

HABERSHAM COUNTY BOARD OF COMMISSIONERS
EXECUTIVE SUMMARY

SUBJECT: IGA with Habersham County Board of Education for Facilities Usage

DATE: 3-8-23

☒ **RECOMMENDATION**

☐ **POLICY DISCUSSION**

BUDGET INFORMATION:

☐ **STATUS REPORT**

ANNUAL-

☐ **OTHER**

CAPITAL-

COMMISSION ACTION REQUESTED ON: March 20, 2023

PURPOSE: To approve and sign an Intergovernmental Agreement (IGA) between Habersham County Parks and Recreation Department/Habersham Board of Commissioners and the Habersham County Board of Education for shared facilities usage.

BACKGROUND / HISTORY: The Habersham County Board of Education and Habersham County Recreation Department have a long-standing partnership that has coordinated providing adequate and safe facilities to the citizens of Habersham County for participation in organized sports and other recreational activities. This partnership has been mutually beneficial and both entities wish to see it continued, however a formal agreement has never been in place. On behalf of the Board of Commissioners, the County Attorney has worked with the Board of Education to draft an IGA detailing the facilities shared between both entities, and clarifying the scope and provisions of this usage.

FACTS AND ISSUES:

- The Habersham County Recreation Department and the Habersham County Board of Education provide each other with facilities for the operation of organized sports and recreational activities.
 - A formal agreement has never been in place; therefore, the County Attorney has drafted an Intergovernmental Agreement (IGA) with the Board of Education on behalf of the Board of Commissioners.
 - The attached IGA details the facilities shared between both entities and clarifies the scopes and provisions of the usage.
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OPTIONS:

- 1) Approve IGA
 - 2) Deny IGA
 - 3) Commission defined alternative
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RECOMMENDED SAMPLE MOTION: Motion to approve the acceptance of the IGA between Habersham County Board of Commissioner and Habersham County Board of Education for Facilities Usage.

DEPARTMENT: Parks and Recreation

Prepared by: Brooke Whitmire

Director: _Brooke Whitmire_____

**ADMINISTRATIVE
COMMENTS:**_____

_____ **DATE:** _____

County Manager

INTERGOVERNMENTAL FACILITIES USE AGREEMENT
BETWEEN HABERSHAM COUNTY, GEORGIA
AND THE HABERSHAM COUNTY BOARD OF EDUCATION

This Intergovernmental Agreement (“Agreement”) is made and entered into with an effective date of the ____ day of March 2023 (“Effective Date”) by and between Habersham County, Georgia, a subdivision of the State of Georgia, by and through its board of commissioners (hereinafter “the County”) and the Habersham County School System, organized under the laws of the State of Georgia, by and through its Board of Education (hereinafter “the BOE”) (jointly referred to as “the Parties.”).

WITNESSETH

WHEREAS, the County owns certain facilities including, but not limited to, the Ruby Fulbright Aquatic Center operated and maintained by and through the Habersham County Parks and Recreation Department (hereinafter “Parks and Rec”); and

WHEREAS, the Director of Parks and Rec is the primary contact for the County concerning the use and operation of those facilities (see Exhibit “A” for contact information which may be amended by substitution from time to time as needed without amending the Agreement in its entirety); and

WHEREAS, the BOE owns certain recreational facilities including, but not limited to, school gymnasiums and athletic fields operated and maintained by the BOE; and

WHEREAS, the Athletic Director for the BOE is the primary contact for the BOE concerning the use and operation of those facilities (see Exhibit “A” for contact information which may be amended by substitution from time to time as needed without amending the Agreement in its entirety); and

WHEREAS, the County and the BOE are desirous of providing for an exchange of facility usage for county groups, school groups and school teams (see Exhibit “B” for a full list of facilities subject to this Agreement) (hereinafter referred to as “the Facilities” excluding the Aquatic Center); and

WHEREAS, the Parties have agreed to a mutual exchange of facility usage between the Parties upon the terms and conditions set forth in Exhibit “C” attached hereto and incorporated herein by reference thereto;

NOW THEREFORE, and in consideration of the premises and mutual covenants and agreements hereinafter set forth, and by and through the authority of the County and the BOE, it is hereby agreed by and between the parties as follows:

Section 1. Facilities Use.

The Parties agree to an exchange of uses and services of the Facilities listed in Exhibit “B” attached hereto. The Parties are permitted to use the Facilities as set forth in Exhibit “C” with the exception of the Aquatic Center (which has specific restrictions). The Parties shall be restricted to the use of the Facilities as outlined in Exhibit “C.”

Section 2. Term of Agreement.

The term of this Agreement shall be for a period of one year commencing the Effective Date hereto and expiring at midnight June 31, 2023, the conclusion of the current fiscal year. (“Initial Term”). This Agreement shall automatically renew annually on July 1, the first day of the fiscal year, for an additional one year. (“Renewal Term”). If at the end of the Initial Term or any subsequent Renewal Term, the Parties wish to negotiate additional terms or revise the Agreement, one or both of the Parties shall provide written notice to the other of said Party’s wish to renew pursuant to revised or additional terms no less than 60 days prior to the expiration of the Initial Term or any subsequent Renewal Term hereof.

Section 3. Fees and Damages.

(a) Aquatic Center Fee: The BOE agrees to pay the County \$3,000.00 (“Aquatic Fee”) annually for the usage of the Ruby Fulbright Aquatic Center.

The County shall invoice the BOE annually for the Aquatic Fee. The Aquatic Fee shall be due and payable to the County not more than 30 day from the date the BOE receives the annual Invoice for the Initial Term year and of any Renewal Term years thereafter.

(b) Event Fees Collected:

1. The BOE shall be entitled to receive the following fees to be collected at events held pursuant to the terms of this Agreement:
 - (a) Football game concession stand proceeds
 - (b) Track and Field concession stand proceeds
 - (c) Swim meet entry fees and participation fees
2. The County shall be entitled to receive the follow fees to be collected at events held pursuant to the terms of this Agreement:
 - (a) Football game gate entry fee – gate fee to be consistent with North Georgia Youth Football Association (NGYFA) per person
 - (b) Swim meet concession stand proceeds
 - (c) Track and Field meet gate entry fee

In the event of any damage to any Facilities as a result of usage by either Party under this Agreement, or in the event that the owner of a Facility incurs any costs as a result of the other Party's usage including, but not limited to, costs of cleanup, repair or replacement of any owner Party's property, that Party shall invoice the using Party the amount necessary to reimburse the owner Party for such costs.

Section 4. Termination.

This Agreement may be canceled by either Party by providing 60 days' written notice to the other Party.

Section 5. Indemnification Clause:

(a) As to the BOE, the BOE shall indemnify and hold harmless the County as the owner of the Facilities listed as County Facilities in Exhibit "C," its officers, members, employees, directors, boards, commissions, and elected officials (hereinafter collectively referred to as the "Indemnitees") from and against any and all claims, demands, liabilities, losses, costs or expenses, including attorneys' fees, due to liability to a third party or parties, for any loss due to bodily injury (including death), personal injury, and property damage arising out of or resulting from the BOE's use of the County's facilities under this Agreement or any act or omission on the part of the BOE, its invitees, agents, employees or others working or enjoying the Facilities on behalf of the BOE, or due to any breach of this Agreement by the BOE, or due to the application or violation of any pertinent federal, state or local law, rule or regulation. This indemnification extends to the successors and assigns of the BOE. This indemnification obligation survives the termination of the contract.

(b) As to the County, the County shall indemnify and hold harmless the BOE as the owner of the Facilities listed as BOE Facilities in Exhibit "C," its officers, members, employees, directors, boards, commissions, and elected officials (hereinafter collectively referred to as the "Indemnitees") from and against any and all claims, demands, liabilities, losses, costs or expenses, including attorneys' fees, due to liability to a third party or parties, for any loss due to bodily injury (including death), personal injury, and property damage arising out of or resulting from the County's use of the BOE's facilities under this Agreement or any act or omission on the part of the County, its invitees, agents, employees or others working or enjoying the Facilities on behalf of the County, or due to any breach of this Agreement by the County, or due to the application or violation of any pertinent federal, state or local law, rule or regulation. This indemnification extends to the successors and assigns of the County. This indemnification obligation survives the termination of the contract.

Section 6.

(a) Insurance Requirements.

Insurance coverage is required of both Parties for the use of the other's Facilities. Each shall, at its own cost and expense, obtain and maintain Commercial General Liability Insurance

which shall include, but not be limited to, coverage for personal and advertising and contractual liability. The Commercial General Liability Insurance shall provide the following minimum limits:

Personal Injury and Advertising – \$1,000,000.00 per occurrence

Contractual – \$1,000,000.00 per occurrence

Damage to Rented Premises— \$1,000,000.00 per occurrence

The policies' coverage must include the full terms of the Agreement, such insurance to be obtained from an insurance company legally licensed and authorized to transact business in the State of Georgia and shall name other Party as an additional insured.

(b) Certificate of Insurance.

Each Party shall furnish the other Party with a copy of a Certificate of Insurance at least 30 days prior to occupancy and use of the Facilities and each said policy shall have a clause showing that the insurance is in force and non-cancelable prior to the end of the Initial Term of this Agreement or any applicable Renewal Term. Either Party's failure to obtain and furnish evidence of the required insurance shall constitute default of this Agreement which may, in addition to other remedies, result in the denial of use of the Facilities.

Section 7. Unforeseen Circumstances.

At times Facilities may be closed due to unforeseen circumstances such as fire or severe weather predictions. In these instances, all activities scheduled to be held at a Facility that is closed are automatically canceled, including a Facility scheduled for use by either Party to this Agreement. These circumstances will not be considered a breach of this Agreement nor a requirement for the County to refund all or any part of the fees paid by the BOE under this Agreement. Neither Party will be liable for any damages or losses as a result of such cancellation.

Section 8. Incorporation of Exhibits.

The terms and conditions contained in Exhibit "B" List of Facilities, Exhibit "C" Scope of Use, Exhibit "D" General Provisions, Exhibit "E" Programs Service Minors and Exhibit "F" Public Health Provisions attached hereto are wholly incorporated into this Agreement and expressly mutually agreed upon by the Parties.

Section 9. Expiration of Terms.

This Agreement shall be effective upon execution hereof by both Parties and this Agreement shall constitute a binding obligation on the Parties hereto from and after its execution. In the event this Agreement is not executed by both Parties within 15 days of the date of the initial signatory, the Agreement and its terms shall expire and be null and void.

Section 10. Entire Agreement.

This Agreement is binding on the Parties and constitutes the full and complete understanding of the Parties. The Agreement may be amended only by mutual agreement of the Parties executed in writing with the same formality as the execution of this Agreement.

IN WITNESS WHEREOF, Habersham County, Georgia by and through its Board of Commissioners and the Habersham County School System by and through its Board of Education have caused this Agreement to be executed and each Party has caused its seal to be hereunto impressed and attested and delivery hereof is hereby acknowledged as of the day and year first above written.

Approved by the Habersham County, Georgia Board of Commissioners on the ____ day of February, 2023 and executed this ____ day of February, 2023, in witness whereof the said Party hereto has set its hand, affixed its seal and delivered these presents.

BOARD OF COMMISSIONERS OF
HABERSHAM COUNTY, GEORGIA

By: _____
Ty Akins, Chairman

Attest: _____
Brandalin Carnes, County Clerk

Approved by the Habersham County Board of Education on the ____ day of March, 2023 and executed this ____ day of March, 2023, in witness whereof the said party hereto has set its hand, affixed its seal and delivered these presents.

HABERSHAM COUNTY BOARD
OF EDUCATION

By: _____
Russell Nelson, Chairman

Attest: _____
Matthew Cooper, Superintendent

EXHIBIT “A”

CONTACT INFORMATION

County Contact Information:

Physical Address: _____

Billing/Mailing Address _____

Primary Contact Person/Director of Parks & Recreation Department:

Contact Telephone Number: _____

Contact Email Address: _____

BOE Contact Information:

Physical Address: _____

Billing/Mailing Address _____

Primary Contact Person/Director of Parks & Recreation Department:

Contact Telephone Number: _____

Contact Email Address: _____

EXHIBIT “B”

FACILITIES SUBJECT TO AGREEMENT

BOE Facilities:

- Ninth Grade Academy Front Grass Field
- Habersham Central High Football Field, Track and Stadium
- All BOE Elementary & Middle School Gymnasiums
- Wilbanks Middle School Track and Grass Field

County Facilities:

- Ruby C. Fulbright Aquatic Center (“Aquatic Center”)
- Softball Field #3 at Aquatic Center Athletic Facility
- Baseball Field #1 at Aquatic Center Athletic Facility

EXHIBIT “C”

SCOPE OF USE AND STAFFING

County Usage of BOE Facilities:

Football/Cheer Season

- I. Facilities Day/Time of Use:
 - a. Ninth Grade Academy Front Grass Field
 - i. Monday, Tuesday and Thursday – 5:30 p.m. to Dark
 - ii. Saturday – 9:00 a.m. to 2:00 p.m.
 - b. Habersham Central High Football Field, Track & Stadium
 - i. Four Saturdays – 7:30 a.m. to 7:00 p.m. (TBD between Parties)
 - ii. Additional Saturdays to be added for Play-Off Games
(Additional dates will be approved with Habersham Central Head Football Coach and Athletic Director)
- II. County Provided Staffing:
 - a. County will provide a minimum of four part-time and one full-time staff members to work each home football game hosted at a Facility.

Basketball Season

- III. Facilities Day/Time of Use:
 - a. All BOE Elementary and Middle School Gymnasiums
 - i. Monday, Tuesday and Thursday

Track and Field Season

- IV. Facilities Day/Time of Use:
 - a. Wilbanks Middle School Track and Field
 - i. Monday, Tuesday and Thursday – 5:30 p.m. to Dark
 - ii. Saturday – 9:00 a.m. to 2:00 p.m.
 - b. Habersham Central High Football Field, Track and Stadium
 - i. One Saturday in March/April – 8:00 a.m. – 5:00 p.m. (Host of Home Track Meet)
 - ii. County will work with BOE to choose date

BOE Usage of County Facilities:

Swim Season

- I. Facilities Day/Time of Use:
 - a. Aquatic Center (Practice) – Recreation and Lap Pools; Locker Rooms; Natatorium Storage; Activity Room (when available)
[Monday through Friday 3:30 p.m. to 5:30 p.m. (Practice times may vary)]
 - b. Aquatic Center (Meets) – Recreation and Lap Pools; Meeting Rooms A/B; Gymnasium(s); Activity Room; Athletic Offices (if needed)
 - i. Four Saturdays – 7:00 a.m. to 4:00 p.m. (may run longer for larger meets)
 - ii. Requested Dates must be submitted to the County for approval. County has final determination of dates for Aquatic Center use.
- II. Responsibilities of County During Use:
 - a. The Aquatic Center will be closed to the public on Swim Meet Days.
 - i. Provision of necessary staff members to run the following: Front desk, concession, cleaning of the facility and lifeguards.

Softball Season

- III. Facilities Day/Time of Use:
 - a. Softball Field #3 at the Aquatic Center Athletic Facility
 - i. Monday through Friday 3:30 p.m. to 5:30 p.m.
- IV. Responsibilities of County During Use:
 - a. Maintain field – dragging and lining
 - b. Field Lights available upon request to County

Baseball Season

- V. Facilities Day/Time of Use:
 - a. Baseball Field #1 at the Aquatic Center Athletic Facility
 - i. Monday through Friday 3:30 p.m. to 5:30 p.m.
- VI. Responsibilities of County During Use:
 - a. Maintain field – dragging and lining
 - b. Field Lights available upon request to County

EXHIBIT “D”

GENERAL PROVISIONS

1. Facilities. Both Parties agree and accept the Facilities “as is, where is, and with all faults.” The Party using a Facility (“Using Party”) in accordance with this Agreement, will be responsible for simple housekeeping of the areas that they occupy. All facilities used shall be left in a condition acceptable to the owner. The Using Party shall reimburse owner for any such damage or injury caused by Using Party, its employees, agents, or any other person admitted to the premises by the Using Party, its agents, or employees.
2. Failure to Pay. The BOE agrees that if it fails to pay the annual fee in accordance with Agreement, or if the BOE violates any other provision of this Agreement, all remaining obligations of the County under this Agreement shall, cease and be terminated upon written notice to the BOE of said nonpayment.
3. Event Staffing. Except as otherwise provided in Exhibit “C” attached hereto, the Using Party shall provide all necessary personnel and labor in order to hold their event. Staff procured by the Using Party and staff provided under this Agreement by the facility owner, shall be employees of the Using Party during said event and not the facility owner and shall be paid by the Using Party, unless otherwise specified in Exhibit “C”.
4. Advertising. No print or electronic advertisement, social media post or other public statement should include the facility owner’s name or logo in connection with any non-sponsored organization, business, or person in any manner that implies that facility owner supports, approves, or endorses any product, service, interest, position or ideology of that organization, business or person. The facility owner’s name and address may only be used as a reference for event location. All promotional materials must be approved by the County Manager prior to production and distribution. Failure to comply with this provision shall be considered automatic grounds for termination of Agreement.
5. Owner Access. The facility owner shall have access to the premises at all times during which the Using Party is permitted to occupy, use, and enjoy the Facilities as outlined above.
6. Party’s Right to Remove. Each Party reserves the right to remove any objectionable person or persons from its Facilities and the Using Party expressly waives any right to damages for such removal.
7. Using Party Property Liability. All property brought onto the premises by the Using Party, its members, participants, and invitees, shall be at the sole risk of the Using Party. The facility owner shall not be responsible for such property nor liable for any damages or injury to the Using Party, its members, participants, invitees, agents, or employees.
8. No Alterations or Improvements. The Using Party shall make no alterations in or additions to any of the Facilities which it is not the owner of.
9. Parking. The Parties understand and agrees that parking facilities adjacent to or near Facilities may be limited. Event staff and participants may not park in staff spaces.
10. Alcohol Policy. Alcohol consumption or sales is prohibited on or in all Facilities and properties unless prior written approval is granted and incorporated herein.
11. Tobacco and E-Cigarette Policy. The use of all forms of tobacco products and E-Cigarette

or “vaping” products on property owned, leased, rented, in the possession of, or in any way used by the Parties or their affiliates is expressly prohibited. “Tobacco Products” is defined as cigarettes, cigars, pipes, all forms of smokeless tobacco, clove cigarettes, and any other smoking devices that use tobacco such as hookahs or simulate the use of tobacco such as electronic cigarettes.

12. Compliance With Programs Serving Minors Policy. The Parties agree that events that provide for the care, custody, or control of minors shall take precautions to assure the safety and well-being of minors and release the facility owner from any liability in conjunction with the use of a Facility. A copy of the County’s policy and compliance provisions is attached hereto as Exhibit “E” and incorporated herein by reference.
13. Fire Safety. Using Party shall abide by standards for fire safety, the Using Party agrees to ensure that all exits are unlocked, and that access thereto is free from all obstructions at all times during occupancy. If applicable, the Using Party further agrees to ensure that all aisles will be kept clear, that no seating in the aisles will be permitted and that every exit light is burning at all times during event(s). The Using Party shall not obstruct any sidewalks, entries, passages, vestibules, hallways, elevators, doors, skylights, stairways, hallways, corridors, passageways, and all openings or ways of access to public utilities of the premises.
14. Compliance with All Applicable Laws, Rules, and Regulations. Both Parties agree that every member connected an event being held in accordance with this Agreement shall abide by and comply with all laws, rules, and regulations of the United States, State of Georgia, and local governments. Failure to comply shall be grounds for immediate termination of this Agreement and removal from the Facility.
15. Assignment. Use and occupancy of the Facilities cannot be assigned by either Party to any other organization, person, or other entity, unless written permission is provided by the facility owner.
16. Governing Law. This Agreement shall be governed by the laws of the State of Georgia.

EXHIBIT “E”

PROGRAMS SERVING MINORS

1. Policy. If the Using Party operates a program or activity that provides for the care, custody, or control of minors, the Using Party shall be governed by and comply with all requirements of the below listed policy on programs serving minors. Such requirements include but are not necessarily limited to those listed below.
2. Duty of Care. The Using Party shall operate such Event in a reasonably safe manner.
3. Forms. The Using Party shall use all appropriate forms related the operation of the Event, which may include but are not necessarily limited to parental consent forms, participant conduct agreement forms, medical information and release forms, medical authorization treatment forms, medical authorization to administer medication forms, media release, pickup authorization forms and others which may be required by the County or the BOE.
4. Criminal Background Checks. The Using Party shall properly screen and conduct criminal history background checks, including the National Sex Offender Registry, on all employees, volunteers, counselors, chaperones, and others who are reasonably anticipated to have direct contact or interaction with minor program participants. Personnel in charge of screening volunteers should be aware of the inherent limitations of background checks and should seek to utilize other screening methods, when possible, in addition to background checks to include in-person interviews and reference checks.
5. Supervision. Every minor participant must be properly supervised at all times in the immediate presence of at least one authorized adult while participating in the Event. The Using Party certifies that there will be appropriate supervision and that there will be an appropriate participant-to-supervisor ratio, which may vary depending on the age of the participants, the nature of the activity, and whether the program has an overnight component.
6. Training. The Using Party shall provide training to all employees, volunteers and others assisting with the Event that addresses mandatory reporting requirements, appropriate contact with minors, safety and security procedures, and response protocols for injury or illness, and staff or participant misconduct.
7. Safety and Security. The Using Party agrees to ensure the safety and protection of program participants and to establish protocols for reporting injuries, staff misconduct, participant misconduct, and procedures for secure pickup and drop-off of program participants. The Using Party agrees to establish security measures (e.g., where to meet and where to go if lost, responses and protocols for weather alerts, accidents, missing persons, etc.), and to communicate those measures to program participants.
8. Reporting Obligations. Criminal activity should be reported immediately to Habersham County Sheriff's Office who can assess the situation and determine what other notifications or actions are necessary.
9. Known or Suspected Abuse or Neglect of Minors. If either Party and/or any of their employees, volunteers, or other agents or any other authorized adult present at the program/activity know, suspect, or receive information providing reasonable cause to believe that a minor has been abused or neglected, or if either Party or such other

individuals have other concerns regarding a minor's safety, the Party or such other individual must report the situation immediately to Habersham County Sheriff's Office and to the Georgia Department of Human Services (and/or the Division of Children and Family Services) by calling 1-855-GACHILD (422-4453), as required by Georgia law. The Parties hereby acknowledge their understanding of this reporting requirement for known or suspected abuse or neglect of minors.

EXHIBIT “F”

PUBLIC HEALTH PROVISIONS

1. Cancellation. In addition to all other cancellation and termination rights of the Parties under the Agreement, the Facility owner may terminate the Agreement at any time if the owner becomes uncertain that it can ensure the safety of staff, members, visitors, or event attendees due to COVID-19, any other public health emergency, or any actual, planned, or suspected civil protest, civil unrest, or rioting. These termination criteria are evaluated at the sole discretion of Facility owner, and termination pursuant to this paragraph shall be effective immediately upon verbal or written notice to other Party. In the event of any termination by a Facility owner pursuant to this paragraph, the owner shall not be liable for any damages or losses as a result of such termination.
2. Applicable Health and Safety Guidelines. The Parties agree that it shall abide by and comply with all health and safety guidelines in place at the time of the event, regardless of whether such guidelines are required by federal, state, or local authorities or by Habersham County. Examples of such guidelines include, but are in no way limited to, the following: requiring event attendees to wear masks; implementing social distancing measures for the event; and restricting the number of attendees for the event to ensure compliance with all health and safety guidelines.