

HABERSHAM COUNTY BOARD OF COMMISSIONERS
EXECUTIVE SUMMARY

SUBJECT: Habersham County Youth Baseball Softball League (HCYBSL) – Facility Usage Agreement

DATE: 4/9/2021

☒ **RECOMMENDATION**
☐ **POLICY DISCUSSION**
☐ **STATUS REPORT**
☐ **OTHER**

BUDGET INFORMATION:

PROJECTED REVENUE FY 2021/22: \$8,000

CAPITAL: N/A

COMMISSION ACTION REQUESTED ON: Monday, April 19th

PURPOSE: This is a facility usage renewal agreement for the HCYBSL to utilize our recreation grounds for their youth baseball/softball spring and fall leagues for the 2021 calendar year. Usage of facilities includes Diamond Memorial Complex; its restrooms & concession stand and the aquatic center fields #1 and #3.

BACKGROUND / HISTORY: The HCYBSL utilizes the recreation grounds for their youth baseball/softball programs. They have been a prominent partner of the recreation department for many years. They are managed by a parent association. HCYBSL removed its partnership with Little League winter of 2020 and became independent of any governing league. Their partnership with The HCYBSL and the recreation department have worked well together to make the youth baseball/softball leagues an enjoyable, positive experience for all involved.

FACTS AND/OR CONCERNS: Compensation to the county, for usage of the Diamond Memorial Complex and fields, is as follows:

- **Fee:** A fee of \$16 per each player that participates in baseball or softball, each season, will be paid to Habersham County. An expected annual revenue collection of \$8,000.
 - **Payment Schedule:** Payments will be made at the end of each season, within 30 days.
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OPTIONS:

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

Move to approve entering into a renewal agreement with Habersham County Youth Baseball Softball League for 2021.

DEPARTMENT: Parks & Recreation

Prepared by: Kurt Cooper

Director: Kurt Cooper

ADMINISTRATIVE

COMMENTS: _____

County Manager

DATE: _____

AGREEMENT FOR THE USE OF FACILITIES IN THE PROVISION OF PROGRAM SERVICES:

"Habersham County Youth Baseball and Softball League."

TERMS OF AGREEMENT: April 1, 2021 to December 31, 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"), acting by and through the Parks & Recreation Department and **"Habersham County Youth Baseball and Softball League"** (hereinafter referred to as "Organization"):

WHEREAS, the parties desire to place in writing the terms of their agreement regarding the Organization's request to provide baseball and softball programs for area youth 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 youth baseball & softball program. Facilities included in this agreement include the Fields #1-6 at Diamond Memorial; athletic support facilities at Diamond Memorial; Aquatic Center Field #1 and #3 and paved parking between the Fairground and Diamond Memorial during Organization's scheduled uses. Use of the parking for Fairground events will supersede parking use by the Organization.
- II. Use of Premises. The Organization shall use subject property to conduct HCYBSL 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 County Youth Baseball Softball will provide baseball & softball program opportunities for area children, youth and their families. 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 HCPRD. 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 providing can liners and disposing of their refuse at the conclusion of each use. Litter inside and outside of the playing area is to be disposed of at the conclusion of events daily. The Organization is not permitted to dispose of any waste in HCPRD's dumpster(s) and must use the HCYBSL waste disposal service provider.
- (4) 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.
- (5) 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.
- (6) The Organization will abide by HCPRD 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.
- (7) The Organization may not offer any activities or programs which conflict or compete with programs offered by HCPRD.
- (8) The Organization will assume responsibility for the cost of repair to any damage sustained to facility areas resulting directly or indirectly from their use.
- (9) The Organization agrees to meet monthly with the HCPRD Director to discuss programs, maintenance issues, future projects and any necessary changes to procedures or protocols.
- (10) See Attachment A for additional organization responsibilities.

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

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 HCPRD. 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. Organization agrees to follow all County and State regulations governing public health codes and standards. Organization must order and sell beverages through the existing HCPRD beverage contract (Coca-Cola products). Organization agrees to purchase all Coca-Cola products from the county with **100 cases per year as a goal**. This is through concession stand sales. The authorized Concession Vendor must meet all applicable Health Codes and offer a full range of items to your participants at reasonable rates.

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 HCPRD facilities as the location but will not express any endorsement or sponsorship of the Organization's program by Habersham County or HCPRD.

H. Complaints and Incidents. Organization agrees to listen to public complaints about the Organization 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. During the HCYBSL seasons (Regular Spring season being described as commencing on February 2021 and ceasing when HCYBSL no longer has representatives in District, State, Regional, or National tournaments and Fall Ball season commencing August 2021 and finishing October 2021) HCYBSL shall have use of the baseball and softball fields at subject properties. Said usage to be determined by HCYBSL submitting a schedule of practices times and games which when approved by the County will not be modified without consent of both parties. At all other times scheduling for the use of the fields will be at the sole discretion of the County.

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. By July 15th (Spring League) and November 15th (Fall League), the Organization shall provide Habersham County with a program service and financial reports for the preceding calendar year. 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 during each monthly meeting with the HCPRD Director. Personal information on participants is not requested or required.

VI. Responsibilities of Habersham County.

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

2. 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. **See Attachment B for specific details.**
 3. 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 B for specific details.**
 4. 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.
 5. 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 \$16.00 “per player, per season”** will be charged for the term of the contract. Fees assessed to the Organization are payable to Habersham County by the fifteenth (15th) of the month following the end of each respective season (e.g. Spring & Fall Seasons). Any request for additional use of the facility, outside the schedule outlined in this agreement, must be negotiated separately through the Habersham County Parks & Recreation Department.
- VIII. Facility Usage.
- A. Facility Usage: Diamond Memorial Complex (7 Days per week), Aquatic Center Field #1 (7 Days per week), and the Aquatic Center Field #3 (Mondays, Tuesday, Thursday, Fridays, and Saturdays only).
 - B. 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.
 - C. 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 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 HCPRD. Such requests shall be approved by HCPRD provided a conflicting use has not been scheduled by HCPRD and any additional fees are agreed upon by the Organization and compensated for in advance of the use.
 - D. 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.
 - E. Organization may modify this schedule from time to time with the approval of the Habersham County.
 - F. The Organization is prohibited from using the Diamond Memorial and fairgrounds parking lots during the Chattahoochee Mountain Fair and the E-911 Halloween Bash. Dates for both of these events will be announced, in writing, to the Organization no later than August 15, 2021.
- 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 April 1, 2021 to December 31, 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 its 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 required 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: Habersham County Youth Baseball Softball League P.O. Box 2241 Clarkesville, GA 30523

Habersham County Government, Georgia

By: _____ Date _____
Commission Chairman

Attest: _____ Date _____
Clerk of Commission

Organization: _____ Date _____

Witness: _____ Date _____
Notary

ATTACHMENT A

HCYBSL agrees that during their seasons they will:

- Maintain the fields, dugouts, restrooms, playground and grounds outside the playing areas free of paper and debris accruing from the operation of any concession stand and HCYBSL activities. All said paper and debris shall be placed in appropriate trash receptacles for removal.
- Assume responsibility for the cost and repair of any damage sustained to the restrooms facilities resulting directly or indirectly from HCYBSL activities.
- Assume responsibility for the cost and repair of any damage sustained to the concession stand facilities due to misuse directly or indirectly resulting from HCYBSL use.
- Assume responsibility for payment of refuse pick-up.
- Assume the responsibility for the purchase of infield conditioners such as, but not limited, to Turface, Diamond Dry, or Pro's Choice.
- Assume responsibility to game-prep fields during the weekends (Saturday & Sundays) and holidays.
- Provide the County notice by 9:00 am the day of (excluding county holiday closings), of any games that have been added to the schedule for the purpose of HCRD game-prepping those fields. Games not reported will be the responsibility of HCYBSL to prepare.
- Abide by any all watering restrictions or regulations issued by the County.
- Provide HCRD staff with practice and game schedules 72 hours in advance of programs commencing so that HCRD staff can schedule field lighting online.

And at all times HCYBSL agrees they will:

- Assume responsibility for the cost to construct and maintain any future authorized improvements made to the facilities at HCYBSL's expense, title of said improvements to be in the name of Habersham County at all times. All such improvements made by HCYBSL to the various facilities shall only be with the approval of the County, which approval will not be unreasonably withheld. HCYBSL and the County shall agree on the selection and scheduling of contractors.
- Obtain the written prior approval of the County before physical improvements or additions are made to the facility.
- The HCYBSL president and Board members shall assume responsibility for making the decision as to the playability of the fields. (HCRD staff may not at times be able to allow field preparing equipment on the fields if weather conditions or field conditions do not allow.) If damage to the fields shall result from the use of the field following the HCYBSL presidents/designee's decision, HCYBSL shall be solely responsible for the repair of the fields. Criteria to be used in the initial determination are as follows:
 - o Standing water 3 inches or more on the field of play.
 - o Soil saturation, exhibited by...
 - Walking on turf causes water to rise.
 - Walking on heels causes indentations.
 - Player's footing becomes unstable, slipping 6" or greater.
 - Extreme drought conditions where 50% of the playing surface has become dormant.
 - o Lightning and poor visibility
 - o Refrain from adding any materials to the playing field without the expressed consent of the County.
 - o Allow only HCYBSL or County sanctioned volunteers to work on the fields. Provide HCRD with the names and phone numbers of those volunteers, who have been trained in the correct methods of field maintenance, will have access to the facility, and be responsible for field maintenance on HCYBSL's behalf. HCYBSL also acknowledges that they will keep all brooms, rakes, squeegees, and other field maintenance equipment locked in the equipment room when not in use.

ATTACHMENT B

The County agrees to:

1. Maintain the playing fields in accordance with the standards deemed appropriate by the County with consultation of HCYBSL. This will include game-prepping scheduled fields and keeping non-game fields in a practice-ready state during the week. Weather will permit whether HCPRD can access the fields to prepare for practice or games.
2. Grant authority to HCYBSL for determining if play should be authorized in questionable situations such as, but not limited to, rain, inclement weather, severe drought, etc.
3. Grant HCYBSL exclusive use of the fields during their seasons described in this Agreement.
4. Assume the responsibility for the purchase and application of field paint for marking outfield foul lines.
5. Assume the responsibility for the purchase of lime dust for marking infield foul lines and batters' boxes.
6. Assume the responsibility for the purchase of replacement bases or as needed.
7. Allow HCYBSL the use of outfield fencing for the sale and display of sponsor advertising if signs are in good taste, meet code requirements, and are properly maintained.
8. Schedule lighting for HCYBSL game and practice use.
9. Habersham County will continue to provide preparations to the fields during the week for all scheduled games i.e. drag fields, line fields and paint fair/foul lines.
10. Assume the responsibility for payments of utility expenses incurred through electrical power, water, and sewer service use.
11. Assume the responsibility for grounds care in and around all facilities.
 - Habersham County will continue to edge playing surfaces, add infield mix in low spots, weed eat, mow playing fields and aerate during appropriate season. Common area grass will be maintained by Habersham County as well. All mowing will take priority, weather pending.
 - Habersham County currently contracts services with TruGreen for applications of seven treatments per year for field turf health on all baseball/softball and soccer fields. Habersham County incurs all cost to turf treatment, an annual expense of \$17,667.
12. Assume responsibility for the cost and replacement of lights and fixtures for playing fields.
13. 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.
14. Habersham County shall provide a score's booth for all Senior League ball games on Aquatics field # 1.
15. Allow access to aquatic concession stand for spring activities.