

HABERSHAM COUNTY BOARD OF COMMISSIONERS

EXECUTIVE SUMMARY

SUBJECT: Facility Usage Agreement – Aquatic Fitness Specialist (AFS)

DATE: 1/3/2020

RECOMMENDATION

POLICY DISCUSSION

BUDGET INFORMATION:

STATUS REPORT

ANNUAL-

OTHER

REVENUE- \$5,400

COMMISSION ACTION REQUESTED ON: January 13th, 2020

PURPOSE: This is a facility usage renewal agreement for the AFS to utilize the recreation/therapeutic pool on Mondays, Wednesdays, and Fridays throughout the year for water aerobics classes.

BACKGROUND / HISTORY: AFS has been conducting shallow and deep water aerobics classes for many years at the aquatic center. Christine Tekippe is the instructor and manager of this service. Christine averages 15 participants daily. The purpose is to see the program grow so that both AFS and Habersham County can financially benefit from the great opportunity of providing a health and fitness program for both youth and adults of Habersham County.

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

- **Revenue:** Participant's will purchase \$30 monthly passes to utilize the pool for fitness classes. With an average of 15 participants each month for 12 months, the estimated revenue to be collected for Habersham County is \$5,400.
 - **Class Schedule:** AFS operates classes on Mondays, Wednesdays and Fridays from 9am to 10am and 11am to 12pm during normal business hours.
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OPTIONS:

- 1) Approve recommendation to enter into a renewal agreement with Aquatic Fitness Specialist for 2020.
 - 2) Deny recommendation to enter into a renewal agreement with Aquatic Fitness Specialist for 2020.
 - 3) Commission defined alternative
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RECOMMENDED SAMPLE MOTION:

Motion to approve entering into a renewal agreement with Aquatic Fitness Specialist for 2020.

DEPARTMENT:

Prepared by: Kurt Cooper

Director: Kurt Cooper

ADMINISTRATIVE

COMMENTS:

DATE: _____

County Manager

**AGREEMENT FOR THE USE OF FACILITIES IN THE PROVISION OF PROGRAM SERVICES:
“AQUATIC FITNESS SPECIALISTS” – Operator: Christine Tekippe**

TERMS OF AGREEMENT: JANUARY 1, 2020 – DECEMBER 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 Parks & Recreation Department and Aquatic Fitness Specialists (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 water exercise classes to area residents utilizing property described as Ruby C. Fulbright Recreation and Aquatic Center Recreational Pool, Locker Rooms, and Restrooms.

WHEREAS, Organization has the proven expertise, training and certification to render such programming and services; and agrees to operate in accordance with the Habersham Policies and Procedures; 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 exclusive privilege of conducting the Organization’s programming as stated above. The specific dates and times are to be determined in advance.
- II. Use of Premises. The Organization shall use subject property to conduct Aquatic Fitness Specialists 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. Aquatic Fitness Specialists will provide water exercise classes for area residents. 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 the 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 County reserves the right to adopt and implement additional park rules and regulations at any time during the term of this agreement.
 - (2) Organization shall maintain the subject properties and the improvements located thereon 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’s maintenance obligation includes litter control during times of scheduled activities and events on subject premises to include removal of all paper and debris from the property at the conclusion of their use. Further, the collection and removal of all personal items belonging to the Organization’s participants must be done 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, including applicable Health Codes.

- (4) The Organization will provide a written description of services being provided and provide updates as necessary.
- (5) The Organization will notify HCRD in the event of any change in scheduling or temporary cancellation of daily scheduled activities.
- (6) The Organization must provide supervision for participants, including children, prior to and following their assigned session.
- (7) The Organization will abide by HCRD staff determination as to the availability of the Aquatic Center in the case of severe weather.
- (8) The Organization agrees to abide by the HCRD policy that prohibits any food or beverage (water accepted) in the pool area.
- (9) The Organization will make no permanent changes to the facilities without the expressed written consent of Habersham County.
- (10) The Organization may not offer any activities or programs which conflict or compete with programs offered by HCRD.
- (11) The Organization will assume responsibility for the cost of repair to any damage sustained to facility areas resulting directly or indirectly from their use.
- (12) Inspection of facilities will be made by Organization and Habersham County representatives immediately prior to scheduled program and immediately following program service.

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 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. Organization agrees to ensure that an Organization representative is present at all times during scheduled activities on said property.

D. Nondiscrimination. Organization 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 Organization 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. N/A

F. Subcontractors. Organization shall at all times use only those persons of good moral character as employees, volunteers and/or independent sub-contractors, and Organization shall not retain any employee, volunteer and/or independent sub-contractor that Habersham County considers to be unfit or otherwise objectionable. Habersham County requires the Organization and/or all sub-contractors to submit all employees to a criminal background check and/or drug test to determine the suitability of their employment. All program personnel shall be neatly dressed at all times and shall conduct themselves courteously in their relations with the public. All personnel engaged by Organization shall be fully qualified for the specific service(s) they are to provide and shall be authorized or permitted to work under applicable state and local laws. The Organization is required to provide copies of all relevant licenses or certificates for any service provider. If required, Organization assumes full responsibility for making all

required income tax, social security and other deductions and related payments and shall also file all required returns and forms needed to fulfill these responsibilities.

G. 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.

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

I. Fees. The Organization may charge reasonable fees in order to conduct its business. All program fees will be made payable to Organization, and will be collected and posted by the Organization.

J. Scheduling of Facilities. The Organization will have exclusive use of the Recreational/Therapy Pool on Mondays, Wednesdays, and Fridays from 9:00 am – 10:00 am and 11 am - 12pm. Use of the Lap Pool for additional class use will be available at the request of the Organization to the HCRD w/in 5 business days and only if the Lap Pool is available for use.

K. Programming. The scheduled activities of the Organization shall be for public purposes open to participation by any citizen, subject to the right of the Organization to impose reasonable rules on participants in Organization scheduled activities.

L. Reports. The Organization shall provide Habersham County with a program service report for the preceding contract period. Such report shall include a summary of all program measures to include statistics on program participants, etc. Personal information on participants is not requested or required.

VI. Responsibilities of Habersham County.

A. Publicity. Habersham County will offer publicity opportunities to the Organization as available. All publicity is to be submitted to HCRD for pre-approval. HCRD will maintain editorial privileges in all publications to lengthen or shorten information as needed.

B. Equipment and Facility Use. Habersham County will furnish Organization with pool 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 rec/therapeutic pool within the recommended temperature range of 83-86 degrees and the lap pool within the recommended temperature range of 78-81 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. Compensation will be collected for HCRD by AFS members being required to purchase a Monthly (\$30) pass to participate in the Aquatic Fitness Specialist classes. Aquatic Fitness Specialist will collect a separate class fee of \$5 to reinvest back into the program which would include certifications, insurance, publicity and advertisement, music, equipment, interns and workshops.

VIII. Facility Usage.

- A. The Organization shall have the right to schedule the use of the facility on the subject properties during the agreed upon use period defined in this paragraph
- B. Organization shall have use of the property or any agreed upon portion thereof during the times defined in Section V. Habersham County may schedule other public and/or private uses of Recreation & Aquatic Center areas during times which the Organization isn't using the property. 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 there is no conflict in the schedule and any additional fees agreed upon by the Organization are paid in advance of the use.
- C. All of the subject property shall be available for public use by the citizens at all times not scheduled for Organization activities. Habersham County reserves the right to schedule and utilize subject property, including structures and other facilities, for uses at all times not scheduled by the Organization.
- D. Organization may modify this schedule from time to time with the approval of Habersham County.

IX. Proprietary Materials. Organization shall have the right to control use of personal property and equipment owned by the Organization and store in any authorized structures located on subject property. All personal property and equipment of the Organization shall remain the personal property of the Organization and shall be removed from the subject property within seven (7) days of any cancellation or termination of this Agreement.

X. Term. The term of this Agreement shall be **January 1, 2020 – December 31, 2020**. 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 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.

XI. Termination for Cause. Organization must support Habersham County rules and regulations. 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 is the sole discretion of Habersham County and 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 that 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.

XII. Indemnification. Organization hereby agrees to defend, indemnify and hold Habersham County it's agents and employees, harmless from any all claims, suits, liens, demands, debts, damages, loss or expense, including, but not limited to, attorney's fees and litigation expenses, suffered or incurred by the Owner as a result of the Organization's failure to perform in accordance with the Agreement Documents and arising out of and resulting from Organization's performance of the work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of Organization, a sub-contractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable.

XIII. Insurance. Organization is required to provide Habersham County with a copy of the certificate of insurance for a General Liability policy with a \$1,000,000 per occurrence minimum and a \$1,000,000 aggregate, with Habersham County named as an additional insured on that policy. The insurance company used must be at least an A minus 6, Class VI, Best Rated Company. Habersham County must be provided 30 days written notice of policy cancellation.

XIV. 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.

XV. 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: Aquatic Fitness Specialist: C/O Christine Tekippe
1439 Yeoman Lake Rd. Clarkesville, Ga 30523

Habersham County Government, Georgia

By: _____ Date: _____
Commission Chair

Attest: _____ Date: _____
Clerk of Commission

Organization: _____ Date: _____

Witness: _____ Date: _____