

HABERSHAM COUNTY BOARD OF COMMISSIONERS

EXECUTIVE SUMMARY

SUBJECT: Piedmont University – Athletics Department Swim Program

DATE: 6/28/23

☒ **RECOMMENDATION**

☐ **POLICY DISCUSSION**

BUDGET INFORMATION:

☐ **STATUS REPORT**

ANNUAL-

☐ **OTHER**

CAPITAL-

PRESENTED BY: Brooke Whitmire

COMMISSION ACTION REQUESTED ON: July 17, 2023

PURPOSE: This is a facility usage renewal agreement for Piedmont University's Swim Program to utilize the Ruby Fulbright Aquatic Center's pools for practices. The usage of the facility includes access to the lap pool, rec pool, locker rooms and associated restrooms.

BACKGROUND / HISTORY: Our relationship with Piedmont University and its National Championship Swim Team is a strong and positive connection. As an educational institution renowned for its commitment to excellence, Piedmont University has been a great partner to us, and we are excited for this opportunity to maintain our relationship and continuing to foster a strong sense of community by allowing Piedmont University's Swim Program to continue their use of the Ruby Fulbright Aquatic center as their homebase for practices.

FACTS AND ISSUES:

Compensation, to the county, for usage of Habersham County Ruby Fulbright Aquatic Center's pools and locker rooms, is as follows:

- A per swimmer fee of \$25 per person, per month, not to exceed \$1,000 per month to be paid to the Habersham County Parks and Recreation Department.
 - Payments will be made monthly by the 15th of each month.
 - Lane times and practice schedules in the pool will be made in advance with the Parks and Recreation Department Aquatics Manager.
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OPTIONS:

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

1. Approve to enter into an agreement with Piedmont University – Athletics Department Swim Program for the 2023-2024 fiscal year.
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DEPARTMENT:

Prepared by: Brooke Whitmire

Director: Brooke Whitmire

**ADMINISTRATIVE
COMMENTS:**

_____ **DATE:** _____

County Manager

**AGREEMENT FOR THE USE OF FACILITIES IN THE PROVISION OF PROGRAM
SERVICES:**

"Piedmont University-Athletics Department Swim Program"

TERMS OF AGREEMENT: July 1, 2023-June 30, 2024

This agreement is made effective the latest date signed below by and between Habersham County, a political subdivision of the State of Georgia (hereinafter referred to as "Habersham"), acting by and through its Parks and Recreation Department ("HCPRD") and Piedmont University (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 for a competitive swim team, 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;

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. HCPRD grants to Organization and Organization accepts from HCPRD the privilege of conducting the Organization's scheduled Competitive Swim Team in the HCPRD facilities as stated above. Facilities included in this agreement are the lap pool, locker rooms and associated restrooms. This agreement does not grant the use of the Colorado Timing System for authorized events. The specific dates and times of all uses are to be determined in advance and in conjunction with the HCPRD.
- II. Use of Premises. The Organization shall use subject property to conduct Piedmont activities only. Organization shall not use or permit HCPRD facilities to be used for any other purpose without obtaining the prior written consent of HCPRD. Such requests must be submitted no less than seven business days prior to the special use.
- III. Services to be Provided. Organization will provide a competitive swim team and competition swim meets. HCPRD 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 HCPRD, 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 HCPRD.

V. Responsibilities of Organization.

A. General.

1. The said property shall be subject to the rules and regulations of Habersham and HCPRD. Habersham 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 HCPRD 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 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, including applicable health codes.
4. The Organization must provide supervision for Piedmont swim participants prior to, during, and following their assigned swim times. Piedmont swimmers 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 HCPRD staff determination as to the availability of the Aquatic Center in case of severe weather.
6. The Organization agrees to abide by the HCPRD 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 HCPRD.
8. The Organization may not offer any activities or programs which conflict or compete with programs offered by HCPRD. Any instructional component must be provided exclusively to those members participating in competitive events 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 HCPRD representatives immediately prior to scheduled program and immediately following program service.
11. The Organization will provide its own storage for equipment at the aquatic center.
12. The Organization will provide its own timing system for swim meets.

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 HCPRD. 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, HCPRD 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 nor 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. HCPRD will provide *all* necessary concessions; the Organization will be unable to provide any sale of food or beverage on the property without approval from HCPRD.

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 HCPRD considers to be unfit or otherwise objectionable. HCPRD 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 or HCPRD. HCPRD 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 HCPRD 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 HCPRD. The agreed upon lane usage for the current contract period is defined in Section VIII. Any necessary or required change to this schedule during the contract period will be provided in writing with a minimum of 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 HCPRD Director will make the final decision on program scheduling.

K. Programming. The scheduled activities of the Organization shall be for Piedmont swimmers training and competitions only.

L. Reports. By July 15 of each year, the Organization shall provide HCPRD with a program service and financial reports for the preceding agreement year. Such reports shall include a summary of all program measures including, but not limited to, statistics on program participants, revenue, expenditures and scholarship donations. Personal information on participants is not requested or required.

VI. Responsibilities of HCPRD.

A. Publicity. HCPRD will offer publicity opportunities to the Organization as available. 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. HCPRD 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 HCPRD. Additionally, HCPRD assumes responsibility to maintain present equipment such as bleachers, lane ropes and starting blocks.

C. Maintenance. HCPRD shall be responsible for the normal support and preventive maintenance of the premises, including plumbing, electrical repairs and replacements.

D. Equipment. HCPRD assumes responsibility for the upkeep of all pool equipment such as, but not limited to, boilers, heaters, and chlorination system and will operate the pool within the recommended temperature range for recreational use (78 - 83 degrees). HCPRD does not at any time guarantee a specific temperature nor is HCPRD

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 HCPRD staff.

E. Utilities. HCPRD 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 team participant, per month, not to exceed \$1000 per month, will be assessed to the organization and submitted to HCPRD by the 15th of the month. 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 HCPRD by the 15th day 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 HCPRD 25% per sponsor. In addition, HCPRD 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) During the agreement year, the Organization will utilize lanes which have been mutually agreed upon.
- 2) All rosters will be verified, and members and members will be required to check in,
- 3) The Organization shall not have the right to schedule the use of the facility on the subject properties without granted approval by HCPRD.
- 4) The Organization may schedule use of the property at other times by submitting a written request to HCPRD. Such requests shall be approved by HCPRD provided a conflicting use has not been scheduled by HCPRD and any additional fees are agreed upon by the Organization and HCPRD is compensated 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. HCPRD 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 HCPRD.
- 7) The Organization shall provide HCPRD with at least four weeks' notice when requesting dates and times for swim meets. A separate Facility Use Agreement will be in place for all 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 days of any cancellation or termination of this Agreement.

- X. Term. The term of this Agreement shall be July 1, 2023 to June 30, 2024. This

Agreement shall automatically renew annually for an additional term provided Organization gives 90 days written notice to HCPRD of its intention to renew and/or execute another agreement prior to the expiration of the term in effect. HCPRD shall have 60 days to review the current agreement and in its sole discretion accept or reject said request for renewal or negotiate any changes at that time. If HCPRD does not object to the extension, this Agreement shall renew as provided above. Notwithstanding the above, the fees/compensation may be subject to revision by addendum hereto annually without the necessity of a new Agreement.

- XI. Termination for Cause. Organization must support HCPRD rules and regulations and HCPRD may terminate this Agreement for cause, which shall include fraud, theft drug use, criminal activity, insubordination to HCPRD, moral offenses or any other offenses deemed damaging to the image or mission of HCPRD, 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 HCPRD for cause shall be initiated by giving written notice to the Organization. Termination for cause in the sole discretion of HCPRD shall be effective immediately upon notice by HCPRD.

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 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 HCPRD and not sooner than seven days from the date of said notice of meeting and not more than 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 HCPRD determines that any condition on the subject premises constitutes an immediate health hazard to the members of the public, HCPRD shall have the right to immediately take action to correct said condition. In that situation, HCPRD 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 days' notice to the other.

XII. Indemnification. Organization hereby agrees to defend, indemnify and hold HCPRD 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 HCPRD 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 HCPRD 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 HCPRD 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; HCPRD 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

XVI. binding. Any notice required under this Agreement shall be provided to the other party at the indicated address

HCPRD, 120 Paul Franklin Road, Clarkesville, GA 30523

Organization: Piedmont University, 1021 Central Avenue, Demorest, Georgia 30535

HCPRD

By: _____
BOCC Chairman

Date: _____

Attest: _____
County Clerk

Date: _____

SIGNATURES CONTINUE ON NEXT PAGE

Piedmont University

Organization: 

Date: 6/8/2023

Witness: _____

Date: _____