

HABERSHAM COUNTY BOARD OF COMMISSIONERS
EXECUTIVE SUMMARY

SUBJECT: Facility Usage Agreement – Rapids Swim Team

DATE: August 6th, 2021

☒ **RECOMMENDATION**

☐ **POLICY DISCUSSION**

BUDGET INFORMATION:

☐ **STATUS REPORT**

REVENUE FY 2022/23: Approximately \$16,500

☐ **OTHER**

CAPITAL: N/A

COMMISSION ACTION REQUESTED ON: August 16th, 2021

PURPOSE: This is a facility usage renewal agreement for the Rapids Youth Swim Team to utilize the aquatic center September 1, 2021 through July 31, 2022. Usage of the facility includes the natatorium, locker rooms, and activity room for meetings - as needed.

BACKGROUND / HISTORY: The Rapids have utilized the aquatic center for swim team functions; such as, meetings, practices, and swim meets. This is a large sized swim team compared to our other swim club (approximately 60 swimmers each month/throughout the year). Their practice schedule operates on Monday, Tuesday, Wednesday, Thursday evenings and on Saturday mornings. Swim meets normally operate on the weekends throughout the year at various aquatic centers across the state and here at the Ruby Fulbright Aquatic center a number of times each year. Each season the Rapids have made a generous effort to contribute funding to purchase new pool equipment.

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

- Six practices or less per month: \$4 per practice, per swimmer.
 - More than six practices per month: \$25 per month, per swimmer.
 - 25% of all sponsorships sold at the Aquatic Center on behalf of the Rapids.
 - 25% of gross revenue collected for swim meets hosted at the aquatic center.
 - 25% of fees collected for swim lessons instructed by Rapids at the Aquatic Center.
-
-

OPTIONS:

1. Approve to enter into a renewal agreement with Habersham Rapids Swim Team for 2021-2022.
 2. Deny entering into renewal agreement and we will renegotiate a new agreement with Habersham Rapids Swim Team.
 3. Commission defined alternate.
-
-

RECOMMENDED SAMPLE MOTION:

Approve to enter into a renewal agreement with Habersham Rapids Swim Team 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:
“HABERSHAM RAPIDS YOUTH SWIM TEAM”**

TERMS OF AGREEMENT: SEPTEMBER 1, 2021 TO JULY 31, 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,” “Habersham County” or “HCRD”), acting by and through the Parks & Recreation Department and Habersham Rapids Swim Team (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 a competitive swim team (Habersham Rapids) competitive stroke development and competition opportunities utilizing property described as Ruby C. Fulbright Recreation and Aquatic Center Lap Pool; 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 privilege of conducting the Organization’s scheduled Competitive Swim Team as stated above. Facilities included in this agreement include the lap pool, deck storage space, locker rooms and restrooms. This agreement does grant the use of the Colorado Timing System for authorized events only. The specific dates and times of all uses are to be determined in advance and in conjunction with the HCRD.
- II. Use of Premises. The Organization shall use subject property to conduct Rapids 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 Rapids will provide a competitive swim team, competitive stroke development, and competition opportunities for area children and youth, ages five (5) and up, that successfully meet defined team expectations. 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's maintenance obligation includes litter control during time of scheduled activities and removal of all paper and debris from the property at the conclusion of events on subject premises. 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 must provide supervision for Habersham Rapids participants, including children, prior to and following their assigned swim times. Children determined to be disruptive to other guests or activities will be required to leave the facility immediately in the company of an Organization representative.
- (5) The Organization will abide by HCRD staff determination as to the availability of the Aquatic Center in the case of severe weather.
- (6) The Organization agrees to abide by the HCRD policy that prohibits any food or beverage (water excepted) in the pool area.
- (7) The Organization will make no permanent changes to the facilities without the expressed written consent of Habersham County.
- (8) The Organization may not offer any activities or programs which conflict or compete with programs offered by HCRD. Any instructional component must be provided exclusively to those members participating in competitive events and for the enhancement of the participants' competitive skills.
- (9) The Organization will assume responsibility for the cost of repair to any damage sustained to facility areas resulting directly or indirectly from their use.
- (10) 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 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. Organization agrees to follow all County and State regulations governing public health codes and standards. HCRD will provide all necessary concessions; the Organization will be unable to provide any sale of food or beverage on the property without approval from HCRD.

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 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 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. HCRD will permit the continued hanging of small sponsor banners in the Aquatic Complex, but all banners must be placed in approved locations only.

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. Organization agrees that all facilities will be scheduled through HCRD Office. The agreed upon lane usage for the current contract period is defined in Appendix A and Appendix B. Any necessary or required change to this schedule during the contract period will be provided in writing with a minimum of fifteen (15) days notice given to the Organization. Should scheduling conflicts occur in programming the Organization 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.

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. Organization may not provide any programs

that are a duplication of HCRD program services without the expressed written consent of the Director.

L. Reports. By July 15th of each year, the Organization shall provide Habersham County with a program service report for the preceding swimming year. Such report shall include a summary of all program measures to include program participants, etc.

VI. Responsibilities of Habersham County.

A. Publicity. Habersham County will offer publicity opportunities to the Organization as available. All internal 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. The Organization is granted permission to hang sponsor banners in the Aquatic Center provided the appropriate fee has been paid to the County for that right on an annual basis.

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. Additionally, Habersham County assumes responsibility to maintain present equipment such as bleachers, lane ropes, starting blocks, and timing system through normal use of said equipment.

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

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

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

VII. Compensation. A fee of \$25.00 per participant, per month on the active list will be assessed to the organization and submitted to HCRD by the 15th of the month. Participants on the inactive list will pay \$4.00 per practice for up to six (6) practices, if more than six (6) practices are attended in a month the fee will be assessed at \$25.00. All participants active or inactive are required to sign in at the front desk to maintain proper count of swim participants for pool usage reports.

Fees assessed to the Organization are payable to Habersham County by the fifteenth (15th) of the month following the end of the month. Any request for additional use of the facility, outside the schedule outlined in this agreement, must be negotiated separately. If the Organization should secure a corporate sponsor, the Organization will pay HCRD 25% per sponsor. If the organization offers swim lessons, the Organization is required to pay HCRD 25% per participant. In addition, HCRD will receive 25% of revenue for meets and associated meet activities held at Fulbright Aquatic Center and hosted/operated by the Organization.

VIII. Facility Usage.

- 1) The Organization will be given use of lanes 4 through 8 for practices, between the hours of 4 PM and 7 PM, Monday through Thursday and 11 AM to 1 PM on Saturdays during the “non-high school swim season”.
- 2) During the high school swim season, the Organization will utilize lanes as follows...
 - a) Lanes 5 through 8 on Mondays & Wednesday: 4PM to 7 PM
 - b) Lanes 4 through 8 on Tuesdays & Thursdays: 4 PM to 7 PM
 - c) Lanes 3 through 8 on Saturdays: 10:30 AM to 12:30 PM

***During the highs school swim season, this schedule may vary and is subject to change, so as all swim teams receive fair usage of the lap pool throughout the high school season October 2021 through February 2022.**

- 3) The Organization shall not have the right to schedule the use of the facility on the subject properties without granted approval by HCRD.
- 4) 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.
- 5) 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.
- 6) Organization may modify this schedule from time to time with the approval of HCRD.
- 7) The Organization shall provide HCRD with at least two (2) weeks’ notice when requesting dates and times for swim meets.

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 through July, 31, 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 forty-five (45) days written notice of their desire to renew and/or execute another agreement prior to the expiration of the term of the Agreement. At such time the fees and/or compensation may be subject to revision. Habersham County in its sole discretion shall have sixty days to accept or reject said request for renewal. Contractor shall give thirty (30) days written notice to Habersham County of its intention to cancel, if prior to the expiration of the term in effect.

- 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 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: Habersham Rapids Swim Team
PO Box 423, Clarkesville, Ga. 30523

Habersham County Government, Georgia

By: _____
BOCC Chairman

Date: _____

Attest: _____
Clerk of Commission

Date: _____

Organization: _____

Date: _____

Witness: _____
Notary

Date: _____

