

HABERSHAM COUNTY BOARD OF COMMISSIONERS
EXECUTIVE SUMMARY

SUBJECT: Facility Usage Agreement – Habersham Medical Center “Total Fitness”

DATE: August 6th, 2021

(x) RECOMMENDATION

() POLICY DISCUSSION

BUDGET INFORMATION:

() STATUS REPORT

REVENUE FY 2022/23: Approximately \$22,000

() OTHER

CAPITAL: N/A

COMMISSION ACTION REQUESTED ON: August 16th, 2021

PURPOSE: This is a facility usage renewal agreement for the Habersham Medical Center “Total Fitness” to utilize the aquatic center September 22nd 2021 – September 22nd 2022. Usage of the facility includes conference room c/d, the aerobics room, board room, locker rooms, restrooms, and other meeting rooms, if available for use.

BACKGROUND / HISTORY: Total Fitness has utilized the aquatic center since July of 2012. They offer a fitness center structured for young and old adults. They offer classes; such as, Zumba, Boot Camp, Cardio Aerobics, etc., and the hospital’s physical therapy division offers water therapy in our therapeutic pool.

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

- \$1,550.00 rent, per month.
 - 20% of revenue collected for water physical therapy.
 - 20% of revenue collected for Hydrobics.
-
-

OPTIONS:

1. Approve to enter into a renewal agreement with Habersham Medical Center “Total Fitness” for 2021-2022.
 2. Deny entering into renewal agreement and we will renegotiate a new agreement with Habersham Medical Center “Total Fitness.”
 3. Commission defined alternate.
-
-

RECOMMENDED SAMPLE MOTION:

Approve to enter into a renewal agreement with Habersham Medical Center “Total Fitness” for 2021-2022.

DEPARTMENT: Parks & Recreation

Prepared by: Kurt Cooper

Director: Kurt Cooper

ADMINISTRATIVE

COMMENTS:_____

County Manager

DATE:_____

LEASE AND SERVICES AGREEMENT

This Lease and Services Agreement ("Agreement") is entered into by and between the Hospital Authority of Habersham County, Georgia, d/b/a Habersham Medical Center ("Hospital Authority") and Board of Commissioners of Habersham County, Georgia ("Habersham County").

WITNESSETH

WHEREAS, the Hospital Authority and Habersham County desire to promote community wellness, fitness and health; and

WHEREAS, Habersham County owns and operates Ruby Fulbright Recreation & Aquatic Center located at 120 Paul Franklin Road, Clarkesville, Georgia (the "Recreation Center"); and

WHEREAS, the Hospital Authority and Habersham County desire to enter into this Agreement whereby citizens are provided with access to predetermined, structured wellness and fitness programs at the Recreation Center; and

WHEREAS, Habersham County desires to lease a portion of the Recreation Center to the Hospital Authority, and the Hospital Authority desires to lease such space from Habersham County.

NOW THEREFORE, in consideration of the premises and the promises and covenants contained in this agreement, the parties agree to the following terms and conditions.

DESCRIPTION OF LEASED PREMISES

Use of the portions of the Recreation Center designated as indicated below on Exhibit A attached hereto and incorporated herein by reference:

- i. Exclusive use of the portions designated as "Authority Dedicated/Exclusive" ("Exclusive Use Areas"); and
- ii. Exclusive use during scheduled times of the portions designated as "Scheduled" ("Scheduled Exclusive Use Areas"); and
- iii. Shared, non-exclusive use of the common areas designated as "Common/Shared" ("Common Areas"). Such Common Areas included shared bathroom and shower facilities.

Collectively, the Exclusive Use Areas, Scheduled Exclusive Use Areas and Common Areas are referred to as "the Leased Premises".

1. DEMISE OF LEASED PREMISES.

In consideration of the obligation of the Hospital Authority to pay Lease Payments as herein provided and in consideration of the other terms and conditions hereof, Habersham

County hereby demises and leases to the Hospital Authority, and the Hospital Authority hereby accepts and leases from Habersham County, the Leased Premises to have and to hold the same for the Term.

2. EXCLUSIVE PROVIDER OF CERTAIN SERVICES.

The Hospital Authority shall be the exclusive provider of water physical therapy and rehabilitation services in the Recreation Center, including the pools, and Habersham County will not contract by lease or service agreement or otherwise allow any other entity or person to provide physical therapy services or rehabilitation services at the Recreation Center. In the event the Hospital Authority does not and/or cannot offer water physical therapy and rehabilitation services, Habersham County has the authority to contract elsewhere, if deemed necessary.

3. USE OF LEASED PREMISES & HOSPITAL AUTHORITY OBLIGATIONS.

3.1. Exclusive Use Area. The Hospital Authority will use the Exclusive Use Area to provide supervised aerobic exercise classes, weight lifting and exercise equipment use;

3.2. Scheduled Exclusive Use Areas.

As scheduled, the Hospital Authority will use the Scheduled Exclusive Use Areas as follows:

- a. Rec Pool. During scheduled times, the Hospital Authority will use the rec pool to provide water physical therapy and rehabilitation services. Habersham County shall use best efforts to accommodate the hours the Hospital Authority wishes to reserve the pool for such services.
- b. Gym(s). The Hospital Authority will use the gym(s) to provide cardiac rehabilitation exercise activities and exercise, such as volleyball, basketball, etc. during hours that “do not” interfere with normally scheduled recreation programs.
- c. All other areas of the Recreation Center not designated as Common Areas or Exclusive Use Areas. The Hospital Authority may use areas of the Recreation Center other than Common Areas and Exclusive Use Areas (including meeting rooms) as scheduled as provided herein for wellness, disease management and fitness purposes.

3.3. Storage. The Hospital Authority may store equipment in areas available for their use.

3.4. Equipment. The Hospital Authority is responsible for purchasing and maintaining all exercise equipment needed or desired by the Hospital Authority to provide services pursuant to this Agreement.

3.5. Cleaning. The Hospital Authority is responsible for providing housekeeping services for the Exclusive Use Areas. The Hospital Authority is responsible for cleaning the Scheduled Exclusive Use Areas immediately after use by the Hospital Authority.

3.6. Repairs.

- a. The Hospital Authority is responsible for flooring and wall covering repairs in Exclusive Use Areas (other than initial repairs and end of Term repairs to be made by Habersham County).
- b. The Hospital Authority will repair walls and flooring damaged or altered by the Hospital in attaching cabinets and/or equipment to the original occupancy configuration. Upon termination of this Agreement, the Hospital Authority shall remove equipment, cabinets and such other items as attached or installed to the Leased Premises, if any, by the Hospital Authority.

3.7. Insurance. The Hospital Authority will maintain leasehold general liability insurance coverage and professional liability insurance covering any and all services provided by the Hospital Authority on the Leased Premises.

3.8. Fees, Billing & Collections. The Hospital Authority shall be solely responsible for establishing fees, billing and collecting for physical therapy services, rehabilitation services, and, as applicable, hydrobics provided by the Hospital Authority in the Recreation Center and shall have the sole right and obligation to bill and collect from patients and third party payers for such services provided.

3.9. Compliance. In connection with the Hospital Authority's lease and use of the Recreation Center, the Hospital Authority agrees to:

- a. Abide by local ordinances and codes; and
- b. Follow Habersham County's facility closing procedures regarding lighting, locking, etc.

3.10. Signage. At the Hospital Authority's sole cost and expense, the Hospital Authority may install/attach signage, including entry way and exterior signage, consistent with the appearance of the Recreation Center signage. Provided, however, advance mutual agreement regarding appearance and location of all signage is required. Habersham County will not withhold reasonable requests. The Hospital Authority shall be responsible for costs of removing the signs and restoring the surface to its original appearance at the expiration or termination of this Agreement, if not renewed for additional term(s).

4. LEASE PAYMENTS.

For use of the Leased Premises as provided herein, the Hospital Authority shall pay Habersham County Lease Payments as follows:

4.1. One Thousand Five Hundred Fifty Dollars (\$1,550.00) per month (\$0.50 per square foot per month for 3,100 square feet) for the Exclusive Use Area and access and use of the Common Areas.

4.2. An amount equal to twenty percent (20%) of the amount collected by the Hospital Authority for physical therapy and rehabilitation services provided by the Hospital Authority at the Recreation Center, payable not less than quarterly. The Hospital Authority shall provide Habersham County with an accounting of use and collections with the quarterly Lease Payments.

4.3. An amount equal to twenty percent (20%) of the amount collected by the Hospital Authority for hydrobics (If offered by the Hospital Authority), payable not less than quarterly. The Hospital Authority shall provide Habersham County with an accounting of use and collections with the quarterly Lease Payments. Hydrobics may be offered for a fixed monthly fee and may be discounted when purchased in connection with fitness center membership. This fee shall be determined by mutual agreement of the parties.

4.4. Other Collections. Habersham County will structure a monthly fee for pool usages that may be added by Hospital Authority fitness center members. Monies collected by the Hospital Authority for pool usage will be paid to Habersham County quarterly. The Hospital Authority will provide a quarterly listing of membership payments.

5. HABERSHAM COUNTY OBLIGATIONS.

5.1. Keys. Habersham County will issue keys to Exclusive Use Areas and Scheduled Exclusive Use Areas to Hospital Authority personnel. Habersham County personnel may also have keys to the Exclusive Use Areas provided that Habersham County assures that Habersham County personnel accesses the Exclusive Use Areas only in urgent or emergent circumstances.

5.2. Housekeeping. Habersham County shall provide housekeeping and cleaning services for all areas of the Recreation Center other than the Exclusive Use Areas.

5.3. Landscaping and Maintenance of Exterior. Habersham County shall maintain the landscaping and exterior areas, including the parking lots.

5.4. Utilities & Lighting. At Habersham County's sole cost and expense, Habersham County shall provide water, electricity and lighting in the Recreation Center, including the Leased Premises.

5.5. Repairs and Maintenance. Habersham County is responsible for repairing and maintaining the Recreation Center, including Leased Premises (Exclusive Use Area, Scheduled Use Area and Common Areas) including, without limitation, the landscaping, parking lots, driveways, the roof, exterior walls, exterior windows, and glazing system as well as the heating, ventilation, and air conditioning system, and

mechanical, electrical and plumbing systems, except repairs rendered necessary by the negligence of Hospital Authority, its agents, employees, or invitees.

5.6. Reception Services. Habersham County shall staff the Recreation Center reception desk during recreation department operation hours.

5.7. Closings. In the event that the recreation center and Total Fitness are not on the same hours of operation schedule (i.e. difference in holiday closings, county closings, etc), it will be Total Fitness's responsibility to "Open & Close" the facility and oversee and supervise the common area and restrooms outside of their exclusive areas of responsibility. During such times, the gymnasiums (basketball courts), pools, activity and conference rooms, and concessions will be closed/locked up, only allowing patrons access to the common area and restrooms where patrons walk on a daily basis. The recreation department will not have staff on site during holiday/county closings, when Total Fitness is open; thus, Total Fitness will be responsible to staff and monitor the facility and open/close the facility on such county closings.

5.8. Swim Meets. Habersham County shall provide clear and accessible entrance to restroom facilities to all patrons at the Aquatic Center during hosted swim meets.

5.9. Concession Services. Habersham County agrees to the extent feasible, to open and operate the concession area during fitness center hours of operation offering healthy choices.

5.10. Insurance. Throughout the Term, Habersham County shall, at its sole cost and expense, shall procure, carry, and maintain the following types of insurance in the amount specified:

a. Liability Insurance. General public liability insurance for personal injury and property damage insurance coverage against damage, cost, and claims arising out of incidents or accidents of any kind occurring on or about the Recreation Center.

b. Fire and Casualty Insurance. During the Term, Habersham County shall be responsible for maintaining fire and casualty insurance.

6. MANAGEMENT OF SERVICES & MUTUAL OBLIGATIONS

6.1. Management.

- a. Each party retains exclusive control over activities exclusively provided by that party.
- b. Representatives of each party will meet not less frequently than annually to review this Agreement and plan for the ensuing year.
- c. Day-to-day operations and activities will be accomplished through a weekly planning meeting and daily interface, as needed, between the Hospital Authority's and Habersham County's designated onsite managers.
- d. Schedules and monthly calendars will be set and updated in the weekly managers meetings which may include additional management representatives from each party.
- e. Administration of policy, goals and directives approved during the joint meeting of the parties shall be the responsibility of the County Manager and Hospital Administrator.

6.2. Scheduling. Habersham County will make best efforts to accommodate the Hospital Authority's request for advance reservation of Scheduled Exclusive Use Space, including but not limited to gyms (basketball courts) and such other meeting rooms as may be available.

6.3. Logos. Neither party will use the others name or logo without prior written consent of the other party.

6.4. Fixtures & Alterations. Habersham County agrees to not withhold reasonable requests of Hospital Authority to make alterations, additions or attachment of equipment, cabinets, etc., in the Exclusive Use Area. Upon expiration or earlier termination of this Agreement, the Hospital Authority shall surrender the Exclusive Use Area in the same condition as received, ordinary wear and tear, fire and other casualty accepted. Prior to such expiration or termination, the Hospital Authority shall remove or cause to be removed at Hospital Authority's expense, all of Hospital Authority's equipment, furnishings, and other personal property. Hospital Authority shall repair prior to such expiration or termination, at Hospital Authority's sole cost and expense, any damage to the Recreation Center caused by or in connection with the removal of any personal property, business or trade fixtures, machinery equipment, cabinet work, furniture, movable partitions.

7. TERM.

The term of this Agreement shall commence on September 22, 2021 and continue for one (1) year unless sooner terminated as herein provided.

8. TERMINATION.

8.1. Either party may terminate this Agreement by providing the other party with at least ninety (90) days' prior written notice.

8.2. If either party breaches or fails to perform any agreement herein and fails to cure such breach or perform such agreement within sixty (60) days after receiving notice thereof from the party (the "non-defaulting party"), then the non-defaulting party may terminate this Agreement.

9. MISCELLANEOUS.

9.1. Compliance of Laws, Rules and Regulations. Hospital Authority and Habersham County shall obey, perform, and comply with any and all laws, ordinances, judgments, injunctions, resolutions, rules, regulations, permits, licenses, administrative orders, and other requirements of federal, state, or local governments having jurisdiction of Hospital Authority and Habersham County or the Recreation Center existing at any time during the term of this Agreement in any way affecting the Recreation Center or the use or condition thereof, or in any way affecting this Agreement.

9.2. Personal Property. All personal property and fixtures of Hospital Authority or others placed or located in the Recreation Center shall be at the risk of Hospital Authority or other owner thereof, and Habersham County shall not be liable to Hospital Authority to any other owner thereof for any damage to, or destruction of, or loss of use of, such personal property to fixtures.

9.3. Force Majeure. Neither party shall be deemed in default with respect to any of the terms, covenants, and conditions of this Agreement, if the party fails to perform and its failure is due in whole or in part to any strike, lockout, labor trouble (whether legal or illegal), civil disorder, inability to procure materials, failure of power, restrictive governmental laws and regulations, riots, insurrections, war, fuel, shortages, accidents, casualties, acts of God, acts caused directly or indirectly by the other party (or the

other party's agents, employees, or invitees) or any other cause beyond the commercially reasonable control of the nonperforming party; provided that nothing in this Section shall excuse Hospital Authority's failure to pay rent due to Habersham County under this Agreement unless otherwise specifically allowed in this Agreement.

9.4. Waiver of Rights. No failure of either party to exercise any power given to it hereunder, or to insist upon strict compliance by either party with its obligations hereunder, and no custom or practice of the parties of variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance of the terms hereto.

9.5. Severability. In the event that under any State or Federal law, rule or regulation or program, including, without limitation, those relating to the maintenance of Hospital Authority's tax-exempt status or status as a hospital authority, any provision of this

Agreement shall be deemed by counsel to Hospital Authority to be illegal, invalid, unenforceable or violative thereof, that provision will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the other provisions shall not in any manner be affected or impaired. Provided, however, that If necessary to effect the intent of the parties, the parties will negotiate in good faith to amend this Agreement to replace the objectionable provision with language which as closely as possible reflects such intent. If the parties cannot reach such an agreement on such amendment, either party may terminate this Agreement.

9.6. Time of Essence. TIME IS OF THE ESSENCE OF THIS AGREEMENT.

9.7. Entire Agreement. This Agreement contains the entire agreement of the parties hereto with respect to the subject matter hereof, and no representations, inducements, promises, or agreements, oral or otherwise between the parties, not included herein, shall be of force or effect. The parties agree that this Agreement shall not be recorded on the public real property records, but both parties agree to execute any memorandum of Agreement reasonably requested by the other party for recording on the public records.

9.8. Invalid Provisions. The invalidity of any particular provision(s) in this Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid and unenforceable provisions were omitted.

9.9. Constructions. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Georgia.

9.10. Amendments. Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, but only by instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought, and consented to by any mortgagee if required under the term of the applicable mortgage.

9.11. Binding Effect. Subject to the restrictions on transfers set forth herein, this Agreement shall insure to the benefit of and be binding on Hospital Authority and Habersham County and their respective legal representatives, successors and assigns.

9.12. Notices and Other Communications. Any notice or other communication provided for or required by this Agreement shall be in writing, and shall be deemed to have been given when delivered by hand or when deposited in the United States Mail, certified or registered, return receipt requested, postage prepaid, properly addressed to the party to whom such notice or other communication is intended to be given at the address indicated below, or, if such party has subsequently furnished another address in writing to the other, at such new address:

As to
Hospital Authority: 541 Historic Highway 441 North
Demorest, GA 30535

As to
Habersham County: 130 Jacobs Way
Clarksville, GA 30523

9.13. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on the dates set forth below.

Date: _____

Hospital Authority

The Hospital Authority of Habersham County,
Georgia, d/b/a Habersham Medical Center

By: _____
Chairman

[SEAL]

Date:

Habersham County

Board of Commissioners of Habersham
County, Georgia

By: _____
Stacy Hall/Chairman

[SEAL]