CONTRACTOR has knowingly violated Section 448.09(1), Florida Statutes, as may be amended. If COUNTY has a good faith belief that CONTRACTOR's subcontractor has knowingly violated section 448.09(1), Florida Statutes, as may be amended, COUNTY shall notify CONTRACTOR to terminate its contract with the subcontractor and CONTRACTOR shall immediately terminate its contract with the subcontractor. If COUNTY terminates this Agreement pursuant to the above, CONTRACTOR shall be barred from being awarded a future contract by COUNTY for a period of one (1) year from the date on which this Agreement was terminated. In the event of such contract termination, CONTRACTOR shall also be liable for any additional costs incurred by COUNTY as a result of the termination.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS:**

By: *[Signature]* 6/12/23
Signature Date
Director / Assistant Director
Palm Beach County Parks and Recreation Department

If Agreement Value Exceeds \$10,000.00:

County Administrator

Signature Date

WITNESS

[Signature] 6/1/23
Signature Date
Kenn Downes
Print

CONTRACTOR - Jupiter Diving Academy, LLC

By: *[Signature]* 6/1/23
Signature Date
Kristin Fuhr 6/1/23
Print
Head Diving Coach
Title

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

County Attorney

[Signature] 6-8-23
Signature Date

**APPROVED AS TO
TERMS & CONDITIONS:**

Division Director

[Signature] 6-9-23
Signature Date

EXHIBIT "A"

(1 of 2)

CONTRACTOR'S Name: Kristin Fuhr (Jupiter Diving Academy, LLC)

CONTRACTOR'S Address for Notices: 17560 Cinquez Park Rd E
Jupiter, FL 33458

Description of Services: Provide US Club Diving Program

Location/Facility: North County Aquatic Complex
861 Toney Penna Drive
Jupiter, FL 33458

Term (start/end dates): August 1, 2023/ September 30, 2023

Days of the Week/Time of Activity/Class: Mon- Friday: 330- 730p
Saturdays: 8am-11am- with coordination of Facility Staff
Summer: 8a-930a- with coordination of Facility Staff

COUNTY reserves the right to request and modify a team's schedule. When able too, the COUNTY will notify the CONTRACTOR a minimum of 30 days notice prior to changes.

The minimum registration will be 2 participants and maximum registration will be 50 participants.

Compensation:

Signed invoices received from the CONTRACTOR pursuant to this Contract will be reviewed and approved by the COUNTY's representative, to verify that services have been rendered in conformity with the Contract. Approved invoices will then be sent to the Finance Department for payment. Invoices will normally be paid within thirty (30) days following the COUNTY representative's approval.

70% percent of the total monthly fees collected by Palm Beach County will be paid out to the Contractor, unless the Do Not Exceed amount is reached. (Page 2)

Jupiter Diving Team Fees/ NCAC	Monthly Fees
JO III	\$175
JO IV	\$250
JO V	\$300

The estimated revenue total earned for this program is \$10,000.00

Approved Fees **not** collected by Palm Beach county BOCC are as follows:

- US Diving Registration Fees
- US Diving Meet Fees
- Merchandise Related Fees

Materials, Tools and Equipment:

Supplied by CONTRACTOR: Contractor will provide all necessary supplies.

Are participants being transported as part of the Scope of Service? Yes No

According to Florida Statute Chapter 440, are you required to maintain Workers' Compensation and Employer Liability coverage? Yes No

EXHIBIT "A"

(2 of 2)

Scope of Work:

CONTRACTOR will inspect all diving platforms and dryland equipment on a daily basis and fill out the inspection log.

CONTRACTOR will notify the Facility Manager of any issues or safety concerns as soon as they become apparent.

CONTRACTOR will be responsible for the preparation and administration of training schedules, registering team and individuals with USA Diving, and technical instruction of competitive and recreational divers.

CONTRACTOR will supervise divers at practices and meets, oversee the entry of divers in sanctioned USA Diving competition, and represent the team as a delegate to the Florida Gold Coast Association of United States Diving.

CONTRACTOR will follow the facility's established CRITICAL INCIDENT PROCEDURES/ EMERGENCY ACTION PLANS should a serious injury or incident occur at the facility.

CONTRACTOR will ensure that all participants be instructed in the pool rules, dryland rules and safety procedures to ensure that risk of injury or accidents is minimized.

CONTRACTOR and all personnel on site will be certified in American Red Cross Safety Training for Swim Coaches (or Lifeguard Training); First Aid/CPR (equivalent or higher training) and must have access to a first aid kit at all times.

CONTRACTOR will provide copies of any team newsletters, calendars and handbooks to the facility manager and obtain approval from the facility manager for all activities other than existing permitted practice times.

CONTRACTOR will provide the facility manager with a list of registered USA Diving members containing the following information: first name; last name; age; sex; their assigned skill group and what monthly fees are to be assessed that swimmer. All changes to this information must be made monthly and provided to the facility manager on the first of each month.

CONTRACTOR will provide facility manager with bi-weekly attendance figures on the first and third Tuesday of each month.

CONTRACTOR will secure necessary judges, meet officials, and volunteers for the set up, running, take down, and clean up for all dive meets.

CONTRACTOR will recognize and abide by the terms of the Agreement between the COUNTY and the School Board of Palm Beach County for the Mutual Use of Recreation Facilities. (R-2008-2241)

CONTRACTOR must submit written requests for lane space to the facility manager on an annual basis. CONTRACTOR and facility manager will meet on a bi-annual basis to assess annual request. Said requests shall be reviewed by the facility manager and request for said usage shall not be unreasonably withheld. At a minimum, CONTRACTOR will submit to the facility manager quarterly, proposed pool needs and activity schedules. The facility manager will review said schedule and after considering the needs of the general public and other program offerings at the facility make reasonable changes thereto, or agree to the schedule as proposed.

CONTRACTOR will ensure proper use and care of all County equipment used by CONTRACTOR, CONTRACTOR'S staff, and program participants.

CONTRACTOR will ensure that the facility is utilized properly and as scheduled and left clean. CONTRACTOR'S will maintain clean and orderly office and storage areas that have been allocated for the competitive diving program.

EXHIBIT "B"
(1 of 2)
INDEPENDENT CONTRACTOR AGREEMENT
Insurance Requirements

CONTRACTOR will maintain in full force and effect, on a primary basis and at its sole expense, at all times during the life of this Agreement, insurance coverages and limits (including endorsements) as described herein. Failure to maintain the required insurance will be considered default of this Agreement. The requirements contained herein, as well as COUNTY's review or acceptance of insurance maintained by CONTRACTOR, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by CONTRACTOR under the Agreement. CONTRACTOR agrees to provide the COUNTY with at least ten (10) days prior notice of any cancellation, non-renewal or material change to the insurance coverages.

Palm Beach County Parks & Recreation Department Representative to mark as applicable:

- No Insurance Required:** Based on scope of services, CONTRACTOR shall not be required to provide insurance.

- Commercial General Liability:** CONTRACTOR shall maintain Commercial General Liability at a limit of liability not less than **\$500,000** Each Occurrence. Coverage shall not contain any endorsement(s) excluding Contractual Liability or Cross Liability.

- Participant Liability:** CONTRACTOR shall maintain Participant Liability at a limit of liability not less than **\$25,000** Each Occurrence.

- Auto Liability:** CONTRACTOR shall maintain Business Auto Liability at a limit of liability not less than **\$500,000** Each Occurrence for all owned, non-owned, and hired automobiles. In the event CONTRACTOR owns no automobiles, the Business Auto Liability requirement shall be amended allowing CONTRACTOR to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form.

- Workers' Compensation Insurance & Employer's Liability:** CONTRACTOR shall maintain Workers' Compensation & Employer's Liability in accordance with Florida Statute Chapter 440.

- Professional Liability:** CONTRACTOR shall maintain Professional Liability or equivalent Errors & Omissions Liability at a limit of liability not less than **\$1,000,000** Each Claim. When a self-insured retention (SIR) or deductible exceeds **\$10,000**, COUNTY reserves the right, but not the obligation, to review and request a copy of CONTRACTOR's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, CONTRACTOR shall maintain a Retroactive Date prior to or equal to the effective date of this Agreement. The Certificate of Insurance providing evidence of the purchase of this coverage shall clearly indicate whether coverage is provided on an "occurrence" or "claims – made" form. If coverage is provided on a "claims-made" form the Certificate of Insurance must also clearly indicate the "retroactive date" of coverage. In the event the policy is canceled, not renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplement Extended Reporting Period (SERP) during the life of this Agreement, CONTRACTOR shall purchase a SERP with a minimum reporting period not less than three (3) years.

EXHIBIT "B"

(2 of 2)

- Additional Insured Clause:** Except as to Workers' Compensation and Employer's Liability the Certificate(s) of Insurance shall clearly confirm that coverage required by this Agreement has been endorsed to include COUNTY as Additional Insured. As such, said Certificate(s) shall specifically include: "Palm Beach County, a Political Subdivision of the State of Florida, its Officers, Employees, and Agents."
- Waiver of Subrogation:** CONTRACTOR hereby waives any and all rights of Subrogation against the COUNTY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition to the policy specifically prohibiting such an endorsement or voids coverage should CONTRACTOR enter into such an agreement on a pre-loss basis.
- Certificates of Insurance:** Prior to execution of the Agreement, the CONTRACTOR shall deliver to the COUNTY Certificate(s) of Insurance evidencing that all types and amounts of insurance coverage required by this Agreement have been obtained and are in full force and effect. In addition, the CONTRACTOR shall provide this evidence to the COUNTY prior to the expiration date of any such insurance required herein. Such Certificate(s) of Insurance shall include a minimum ten (10) day endeavor to notify due to cancellation of coverage. Certificates of Insurance are to be sent to:
- Palm Beach County Board of County Commissioners
C/O Parks and Recreation Department
Attn:Aquatic Programs Coordinator
2700 Sixth Avenue South
Lake Worth, Florida 33461
- Umbrella or Excess Liability:** If necessary, CONTRACTOR may satisfy the minimum limits required above for Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for Commercial General Liability, Business Auto Liability, or Employer's Liability. The COUNTY shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.
- Right to Revise or Reject:** COUNTY, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject, or accept any required policies of insurance, including limits, coverage, or endorsements, herein from time to time throughout the term of this Agreement. COUNTY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
6/13/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER USI Insurance Services NW 601 Union Street, Suite 1000 Seattle, WA 98101	CONTACT NAME: PHONE (A/C, No, Ext): 206-441-6300 FAX (A/C, No): E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
INSURED USA Diving, Inc. 9801 Fall Creek Road #412 Indianapolis IN 46256	INSURER A: Accredited Surety and Casualty Co, Inc. NAIC # 26379	
	INSURER B: QBE Insurance	
	INSURER C:	
	INSURER D:	
	INSURER E:	
INSURER F:		

COVERAGES **CERTIFICATE NUMBER:** 74832966 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Participant Legal Liability GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	1-TRE-IN-17-01338559-00	1/1/2023	1/1/2024	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 2,000,000 MED EXP (Any one person) \$ None PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Aggregate Limit Cap \$ 15,000,000 COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY <input type="checkbox"/> AUTOS ONLY						PROPERTY DAMAGE (Per accident) \$ \$
A	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			1-TRE-IN-17-01338560-00	1/1/2023	1/1/2024	EACH OCCURRENCE \$ 3,000,000 AGGREGATE \$ 3,000,000 \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Sexual Abuse & Molestation			1-TRE-IN-17-01338559-00	1/1/2023	1/1/2024	\$2,000,000 Each Occurrence \$4,000,000 Aggregate

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Club: Jupiter Diving Academy 861 Toney Penna Drive Jupiter FL 33458
 Certificate Holder is Additional Insured when required by written contract per form RSCG 03 03 The General Liability policy contains a Waiver of Subrogation provision as per waiver of Right of Recovery Against Others per form CG 24 04. The General Liability is primary per form CG 20 01.
 Carrier B: Coverage available under policy #UBH000003 is on file with the policyholder - Accident Medical Coverage \$25,000, deductible \$500 - Accidental Death & Dismemberment \$10,000. Policy effective date: January 1, 2023/ Policy expiration date: January 1, 2024.

CERTIFICATE HOLDER Palm Beach County Board of County Commissioners 2700 6th Ave S Lake Worth FL 33461	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE Gary Patterson <i>Gary D. Patterson</i>

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – MANAGERS OR LESSORS OF PREMISES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designation Of Premises (Part Leased To You):
Name Of Person(s) Or Organization(s) (Additional Insured): ANY CERTIFICATE HOLDER IDENTIFIED AS AN ADDITIONAL INSURED ON A CERTIFICATE ON FILE WITH THE COMPANY Palm Beach County Board of County Commissioners 2700 6th Ave S Lake Worth FL 33461
Additional Premium: INCL.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by you or those acting on your behalf in connection with the ownership, maintenance or use of that part of the premises leased to you and shown in the Schedule and subject to the following additional exclusions:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to be a tenant in that premises.
2. Structural alterations, new construction or demolition operations performed by or on behalf of the person(s) or organization(s) shown in the Schedule.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and

2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.
- B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:**
- If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:
1. Required by the contract or agreement; or
 2. Available under the applicable limits of insurance; whichever is less.
- This endorsement shall not increase the applicable limits of insurance.