

HABERSHAM COUNTY BOARD OF COMMISSIONERS
EXECUTIVE SUMMARY

SUBJECT: Habersham County Church League (HCCL) – Facility Usage Agreement

DATE: 4/9/21

(X) RECOMMENDATION

() POLICY DISCUSSION

BUDGET INFORMATION:

() STATUS REPORT

ANNUAL- \$3,000

() OTHER

CAPITAL-

COMMISSION ACTION REQUESTED ON: 4/19/21

PURPOSE: This is a facility usage renewal agreement for the HCCL to utilize our recreation grounds for their adult softball spring league for the 2021 calendar year. Usage of facilities includes aquatic center fields #2 and #4.

BACKGROUND / HISTORY: The HCCL utilizes the recreation grounds for their adult softball spring church league. They have partnered with the recreation department for several years. They are managed by a league association. The HCCL and the recreation department have worked well together in the past and currently have presented a solid foundation to make the adult softball league an enjoyable, positive experience for all involved.

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

1.) **Fees:** HCCL will pay Habersham County Recreation Department 25% of each team's league registration fee. HCCL will also pay HCRD a \$15 daily field preparation for each field in use. This will generate an estimated fee of \$3,000 to be paid to the county.

2.) **Dues:** Payment will be made by June 15th, 2021.

3.) **Usage:** HCCL will use Aquatic Fields #2 and #4 on Monday, Tuesday, and Thursday evenings.

OPTIONS:

1. Approve to enter into a renewal agreement with Habersham County Church League for 2021.
 2. Deny entering into renewal agreement and we will renegotiate a new agreement with Habersham County Church League.
 3. Commission defined alternate
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RECOMMENDED SAMPLE MOTION:

Move to approve to enter into a renewal agreement with Habersham County Church League for 2021.

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:

"Habersham County Church Softball League"

TERMS OF AGREEMENT March 29th, 2021 through June 30, 2021

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" and/or "HCRD"), acting by and through the Parks & Recreation Department and the Habersham County Church Softball League (hereinafter referred to as "Organization" and/or HCCL):

WHEREAS, the parties desire to place in writing the terms of their agreement regarding the Organization's request to provide Adult Softball programs for area adults utilizing property described as Habersham County Parks & Recreation Department athletic fields; and,

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 adult softball program. Ball field usage included in this agreement is Aquatic Center Field #2 & #4.
- II. Use of Premises. The Organization shall use subject property to conduct HCCL 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. HCCL will provide adult softball program opportunities. 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 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 is responsible for ensuring the collection and removal of all personal items belonging to the Organization's participants is done at the conclusion of any use.
- (4) 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.
- (5) The Organization will abide by HCRD staff determination as to the availability of the fields for play in situations such as, but not limited to, severe drought, rain, inclement weather, etc.
- (6) The Organization may not offer any activities or programs which conflict or compete with programs offered by HCRD.
- (7) The Organization will assume responsibility for the cost of repair to any negligent damage sustained to facility areas resulting directly from their use.
- (8) The Organization agrees to meet monthly with the HCRD Director to discuss program and maintenance issues and any necessary changes to procedures or protocols.

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 **only**, unless prior written approval is made between the Organization and the HCRD. Organization further agrees that could be an occasion 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, 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, or sexual orientation, age, marital status, religion or disability.

E. Concessions. HCRD will operate the ball field concessions in accordance to games scheduled.

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 reserves the right at any time to require members of the Organization and/or all sub-contractors to submit 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. 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 HCRD facilities 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 program and work out a fair solution to 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 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. Aquatic Center Fields #2 & #4 are open for HCCL scheduling for games and tournaments on Mondays, Tuesdays, and Thursdays. Wednesday, Friday, Saturday, and Sunday field usage must be approved by the HCRD Director prior to usage. Team practices shall go directly through the HCRD at the rate of \$10 per hour without light usage and \$17.50 per hour with light usage.

K. Programming. The scheduled activities of the Organization shall be for public purposes open to participation by all citizens, 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 and financial reports for each respective softball season during the term of this contract. Such reports shall include a summary of all program measures to include statistics on program participants, revenue and expenditures, etc. A detailed report of any improvements made to the facility (including date, improvement, and cost) shall be kept and presented to the HCRD Director. Personal information on participants is not requested or required. Such reports are due no later than fifteen (15) days following the conclusion of each respective softball season.

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 fields and support amenities in a safe manner consistent with regulated and acceptable health and sanitation 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. **See Attachment A** for additional duties.

D. Equipment. Habersham County assumes responsibility for the upkeep of all equipment such as, but not limited to, field lighting, plumbing, fencing, etc. Should a failure occur in any mechanical or lighting 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 25% of all team fees collected and a \$15 per field daily prepping fee will be assessed to the Organization and payable to Habersham County. Fees are due by June 15, 2021.**

VIII. Practices. **Team practices shall be scheduled directly through the HCRD at the rate of \$10 per hour without light usage and \$17.50 per hour with light usage.**

- IX. Any request for additional use of the facility, outside the schedule outlined in this agreement, must be negotiated separately.

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 contract.
- B. Organization shall have exclusive use of the property, or any agreed upon portion thereof, during the time period defined in Section V (J). Habersham County may schedule other public and/or private uses of the facilities during times when 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 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 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 the 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 March 29, 2021 to June 30, 2021. 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 ninety (90) 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 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 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 there from, 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 recommended to provide Habersham County with a copy of the certificate of insurance for a Commercial 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: HCCL, Mr. Stephen Cain 311 Hershel's Way Clarkesville, Ga 30523

Habersham County Government, Georgia

By: _____
Commission Chairman

Date: _____

Attest: _____
Clerk of Commission

Date: _____

Organization: _____

Date: _____

Witness: _____
Notary

Date: _____

ATTACHMENT A

The County agrees to:

- Maintain the playing fields in accordance with the standards deemed appropriate by the County with consultation of HCCL. This will include game-prepping scheduled fields and keeping non-game fields in a practice-ready state during the week.
- Grant authority to HCCL for determining if play should be authorized in questionable situations such as, but not limited to, rain, inclement weather, severe drought, etc.
- Grant HCCL exclusive use of the aforementioned fields during the course of their seasons described in this Agreement.
- Assume responsibility to maintain present structures at subject fields; such as bleachers, dugouts, fencing, backstops, irrigation, lighting, scoreboards, and buildings through normal use of said structures.
- Assume the responsibility for the purchase and application of field paint for the purpose of marking outfield foul lines. Assume the responsibility for the purchase of marble dust for the purpose of marking infield foul lines and batters boxes.
- Assume responsibility for the cost and replacement of lights and fixtures.
- Assume the responsibility for payments of utility expenses incurred through electrical power, water, and sewer service use.
- Assume the responsibility for grounds care in and around all facilities.
- Allow HCCL the use of outfield fencing for the sale and display of sponsor advertising (with a 20% cut of all sponsorships made payable to Habersham County) as long as signs are in good taste, meet code requirements, and are properly maintained. Sponsorship signage must be approved by HCRD prior to display.