

HABERSHAM COUNTY BOARD OF COMMISSIONERS

EXECUTIVE SUMMARY

SUBJECT: Georgia DDS – Facility Usage Agreement

DATE: 6/8/23

☒ **RECOMMENDATION**

☐ **POLICY DISCUSSION**

BUDGET INFORMATION:

☐ **STATUS REPORT**

~~ANNUAL-~~

☐ **OTHER**

~~CAPITAL-~~

PRESENTED BY: Brooke Whitmire

COMMISSION ACTION REQUESTED ON: June 19, 2023

PURPOSE: To seek Commission approval for a facility usage agreement for the Georgia Department of Driver Services (DDS) to utilize a portion of the parking lot behind the aquatic center and classroom space to conduct their Motorcycle Safety Program for the period of July 1, 2023, through June 30th, 2024. Usage of the facility includes a portion of the parking lot between the Aquatic Center and baseball/softball fields behind the aquatic center, storage for 1 Conex container, and use of classroom space inside the aquatic center for testing.

BACKGROUND / HISTORY: The Georgia DDS offer the Georgia Motorcycle Safety Program in various locations across the state. There are restrictions on the types of parking lots they can use, so it makes it difficult to find satellite locations like ours. We have a great place for them to host these trainings and after speaking with their representative, we believe this would be a popular place for those who need this training, and it would help make motorcyclists in our community and others much safer on the roads.

FACTS AND ISSUES:

Compensation, to the county, for usage of Habersham County parking lot space, is as follows:

- \$150 per scheduled training session, up to twice per month (maximum of \$300) with anticipation of at least 1 training scheduled per month year-round.
 - Training would take place mostly during regular business hours – Saturdays from 7:00a-4:00p and Sundays from 8:00a-3:00p. Extra part-time hours would be needed to cover 1.5 hours on Saturday and 3 hours for Sunday (we would only need someone there to open the aquatic center for a few hours for the classroom portion of training)
 - The scheduled training weekends would be posted ahead of time and any large events would be scheduled around these dates. This will not otherwise affect regular operating hours for the Aquatic Center
 - Parking would be affected near the tennis/pickleball courts, thus schedules for these training dates would be posted at the tennis/pickleball courts as well.
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OPTIONS:

- 1) Approve recommendation.
 - 2) Deny recommendation.
 - 3) Commission defined alternative.
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RECOMMENDED SAMPLE MOTION:

“I motion to approve entering the facility usage agreement with the Georgia Department of Driver Services for the 2023-2024 fiscal year for Motorcycle Safety Training.”

DEPARTMENT:

Prepared by: Brooke Whitmire

Director: Brooke Whitmire

**ADMINISTRATIVE
COMMENTS:**

_____ **DATE:** _____

County Manager

Memorandum of Agreement
Between
Habersham County Board of Commissioners
and the
Georgia Department of Driver Services.

This Memorandum of Agreement (“Agreement”) is entered into this ____ day of _____, 2023 between the Georgia Department of Driver Services, an agency of the State of Georgia, having its principal office at 2206 East View Parkway, P.O. Box 80447, Conyers, Georgia 30013 (hereinafter referred to as (“DDS”) and Habersham County Board of Commissioners at 130 Jacob’s Way, Suite 202, Clarkesville, GA 30523 (hereinafter referred to as “GMSP Host”). The GMSP Host and DDS shall be referred to individually as a “Party” and collectively as the “Parties.”

Whereas, DDS is responsible for the management and operation of the Georgia Motorcycle Safety Program (hereinafter referred to as “GMSP”);

Whereas, the GMSP is responsible for developing and implementing initiatives designed to significantly reduce the occurrence of motorcycle related fatalities in high-risk areas identified by the Governor’s Office of Highway Safety;

Whereas, in furtherance of this initiative, this Agreement is made by and between the Parties;

Now Therefore, in consideration of the mutual covenants and promises contained herein and intending to be legally bound, the Parties agree as follows:

1. GMSP HOST RESPONSIBILITIES:

The GMSP Host agrees:

- A. To abide by reasonable written policies, procedures, and guidelines established by the GMSP and approved by GMSP Host pertaining to services to be provided pursuant to this agreement.
- B. To provide temporary classroom space at a place to be designated by GMSP Host, adequate to accommodate ten people.

- C. To provide a paved area for motorcycle training and testing areas at the Ruby Fulbright Aquatic Center at 120 Paul Franklin Road, Clarkesville, GA 30523 (“Property”).
- D. To provide a secured space at the Property for one Conex box for storage of DDS property and equipment used in conjunction with the GMSP.
- E. To be solely responsible for reasonable maintenance and upkeep of paved areas of the Property, except for damage caused by gross negligence and willful or intentional misconduct of DDS, GMSP or their respective employee’s licensees, invitees, or agents.

2. DDS/GMSP RESPONSIBILITIES:

The GMSP agrees:

- A. To provide to GMSP Host written specifications, policies, procedures and guidelines pertaining to the services referenced herein. GMSP Host Guidelines are attached hereto as Exhibit “A”. All GMSP established policies, procedures and guidelines specifications shall be provided to and approved by the GMSP Host in writing prior to the execution of this Agreement. GMSP policies, procedures, guidelines and specifications shall be incorporated into this Agreement.
- B. To provide the GMSP Host motorcycle course schedules up to three months in advance and coordinate the Parties’ respective use of the Property and classroom space. Notwithstanding the foregoing, both Parties reserve the right to modify schedules or cancel courses as required upon reasonable prior written notice to the other Party.
- C. To be responsible for all aspects of course registration and instruction.
- D. To provide advertising material for GMSP Host catalogues or other materials.
- E. To provide one properly maintained Conex box for storage of DDS property and equipment used in conjunction with the GMSP.

3. TERM:

The term of this Agreement shall commence July 1, 2023 or upon the date the agreement is fully executed (whichever is later) and expire at the end of the state fiscal year (June 30, 2024), with options to renew in writing for subsequent state fiscal years (July 1 to June 30) unless otherwise terminated by the Parties pursuant to terms of this Agreement. In the event either Party wishes to terminate this Agreement, 30 days written notice shall be provided.

4. COMPENSATION AND PAY:

During the term of this Rental Agreement, the DDS agrees to pay a rental fee of \$150.00 per class and a maximum of two classes per calendar month for a total of \$300.00 per month.

The rental fee shall cover the costs for use of the classroom space, other classroom materials/furnishings, paved areas for motorcycle testing and secured space to store DDS property. The DDS shall make payment to GMSP Host on a per class basis throughout the term of the Agreement, with a maximum payment of \$300 per month.

5. LIABILITIES OF THE PARTIES:

DDS and GMSP Host agree that they will be responsible for their own acts and the results thereof and shall not be responsible for the acts of the other Party and the results thereof.

DDS shall continue its participation in the general liability and tort claims programs of the Department of Administrative Services, as provided in O.C.G.A. §§ 45-9-1, 45-9-4, 50-21-20 et seq. Each party shall act at its own risk and responsibility. Nothing contained in this Agreement shall make, or shall be construed to make, DDS OR GMSP Host liable to a third party for the debts or obligations of the other. To the extent that any liability arises under this Agreement, the parties shall rely on their constitutional sovereign immunity.

6. TERMINATION:

This Agreement may be terminated if superseded by subsequent changes in the governing laws of the United States or of Georgia, by Executive Order of the Governor or upon mutual Agreement of the Parties.

Any Party may terminate this Agreement without cause with 30 days' prior written notice to the other Party. If this Agreement is terminated by a Party for any reason, DDS shall pay GMSP Host all costs that have accrued under this Agreement up to the actual date of termination and shall not be relieved of the obligation to pay such costs because of termination. DDS shall make such payments to the GMSP Host within 30 days after the effective date of termination of this Agreement.

Notwithstanding the foregoing, if the source of the payment for the services no longer exists or is insufficient for the DDS to meet its obligations hereunder, then any Party may immediately terminate this Agreement without further obligation of the Parties. DDS shall immediately notify GMSP Host in writing if and when the source of payment for the services hereunder no longer exist or is insufficient. The written certification of the Commissioner of the DDS as to the events stated herein shall be conclusive.

7. APPLICABLE LAW:

This Agreement shall be deemed to have been executed in the State of Georgia and all questions of interpretation and construction shall be governed by the laws of the State of Georgia. Any lawsuit regarding this Agreement shall be brought in the Superior Court of

Fulton County, Georgia or, if there is federal court jurisdiction, alternatively, in the United States District Court for the Northern District of Georgia.

8. INDEPENDENT PARTIES:

The Parties to this Agreement are, and shall remain, independent and nothing herein shall be construed to create a partnership, agency or joint venture between the Parties. Each Party shall be responsible for wages, hours and conditions of employment of its personnel during the term of, and under, this Agreement.

9. WAIVER:

No waiver by a Party of any breach of any provision hereof shall constitute a waiver of any other breach of that provision or any other provision hereof. Any such waiver must be in writing and properly signed to be effective and no such waiver, or waivers, shall serve to establish a course of performance between parties contradictory to the terms hereof.

10. MODIFICATION:

This Agreement constitutes the entire agreement between the Parties. This Agreement may not be modified or altered except in writing by an instrument duly executed by authorized officers of all Parties. No other terms and conditions, oral or written, be they consistent, inconsistent or additional to those contained herein, shall be binding upon the parties, unless and until such terms and conditions shall have been specifically accepted in writing by the Parties.

11. GRANT COMPLIANCE LANGUAGE:

During the performance of this Agreement, the Parties agree to abide by the terms of Executive Order 11246 on nondiscrimination and will not discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity or national origin. The participants will take affirmative action to ensure that applicants are employed without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. No member of or delegate to Congress, or resident Commissioner, shall be admitted to share any part of this Agreement or any benefit that may arise therefrom; but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit. The Parties agree that in any contracts to be developed and awarded pursuant to this Agreement all work and procedures related to said contract, shall, at all times, conform to the applicable federal and state laws, rules, regulations, orders and approvals, including specifically, procedures and requirements relating to labor standards, equal employment opportunity, nondiscrimination, compliance with the Americans with Disabilities Act, anti-solicitation, information, auditing and reporting provisions.

12. NOTICES:

All notices and other communications referenced herein must be in writing and shall be deemed effective three business days after being sent to the Parties at the following designated addresses or e-mail addresses:

a. If to Habersham County Board of Commissioners or GMSP Host:

Habersham County Board of Commissioners

Attn: County Manager Alicia Vaughn

130 Jacob's Way, Suite 202

Clarkesville, GA 30523

Email: avaughn@habershamga.com

b. If to DDS or GMSP:

Georgia Department of Driver Services

Attn: Holly Hegyesi

Georgia Motorcycle Safety Program

P.O. Box 80447

Conyers, GA 30013

Email: holly.hegyesi@dds.ga.gov

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives the day first above written.

SIGNATURES ON NEXT PAGE

GMSP HOST:

Signature: _____

By: Habersham County Board of Commissioners

Name: Ty Akins

Title: Commission Chairman

Date: _____

FEI#: _____

DDS:

Signature: _____

By: Division of Driver Services

Name: Spencer R. Moore

Title: Commissioner

Date: _____

FEI#: _____

Exhibit "A"

GMSP Host Guidelines

- A. GMSP HOST shall ensure that the classroom instruction area will reasonably accommodate ten students comfortably, be clean and orderly, suitable for small group discussions and interaction and equipped with audio-visual equipment capable of playing the training ads.
- B. GMSP Host will allow the Property's on-motorcycle training area (the Range) to be painted in accordance with GMSP requirements and in accordance with plans approved by GMSP Host. GMSP host may relocate the training area on the Property from time-to-time, in its discretion.
- C. The training area provided by GMSP Host shall be free from pedestrian, animal or vehicle traffic. The pavement shall be reasonably suitable for riding maneuvers such as sharp turns, braking and safe vehicle travel. The surface shall provide good traction. There shall be no obstacles that present unreasonable risk such as parked vehicles. Adequate notice to GMSP is required if any maintenance (paving, line striping, etc.) is planned or anticipated so as not to interfere with scheduled classes.
- D. GMSP Host will allow one Conex box to be located on the Property near the Range in a location designated by GSMP Host in its discretion. The Conex box must be reasonably accessible to GMSP personnel on an as-needed basis and shall be maintained in a reasonable condition.
- E. GMSP Host will notify GMSP in advance (at least three weeks) of any events that interfere with scheduled classes.