

HABERSHAM COUNTY BOARD OF COMMISSIONERS
EXECUTIVE SUMMARY

SUBJECT: Rapids Futbol Club (RFC) – Facility Usage Agreement

DATE: August 6th, 2021

(x) RECOMMENDATION

() POLICY DISCUSSION

BUDGET INFORMATION:

() STATUS REPORT

REVENUE FY 2022/23: \$10,500.00

() OTHER

CAPITAL: N/A

COMMISSION ACTION REQUESTED ON: August 16th, 2021

PURPOSE: This is a facility usage renewal agreement for the Rapids Futbol Club to utilize the soccer complex for their spring, summer, and fall leagues and the fairgrounds pavilion for their winter league for the period of September 1, 2021 through September 1, 2022. Usage of the facility includes the fairgrounds upper and lower soccer fields, the fairgrounds pavilion (11/21 to 02/22), Aquatics # 1 and # 2 soccer fields, concession stand, upper and lower complex restrooms and executive office located at aquatics baseball complex.

BACKGROUND / HISTORY: The RFC utilizes the recreation grounds for youth and adult soccer programs. They have been a prominent partner of the recreation department for over ten years. They are managed by a parent association and a hired soccer manager, at their expense. The RFC and the recreation department work very well together to make the youth and adult soccer leagues an enjoyable, positive experience for all.

FACTS AND/OR CONCERNS: Compensation, to the county, for usage of Habersham County athletic field space, is as follows:

- An annual fee of \$10,500.00 will be paid to the Habersham County Parks and Recreation.
 - Payments will be made in four quarterly installments of \$2,625.00.
 - Installments are due within 30 days after the conclusion of each soccer season.
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OPTIONS:

1. Approve to enter into a renewal agreement with Habersham Rapids Futbol Club for 2021-2022.
 2. Deny entering into renewal agreement and we will renegotiate a new agreement with Habersham Rapids Futbol Club.
 3. Commission defined alternate.
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RECOMMENDED SAMPLE MOTION:

Approve to enter into a renewal agreement with Habersham Rapids Futbol Club for 2021-2022.

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:
“RAPIDS FUTBOL CLUB”**

TERMS OF AGREEMENT: September 1, 2021 to September 1, 2022

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” or “Habersham County” or “HCRD”), acting by and through the Parks & Recreation Department and Rapids Futbol Club (hereinafter referred to as “Organization” or “RFC”):

WHEREAS, the parties desire to place in writing the terms of their agreement regarding the Organization’s request to provide soccer 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 soccer program. Facilities included in this agreement include the Rapids Futbol Fieldhouse, Upper and Lower Fairground fields, along with Aquatics Soccer fields 1 and 2;
- II. Use of Premises. The Organization shall use subject property to conduct RFC 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. The Organization will provide soccer 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 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 providing additional can liners and disposing of their refuse at the conclusion of each use.
- (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 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.
- (7) The Organization may not offer any activities or programs which conflict or compete with programs offered by HCRD.
- (8) The Organization will assume responsibility for the cost of repair to any damage sustained to facility areas resulting directly from their use.
- (9) See Attachment A for additional responsibilities.

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 HCPD. Organization further agrees that there 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, 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. Organization agrees to follow all County and State regulations governing public health codes and standards. Organization must order and sell beverages through the existing HCRD beverage contract (Coca-Cola products). Organization agrees to purchase all Coca-Cola products. The authorized Concession Vendor must meet all applicable Health Codes and offer a full range of items to your participants at reasonable rates. If the Organization decides not to offer concessions, they must notify the recreation department so other concession options can be explored; whether offered by the recreation department or subcontract out to a third party.

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 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. RFC will have use of subject fields at the following schedule:

- a) During the spring, summer, and fall seasons, soccer programs will take place on the upper & lower fairground soccer fields and Aquatics Soccer fields 1 and 2. Special events at the Fairgrounds may supersede the Organizations use of the upper and lower fairground soccer fields during the designated timeframe.
- b) Indoor Soccer will be held in the Dewey H. Tench Pavilion during the winter season.
- c) **NO GAMES OR PRACTICES** will be allowed at the fairground fields during the Chattahoochee Mountain Fair and the E-911 Children's Festival. The soccer complex and parking lot will be closed off for these events. Practices and games may be allowed at the aquatic center fields. Dates of these special events will be provided at least three months prior to the event.
- d) All usage in (a) and (b) will be determined by RFC submitting a schedule of practice times and games which when approved by the HCRD will not be modified without consent of both parties. HCRD programs will retain priority for all field scheduling. At all other times scheduling for the use of the fields will be at the sole discretion of the County.
- e) Use of any other recreation department managed fields, outside of usage in (a) and (b), may be subject to further charges.

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 24, 2022, the Organization shall provide Habersham County with a program service and financial reports for the preceding agreement year. Such reports shall include a summary of all program measures to include statistics on program participants, revenue and expenditures, 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 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.

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 B for specific details. **The Organization will be responsible for making sure the concession area, restrooms, playing fields, and spectator areas are free of trash/debris and maintained in a clean, presentable manner. The Organization is responsible for providing and stocking all toiletry products for restrooms (upper & lower soccer restrooms and the fairgrounds building restrooms during the Indoor Winter Soccer League).**

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.

- **An annual fee of \$10,500.00 will be paid to Habersham County for use of the soccer complex during the spring, summer, and fall seasons and use of the fairgrounds building during the winter season.**
- All fees are payable and due to Habersham County Parks & Recreation Department.
- The annual fee will be broken down into four installments of \$2,625.00.
- Each installment is due to the recreation department within thirty (30) days of the conclusion of each soccer season (spring, summer, fall, and winter).

VIII. Facility Usage.

- A. Upper & Lower Soccer fields at Fairgrounds during the spring, summer, and fall Soccer Seasons.
- B. Aquatic Soccer F #1 and F #2 during the spring, summer and fall soccer.
- C. The Dewey H. Tench Pavilion (fairgrounds building) for the Indoor Winter Soccer Season - November 2021 through February 2022.
- D. Use of any other recreation department ball fields, if available and with the approval of the HCRD (i.e. use of the outfields of the base/softball fields and the football fields), may be subject to additional charges for use of such fields.
- E. 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.
- F. Organization shall have 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 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.

- G. 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.
- H. 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 September 1, 2021 to September 1, 2022. 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, 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 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: Rapids Futbol Club, PO Box 1321, Clarkesville, GA 30523

Habersham County Government, Georgia

By: _____
BOCC Chairman

Date: _____

Attest: _____
Clerk of Commission

Date: _____

Organization: _____

Date: _____

Witness: _____

Date: _____

ATTACHMENT “A”

RFC agrees that during their seasons they will:

- Maintain the fields and grounds outside the playing area free of paper and debris accruing directly or indirectly from RFC activities. All said paper and debris shall be bagged and placed in trash bins and/or an appropriate area for pick-up by the county.
- Assume the responsibility for the purchase and stocking of any restroom facilities with items such as toilet paper and soap.
- Assume the responsibility to maintain and set up goals/nets.
- Provide the County with a complete game and practice schedule.
- Vary the direction teams practice for the purpose of ease on the playing turf, especially the goal mouths.
- Refrain from play on any other county area outside of areas established in this agreement, unless approved.
- Adhere to any water restrictions or regulations issued by the County.
- Remove artificial indoor turf from Dewey H. Tench building within 15 business days at conclusion of winter season.

Further, RFC agrees they will:

- Assume the responsibility for the cost to construct and maintain any future authorized improvements made to the facilities at RFC's expense, title of said improvements to be in the name of Habersham County at all times. All such improvements made by RFC to the various facilities shall only be with the approval of the County, which approval will not be unreasonably withheld. RFC and the County shall agree on the selection and scheduling of contractors for any such improvements.
- Obtain written prior approval of the County before physical improvements or additions are made to the facilities.
- Assume the responsibility to re-sod worn areas of turf (such as in goal mouths) when the County determines the necessity to do so. Such determination will be made with consultation with the RFC president or his/her designee.
- On weekends the RFC executive director or his/her designee shall assume responsibility for making the decision as to the playability of the fields. If damage to the fields result from said decision it shall be the sole responsibility of RFC for the repair of the fields. Criteria to be used in the initial determination is as follows:
 - o Standing water 3 inches or more on the field.
 - o Soil saturation
 - Walking on turf causes water to rise.
 - Walking on heels causes indentations.
 - One inch or more of rain 24 hours prior to scheduled game/practice followed by steady downpour of rain on game/practice day.
 - Player's footing becomes unstable, slipping 6' or greater.
- Extreme drought condition where 50% of the playing surface has become dormant.
 - o Lightning
 - o Visibility
 - o Other Acts of Mother Nature
- Refrain from adding any materials to the playing field without the expressed consent of the County.
- Allow only RFC or County sanctioned volunteers to work on the fields. RFC 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:

- Maintain the playing fields in accordance with the standards deemed appropriate by the County with consultation of RFC. This will include keeping fields in a ready state during the week.
- Maintain authority for determining if play should be authorized in questionable situations such as, but not limited to, rain, inclement weather, severe drought, etc.
- Grant RFC 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, fencing, irrigation, lighting, scoreboards, and buildings through normal use of said structures.
- HCRD will assume the responsibility for the purchase and application of field paint for the purpose of marking field lines on an appropriate schedule so that lines are always clearly visible.
- 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 RFC the use of fencing for the display of sponsor advertising as long as signs are in good taste, meet county code requirements, and are properly maintained.
- Maintenance will properly move soccer goals in a safe manner when mowing the fields. HCRD will accept responsibility to fix any damages caused by error of moving.