

HABERSHAM COUNTY BOARD OF COMMISSIONERS

EXECUTIVE SUMMARY

SUBJECT: Habersham County Pickleball Club Services Agreement

DATE: 9-5-2023

RECOMMENDATION

POLICY DISCUSSION

BUDGET INFORMATION:

STATUS REPORT

ANNUAL-

OTHER

CAPITAL-

PRESENTED BY: Brooke Whitmire

COMMISSION ACTION REQUESTED ON: 9-18-2023

PURPOSE: This is a facility and services agreement for the Habersham County Pickleball Club to continue utilization of the outdoor pickleball courts, indoor pickleball courts, outdoor storage, and restrooms located at the Ruby Fulbright Aquatic Center for the period of September 1st, 2023 through August 31st, 2024.

BACKGROUND / HISTORY: Habersham County Pickleball Club (HCPC) is a not for profit organization which was built from members of the Habersham County Community who wanted to see the sport of Pickleball flourish. They have been a great support over the last year and have helped make needed improvements to the area, as well as raised thousands of dollars for the Parks and Recreation Department's scholarship program and donations to many other local charities in the area. HCPC fills a need by offering structured play times and instruction to those looking to play pickleball in Habersham County. Their open play times are open to the entire community and come complete with happy, smiling folks willing to help! This agreement helps us to put into words the wonderful relationship we have with HCPC and adds framework for how we want to move forward.

FACTS AND ISSUES:

Typical Open Play times and other HCPC operations are not fee based, but in the event there are fees or sponsorships collected by HCPC the following guidelines will apply:

Event Fees Collected:

1. HCPC shall provide 20% of proceeds from sales of advertising or sponsorships for HCPC events to the County to be used to enhance the County's Facilities, to purchase balls or other equipment which will be used during play or instruction. Said proceeds may also be used to provide for signage to provide direction of organized play times and rules for the sport of pickleball. HCPC acknowledges that any improvements made to the Facilities do not impact the ownership of the Facilities by the County. HCPC shall have no ownership claim to any of the Facilities, equipment, or signage purchased by the County. Equipment owned and utilized by HCPC stored in the Facilities with County approval shall remain the property of HCPC.
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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) Rental fees as set forth by the fee schedule approved by the Habersham County Board of Commissioners for events/lessons/clinics/etc. performed by anyone other than HCPC or a HCPC sponsored event.
- (b) Should HCPC hold camps, events, clinics, programs, etc. in which they charge a registration fee, HCPC shall provide 20% of the registration fee to the County.
- (c) Should HCPC hold a fundraising event to benefit a local charity, the rental price of the pickleball facility may be waived at the discretion of HCPRD with pre-approval.
- (d) Should HCPC or the County receive donations from individuals, such donations shall be HCPC funds and the County nor HCPRD shall have any claim to such funds. The County shall remit said funds to HCPC promptly.

OPTIONS:

- 1) Approve recommendation
- 2) Deny recommendation
- 3) Commission defined alternative

RECOMMENDED SAMPLE MOTION:

- 1. Approve to enter into agreement with the Habersham County Pickleball Club for the 2023-2024 year for HCPC to continue to provide valuable pickleball events and programs.

DEPARTMENT: Parks and Recreation

Prepared by: Brooke Whitmire

Director: Brooke Whitmire

**ADMINISTRATIVE
COMMENTS:** _____

_____ **DATE:** _____

County Manager

SERVICES AGREEMENT

This Services Agreement (“Agreement”) is made and entered into this ____ day of _____, 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 Pickleball Club, Inc., a Georgia non-profit corporation (hereinafter “HCPC”) (jointly referred to as “the Parties.”).

WITNESSETH

WHEREAS, the County owns certain athletics and recreational facilities including pickleball courts, which are operated and maintained by and through the Habersham County Parks and Recreation Department (hereinafter “HCPRD”); and

WHEREAS, the Director of HCPRD 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, HCPC operates a Pickleball Program which would benefit from the utilization of the facilities owned and operated by HCPRD; and

WHEREAS, the Pickleball Ambassador for HCPC is the primary contact for the HCPC concerning the operation of said programs (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 HCPC are desirous of entering into an agreement whereby HCPC may donate funds to the County in exchange for the utilization of the County’s facilities, particularly the pickleball courts (see Exhibit “B” for a full list of facilities subject to this Agreement) (hereinafter referred to as “the Facilities”); and

WHEREAS, the Parties have agreed to an exchange of services and 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 HCPC, 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”. 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 commence on the Effective Date hereto and expiring at midnight June 30, 2024, with the conclusion of the fiscal year (“Initial Term”). This Agreement shall automatically renew for additional one year terms annually on July 1, the first day of the fiscal 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) Event Fees Collected:

1. HCPC shall provide 20% of proceeds from sales of advertising or sponsorships for HCPC events to the County to be used to enhance the County’s Facilities, to purchase balls or other equipment which will be used during play or instruction. Said proceeds may also be used to provide for signage to provide direction of organized play times and rules for the sport of pickleball. HCPC acknowledges that any improvements made to the Facilities do not impact the ownership of the Facilities by the County. HCPC shall have no ownership claim to any of the Facilities, equipment, or signage purchased by the County. Equipment owned and utilized by HCPC stored in the Facilities with County approval shall remain the property of HCPC.
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) Rental fees as set forth by the fee schedule approved by the Habersham County Board of Commissioners for events/lessons/clinics/etc. performed by anyone other than HCPC or a HCPC sponsored event.
 - (b) Should HCPC hold camps, events, clinics, programs, etc. in which they charge a registration fee, HCPC shall provide 20% of the registration fee to the County.
 - (c) Should HCPC hold a fundraising event to benefit a local charity, the rental price of the pickleball facility may be waived at the discretion of HCPRD with pre-approval.

- (d) Should HCPC or the County receive donations from individuals, such donations shall be HCPC funds and the County nor HCPRD shall have any claim to such funds. The County shall remit said funds to HCPC promptly.

Section 4. Termination and Damages.

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

In the event of any damage to any Facilities as a result of usage by HCPC under this Agreement, excepting normal wear and tear, or in the event that the County incurs any costs as a result of the HCPC's usage including, but not limited to, costs of cleanup, repair or replacement of any of the County's property, the County reserves the right to invoice the HCPC for the amount necessary to reimburse the County for such costs.

Section 5. Indemnification Clause:

HCPC 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 HCPC's use of the County's Facilities under this Agreement or any act or omission on the part of HCPC, its invitees, agents, employees or others working or enjoying the Facilities on behalf of HCPC, or due to any breach of this Agreement by HCPC, 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 HCPC. This indemnification obligation survives the termination of the contract.

Section 6.

(a) Insurance Requirements.

Insurance coverage is required for HCPC's use of the County's Facilities. HCPC 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.

HCPC shall furnish the other Party with a copy of a Certificate of Insurance at least 30 days prior to use of the Facilities and 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. HCPC'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 HCPC 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 Pickleball Club, Inc. 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 _____, 2023 and executed this ____ day of _____, 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 Pickleball Club Inc., on the ____ day of _____, 2023 and executed this ____ day of _____, 2023, in witness whereof the said party hereto has set its hand, affixed its seal and delivered these presents.

HABERSHAM COUNTY PICKLEBALL
CLUB INC.

By: _____
Peggy Fortson, President

Attest: _____
_____, Secretary

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: _____

HCPC Contact Information:

Physical Address: _____

Billing/Mailing Address _____

Primary Contact Person – Title _____:

Contact Telephone Number: _____

Contact Email Address: _____

EXHIBIT “B”

FACILITIES SUBJECT TO AGREEMENT

County Facilities:

Aquatic Center Sports Complex – 120 Paul Franklin Road, Clarkesville GA, 30523

- 6 Outdoor Pickleball Courts
- 6 Indoor Pickleball Courts
 - 3 inside the Blue Gym
 - 3 Inside the Red Gym
- 1 Pavilion w/restrooms and storage located by the Pickleball Courts
- 1 Covered bleacher area located by the Pickleball Courts
- 2 cabinets for storage inside the Meeting Room Kitchen of the Aquatic Center

EXHIBIT “C”

SCOPE OF USE AND STAFFING

HCPC Usage of County Facilities:

- I. Facilities Day/Time of Use:
 - a. Aquatic Center Sports Complex – 120 Paul Franklin Rd, Clarkesville GA, 30523
 - i. 6 Outdoor Pickleball Courts
 1. M-W-F
 - a. 8:30a – 2:00p – Scheduled Open Play
 2. Tuesdays
 - a. 9:30a – 12:00p – Ladies Drills
 - b. 6:00p – 10:00p – Scheduled Open Play
 3. Thursdays
 - a. 9:00a – 11:00a – Advanced Drills
 - b. 6:00p – 10:00p – Scheduled Open Play
 4. Sundays
 - a. 6:00p – 10:00p – Scheduled Open Play
 - ii. 6 Indoor Pickleball Courts
 1. 3 inside the Blue Gym
 - a. M - F – 8:00a – 2:00p – Scheduled Open Play
 2. 3 Inside the Gray Gym
 - a. M-W-F – 8:00a – 2:00p – Scheduled Open Play
- II. Responsibilities of County During Use:
 - a. County will communicate scheduled times above so that the community is aware.
 - b. During Scheduled Open Play
 - i. Open play for all, this does not exclude anyone who would like to come utilize the courts. Scheduled Open Play means that during these hours any games will follow the PLAY-In Guidelines which govern length of game times so that as many people as possible will get a chance to play.
 - ii. PLAY-IN Guidelines:
 1. Courts 1, 2, & 3 are designated for Level 3.5 and Above Players and Courts 4, 5, & 6 are designated for Level 3.0 and below players.
 2. During Scheduled Open Play hours, place your paddle in designated rack to play-in. Move the “next up slide” to the next paddles in line. **If your paddle is not in the rack, you are NOT in line to play next.**
 3. Winners stay and split with the next 2 paddles in line coming in to play. If winners come off to get a drink, lay

your paddles on the court you'll return to in order to avoid confusion.

4. Players in line to play will be notified by someone announcing, "next two players up." It is the players in line's responsibility to be alert and listen for the "next up" call and move onto the court quickly.
5. At any time during scheduled open play hours, more advanced players (strong 3.5's, 4.0's or higher) may declare court #3 as a "Challenge Court." If that occurs the following guidelines will be followed.
 - a. Follow the same "next up" paddle placement in number 2.
 - b. The winning team will stay on the court for up to 3 consecutive games (if you are winning) before sitting out and stacking paddles at the end of the line.
 - c. If winners relinquish the court before 3 wins, 4 NEW players take the court.

iii. PLAY-IN Guideline Exceptions:

1. If there is a large number (more than 6) players waiting to play on either side of the 3.0 or 3.5+ courts, and less than 4 players waiting to play on the 3.0 and below courts, **Court 6** may be used by the 3.5+ groups with more than 6 players waiting and **Court 3** may be used by the 3.0 groups with more than 6 players waiting.
2. If there is a large number of players waiting for ALL court, the guidelines may change to all 4 players off and 4 new players on to avoid lengthy waiting times.
3. If the "Challenge Court" is being used but there are more than 8 players waiting to play, the "challenge court" will revert to a normal play-in court.

c. During Scheduled Drills

- i. Courts being utilized by HCPC will be reserved for their use only. Any open courts not utilized during this time remain first come, first served.

EXHIBIT “D”

GENERAL PROVISIONS

1. Facilities. HCPC agrees and accept the Facilities “as is, where is, and with all faults.” HCPC shall use all Facilities in accordance with this Agreement and will be responsible for simple housekeeping of the areas that they occupy. All facilities used shall be left in a condition acceptable to the County as owner. HCPC shall reimburse the County for any such damage or injury caused by HCPC, its employees, agents, or any other person admitted to the premises by the HCPC, its agents, or employees.
2. Failure to Pay. HCPC agrees that if it fails to pay the any fee in accordance with this Agreement, or if HCPC 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 HCPC of said nonpayment.
3. Event Staffing. Except as otherwise provided in Exhibit “C” attached hereto, the HCPC shall provide all necessary personnel and labor in order to hold their events. Staff procured by the HCPC and staff provided under this Agreement by the County (if any), shall be employees of the HCPC during said event and not the County and shall be paid by the HCPC, unless otherwise specified in Exhibit “C”.
4. Advertising. No print or electronic advertisement, social media post or other public statement should include the County’s name or logo in connection with any non- sponsored organization, business, or person in any manner that implies that HCPC supports, approves, or endorses any product, service, interest, position or ideology of that organization, business or person. The County’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 County shall have access to the premises at all times during which the HCPC is permitted to occupy, use, and enjoy the Facilities as outlined in Exhibit “C”.
6. Party’s Right to Remove. The County reserves the right to remove any objectionable person or persons from its Facilities and the County expressly waives any right to damages for such removal. **HCPC agrees to enforce the County’s Sportsmanship and Spectator Policy at all of its events which use County Facilities.**
7. HCPC Property Liability. All property brought onto the premises by the HCPC, its members, participants, and invitees, shall be at the sole risk of the HCPC. The County shall not be responsible for such property nor liable for any damages or injury to the HCPC, its members, participants, invitees, agents, or employees.
8. No Alterations or Improvements. The HCPC shall make no alterations in or additions to any of the Facilities which it is not the owner of.
9. Parking. The HCPC understands 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 HCPC agrees that events which provide for the care, custody, or control of minors shall require precautions to assure the safety and well-being of minors and release the County 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. HCPC shall abide by standards for fire safety, the HCPC 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 HCPC 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 HCPC 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. HCPC agrees that every member connected with 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 HCPC to any other organization, person, or other entity, unless written permission is provided by the County in writing.
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 HCPC operates a program or activity that provides for the care, custody, or control of minors, the HCPC 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 HCPC shall operate such event in a reasonably safe manner.
3. Forms. The HCPC 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.
4. Criminal Background Checks. The HCPC 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 HCPC 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 HCPC 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 HCPC 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 HCPC 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 County 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 the County, and termination pursuant to this paragraph shall be effective immediately upon verbal or written notice to HCPC. In the event of any termination by the County pursuant to this paragraph, the County 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 they 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.