HABERSHAM COUNTY BOARD OF COMMISSIONERS

EXECUTIVE SUMMARY

SUBJECT: Facility Usage Agreement – North Georgia Technical College

DATE: August 2, 2019

(X) RECOMMENDATION
( ) POLICY DISCUSSION
( ) STATUS REPORT
( ) OTHER

BUDGET INFORMATION:
REVENUE FY 20: $1,950.00
CAPITAL: N/A

COMMISSION ACTION REQUESTED ON: August 19th, 2019

PURPOSE: This is a renewal of the facility usage agreement for North Georgia Technical College to use the aquatic center September 1, 2019 through May 31, 2020. Usage includes the natatorium, locker rooms, and gymnasium.

BACKGROUND / HISTORY: North Georgia Technical College is in their fifth year of utilizing the aquatic center to provide extra amenities for their students, faculty, and staff. There were 530 facility uses for FY19.

FACTS AND ISSUES: Compensation to the county, for usage of the aquatic center, is as follows:

- Semi-annual installments in the amount of $975.00 will be paid to HCPRD.
- Regardless of participation numbers, this amount is paid each period.

OPTIONS:

1. Approve to enter into a renewal agreement with North Georgia Technical College for 2019-2020.
2. Deny entering into renewal agreement and we will renegotiate a new agreement with North Georgia Technical College.
3. Commission defined alternate.

RECOMMENDED SAMPLE MOTION:

Approve to enter into a renewal agreement with North Georgia Technical College for 2019-2020.

DEPARTMENT: Recreation

Prepared by: Kurt Cooper, Director

Director: Kurt Cooper

ADMINISTRATIVE COMMENTS:_____

_____

_____

_____ **DATE:**_____

County Manager

AGREEMENT FOR THE USE OF FACILITIES FOR RECREATIONAL PURPOSES:

"NORTH GEORGIA TECHNICAL COLLEGE"

DURATION & TERMS OF AGREEMENT: September 1, 2019 to May 31, 2020

This agreement is made effective the latest date signed below by and between HABERSHAM COUNTY, a political subdivision in the State of Georgia (hereinafter referred to as "Habersham"), acting by and through the Recreation Department and North Georgia Technical College (hereinafter referred to as "Organization").

WHEREAS, the parties desire to place in writing the terms of their agreement regarding the Organization's request to utilize Habersham recreation facilities to provide students, faculty and staff with recreational opportunities through drop-in use of property described as Ruby C. Fulbright Recreation and Aquatic Center; and,

NOW THEREFORE, and in consideration of the mutual covenants and conditions hereinafter set forth, the parties hereby agree as follows:

I. Grant and Description of Premises. Habersham County grants to Organization and Organization accepts from Habersham County the non-exclusive privilege of utilizing the facilities as stated above. Facilities included in this agreement include the gymnasiums, recreational pool, lap pool, locker rooms, and restrooms during normal operating hours.

II. Use of Premises. The Organization shall use subject property for independent recreational activities only. Organization shall not use or permit Habersham County facilities to be used for any other purpose without obtaining the prior written consent of Habersham County. Such requests must be submitted no less than seven (7) business days prior to the special use.

III. Services to be Provided. Habersham will provide safe and accessible facilities only – no programming services are included in this agreement. Habersham County or Organization may request changes in the scope of services to be performed by the Organization under this Agreement. However, no change shall be effective and enforceable unless mutually agreed upon by written amendment to this Agreement executed by both parties and attached hereto.

IV. No Employment Contract. Nothing contained in this Agreement shall be construed in such a manner so as to constitute the Organization as an agent or employee of Habersham County, it being the intent of the parties that Organization shall remain an independent organization, nor shall either party have any authority to bind the other in any respect except as specifically provided for herein. It is acknowledged by the Organization that all employees, agents and volunteers of the Organization are not employees or agents of Habersham County.

V. Responsibilities of Organization.

A. General.

(1) The said property shall be subject to the rules and regulations of Habersham County and HCRD. Habersham reserves the right to adopt and implement additional park rules and regulations at any time during the term of this agreement.
(2) The Organization and its users shall maintain the subject properties and the improvements located therein so as to return same to Habersham County at the end of

the agreement term in the same condition as they now exist subject to ordinary wear and tear.

(3) The Organization and its users' maintenance obligation includes the collection and removal of all personal items belonging to the Organization's participants at the conclusion of any use. Specifically, it shall be the obligation of the Organization to maintain the subject premises in conformance with all relevant codes and ordinances of Habersham County.

(4) The Organization and its users will abide by HCRD staff determination as to the availability of the Aquatic Center in the case of severe weather.

(5) The Organization and its users agree to abide by the HCRD policy that prohibits any food or beverage (water excepted) in the pool area.

(6) The Organization may not offer any activities or programs which conflict or compete with programs offered by HCRD without the expressed written permission of the Director.

(7) The Organization will assume responsibility for the cost of repair to any damage sustained to facility areas resulting directly or indirectly from their use.

(8) All users of the facilities under this agreement will check in at the Main Desk and present a current up-to-date photo ID from North Georgia Technical College before using the facility. Users must also sign in on the appropriate clipboard registering their attendance. Any guests of an authorized user must pay the appropriate user fee unless they are also entitled to privileges under this agreement.

B. Expenses. Organization agrees to pay all expenses incurred in conducting programming and ancillary services.

C. Hours of Operation. Organization shall schedule all activities and ancillary services during the normal operating hours posted **only**, unless prior written approval is made between the Organization and the HCRD. Organization agrees to not schedule any activities during days when the facilities are closed. Organization further agrees that there will possibly be designated times throughout the year where scheduling conflicts will occur in programming and agrees that these conflicts will be discussed and worked out to the best interest of both programs if possible. If the scheduling conflicts cannot be resolved, the Habersham County Parks & Recreation Department Director will make the final decision on program scheduling.

D. Nondiscrimination. Habersham shall not discriminate against any program participant, employee and/or sub-contractor because of race, creed, color, national origin, gender, affectional or sexual orientation, age, marital status, religion or disability by refusing to furnish such person any service or privilege offered to or enjoyed by area residents. Neither Habersham or his/her employees and/or sub-contractors shall publicize the services provided under this Agreement in any manner that would directly or by inference reflect on the acceptability of any person for instruction, programming and ancillary services based on race, creed, color, national origin, gender, affectional or sexual orientation, age, marital status, religion or disability.

E. Concessions. *(If applicable)* Organization agrees to follow all County and State regulations governing public health codes and standards. Organization must sell only beverages that are currently approved through the existing HCRD beverage contract. Should HCRD have an existing concessionaire agreement, the Organization will be unable to provide any sale of food or beverage on the property and said services will be provided through the existing Concessionaire Agreement contractor.

F. Publicity. Organization agrees that all program advertisement, publications, and public notices will recognize Ruby C. Fulbright Recreation & Aquatic Center as the location but will not express any endorsement or sponsorship of the Organization's program by Habersham County or HCRD.

G. Complaints and Incidents. Habersham agrees to listen to public complaints about any program and work out a fair solution to any and all issues. Habersham agrees to notify Organization by the quickest means practicable of any incidents and/or accidents associated with subject facilities.

H. Reports. Personal information on participants is not requested or required in advance by Organization.

VI. Responsibilities of Habersham County

A. Publicity. Habersham County will offer no publicity opportunities to the Organization.

B. Equipment and Facility Use. Habersham County will furnish Organization with facilities and support amenities in a safe manner consistent with regulated and acceptable health standards deemed necessary to the conduct of the program and mutually agreed upon by the Organization and Habersham County.

C. Maintenance. Habersham County shall be responsible for the normal support and preventive maintenance of the premises, including plumbing, electrical repairs, and repair and replacement.

D. Equipment. Habersham County assumes responsibility for the upkeep of all pool equipment such as, but not limited to, boilers, heaters, and chlorination system and operates the pool within the recommended temperature range for recreational use (78 – 83 degrees). We do not at any time guarantee a specific temperature nor are we able to adjust the temperature of the pool for specific activities or use. Should a failure occur in the pool mechanical system, the Organization will be notified at the earliest opportunity by HCRD staff.

E. Utilities. Habersham County shall provide public utilities (water and electricity) for uses of the park by the Organization and by the general public.

VII. Compensation. **A fee of $1,950.00 will be assessed to the Organization and payable to Habersham County in two installments of $975.00. The first installment is due by December 15, 2019 and the second installment is due by June 15, 2020**. This fee covers the use of the gymnasiums, recreational pool, lap pool, locker rooms, and restrooms during normal facility operating hours only. Any request for additional use of the facility must be negotiated separately. Failure to make timely payments may result in a late fee being assessed.

VIII. Facility Usage.

A. The Organization shall not have the right to schedule the use of the facility on the subject properties.

B. Organization shall have non-exclusive use of the property, or any agreed upon portion thereof, during normal operating hours. The Organization may schedule use of the property at other times by submitting a written request to HCRD. Such requests shall be approved by HCRD provided a conflicting use has not been scheduled by HCRD and any additional fees are agreed upon by the Organization and compensated for in advance of the use.

C. All of the subject property shall be available for public use by the citizens at all times. Habersham County reserves the right to schedule and utilize subject property, including structures and other facilities, for uses at all times.

IX. Term. The term of this Agreement shall be September 1, 2019 to May 31, 2020 (9 Month Agreement). It is the intent of Habersham County to review the current agreement at the conclusion of this date and negotiate any changes at that time. With both the Organization and Habersham County being mutually pleased with the success of the program agreement each shall have the option to amend or renew this Agreement for an additional one year after the termination of the term with each giving notice of their desire to renew the contract. The fees/compensation may be subject to revision. Organization shall give thirty (30) days written notice to Habersham County of its intention to cancel, renew and/or execute another agreement prior to the expiration of the term in effect. Habersham County in its sole discretion shall have sixty days to accept or reject said request for renewal.

X. Termination for Cause. Organization must support Habersham County rules and regulations and Habersham County may terminate this Agreement only for cause, which shall include fraud, theft, drug use, criminal activity, insubordination to Habersham County, moral offenses or any other offenses deemed damaging to the image or mission of the Parks & Recreation Department, failing to fulfill the obligations under this Agreement in a timely manner, or the Organization's violating any of the material provisions of this Agreement. Termination by Habersham County for cause shall be initiated by giving written notice to the Organization. Termination for cause in the sole discretion of Habersham County shall be effective immediately upon notice by Habersham County.

Either party to this Agreement may provide notice to the other at the addresses indicated in paragraph XV below, that the party deems the other party to the Agreement to be in violation of the Agreement.

A. The notice shall specify the nature of the alleged violation and the corresponding provision in this Agreement. Within seven (7) days, the other party shall respond in writing regarding the allegations of violation of the Agreement. If the alleged violations have been cured, the response shall so note. If after the exchange of notice of violation and response, either party considers the issue to not be resolved, that party shall notify the other of the date, time and place of a meeting (to be held within Habersham County and not sooner than seven (7) days from the date of said notice of meeting and not more than fourteen (14) days subsequent to the date of said notice of meeting) at which representatives of the parties shall discuss the alleged violation and the response thereto.

B. Irrespective of the foregoing, in the event Habersham County determines than any condition on the subject premises constitutes an immediate health hazard to the members of the public, Habersham County shall have the right to immediately take action to correct said condition. In that situation, Habersham County shall notify the representative of the Organization identified in paragraph XV below, by telephone, facsimile transmission or other method designed to provide the most expedient notice to the Organization.

C. In the event the meeting of the parties pursuant to the procedures in sub-paragraph A above does not resolve the alleged violation, either party may pursue any available judicial remedy.

Upon final determination that the other parties in violation of this Agreement, either party shall have the right to terminate this Agreement on seven (7) days notice to the other.

XI. Conflicts of Law. This agreement shall be deemed to be made in and shall be construed in accordance with the laws of the State of Georgia.

XII. Entire Agreement. - This agreement contains the entire understanding of the parties and supersedes all previous verbal and written Agreements. No other agreement, statement or promise not contained herein relating to the subject matter of this Agreement shall be valid or binding. Any notice required under this Agreement shall be provided to the other party at the addresses indicated:

Habersham County Parks & Recreation Department
120 Paul Franklin Road, Clarkesville, GA 30523

Organization: North Georgia Technical College
PO Box 65, 1500 Hwy 197
Clarkesville, GA 30523

Habersham County Government, Georgia

By: _____ Date: _____
Commission Chairman

Attest: _____ Date: _____
Clerk of Commission

Organization: _____ Date: _____

Witness: _____ Date: _____
Notary