

**LICENSE AGREEMENT**

THIS LICENSE AGREEMENT (this “**Agreement**”) is between the MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, a public body corporate and agency of the State of Maryland (the “**Commission**”), and MONTGOMERY COUNTY, MARYLAND, a political subdivision of the State of Maryland, through its Department of Recreation, located at 2425 Reddie Drive, 10<sup>th</sup> Floor, Wheaton, Maryland 20902 (the “**County**”).

RECITALS:

A. The Commission is a public body corporate and agency of the State of Maryland, created and existing under Md. Code, Ann., Land Use, Titles 14 through 27, and is engaged in performing governmental functions of acquiring, developing, maintaining and operating public parks, facilities, and recreation areas within Montgomery and Prince George’s Counties, Maryland.

B. The Commission has the authority to license property acquired for park purposes pursuant to Md. Code, Ann., Land Use, § 17-204, as amended.

C. The Commission is the owner of the Wall Local Park, the land and improvements located at 5900 Executive Boulevard, Rockville, Maryland 20852 (the “**Park**”).

D. County desires to provide a student centered training program that encompasses a safe and fun environment for students to learn the sport of diving by implementing a dryland dive practice facility.

E. County has submitted a written proposal to the Commission attached hereto as Attachment One, to use part of the Park for a dryland diving practice facility to be operated by County (the “**Proposal**”), following the termination of a license agreement for the same activity by the Commission and Monumental Dive Club, LLC.

F. The Commission is agreeable to grant County a revocable license for exclusive use of part of the Park in accordance with this License Agreement.

ACCORDINGLY, the parties agree as follows:

1. **Recitals.** The recitals set forth above are incorporated herein by reference.

2. **Reference Provisions; Exhibits.** As used in this Agreement, the terms defined in preamble and recitals will have the meanings assigned to them, and the following terms shall have the following meanings:

2.1 **Licensed Premises:** A building in the Park as described in more detail and designated in Attachment Two, attached to and incorporated into this Agreement by reference.

2.2 Initial Term: 36 months commencing on the Term Commencement Date and ending on the Termination Date, and any renewals and/or extensions thereof.

2.3 Renewal Term: Four renewal terms of one year each as set forth in the table below:

<b>Renewal Term</b>	<b>Commencement Date</b>	<b>Expiration Date</b>
First	August 1, 2025	July 31, 2026
Second	August 1, 2026	July 31, 2027
Third	August 1, 2027	July 31, 2028
Fourth	August 1, 2028	July 31, 2029

2.4 Term: Initial Term and any Renewal Term(s).

2.5 Term Commencement Date: August 1, 2022.

2.6 Termination Date: Date that is 36 months from the Term Commencement Date or any termination date applicable under the Renewal Term, or the earlier date on which this Agreement is terminated in accordance with the provisions hereof.

2.7 License Fee: Annual license fees as set forth in Attachment Three, attached to and incorporated into this Agreement by reference.

2.8 *[Not Used]*

2.9 Security Deposit: None

2.10 License Year: The first License Year shall be the period commencing on the Term Commencement Date and ending on the last day of the 12th full calendar month thereafter. Each successive License Year shall begin on the first day after the end of the previous License Year and shall end on the last day of the twelfth 12th full calendar month thereafter.

2.11 Partial License Year: Any period during the Term which is less than a full License Year.

2.12 Permitted Use: County may use the Licensed Premises solely for a dryland diving practice facility, including acrobatics and gymnastics programs, to aid the dryland diving training.

2.13 Person: An individual, firm, partnership, association, corporation, limited liability company, or any other entity.

2.14 Sign: Any sign prepared and installed in accordance with Section 5.4.

2.15 Legal Requirements: All laws, statutes, orders, ordinances, zoning, and other regulations and ordinances of federal, state, county, municipal and other governmental authorities having jurisdiction, including all of the Commission rules, regulations, and practices.

2.16 County Improvements: Defined in Sections 16 and 19.

2.17 License Fee Payments: License Fee payments and all other payments due under this Agreement shall be made payable to "M-NCPCC" and sent to the Commission at the following address or such other address as the Commission shall designate by giving notice to the County:

Park Property Management  
MNCPPC  
Montgomery County Department of Parks  
8301 Turkey Thicket Drive, 2<sup>nd</sup> Floor  
Gaithersburg, MD 20879

2.18 Notice Addresses:

Commission: Same as County Fee Payment address above.

*With a copy to:* Office of General Counsel  
6611 Kenilworth Avenue, Suite 200  
Riverdale, MD 20737

County: Department of General Services  
Office of Real Estate 9<sup>th</sup> Floor  
101 Monroe Street, Rockville MD. 20815  
Attn: Cynthia Brenneman

*With a copy to:* Office of the County Attorney  
101 Monroe Street, 3<sup>rd</sup> Floor  
Rockville, MD 20850

*With a copy to:* Department of Recreation  
2425 Reddie Drive, 10th Floor  
Wheaton, MD 20902

2.19 Attachments and Addenda:

- Attachment One: County's Proposal
- Attachment Two: Description and Designation of Licensed Premises
- Attachment Three: License Fees
- Attachment Four: County's Third Party Contractors' Insurance

Requirements

3. **Licensed Premises.** The Commission licenses a revocable license to the County, and the County accepts this revocable license from the Commission, with the Licensed Premises in "AS IS, WHERE IS" condition, with no representation or warranty by the Commission as to the condition or suitability of the Licensed Premises for the County's purpose.

4. **Term.**

4.1 **Term:** The Term of this Agreement shall commence on the Term Commencement Date and expire on the Termination Date. This Agreement shall terminate on the Termination Date without the necessity of Notice from either the Commission or County.

4.2 **Renewal Term:** If this Agreement is in full force and effect and County is in compliance with all of the covenants, agreement, conditions, and provisions of this Agreement, County may request to renew this Agreement for the Renewal Terms, which if approved by the Commission, will renew immediately following the expiration of the then current term, on the same terms, conditions, and provisions as set forth in this Agreement, except that the License Fee shall be adjusted and modified as stated in Attachment Three. Despite the foregoing, the Commission in its sole discretion may accept or deny the request to renew this Agreement. To renew the Term, the County must give written notice of its intent to renew to the Commission at least six months prior to the expiration of the term then in effect.

4.3 **Holding Over:** If the County fails to vacate the Licensed Premises on the Termination Date, the tenancy under this Agreement shall be a tenancy from month-to-month at a monthly License Fee of 115% of the License Fee due for the last month under this Agreement, provided that such month-to-month tenancy shall not deprive the Commission from exercising any and all rights available at law or equity, including any legal remedies to remove the County from the Licensed Premises without notice. Notwithstanding the foregoing, the Commission and the County agree that the number "115%" shall be deemed to be omitted from the preceding sentence, if both the Commission and the County are negotiating in good faith to enter into a new license agreement.

5. **Use of Licensed Premises.**

5.1 **Use:** The County shall use the Licensed Premises solely for the Permitted Use and for no other purpose.

5.2 **[Not Used]**

5.3 Licenses & Permits: The County shall obtain and furnish licenses or permits required by the Legal Requirements prior to initiating operations, as applicable. The County agrees to furnish and maintain all such required licenses and/or permits during the County's occupation of the Licensed Premises.

5.4 Signs: The County may not install any sign on the exterior of the Licensed Premises or in the Park unless the County has obtained the prior approval of the Commission, which shall not be unreasonably withheld or delayed. Any Sign, placard, decoration, lettering, or descriptive material installed by County shall be in compliance with all applicable Legal Requirements and shall be prepared, installed, and removed at the County's sole cost and expense.

5.5 County Contractors: The County may engage the services of a third-party contractor who may use the Licensed Premises for the Permitted Use. If the County engages any such contractor(s), the County shall cause its contractor(s) to comply with the terms of this Agreement.

6. *[Not Used]*

7. **License Fee; Additional License Fee; Security Deposit.**

7.1 License Fee. The County shall pay the Commission the License Fee, without prior notice or demand and without offset, deduction or counterclaim whatsoever, in the amounts, at the rates and times set forth in this Agreement, prorated for any partial calendar month.

7.2 Additional License Fee. Whenever the County is required to pay to the Commission any sum of money in addition to the License Fee, such sum shall be deemed to be and shall become an additional license fee (the "**Additional License Fee**"), whether or not such sum is designated as an Additional License Fee (including, but not limited to, payments and charges for utilities, maintenance, insurance, repairs, remediation, late fees, interest, attorneys' fees, court-awarded costs, and/or security deposit).

7.3 *[Not Used]*

7.4 Late Payment & Dishonored Check Charges.

(a) If the License Fee is not received by the Commission by the Fifth day from the date the License Fee is due, the County shall pay the Commission a late charge equal to 10% of any amount then due. Payment of such late charge shall not excuse or waive the late payment of the License Fee.

(b) If the County presents a check to the Commission that a bank returns unpaid, the Commission may require the County to make payment by certified check or money order. In addition, the County shall pay to the Commission a returned check fee of \$50.00 for each returned check, plus any other reasonable fees, costs, charges, and

expenses incurred in collecting the payment.

7.5 Payment of License Fee. The County shall pay the Commission the License Fee and any Additional License Fee(s) (where applicable), in equal annual installments, in advance, commencing on the Term Commencement Date, and on the first day of each calendar year thereafter throughout the Term. If paid by checks, the payment checks shall be made payable to "M-NCPCC."

7.6 Security Deposit. *Not Used.*

**8. Utilities and Services.**

8.1 County. The County shall directly and promptly pay all fees, taxes, costs and charges for:

(a) Any and all utilities, including electric, gas and WSSC water services. Any utilities shall be separately metered when possible for the use of the County and the Licensed Premises. The Commission shall not be required to provide or pay for any utilities.

(b) All telecommunications expenses.

(c) Removal and disposition of County's trash.

8.2 If either party wishes to establish separate metering of a utility service at that party's sole cost and expense, the other party shall cooperate in that process.

8.3 The Commission shall not be liable to the County for damages or otherwise for the quality, quantity, failure, unavailability, or disruption of any utility service and the same shall not constitute a termination of this Agreement, or to any abatement of License Fee.

8.4 The Commission may at any time alter any utility, and related equipment, serving the Licensed Premises, provided such alteration does not materially interrupt service to the Licensed Premises and does not unreasonably interfere with County's business operation within the Licensed Premises.

**9. Restrictions on Use of Licensed Premises.** The County shall not use the Licensed Premises:

9.1 In violation of any Legal Requirements.

9.2 In a manner to commit waste.

9.3 For any purpose that is

- (a) unsafe or hazardous,
- (b) in violation of any certificate of occupancy, and/or
- (c) a public or private nuisance.

9.4 For the purpose of bringing, placing, disposing of or storing any dangerous item or property, or any illegal, hazardous or toxic material or substance.

9.5 For the storage of equipment, supplies, materials or personal property not directly related to the Permitted Use.

9.6 For the storage or parking of any trailer, recreational vehicle, boat, commercial vehicle, truck, or equipment on the Licensed Premises or any Park land.

9.7 Allow any person to park anywhere on the Licensed Premises or in the Park who is not authorized to use the Licensed Premises.

9.8 Use the Park or the Licensed Premises for repair of motor vehicles or equipment.

9.9 Obstruct a sidewalk, driveway, exit, or entrance, or area in the Licensed Premises or the Park.

9.10 For any use that violates or is inconsistent with this Agreement.

**10. Public Access to Licensed Premises.** The County may prohibit the general public from accessing the Licensed Premises, provided always, that the public may always access and use the Park, unless such access is prohibited by the Commission.

**11. Liens.** The County shall not permit any liens to be imposed or maintained against the Licensed Premises for any labor, service or material furnished to County. If any lien is asserted against the Licensed Premises, County shall, at County's sole cost and expense, have the lien discharged by payment, bond or otherwise within 10 days from the date any such lien is imposed on the Licensed Premises.

**12. Taxes, Fees and Charges.** The County shall pay all taxes, fees, and charges imposed against the County by Federal, State or local government agencies resulting from, or related to, the use of the Licensed Premises under this Agreement.

**13. Insurance.**

13.1 As of the Term Commencement Date and throughout the Term, the County shall carry, at its sole cost: General Liability Insurance naming the Commission as additionally insured, if using commercial policy. The County shall have the right to self-insure. The County is a member of the Montgomery County Self Insurance Program and, as provided in

Section 20-37 of the Montgomery County Code, legal defense under the fund is limited to members of the fund and does not extend to outside third parties. The County's self-insurance coverage limits for general liability coverage is \$800,000 in the aggregate and \$400,000 for each occurrence. The self-insurance limits outlined in this paragraph are the maximum limits of liability for which the self-insurance program is responsible, as provided in Section 5-301, et seq. of the Courts and Judicial Proceedings Article of the Annotated code of Maryland (2016).

13.2 Any indemnification, liability or obligation of the County arising in any way from this Agreement is subject to, limited by and contingent upon the appropriation and availability of funds, and is subject to the notice requirements and damages limitations stated in the Local Government Tort Claims Act, Md. Code Ann., Cts. & Jud. Proc. Sec. 5-303, *et seq.*; Md. Code Ann. Cts. & Jud. Proc. § 5-5A-02 (2016); and Md. Code Ann., Cts. & Jud. Proc. Sec. 5-509 (2016 Repl. Vol.), (together the "**County Indemnification Statutes**"), all as amended from time to time, and is not intended to create any rights in any third parties or increase the County's liability above the caps provided in the County Indemnification Statutes, as applicable. .

13.3 The County shall maintain Worker's Compensation coverage as required in the applicable Worker's Compensation law or similar laws of the state of Maryland or other political division having jurisdiction over the employee, and the employer's liability with a limit of liability of \$100,000 accident (each), \$500,000 aggregate, and \$100,000 per disease (each employee), each occurrence.

13.4 The County must provide the Commission with a certificate of insurance with the signed Agreement.

13.5 The County must provide the Commission with a renewal certificate of insurance on or before expiration of the existing certificate.

13.6 The certificate must provide for 30 days advance notice to the Commission in the event of modification, termination or cancellation of coverage

13.7 If the County engages the services of a third-party contractor to provide the services or programs allowed under this Agreement, then the County shall cause its contractor to meet the insurance requirements as set forth in this Agreement as Attachment Four.

#### **14. Indemnification.**

14.1 The County shall indemnify and hold harmless, and shall cause any of its contractor(s) to indemnify and hold harmless, the Commission, its Commissioners, directors, officers, employees, agents, and representatives (collectively, the "**Indemnitees**") against and from all claims, liabilities, obligations, damages, fines, penalties, demands, costs, charges, judgments and expenses including reasonable attorneys' fees, experts' fees, and other professional costs (in the case of the County's indemnification, only if those fees and costs are awarded by a court of law) that are made against or incurred by any Indemnitee arising from the County's negligence, omission, wrongful conduct, negligent performance or failure to

perform any of the County's obligations under this Agreement. The foregoing indemnification shall survive the expiration or termination of this Agreement.

14.2 The County shall require all contractors and agents who enter the Licensed Premises to carry insurance for the type of activity being conducted at the Licensed Premises, naming the Commission as an additional insured, and the County shall provide proof of such insurance to the Commission prior to any such contractors or agents entering onto the Licensed Premises, and thereafter upon the Commission's request.

**15. Waiver and Limitation of Liability.**

15.1 Limitation. The Commission shall not be liable to the County, or to those claiming through the County, for any loss, theft, injury, liability, or damage of, for or to the County's business and/or property which may result from: (a) any act, omission, fault or negligence of the County, its agents, employees or contractors, or any other persons (including the public); (b) the breaking, bursting, backup, stoppage, or leaking of electrical or phone/internet cables and wires, or water, gas, sewer, HVAC or steam pipes or ducts serving the Licensed Premises and/or the Park, except to the extent caused by the negligent acts or omissions of the Commission, its agents, contractors or employees; and/or (c) water, snow or ice being upon the Licensed Premises. The County acknowledges that its use of the Licensed Premises and the Park is at its own risk. County expressly agrees to indemnify and hold the Commission harmless against any such claims, as set forth in Sections 13 and 14 above. To the extent any liability imposed on the Commission in this Agreement is limited by the notice requirements, types of liabilities, and damage limits stated in the Local Government Tort Claims Act, Md. Code Ann., Cts. & Jud. Proc. § 5-301 *et seq.* and the Maryland Tort Claims Act, Md. Code Ann., S G, § 12-101 *et seq.* This provision is not intended to create any rights in any third parties.

15.2 Budgetary Appropriations. The Commission shall, in accordance with its normal budgetary procedures, make timely application for, and use reasonable efforts to obtain, budget appropriations reasonably calculated to provide all funds necessary for the Commission's performance of and compliance with all of the material terms, conditions and covenants contained in this Agreement. Notwithstanding anything to the contrary in this Agreement, the Commission shall not be deemed to be in default in the performance of or compliance with any of the terms, conditions, or covenants contained in this Agreement if funds are not specifically budgeted and appropriated therefore at the time of the alleged default. Certification by the Secretary-Treasurer of the Commission that funds are not specifically budgeted and appropriated therefore shall be conclusive as to that issue.

15.3 County Appropriations. The County's obligations under this Agreement are subject to, limited by, and contingent upon the appropriation and availability of funds.

**16. Improvements to Licensed Premises.**

16.1 Except for those subject to Section 19, the County shall not make any improvements to the Licensed Premises without first obtaining the Commission's written consent.

16.2 The failure to comply with this Section 16.1 is a material breach of this Agreement.

**17. Maintenance and Repair of Licensed Premises by County.** During the Term of this Agreement, the County shall at its sole cost and expense:

17.1 Maintain the Leased Premises in a good and useable condition.

17.2 Repair any damage caused to the Licensed Premises.

17.3 Provide janitorial services to clean and maintain the Licensed Premises in a clean and safe condition. Promptly remove and dispose of all trash off site (not in Park receptacles).

17.4 Remove snow and ice from the Licensed Premises

17.5 Maintain, repair, and replace all of County's personal property, fixtures, equipment, furnishings and appliances.

17.6 Maintain and repair any outbuildings, sheds, and outdoor areas used in conjunction with the County's operations, if any.

17.7 Immediately report any damage, defects, or needed repairs to the Commission.

17.8 Obtain prior written approval from the Commission prior to making any improvements such as adding air conditioning or build a new structure on or about the Licensed Premises which work must be performed in accordance with the Legal Requirements.

**18. [Not Used]**

**19. Alterations to Licensed Premises.** The County shall provide the Commission with plans for any alterations, additions or improvements to the Licensed Premises, and shall not make any alterations, additions or improvements to the Licensed Premises without obtaining the written approval in advance from the Director of Parks or the Director's designee. The County shall comply with all Legal Requirements, including the Americans With Disabilities Act.

**20. Incidents and Accident Reports.** The County shall promptly notify the Commission and the County's insurance carrier of any personal injury, property damage, incidents and accidents on or about the Licensed Premises, including, but not limited to

accident, fire, water, flood, wind, explosion and vandalism. Notwithstanding the previous sentence, the County shall not be required to notify the Commission of property damage to the County's property. The County shall immediately notify both (a) the Park Police at (301) 949-3010, and (b) the Commission's Property Management Office at (301) 495-2520.

**21. Hazardous Materials.** If the County uses, stores, manages and disposes of any Hazardous Materials on the Licensed Premises, the County must comply with all applicable Legal Requirements. If the County violates this section, or causes or permits hazardous material on the Licensed Premises that results in contamination of the Licensed Premises or any part of the Park, then the County must: (a) indemnify and hold the Commission harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, attorneys' fees, consultant fees and expert fees that are awarded by a court of law); and (b) promptly take all actions as are necessary to return the Licensed Premises and any other affected properties to the condition existing prior to the introduction of the hazardous material to the Licensed Premises and all other affected properties, whether arising during the Term of this Agreement or after the expiration or termination of this Agreement. The indemnification by the County includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any Federal, State or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the Licensed Premises or any affected properties. For the purposes of this Agreement, the term "**Hazardous Material**" means (i) hazardous or toxic substances, wastes, materials, pollutants and contaminants which are included in or regulated by any Legal Requirements, including CERCLA, Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act, and the Toxic Substances Control Act, as any of the foregoing may be amended from time to time, (ii) petroleum products, (iii) halogenated and non-halogenated solvents, and (iv) all other regulated chemicals, materials and solutions which, alone or in combination with other substances, are potentially harmful to the environment, public health or safety or natural resources.

**22. Pest Control.** County shall be responsible for pest control within the Licensed Premises. The County shall comply with all applicable Legal Requirements governing pest control, including, but not limited to, storage, inventory, purchase, disposal and application. The County shall not use, or cause to use, any pest control material that is prohibited by any Legal Requirements. The County shall provide a copy of the pest control contract to Commission's Montgomery County Department of Parks' Property Management to evidence the County's maintenance of pest control obligation within 60 days of the Term Commencement Date, and within 60 days of the commencement of each Renewal Term.

**23. Default.** In the event there is a breach by the County with respect to any of the provisions of this Agreement or its obligations under it, including the payment of the License Fee and/or Additional Fees, the Commission shall give County written notice of such breach. The County must cure any monetary breach within 15 days from the date of posting of such written notice. For any non-monetary breach, the County must cure any such breach within 30

days from the date of posting of such written notice, provided the County may have such extended period as may be required beyond the 30 days (a) if the nature of the cure is such that it reasonably requires more than 30 days; (b) County commences the cure within the 30 day period; and (c) continuously and diligently pursues the cure to completion. The Commission may not maintain any action or effect any remedies for default against the County unless and until County has failed to cure the breach within the time periods provided in this section. Upon expiration of the period specified in the cure notice, the Commission may (x) charge the County any sums, amounts, charges, costs, claims, fees or expenses incurred by the Commission to cure the County's failure or default, which may include additional management fee equal to 15% of all amounts incurred by the Commission, which amount must be paid to the Commission by the County within 10 days of the date of demand; or (y) terminate this Agreement and pursue any other remedies available to it at law or in equity.

**24. Expiration; Termination.** This Agreement may be terminated without cause by either party upon 30 days prior written notice to the other party. If the Commission or the County fail to receive, for any or no reason, an appropriation or otherwise have available funds sufficient to maintain the Licensed Premises or any or all portions of the Park, or to fulfill any of its or their obligations under this Agreement, either party may, upon 30 days written notice to the other, unilaterally terminate this Agreement without penalty or termination expense. Upon the expiration or termination of this Agreement, the County shall immediately cease operations on the Licensed Premises and peaceably surrender the Licensed Premises, without further notice, in a broom-swept, as good a condition as County received the Licensed Premises, reasonable wear and tear excepted. If the Commission requests the County to remove the County's personal property, the County will promptly do so, shall repair any damage to the Licensed Premises, and return the Licensed Premises to the condition prior to the County's use thereof. Failure by the County to remove any of the personal property within 30 days after notice to do so, such property shall be deemed abandoned by the County and all right and title to such property shall automatically transfer to the Commission. In the event the County fails to peaceably surrender the Licensed Premises or remove its personal property at the expiration or termination of this Agreement, the Commission may: (a) reenter the Licensed Premises, and expel the County or any person or legal entity claiming through the County, including the change of the locks without any prior notice to the County; and/or (b) sell, transfer or assign any of County's personal property and apply any sales proceed therefrom against any monies due and owing to the Commission. The County expressly consents to all of the foregoing actions by the Commission, if performed in accordance with the Legal Requirements, and waives any right to object, contest or file any legal action against the Commission. The County further agrees not to file any counterclaim to any Commission legal action and shall bring any of County's action in separate legal proceedings. The County shall remain liable for the County's negligence, wrongful conduct, negligent performance or failure to perform any of the County's obligations under this Agreement, plus court costs and reasonable attorney's fees and other professional fees including expert witness that are awarded by a court of law.

**25. Laws and Regulations.** The County shall comply with all of the Legal Requirements at all times.

**26. Non-Discrimination.** The County shall not discriminate against any participant in or applicant for its programs, or against any employee or applicant, or against any contractor because of age, sex, race, creed, color, national origin, marital status, ancestry, or disability. If the County is determined to be in violation of any Federal, State or County nondiscrimination law by the final order of an agency or court, the Commission may terminate or suspend this Agreement in whole or in part. The Commission may declare the County ineligible for further agreements with the Commission.

**27. Notices.** The parties shall send all notices, requests, demands or other communications in writing by: (a) personal delivery, or (b) by certified mail or registered mail, postage prepaid, return receipt requested, to the Commission or the County, to the addresses set forth in Section 2.17 above. Any change in address is not valid until written notice of such change is provided to the other party.

**28. Non-Waiver; Cumulative Remedy.** The failure by the Commission to insist upon the performance of any provision, condition or term of this Agreement, or the failure of the Commission to exercise any right or remedy shall not constitute a waiver of provision, condition, term, right or remedy by the Commission. The provision, condition, term, right or remedy shall continue in full force and effect, unless waived in writing by the Commission. All rights and remedies enumerated in this Agreement shall be cumulative and mention in this Agreement of any specific right or remedy shall not preclude the Commission from exercising any other right or remedy now or hereafter allowed by or available under any statute, ordinance, rule of court, the common law, or otherwise at law or in equity or both.

**29. Entire Agreement.** County agrees to abide by the terms of this Agreement and RFP. This Agreement and RFP contains the entire agreement between the parties and supersedes any prior agreements, whether written or oral. In the event of any conflict between this Agreement and the applicable portion of the RFP, this Agreement shall control. This Agreement may be modified by a written amendment signed by the parties.

**30. Waiver of Jury.** The County waives any right to a trial by jury in any legal action relating to this Agreement.

**31. Severability.** If any provision of this Agreement is determined to be invalid or illegal by a court or an administrative agency or body, that provision shall be severed from this Agreement and shall not affect the remainder or any other provision of this Agreement.

**32. Assignment.** The County may not delegate, or assign, sell or transfer, any right, interest, or obligation under this Agreement, without the prior written consent of the Commission, which consent shall be at the Commission's sole discretion. In the event of a request for the Commission's consent to the delegation, assignment, sale or transfer of any right, interest or obligation under this Agreement, the County shall request the Commission's consent in writing, and the County shall furnish the Commission a copy of the documents proposing the delegation, assignment, transfer or sale. All assignments must use the Commission's assignment form as provided by the Commission to the County

**33. Applicable Law.** This Agreement shall be interpreted in accordance with the laws of the State of Maryland, and enforced exclusively in any court of competent jurisdiction in Montgomery County, Maryland.

**34. Permits.** County shall obtain any permit and license required by the Legal Requirements for its use of, and any alteration or work on or about, the Licensed Premises.

**35. Commission Access to Licensed Premises.**

35.1 Subject to Section 35.2 below, the Commission with one (1) business days' notice may enter the Licensed Premises at all reasonable times to:

- (a) Inspect the Licensed Premises for compliance of this Agreement;
- (b) Perform any work on the Licensed Premises, provided that the Commission gives the County two (2) business days notice of such work, unless the County requests the Commission to perform work with less than one (1) business day notice;
- (c) Enforce this Agreement; and
- (d) Perform any duty or obligation under the Legal Requirements.

35.2 Despite the foregoing, the Commission may enter the Licensed Premises at any time in case of an emergency without the need to provide any notice.

**36. Police Services.** The Commission Park Police has primary jurisdiction over the Licensed Premises.

**37. Force Majeure.** Either party shall be excused for any period or periods of delay in the performance of any of such party's obligations hereunder when delayed, hindered or prevented from so doing by any cause or causes beyond such party's control, which causes shall include, without limitation, all labor disputes, riots, civil commotion or insurrection, war or war-like operations, invasion, rebellion, military or usurped power, sabotage, terrorism, governmental restrictions, regulations or controls (including delays attributable to the actions and requirement of federal, state and local environmental protection agencies respecting water pollution and/or air pollution, storm drainage, sanitary sewer disposal, energy shortages and/or like matters), inability to obtain any materials or services, fire or other casualties, or acts of God. The foregoing are individually and collectively referred to as a "**Force Majeure**". Lack of available funds shall not be deemed a Force Majeure. If as a result of any of such events the Commission or the County, as the case may be, shall be unable to exercise any right or option within any time limit provided therefor in this License, such time limit shall be deemed extended for a period equal to the duration of such event. The provisions of this section shall not operate to postpone the Term Commencement Date, delay the payment of License Fee or to extend the Term or applicable renewal term.

**39. Casualty.**

39.1 Fire or Other Casualty. The County shall give prompt notice to the Commission in case of fire or other casualty (the "**Casualty**") to the Licensed Premises or the Park.

39.2 Right to Terminate. If (a) the Licensed Premises is damaged to the extent of more than 50% of the cost of replacement thereof; (b) the Licensed Premises is damaged to the extent such damage cannot be repaired within 150 days from the date of the Casualty; or (c) such Casualty is not covered by insurance carried by the Commission or if the Commission's funding or appropriation does not make sufficient proceeds available for full and complete restoration, then the Commission may terminate this Agreement by notice to the County within 150 days after the date of the Casualty. If the Commission so terminates this Agreement then the Termination Date shall be the date set forth in the notice to County, which date shall not be less than 30 days nor more than 90 days after the giving of said Notice. The "**cost of replacement**" shall be determined by the Commission at its sole discretion.

39.3 Liability After Casualty. *Not Used.*

39.4 Termination. Upon any termination of this Agreement under any of the provisions of this section, the License Fee shall be adjusted as of the date of such termination and the parties shall be released thereby without further obligation to the other party coincident with the surrender of possession of the Licensed Premises by the County, except for items which have been theretofore accrued and are then unpaid or unperformed and except that the County shall not be released from claims for personal injury or property damage occurring on the Licensed Premises prior to termination of this Agreement and for which the County is otherwise responsible hereunder.

39.5 Non-Termination. In the event this Agreement is not terminated pursuant to this section after Casualty, the License Fee payable by the County under this Agreement shall be abated from the time of Casualty to completion of any rebuilding and the County has full access and use of the Licensed Premises. Additionally, the Commission shall not be liable for any damages (including, without limitation, business interruption) that may be suffered by the County by reason of any Casualty and/or the deprivation of the County's use and possession thereof, regardless of reason or cause, nor shall the Commission be liable for any damage to, or repair, rebuilding, reconstruction, restoration or replacement of any of, the County's property, improvements, or any other improvements required to be rebuilt by the County.

**40. Administrative Requests. Intentionally Omitted.**

**41. Authorization.** Each person executing this Agreement, whether on his/her own or behalf of any organization hereby certifies that each of them have been duly authorized to execute this Agreement on behalf of such organization. County represents, warrants, and certifies that all approvals required for County to enter into this Agreement have been duly obtained.

**42. Electronic Signature.** The parties acknowledge and agree that this Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include faxed versions of an original signature or electronically scanned and transmitted versions (e.g., via pdf) of an original signature.

*[SIGNATURE PAGE FOLLOWS]*

**TO EVIDENCE** the parties' agreement herein, they have signed and delivered it on the dates written below.

**MONTGOMERY COUNTY, MARYLAND**

Date: 8/1/22

By:   
(Signature)

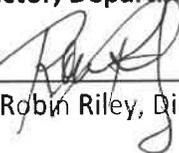
Typed Name: Fariba Kassiri

Title: Deputy Chief Administrative Officer

**RECOMMENDED:**

**Director, Department of Recreation**

Date: 7/28/22

By:   
Robin Riley, Director

APPROVED FOR FORM AND LEGALITY

Date: 7/28/2022

By: Neal Anker  
Montgomery County Attorneys' Office

**MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION**

Date: 08/09/2022

By: Asuntha ChiangSmith  
Asuntha Chiang-Smith  
Executive Director

**ATTEST:**

Date: 08/09/2022

By:   
Gavin Cohen,  
Secretary-Treasurer

APPROVED FOR LEGAL SUFFICIENCY

Date: 08/04/2022

By: Megan Chung  
M-NCPPC Office of General Counsel

**ATTACHMENT ONE**

**County Proposal**

ATTACHMENT ONE



DEPARTMENT OF RECREATION

Marc Eirich  
*County Executive*

Robin Riley  
*Director*

February 24, 2022

Michelle Grace

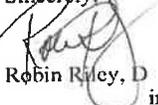
Assistant Division Chief-Facilities Management  
M-NCPPC Montgomery Parks  
8301 Turkey Thicket Dr., 2nd Floor  
Gaithersburg, MD 20879

Dear Michelle;

Montgomery County Recreation is requesting the use of the former handball court to be used as a dryland dive practice facility.

Montgomery County will have certified and insured contractors provide dryland diving training in this space. Only approved contractors will be providing classes in the space to complement our current programs. Registration will be through *ActiveMontgomery* and classes would be offered up to seven days a week. Time of classes will vary but will be within the hours of 6 a.m. - 10 p.m. Mondays through Fridays and 8 a.m. - 6 p.m. on Saturdays and Sundays. Coaches and participants will check in at the Kennedy Shriver Aquatic Center before attending each class. The contents inside the practice facility were purchased by the Montgomery County Dive boosters club and will be donated to Montgomery County Recreation for the use of our participants once the Recreation Department has a signed lease agreement in place.

Thank you for your consideration.

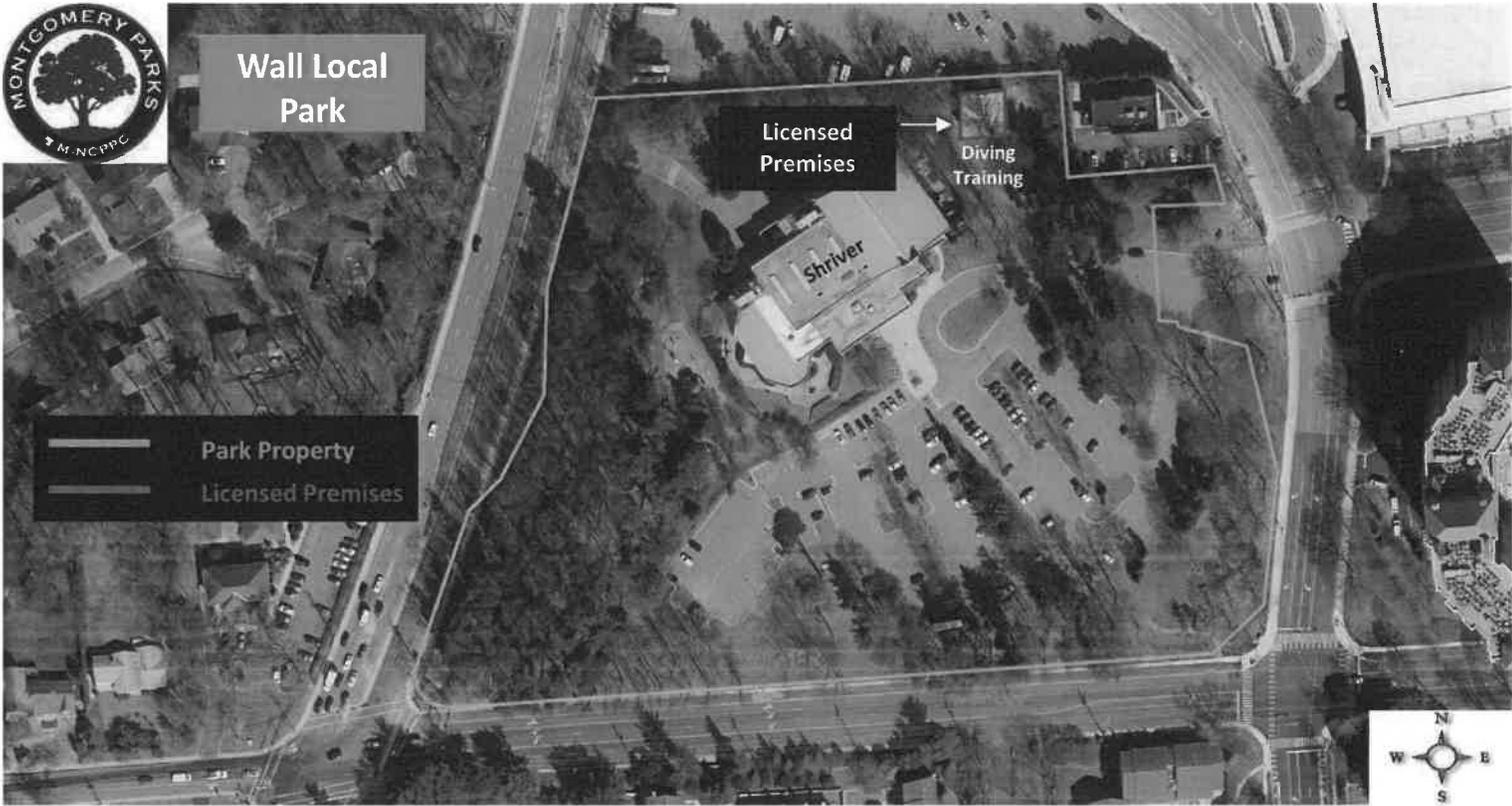
Sincerely,  
  
Robin Riley, Director

---

Office of the Director

**ATTACHMENT TWO**

**Description and Designation of Licensed Premises**



**ATTACHMENT THREE****Annual License Fee**

<b>Annual License Fee Payment Due Date in <u>Bold</u> below</b>	<b>Annual License Fee</b>
<b>August 1, 2022</b> - July 31, 2023	\$12,000.00
<b>August 1, 2023</b> - July 31, 2024	\$12,480.00
<b>August 1, 2024</b> - July 31, 2025	\$12,980.00
<b>August 1, 2025</b> - July 31, 2026	\$13,499.00
<b>August 1, 2026</b> - July 31, 2027	\$14,039.00
<b>August 1, 2027</b> - July 31, 2028	\$14,600.00
<b>August 1, 2028</b> - July 31, 2029	\$15,184.00

**ATTACHMENT FOUR**

**Insurance Requirements**  
**County's Third-Party Contractor**

1. **Insurance Rating:** Insurance companies providing the insurance coverages required in this License must be rated by A.M. Best or a comparable rating company and carry at least an "A" rating.
2. All insurance shall be procured from insurance companies licensed and authorized to do business in the state of Maryland.
3. The Contractor must provide the Commission with a certificate of insurance with the signed License.
4. The Contractor must provide the Commission with a renewal certificate of insurance on or before expiration of the existing certificate.
5. The certificate must provide for 45 days advance notice to the Commission in the event of modification, termination or cancellation of coverage.
6. All insurance policies must include the County and the Commission as an additional insured.
7. All insurance policies must waive all rights of subrogation against the Commission.
8. The contractor's insurance coverage shall be the primary coverage.

County Contractor Insurance for this License Agreement is the following:

Aquatics - Water Fitness / Private Lessons / Swim Coach / Diving / Scuba / Aqua Sports / Clinics -Camps - Sports / Educational / Arts and Crafts / Music and Dance / Tiny Tots (programs for children under the age of 6) / Private Location programs

Prior to the execution of the contract by the County, the proposed awardee must obtain at their own cost and expense the following insurance with an insurance company/companies licensed to do business in the State of Maryland and acceptable to the Division of Risk Management. This insurance must be kept in full force and effect during the term of the contract, including all extensions. The proposed awardee will be responsible for providing the County a certificate of insurance evidencing coverage within 15 days of the execution of the Contract along with copy of the insurance policies. The Contractor's insurance shall be primary.

Commercial General Liability or Professional

A minimum limit of liability of one million dollars (\$1,000,000), combined single limit, for bodily injury and property damage coverage per occurrence including the following coverages:

Contractual Liability

Premises and Operations

Independent Contractors

Products and Completed Operations

Workers' Compensation/Employer's Liability - Waive if no employees

Meeting all statutory requirements of the State of Maryland Law and with the following minimum Employers' Liability limits:

Bodily Injury by Accident - \$100,000 each accident

Bodily Injury by Disease - \$500,000 policy limits

Bodily Injury by Disease - \$100,000 each employee

Additional Insured

Montgomery County, Maryland, its elected and appointed officials, officers, consultants, agents and employees must be named as an additional insured on Contractor's Commercial and Excess/Umbrella Insurance for liability arising out of contractor's products, goods and services provided under this contract.

Policy Cancellation

Should any of the above policies be cancelled before the expiration date thereof, written notice must be delivered to the County in accordance with the policy provisions.

Certificate Holder  
Montgomery County Maryland (Contract #)  
Office of Procurement  
Rockville Center  
27 Courthouse Square, Suite 330  
Rockville, Maryland 20850-416