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**CITY COUNCIL AGENDA ITEM**

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**TO:** Mayor & City Council

**DATE:** June 2, 2011

**FROM:** John McDonough, City Manager

**AGENDA ITEM:** Operating Agreement with Sandy Springs Recreation, Inc.

**MEETING DATE:** For Submission onto the June 7, 2011, City Council Regular Meeting Agenda

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**BACKGROUND INFORMATION:** (Attach additional pages if necessary)

See attached:

Memorandum  
Agreement

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**APPROVAL BY CITY MANAGER:**                     JFM                     APPROVED

\_\_\_\_\_ NOT APPROVED

**PLACED ON AGENDA FOR:**           6/7/2011          

**CITY ATTORNEY APPROVAL REQUIRED:** (  ) YES (  ) NO

**CITY ATTORNEY APPROVAL:**                     [Signature]                    

**REMARKS:**



**To:** John McDonough, City Manager  
**From:** Ronnie Young, Recreation & Parks Director  
**Date:** May 24, 2011, 2011 for Submission onto the June 7, 2011 City Council Consent Agenda  
**Description:** Operating Agreement with Sandy Springs Recreation Inc.

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***CMO (City Manager's Office) Recommendation:***

The City Council to authorize the City Manager to contract with Sandy Springs Recreation Inc., allowing Sandy Springs Recreation Inc. to provide a Gymnastics Program and other leisure program opportunities for children and adults located at 705 Hammond Drive facility.

***Background:***

Sandy Springs Recreation Inc. has requested that the City allow them to render gymnastics and leisure program opportunities at 705 Hammond Drive facility.

***Discussion:***

Sandy Springs Recreation Inc. Owner, Marina Davidovich has managed the City Recreation and Parks Gymnastic and other leisure programs at the Hammond Park Facility for five years. She is very dedicated and will conduct a first class program as a contract vendor.

***Financial Impact:***

The City will receive monthly \$3,000 from the Sandy Springs Recreation Inc.

***Final Impact:***

The Sandy Springs Recreation Inc. will provide an exceptional gymnastics program at the 705 Hammond Drive facility, and will increase leisure opportunities for our citizens and provide a positive impact on the City of Sandy Springs quality of life.

*Finance*



**OPERATING AGREEMENT  
Sandy Springs Recreation Inc.**

This Operating Agreement (hereinafter referred to as this “Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2011, by and between the CITY OF SANDY SPRINGS, GEORGIA, (hereinafter referred to as the “City”), a municipal corporation existing under and pursuant to the laws of the State of Georgia, and SANDY SPRINGS RECREATION, INC. (hereinafter referred to as “Contractor”) a corporation created and existing pursuant to the laws of the State of Georgia,

**WITNESSETH:**

**WHEREAS**, Contractor is engaged in the business of performing, coordinating and managing Gymnastics Programs; and

**WHEREAS**, Contractor wishes to perform, coordinate and manage programs and activities in the City of Sandy Springs including: Gymnastic, Dance, Cheerleading, Martial Arts, Etiquette for Kids, Summer/Winter/Day Camps, as well as events like Birthday Parties, Shows and Workshops within the City of Sandy Springs; and

**WHEREAS**, the parties are entering into this Agreement to allow Contractor to perform, coordinate, and manage the Gymnastics Program as well as other programs as approved by the City on certain property located within the City; and

**WHEREAS**, Contractor is willing and able to render said services;

**NOW, THEREFORE**, in consideration of the mutual terms, conditions and covenants set forth herein, the parties hereto agree as follows:

1. **Services.**

Contractor agrees to perform, coordinate, and manage a program of gymnastics within the City (the “Gymnastics Program”) along with other general recreational programs (the “Recreational Programs”) as set forth in the Statement of Work attached hereto as Exhibit “A”.

2. **Property.**

Contractor is hereby authorized and granted a license to utilize the Hammond Park Gym and the associated parking area at Hammond Park, Sandy Springs, Georgia (the “Property”) for the purpose of conducting the Gymnastics Program and other Recreational Programs as approved by

the City (the “Programs”). The Contractor agrees that all parking areas are open to the public and no portion has been reserved under this contract for Contractor or the Programs.

Contractor’s use of the Property shall be subordinate to the City and Contractor shall be responsible for any coordination of access or other issues regarding the Programs on the Property. In addition to the general right retained hereunder, the City specifically retains the right to place recreation and parks marketing materials inside the Gym Lobby and on the bulletin board and utilize the multi-purpose room in the Gym for meetings, conferences, or other gatherings upon reasonable notification to Contractor.

Contractor shall be responsible for daily cleaning and minor maintenance of the Gym; provided that the parties shall agree upon a minimum acceptable maintenance plan prior to the commencement of this Agreement. Under any circumstances, the maintenance plan shall include general maintenance, janitorial services, minor plumbing issues, maintenance and replacement of light bulbs, water coolers, damaged doors, and other small repairs.

Contractor shall notify City of any unresolved maintenance issues with the Gym as soon as reasonably practicable after learning of the same.

Contractor shall ensure that no soliciting by political, religious, or other “special” cause group or individuals is permitted on the Property.

Contractor shall be obligated to conduct only Programs approved by the City by the City in the agreed upon work plan.

Contractor will allow the park users to enter the Gym during park hours to use the drinking fountains and the restrooms.

The Contractor will be responsible for opening and closing the Hammond Park Gym daily. Contractor must have approval of any deviation of the operating hours of the Gym from the City approved schedule.

The Contractor may not rent or allow free use of the Gym spaces by any third parties other than instructors working with Contractor as approved by the City.

### 3. **Furniture, Fixtures and Equipment.**

The City shall maintain legal possession of the furniture, fixtures, and equipment located at the Gym. Contractor and City shall inventory the contents of the Gym which is owned by the City at the commencement of this Agreement and Contractor shall be responsible for maintaining the inventory of property.

City will be responsible for providing all office equipment such as telephones, fax, and computers which shall remain the property of the City.

Any equipment which Contractor provides for use in the Gymnastics Program shall meet US Gymnastics Safety Standards.

4. **Compensation.**

a. Unless otherwise set forth herein, Contractor shall be responsible for all startup-expenses, and operating expenses in establishing and operating the Programs. Contractor shall pay a flat fee of \$3,000.00 per month to the City of Sandy Springs for each month during the term of this Agreement.

b. In addition to the fees paid by the Contractor in Subsection (a) above, commencing with each successive term of this Agreement, once Contractor has received gross income to the Programs in the amount of Five Hundred Thirty Thousand and 00/100 Dollars (\$530,000.00) during the current term, Contractor shall pay fifty percent (50%) of all gross income above said \$530,000.00, less the actual costs paid to instructors, to the City. Said payments shall be remitted monthly with the payment set forth in Subsection (a) above; provided, however, the fees set forth in this subsection may be paid thirty (30) days in arrears to allow Contractor to close accounting for the previous month.

c. **Recordkeeping.** Contractor agrees to institute and maintain for not less than three (3) years following the termination of this Agreement, such systems of bookkeeping and auditing as reasonably requested by the City Finance Department. Contractor shall further at its sole cost and expense, and in form reasonably acceptable to the City, furnish the City: (1) a financial report of the gymnastic program no later than fifteen (15) days following the close of each such period.

d. **Audit.** The records of the operator shall be subject to audit by the City Finance Department at any time during reasonable business hours upon five (5) days notice.

e. The City shall provide up to \$10,000 annually for capital improvements, equipment, or minor repairs and upkeep of the facility to be expended, in the City's discretion, in support of the Programs.

f. The City will at no charge allow Contractor to market programs in the Recreation and Parks Brochure, other flyers, emails, posters and media articles are the responsibility of the City.

g. The City shall be responsible for paying the following utility bills for the Gym: Electricity, Water, Natural Gas, and Telephone. Contractor shall, however, at all times utilize best practices to insure that such bills are as low as feasible and agrees to following any and all rules and regulations established by the City in order to conserve resources.

5. **Relationship of Parties.**

Nothing contained herein shall be deemed to create any relationship other than that of independent contractor between the City and Contractor, or the City, Contractor, or any of the instructors or vendors who may contract with Contractor as part of the Gymnastics Program. This Agreement shall not constitute, create, or otherwise imply an employment, joint venture, partnership, agency or similar arrangement between the City and Contractor, or the City, Contractor, or any of the

instructors or vendors who may contract with Contractor as part of the Gymnastics Program. It is expressly agreed that Contractor is acting as an independent contractor and not as an employee in providing the Services under this Agreement. The Contractor will retain all staffing responsibilities, payroll, benefits, and workers compensation, disability and all other aspects of employee responsibilities. The City will not be responsible nor liable for contractor's employees or sub contractors.

6. **Term.**

This Agreement shall be effective on the date of execution hereof (the "Effective Date"). The term of the Contractor's retention pursuant to this Agreement (the "Term") shall commence on the Effective Date until December 31, 2011. Upon thirty (30) day written notice to Contractor, the City may, at its option, extend the term of this Agreement for up to five (5) additional one year terms. Terms of this Agreement for each subsequent year will be negotiated prior to renewal.

7. **Termination.**

**For Cause**

The City shall for cause have the right to terminate this Agreement if Contractor is in default of any obligation hereunder and such default is not cured within ten (10) days of receipt of from City specifying such default. "Default" shall mean:

a. Contractor fails to perform or observe any of its duties or obligations under the terms of this Agreement;

b. If Contractor shall have made any warranty or representation in connection with this Agreement which is found to have been false at the time such warranty or representation was made and is materially harmful to the other party.

**Without Cause**

This Agreement may also be terminated without cause by either party by giving written notice thirty (30) days prior to the effective date of termination.

8. **Termination of Services and Return of Property.**

Upon the expiration or earlier termination of this Agreement, Contractor shall immediately terminate the operation of services hereunder and shall deliver promptly to the City all City property delivered, obtained or created in furtherance of this Agreement.

9. **Standard of Performance; Compliance with Applicable Laws; Rules and Regulations; Background Checks**

a. Contractor warrants and represents that it possesses the skill, competence, and experience to undertake the obligations imposed by this Agreement. Contractor agrees to perform in

a diligent, efficient, competent and skillful manner commensurate with the highest standards of the profession, and to otherwise perform as is necessary to undertake the operation of services required by this Agreement.

b. Contractor warrants and represents that it will, at all times, observe and comply with all federal, state, local and municipal ordinances, rules, regulations, permitting, relating to the provision of the Services to be provided by Contractor hereunder or which in any manner affect this Agreement including but not limited to the requirements set forth in the Georgia Security and Immigration Compliance Act attached hereto as Exhibit "C", Certification of Sponsor Drug Free Workplace Exhibit "D", and any rules, regulations, requirements, or directions as set forth by the City in its Special Event Permit issued for the Gymnastics Program Event.

c. The Contractor shall provide and pay for employees and volunteers background checks, credit checks through the City's provider Southeastern Security Consultants (SSCI). The current cost is \$18.50 for each background check. Motor Vehicle records checks will cost \$15.00 and shall be by request only. All fees are subject to change.

10. **Conflicts of Interest.**

Contractor warrants and represents that:

a. The operation of services to be performed hereunder will not create an actual or apparent conflict of interest with any other work it is currently performing; and

b. Contractor is not presently subject to any agreement with any other party that will prevent Contractor from performing in full accord with this Agreement; and

c. Contractor is not subject to any statute, regulation, ordinance or rule that will limit its ability to perform its obligations under this Agreement. The parties agree that Contractor shall be free to accept other work during the term hereof; provided, however, that such other work shall not interfere with the provision of Services hereunder.

11. **Proprietary Information**

Contractor acknowledges that it may have access to and become acquainted with confidential and other information proprietary to the City including, but not limited to, information concerning the City of Sandy Springs, its operations, customers, citizens, business and financial condition, as well as information with respect to which Contractor has an obligation to maintain confidentiality (collectively referred to herein as "Proprietary Information"). Contractor agrees not to disclose, directly or indirectly, to anyone or to use or to allow others to use, for any purpose whatsoever, any Proprietary Information of any type, whether or not designated confidential or proprietary, acquired in the course of performing under this Agreement. The obligations of Contractor under this section shall survive the termination of this Agreement.

12. **Indemnification.**

Contractor agrees to defend, indemnify and hold harmless the City, its Mayor, Council members, officers, employees, successors, assigns, agents to the extent allowed by applicable law, from and against any and all claims, losses, liabilities or expenses (including, without limitation, attorneys' fees) which may arise, in whole or in part, out of a breach by the Indemnitor of its obligations under this Agreement.

13. **Insurance.**

Insurance requirements are attached hereto as Exhibit "E".

14. **Assignment.**

Contractor shall not assign this Agreement without the prior express written consent of Sandy Springs. Any attempted assignment by Contractor without the prior express written approval of Sandy Springs shall remain without force or effect and, at City's sole option, will serve to terminate this Agreement without any notice to SANDY SPRINGS RECREATION INC. of such termination.

15. **Notices.**

All notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given when delivered personally in hand, or when mailed by certified or registered mail, return receipt requested with proper postage prepaid, addressed to the appropriate party at the following address or such other address as may be given in writing to the parties:

**If to the City:**

John McDonough, City Manager  
7840 Roswell Road, Building 500  
Sandy Springs, Georgia 30350

**With copies to:**

Wendell Willard, City Attorney  
Two Ravinia Drive, Suite 1630  
Atlanta, Georgia 30346

**If to SANDY SPRINGS RECREATION INC.**

Marina Davidovich  
6851 Roswell Road NE Suite H-23  
Atlanta, GA 30328

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

16. **Governing Law and Consent to Jurisdiction.**

This Agreement is made and entered into in the State of Georgia and this Agreement and the rights and obligations of the parties hereto shall be governed by and construed according to the laws of the State of Georgia without giving effect to the principles of conflicts of laws.

17. **Waiver of Breach.**

The waiver by either party of a breach or violation of any provision of this Agreement shall not operate or be construed to constitute a waiver of any subsequent breach or violation of the same or other provision thereof.

18. **Severability.**

If any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of the Agreement, which shall remain in full force and effect, and enforceable in accordance with its terms.

19. **Entire Agreement.**

This Agreement contains the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior discussions, representations and understandings, whether oral or written.

**IN WITNESS WHEREOF**, the parties have executed this Agreement through their duly authorized representatives.

**CITY OF SANDY SPRINGS, GEORGIA**

By: \_\_\_\_\_

John McDonough  
Title: City Manager

Approved as to form:

\_\_\_\_\_  
Assistant City Attorney

City Clerk: \_\_\_\_\_

Attest:

(Signatures Continued on Following Page)

SANDY SPRINGS RECREATION INC.

By:

By: \_\_\_\_\_

Marina Davidovich, President

By: \_\_\_\_\_

## **EXHIBIT "A"**

### **Scope of Services**

1. Contractor shall manage, coordinate, and direct gymnastic programs for the City on the Property. The gymnastic programs shall, at minimum, not be less than the scope and magnitude as that provided to by City in the 2010 calendar year. All programming shall be coordinated with the City and require the prior approval in writing of the City. For subsequent years, if awarded by the City, Contractor will submit a program and fee plan for City consideration by November 1, of each year which shall require prior written approval from the City prior to implementation.
2. Contractor may manage, coordinate, and direct general recreational programs for the City on the Property. All programming shall be coordinated with the City and require the prior approval in writing of the City. For subsequent years, if awarded by the City, Contractor will submit a program and fee plan for City consideration by November 1, of each year which shall require prior written approval from the City prior to implementation. At minimum Contractor shall be allowed to operate the following general recreation programs: Dance, Cheerleading, Martial Arts, Etiquette for Kids, Summer/Winter/Day Camps, as well as events like Birthday Parties, Shows and Workshops.
3. Contractor shall provide online registration at a level not less than that provided in 2010, and walkup registration at the Gym for interested participants.
4. Contractor shall provide gymnastics for children and adults.
5. The Contractor will allow participation for all individuals where the city provides scholarship monies.
6. As part of the Programs, the Contractor shall provide at a minimum two (2) hours a week instruction and training for special needs children.
7. The Contractor shall provide an attendant at the front office at all times at which the Gym is open, or as otherwise agreed in writing by the City.
8. The Contractor shall be responsible for procuring all required permissions, copyrights, or other charges for any music utilized in furtherance of this Agreement.
9. The Contractor shall maintain a website, as approved by the City, which also shall be linked to the City website, containing information relating to programs being conducted, fees and registration details.
10. The contractor shall print the Sandy Springs Recreation and Parks Department logo and following statement on all flyers, media articles, signs, and any other marketing materials.

“Sandy Springs Recreation Inc, provides programs under contract with the City of Sandy Springs.

11. The contractor shall not post signage of any kind at the facility without prior approval by the City.

**EXHIBIT "C"**

**CERTIFICATION OF CONTRACTOR**

**GEORGIA SECURITY AND IMMIGRATION COMPLIANCE ACT**

I hereby certify that I am a principle and duly authorized representative of \_\_\_\_\_, ("Contractor"), whose address is \_\_\_\_\_, \_\_\_\_\_.

Contractor hereby agrees to comply with all applicable provisions and requirements of the Georgia Security and Immigration Compliance Act of 2006 (the "Act"), as codified in O.C.G.A. Sections 13-10-90 and 13-10-91 and regulated in Chapter 300-10-1 of the Rules and Regulations of the State of Georgia, "Public Employers, Their Contractors and Subcontractors Required to Verify New Employee Work Eligibility Through a Federal Work Authorization Program," accessed at <http://www.dol.state.ga.us>, as further set forth below.

Contractor agrees to verify the work eligibility of all of newly hired employees through the U.S. Department of Homeland Security's *Employment Eligibility Verification (EEV) / Basic Pilot Program*, accessed through the Internet at <https://www.vis-dhs.com/EmployerRegistration>, in accordance with the provisions and timeline found in O.C.G.A. 13-10-91 and Rule 300-10-1-.02 of the Rules and Regulations of the State of Georgia. As of July 1, 2007, the verification requirement applies to contractors and subcontractors with five-hundred (500) or more employees.

Contractor understands that the contractor and subcontractor requirements of the Act apply to contracts for, or in connection with, the physical performance of services within the State of Georgia.

Contractor understands that the following contract compliance dates set forth in the Act apply to the Contract Agreement, pursuant to O.C.G.A. 13-10-91:

On or after July 1, 2007, to public employers, contractors, or subcontractors of 500 or more employees;

On or after July 1, 2008, to public employers, contractors, or subcontractors of 100 or more employees; and

On or after July 1, 2009, to all other public employers, their contractors, and subcontractors.

To document the date on which the Act is applicable to Contractor, and to document Contractor's compliance with the Act, the undersigned agrees to initial one of the three (3) lines below indicating the employee number category applicable to Contractor, and to submit the indicated affidavit with the Contract Agreement if the Contractor has 500 or more employees.

Contractor has:

- \_\_\_\_\_ 500 or more employees [Contractor must register with the *Employment/Eligibility Verification/Basic Pilot Program* and begin work eligibility verification on July 1, 2007];
- \_\_\_\_\_ 100-499 employees [Contractor must register with the *Employment Eligibility Verification/Basic Pilot Program* and begin work eligibility verification by July 1, 2008]; or
- \_\_\_\_\_ 99 or fewer employees [Contractor must begin work eligibility verification by July 1, 2009].

Contractor further agrees to require O.C.G.A. Sections 13-10-90 and 13-10-91 compliance in all written agreements with any subcontractor employed by Contractor to provide services connected with the Contract Agreement, as required pursuant to O.C.G.A. 13-10-91.

Contractor agrees to obtain from any subcontractor that is employed by Contractor to provide services connected with the Contract Agreement, the subcontractor's indication of the employee number category applicable to the subcontractor.

Contractor agrees to secure from any subcontractor engaged to perform services under this Contract an executed "Subcontractor Affidavit," as required pursuant to O.C.G.A. 13-10-91 and Rule 300-10-1-.08 of the Rules and Regulations of the State of Georgia, which rule can be accessed at <http://www.dol.state.ga.us>.

Contractor agrees to maintain all records of the subcontractor's compliance with O.C.G.A. Sections 13-10-90 and 13-10-91 and Chapter 300-10-1 of the Rules and Regulations of the State of Georgia.

CONTRACTOR:

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT "D"**

**CERTIFICATION OF SPONSOR**

**DRUG-FREE WORKPLACE**

I hereby certify that I am a principle and duly authorized representative of \_\_\_\_\_, ("Contractor"), whose address is \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and I further certify that:

- (1) The provisions of Section 50-24-1 through 50-24-6 of the Official Code of Georgia Annotated, relating to the "Drug-Free Workplace Act" have been complied with in full; and
- (2) A drug-free workplace will be provided for Contractor's employees during the performance of the Agreement; and
- (3) Each Subcontractor hired by Contractor shall be required to ensure that the subcontractor's employees are provided a drug-free workplace. Contractor shall secure from that subcontractor the following written certification: "As part of the subcontracting agreement with Contractor, \_\_\_\_\_ certifies to Contractor that a drug-free workplace will be provided for the Subcontractor's employees during the performance of this Agreement pursuant to paragraph (7) of subsection (b) of the Official Code of Georgia Annotated, Section 50-24-3"; and
- (4) The undersigned will not engage in unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of the Agreement.

**CONTRACTOR:**

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Title: \_\_\_\_\_

## **EXHIBIT "E"**

### **INSURANCE REQUIREMENTS**

Within 10 days of Notice of Award, and at all times that this Contract is in force, the Contractor shall obtain, maintain and furnish the City Certificates of Insurance from licensed companies doing business in the State of Georgia with an A.M. Best Rating A-6 or higher and acceptable to the City covering:

1. Statutory Workers' Compensation Insurance

(a) Employers Liability:

Bodily Injury by Accident - \$500,000 each accident

Bodily Injury by Disease - \$500,000 policy limit

Bodily Injury by Disease - \$500,000 each employee

2. Comprehensive General Liability Insurance

(a) \$1,000,000 limit of liability per occurrence for bodily injury and property damage Owner's and Contractor's Protective

(b) Blanket Contractual Liability

(c) Blanket "X", "C", and "U"

(d) Products/Completed Operations Insurance

(e) Broad Form Property Damage

(f) Personal Injury Coverage

3. Automobile Liability

(a) \$ 300,000 limit of liability

(b) Comprehensive form covering all owned, non-owned and hired vehicles

4. The City of Sandy Springs, Georgia, and its subcontractors and affiliated companies, their officers, directors, employees shall be named on the Certificates of Insurance as additional insured and endorsed onto the policies for Comprehensive General Liability, Automobile Liability and Umbrella Liability insurance maintained pursuant to this Contract in connection with liability of the City of Sandy Springs and their affiliated companies and their officers, directors and employees arising out of Contractor's operations. Copies of the endorsements shall be furnished to the City prior to execution of the contract. Such insurance is primary insurance and shall contain a Severability of Interest clause as respects each insured. Such policies shall be non-cancelable except on thirty (30) days written notice to the City. Any separate insurance

maintained in force by the additional insured named above shall not contribute to the insurance extended by Contractor's insurer(s) under this additional insured provision.

Certificate Holder should read: The City of Sandy Springs, 7840 Roswell Road, Building-500, Sandy Springs, Georgia 30350.