

HEALTH AND WELLNESS CENTER OPERATIONS CONTRACT

THIS HEALTH AND WELLNESS CENTER OPERATIONS CONTRACT (herein "Contract") is made effective this 8th day of March, 2004 by and between the TOWN OF COLLIERVILLE, TENNESSEE, a Tennessee municipal corporation (herein the "TOWN") and CMC ENTERPRISES, LLC, a Tennessee limited liability company (herein the "OPERATOR").

W I T N E S S E T H:

WHEREAS, the TOWN has constructed the Town of Collierville Community Center located at 440 West Powell Road, Collierville, Tennessee (herein the "Center") with space allocated therein for certain health and wellness programs to be conducted at the Center, and

WHEREAS, the OPERATOR desires to conduct certain health and wellness programs at the Center (herein the "Programs") described by the TOWN in that certain Request for Statement of Qualifications dated, December 10, 2003, which is attached hereto and made a part hereof as Exhibit "A" (herein the "RFQ"), and

WHEREAS, the OPERATOR has submitted a proposal for conducting the Programs, including the purchase, installation and maintenance of quality, state-of-the-art exercise and diagnostic equipment to be used in connection with the Programs (collectively, herein the "Equipment"), which proposal is dated, December 18, 2003 and which proposal is attached hereto and made a part hereof as Exhibit "B" (herein the "Proposal"), and

WHEREAS, the operation of the Programs requires the presence of medical and other professionally-trained personnel, and

WHEREAS, the services provided by such medical and other professionally-trained personnel in connection with the Programs are of a distinct and non-competitive nature, and

WHEREAS, the OPERATOR has the requisite experience, abilities and resources to conduct the Programs, and

WHEREAS, the OPERATOR desires to enter into this Contract as an independent contractor and is ready, willing and able to provide the Programs and Equipment in accordance with the terms of and subject to the conditions in this Contract.

NOW, THEREFORE, for good and valuable consideration, received or to be received, the sufficiency of which the parties acknowledge, the parties agree as follows:

1.00 SCOPE OF CONTRACT

1.01. Center Operations. The OPERATOR shall conduct the Programs as described in the Proposal during the hours and on the days shown in the Proposal and provide childcare for children up to ten (10) years of age for parents and others needing childcare at the Center while participating in the Programs. Staffing of the childcare facility shall be as described in the Proposal. The OPERATOR shall cooperate fully with the TOWN'S Director of Parks and

Recreation, who shall have the authority to conduct daily oversight of the OPERATOR'S activities at the Center. Any request by the OPERATOR to change the hours of operations, staffing, rates, or any other operational aspect at the Center must be submitted to the TOWN in writing. No operational change requested by the OPERATOR shall take effect until such time, if any, as the Board of Mayor and Aldermen of the TOWN approves an amendment to this Contract.

1.02. Space at Center. The TOWN will provide approximately 7,400 square feet of rent-free space at the Center (the "Allocated Space") to the OPERATOR for the OPERATOR to conduct the Programs and provide childcare. Within the Allocated Space, the OPERATOR shall maintain an office for the OPERATOR'S staff. The plans for construction of said office must first be approved by the TOWN. The OPERATOR hereby agrees to acquire its own telephone listing for its office at the Center and be responsible for all telephone service and telephone bills for said office. If the OPERATOR constructs a mezzanine level within the Center as permitted under Section 23.00, such space shall thereafter be used by the OPERATOR rent-free for the purposes of this Contract.

1.03. OPERATOR'S Maintenance and Care of Equipment. The OPERATOR agrees to purchase and install the Equipment and maintain same in good working order at all times. During the Term (as defined in Paragraph 8.01 herein), the OPERATOR shall provide other equipment it deems necessary to render services under this Contract. Such added equipment shall then become Equipment, as defined herein above. If, in the opinion of the TOWN, any Equipment becomes worn out or obsolete, the OPERATOR, in consultation with the TOWN, shall either repair such Equipment or replace such Equipment with equipment of similar character and utility. Such replacement equipment shall then become Equipment, as defined herein above. The OPERATOR agrees to cooperate with the TOWN to complete an annual review of the Equipment. The OPERATOR agrees to furnish the TOWN a list of all Equipment and to keep such list current. At any time during the Term and upon the request of the TOWN, the OPERATOR shall furnish the TOWN with copies of all Equipment leases.

1.04. Compensation and Fees. The OPERATOR shall collect fees from Center patrons in accordance with the terms of the Proposal. In accordance with the terms of the Proposal, the OPERATOR shall pay the TOWN a percentage of the total gross revenue, exclusive of sales tax, collected each month by the OPERATOR at the Center (the "Percentage Fee") and the OPERATOR shall retain the balance of monthly gross revenue collected at the Center. During the Initial Term (as defined in Paragraph 8.01 hereinbelow), the Percentage Fee shall equal five percent (5%). In the event that the parties are unable to agree on a Percentage Fee for any Renewal Term (as defined in Paragraph 8.01 hereinbelow), the Percentage Fee shall equal eight percent (8%). In the event that the TOWN elects a Renewal Term, the parties shall execute an amendment to this Contract, which amendment shall include a statement of the Percentage Fee to be paid during the Renewal Term. The TOWN may require at the TOWN'S option that the OPERATOR produce at the OPERATOR'S expense an audit conducted by an independent auditor appointed by the TOWN; provided, however, that the TOWN shall not request such audit more than once each calendar year during the Term (as defined in Paragraph 8.01 hereinbelow).

1.05 Maintenance and Repair of Premises. Maintenance and repairs of the Center, exclusive of the décor, fixtures, and machines installed by OPERATOR, shall be the

responsibility of the TOWN, except for maintenance or repair within the Allocated Space that results in more than ordinary wear and tear caused by OPERATOR, its employees and persons who pay the OPERATOR to use the space provided hereunder to the OPERATOR by the TOWN. As specified in the RFQ, the OPERATOR will provide janitorial services, including but not limited to housekeeping and minor plumbing repairs (for example, unclogging sinks), for the space allocated to the OPERATOR (including any mezzanine constructed in accordance with **Section 23.00** herein) and the restrooms and locker rooms adjacent to the space allocated to the OPERATOR. The TOWN will provide janitorial services for all other areas of the Center. The TOWN will provide all utility services for the Center including plumbing and HVAC but exclusive of telephone service as specified in **Paragraph 1.02** hereinabove.

2.00 ADDITIONAL SERVICES

In the event the TOWN requests that the OPERATOR perform additional services not covered by the Proposal, the OPERATOR shall perform such additional services after the TOWN and the OPERATOR enter into an equitable agreement regarding the additional services, such agreement to be subject to the approval of the Board of Mayor and Aldermen.

3.00 NOTICE TO PROCEED

The OPERATOR shall have all of the Equipment installed and shall begin conducting the Programs and furnishing childcare as called for under this Contract on the date specified in the written notice to proceed issued by the TOWN, which notice to proceed shall be given not later than 180 days before the date OPERATOR is to have all the Equipment installed and begin conducting the Programs and providing childcare.

4.00 OPERATOR'S PERSONNEL

The OPERATOR certifies that it presently employs, and shall continue to employ throughout the Term of this Contract, adequate qualified personnel for the performance of the Programs, the provision of childcare, and the maintenance of all Equipment contemplated under this Contract.

5.00 CONFLICT OF INTEREST

The OPERATOR declares that neither the Mayor, nor any Aldermen, nor any other TOWN official holds a direct or indirect interest in this Contract. The OPERATOR pledges that it will notify the TOWN in writing should any TOWN official become either directly or indirectly interested in this Contract. The OPERATOR declares that as of the date of this declaration that it has not given or donated or promised to give or donate, either directly or indirectly, to any official or employee of the TOWN, or to pay anyone else for the benefit of any official or employee of the TOWN, any sum of money or other thing of value for aid or assistance in obtaining this Contract. The OPERATOR further pledges that neither it nor any of its owners, officers or employees will give or donate or promise to give or donate, directly or indirectly, to any official or employee of the TOWN, or anyone else for the benefit thereof, any sum of money or other thing of value for aid or assistance in obtaining any change order to this Contract.

6.00 DISPUTES

Any dispute concerning a question of fact in connection with this Contract not disposed of by agreement between the TOWN and the OPERATOR shall be referred to the Town Administrator, or his duly authorized representative, whose decision regarding such disputed question of fact shall be final and binding.

7.00 COMPLIANCE WITH LAWS

The OPERATOR agrees to observe and to comply at all times with all applicable Federal, State, and local laws, ordinances, and regulations in any manner affecting its obligations under this Contract and to comply with all instructions and orders issued by the TOWN regarding this Contract.

8.00 TERM AND TERMINATION

8.01 Term. This Contract shall become effective when duly executed on behalf of both parties and after OPERATOR secures adequate financing. Subject to termination as provided hereinafter, this Contract shall remain in effect for a term of five (5) years from and after the date the Programs go into operation (the "**Initial Term**"). The TOWN may extend the Initial Term on the same terms contained herein for two (2) additional successive five (5) year periods or portions thereof (each a "**Renewal Term**") by written notice to the OPERATOR given at least one hundred eighty (180) days before the expiration of the term then in existence (the Initial Term and any Renewal Term are sometimes referred to herein collectively as the "**Term**"). If the TOWN elects not to extend the Initial Term or the first Renewal Term, the TOWN shall notify the OPERATOR of such decision at least one hundred eighty (180) days before the expiration of the term then in existence.

8.02. Termination Without Cause. At any time during the Term, either party may terminate this Contract without cause upon at least one hundred eighty (180) days written notice to the other party.

8.03. Mutual Termination. The parties may mutually agree to terminate this Contract at any time.

8.04. Termination by TOWN. The TOWN may, at its option, either suspend performance hereunder or terminate this Contract for cause. The term "cause" shall mean the following:

1. If the OPERATOR fails to obtain or maintain insurance as required under this Contract.
2. If any of OPERATOR'S personnel either employed by or credentialed by the OPERATOR and on active staff status with the OPERATOR who have been assigned by the OPERATOR to perform services under this Contract suffers any of the following events and the OPERATOR fails within twenty (20) days after written notice to the OPERATOR from the TOWN of such occurrence or event,

either to reverse the effect thereof to the TOWN'S satisfaction or to terminate such employee of OPERATOR from performing any services under this Contract:

- a. To be charged with gross misconduct of either a professional or personal nature; or
- b. To have any medical privileges or membership suspended, restricted, revoked, or placed under probation or proctoring; or
- c. To have his or her professional license suspended, lapsed, revoked, placed under probation, or otherwise formally acted against; or
- d. To be convicted of a crime other than a minor traffic violation; or
- e. To have a guardian or conservator of the person appointed by a court of competent jurisdiction; or
- f. To become disabled or impaired to the extent that he or she is unable to perform the duties required by this Contract; or
- g. To fail to perform the services required hereunder in accordance with the standards of quality at the Center.

Provided, however, if the conduct of any of OPERATOR'S personnel or personnel of any other entity furnishing services with the OPERATOR is deemed by the TOWN to be of such a nature as to present a danger to patrons of the Center or to bring the Center into disrepute, the TOWN may require the OPERATOR to suspend immediately such personnel until a thorough investigation can be conducted.

3. If the OPERATOR files or has filed against it a petition under the bankruptcy laws and has not reversed the effect thereof to the TOWN'S satisfaction within twenty (20) days after written notice to the OPERATOR by the TOWN of the occurrence of such event.
4. If the OPERATOR is in substantial breach of any material term or condition of this Contract within sixty (60) days after TOWN has provided OPERATOR with at least two (2) written demands for substantial performance which detail any such substantial breach.

5. If OPERATOR fails to operate the health club and childcare facility in accordance with industry standards and in accordance with the standards set forth on **Exhibit "C"** attached hereto and incorporated herein by reference within twenty (20) days after TOWN has provided OPERATOR with at least two (2) written demands regarding same.

8.05. Option of TOWN to Purchase Equipment.

1. In the event that the TOWN terminates this Contract without cause at any time prior to the expiration of any existing Equipment lease, the TOWN shall assume such unexpired Equipment lease to the extent that such obligations are assignable to the TOWN. The OPERATOR shall cooperate fully with the TOWN to ensure that the TOWN obtains equivalent rights to the Equipment held by OPERATOR at the time of any such termination of this Contract by the TOWN.
2. Upon expiration of this Contract due to the passage of time, upon termination of this Contract for cause, or upon termination of this Contract without cause by the TOWN after the expiration of all Equipment leases, the TOWN shall not be required to acquire OPERATOR'S Equipment, but, at the TOWN'S option, may:

Purchase any or all of the Equipment placed by the OPERATOR at the Center at the then fair market value for such Equipment, which purchase, if any, shall be subject to the following conditions.

- a. The TOWN shall have a period of thirty (30) days following the date that the Contract terminates during which the TOWN may exercise its option to purchase any or all Equipment. During such thirty (30) day period, the TOWN will have the right to use the Equipment without charge. If the TOWN so elects, such option to purchase shall be exercised by written notice from the TOWN to the OPERATOR. If the TOWN exercises said option, it shall pay the purchase price in cash or other agreed to form of payment within two (2) business days after the end of said thirty (30) day period. If the TOWN does not wish to purchase the Equipment, the OPERATOR must remove the Equipment within seven (7) business days after the end of said thirty (30) day period.

- b. If the TOWN elects to exercise its purchase rights under this Paragraph 8.05 Subsection 2, the OPERATOR shall convey any and all Equipment purchased by the TOWN free and clear of the claims of any other parties, including lessors of or holders of any security interest in the Equipment. The OPERATOR will be responsible for fulfilling any obligations with respect to the Equipment after applying the purchase price paid by the TOWN for the Equipment, determined in accordance with this Paragraph 8.05 Subsection 2, to any lease or indebtedness securing any interest in the Equipment.

- c. In the event that the parties cannot agree on the fair market value of the Equipment, the valuation of the Equipment shall be made by an appraiser of recognized standing selected by the TOWN and OPERATOR or, if the parties cannot agree on an appraiser within twenty (20) days after the OPERATOR'S receipt of the TOWN'S written purchase notice, each shall select an appraiser of recognized standing and the two appraisers shall designate a third appraiser of recognized standing, whose appraisal shall be determinative of the value of the Equipment.

9.00 REIMBURSEMENT FOR EXPENSES

The OPERATOR shall not be reimbursed for any expenses, unless such expenses either are authorized in accordance with the Proposal or are authorized in writing by the TOWN before the OPERATOR incurs any such expenses.

10.00 INDEMNIFICATION

The OPERATOR hereby agrees to indemnify and hold the TOWN harmless from and against any and all liability, losses, damages, claims, or causes of action, and expenses incurred therewith (including reasonable attorney's fees and court costs), caused or asserted to have been caused, directly or indirectly, by or as a result of the acts, errors, or omissions of the OPERATOR, its agents, servants and employees in the performance of this Contract, and the OPERATOR will carry sufficient general liability insurance to provide the above indemnification.

11.00 INSURANCE

The OPERATOR will carry adequate public liability and indemnity insurance protecting both the OPERATOR and the TOWN and naming the TOWN as an insured party against loss or

damage arising due to injury to persons or damages to property. The OPERATOR shall purchase and maintain comprehensive general liability insurance, comprehensive automobile liability insurance, worker's compensation insurance, and professional liability insurance with limits of not less than those set forth as follows:

Comprehensive General Liability Insurance: Liability limits of \$1,000,000 each occurrence and \$1,000,000 aggregate.

Fire and Legal Liability Insurance: Liability limit of \$1,000,000

Comprehensive Automobile Liability Insurance: Liability limit of \$1,000,000 any one (1) accident.

Worker's Compensation Insurance: Statutory coverage, including Employer's Liability coverage.

Professional Liability Insurance: As appropriate with a minimum of \$1,000,000.

The OPERATOR shall provide the TOWN with certificates of insurance evidencing the coverages required above. Such certificates shall provide that the TOWN be given at least thirty (30) days prior written notice of any cancellation of, intention not to renew, or material change in such coverage. The OPERATOR shall provide certificates of insurance to the TOWN before occupying the Center and annually thereafter. The OPERATOR hereby acknowledges that the purchasing and maintaining of insurance as required herein does not relieve the OPERATOR of any of the responsibilities or obligations for which the OPERATOR may otherwise be liable. The OPERATOR'S failure to provide and continue in force such insurance as required above shall be deemed a material breach of this Contract.

12.00 EQUAL EMPLOYMENT OPPORTUNITY

In carrying out its professional services under this Contract, the OPERATOR shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin or sex. The OPERATOR shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, national origin or sex. Such action shall include, but not be limited to, the following: employing; upgrading; demoting; or transferring; recruiting or paying recruitment compensation; and selecting for training, including apprenticeships.

13.00 ATTORNEY'S FEES

If any legal action or other proceeding is brought for the enforcement of this Contract or because of any alleged dispute, breach, default, or misrepresentation in connection with any provisions of the Contract and either the TOWN or the OPERATOR is successful therein, the prevailing party shall be entitled to recover from the other party reasonable attorney's fees, court costs and all expenses even if not taxable or assessable as court costs (including, without limitation, all such fees, costs and expenses incident to appeal) incurred in that action or proceeding in addition to any other relief to which the prevailing party may be entitled.

14.00 PERMITS, LICENSES AND CERTIFICATES

The OPERATOR is to procure all permits, licenses, and certificates, or any such approvals as may be required by federal, state and local laws, ordinances, rules, and regulations, for the proper execution and completion of its obligations under this Contract.

15.00 CONTRACTING AUTHORITY

The persons executing this Contract on behalf of the TOWN and the OPERATOR hereby personally represent and warrant to all other parties that they have been duly authorized to execute and deliver this Contract.

16.00 GOVERNING LAW

This Contract is being executed and delivered and is intended to be performed in the State of Tennessee, and the laws (without regard to principles or conflicts of law) of such state, and of the United States of America shall govern the rights and duties of the parties hereto in the validity, construction, enforcement and interpretation hereof. Any litigation brought with respect to this Contract shall be brought in a court of competent jurisdiction in Shelby County, Tennessee and the OPERATOR hereby consents to the jurisdiction of such courts.

17.00 OPPORTUNITY FOR REVIEW

Each party has received and had the opportunity to review this Contract, and each party has had the opportunity, whether exercised or not, to have each respective party's attorneys review this Contract; and, accordingly, the normal rule of construction to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of this Contract.

18.00 SECTION HEADINGS

The section headings contained in this Contract are for convenience of reference purposes only and are not intended to qualify the meaning of any section and shall not affect the interpretation of this Contract.

19.00 NOTICES

All notices, demands, and requests required or permitted by this Contract shall be in writing and shall be sent by facsimile transmission, air or other courier, or hand delivery as follows:

- (i) To: Town of Collierville
Attn.: Derek Honeycutt, Purchasing Agent
500 Poplar View Parkway
Collierville, TN 38017
Facsimile: (901) 457-2258

(ii) To: CMC ENTERPRISES, LLC
932 Nestingwood Circle
Cordova, TN 38018
Facsimile: () _____

Any notice, demand, or request sent by facsimile transmission shall be deemed given for all purposes under this Contract when properly transmitted by telecommunication device. Any notice, demand, or request that is hand delivered or sent by air or other courier shall be deemed given for all purposes under this Contract when received.

Any party to this Contract may change such party's address and/or telecopier number for the purpose of notices, demands and requests required or permitted under this Contract by providing written notice of such change of address to all of the parties, which change of address shall only be effective when notice of the change is actually received by the party who thereafter sends any notice, demand or request.

20.00 SEVERABILITY

If any provision of this Contract is held to be unlawful, invalid or unenforceable under present or future laws effective during the terms hereof, such provision shall be fully severable and this Contract shall be construed and enforced as if such unlawful, invalid, or unenforceable provision were not contained herein by its severance herefrom. In addition, in lieu of such unlawful, invalid or unenforceable provision, there shall be added automatically as a part hereof a provision as similar in terms to such unlawful, invalid, or unenforceable provisions as may be possible and may be lawful, valid or enforceable. Furthermore, if any provision of this Contract is capable of two constructions, one of which would render the provision void and the other that would render the provision valid, then the provision shall have the meaning that renders it valid.

21.00 NO CONSENT TO BREACH

No consent or waiver, express or implied, by any party to this Contract to or of any breach or default by the other party to this Contract in the performance by such other party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default of the same or any other obligations hereunder. Failure on the part of any party to this Contract to complain of any act or failure to act of any other party to this Contract, or to declare such party in default, irrespective of how long such failure continues, shall not constitute a waiver by the non-defaulting party of its rights hereunder.

22.00 OTHER INSTRUMENTS

The parties shall execute and deliver all other appropriate supplemental agreements and other instruments and take any other action necessary to make this Contract fully and legally effective, binding and enforceable as between the parties and as against third parties.

23.00 PREMISES

The OPERATOR shall neither make nor suffer to be made any substantial alterations of the Center's premises or any part thereof nor shall the OPERATOR install any equipment other than the Equipment without the prior written consent of the TOWN; provided, however, that the TOWN hereby consents to OPERATOR constructing a mezzanine level within the Center. The OPERATOR is not required to construct a mezzanine level within the Center. If the OPERATOR chooses to construct a mezzanine level within the Center, the plans and associated costs for all such construction must first be approved by the TOWN. All such construction must be completed at the sole expense of the OPERATOR. If the OPERATOR chooses to construct a mezzanine level within the Center, the OPERATOR shall provide in any agreement with its general contractor performing such work that: (i) no materialmen's or mechanic's liens are permitted; (ii) the OPERATOR'S general contractor and any and all subcontractors must waive all rights to such liens; and (iii) the OPERATOR'S general contractor and any and all subcontractors must waive all rights against the TOWN. The OPERATOR agrees that its general contractor shall furnish to the OPERATOR and to the TOWN a performance bond and a payment bond, which performance and payment bonds shall include the TOWN as a party to which payment shall be made in the event of default under either or both such bonds. All additions to or alterations of the Center's premises, including said mezzanine but excluding the Equipment, shall become at once a part of the realty and belong to the TOWN. In the event that the TOWN terminates this Contract without cause or chooses not to elect any Renewal Term, the TOWN shall pay the OPERATOR an amount equal to the unamortized cost of construction of the mezzanine based upon a fifteen (15) year straight line amortization period commencing upon the date the mezzanine is completed (such amount referred to hereinafter as the "**Amortized Amount**"). Termination without cause by the TOWN or the TOWN choosing not to elect any Renewal Term shall be the only events resulting in an obligation on the part of the TOWN to pay the OPERATOR the Amortized Amount. If the OPERATOR terminates this Contract without cause, if the TOWN terminates this Contract with cause, or if both renewal options are exercised by the TOWN but this Contract expires at the end of fifteen years or the last Renewal Term, the TOWN shall have no obligation whatsoever to pay the Amortized Amount.

24.00 ENTIRE AGREEMENT

This Contract and all exhibits hereto constitute the entire agreement and understanding between the parties relating to the subject matter herein and shall not be modified, altered, changed or amended unless in writing and signed on behalf of the parties. Any modification and amendment of this Contract must be in writing and signed by all of the parties hereto. Any waiver of any covenant, representation, warranty, or other provision of this Contract must be in writing and signed by each party whose interest is adversely affected by such waiver. No waiver granted in any one instance shall be construed as a continuing waiver applicable in any other instance.

25.00 TRANSFER, ASSIGNMENT OR SUBLETTING

This Contract shall not be transferred, assigned, or sublet without prior written consent of the TOWN.

26.00 ARBITRATION

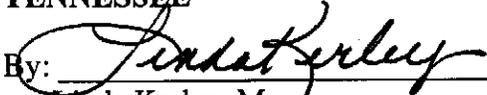
Any controversy or claim between or among the parties hereto, including but not limited to those arising out of or relating to this Contract shall be determined by binding arbitration in accordance with the Federal Arbitration Act (or if not applicable, the law of the State of Tennessee), the Commercial Arbitration Rules of the American Arbitration Association in effect as of the date hereof, and the provisions of this **Section 26.00**. In the event of any inconsistency, the provisions herein shall control. However, nothing herein shall prevent the TOWN from seeking injunctive relief in a court of competent jurisdiction for a breach or threatened breach of any portion of this Contract by OPERATOR. Judgment upon any arbitration award may be entered in any court having jurisdiction. Any party to the Contract may bring an action, including a summary or expedited proceeding, to compel arbitration of any controversy or claim to which this Contract applies in any court having jurisdiction over such action; provided, however, that all arbitration proceedings shall take place in Shelby County, Tennessee. The arbitration body shall set forth its findings of fact and conclusions of law with citations to the evidence presented and the applicable law, and shall render an award based thereon.

27.00 CONTRACT CONTROLLING

To the extent that any provision hereof is inconsistent with a provision contained in the Proposal, the provision contained herein shall govern.

WITNESS THE DUE EXECUTION HEREOF.

**TOWN OF COLLIERVILLE,
TENNESSEE**

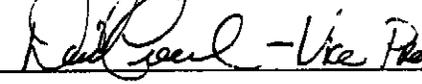
By: 
Linda Kerley, Mayor

ATTEST:
By: 
Town Clerk/Recorder

APPROVED AS TO FORM AND
CONTENT: 
Town Attorney



CMC ENTERPRISES, LLC

By:  - Vice Pres
Its: _____

OPERATOR'S Mailing Address:
932 Nestingwood Circle
Cordova, TN 38018

OPERATOR'S Telephone Number:
() _____

OPERATOR'S Facsimile Number:
() _____

**TECHNICAL PROPOSAL
IN RESPONSE TO RFSOQ # 2003-006**

SUBMITTED BY



D E S O T O
A T H L E T I C C L U B
www.desotoathleticclub.com

DECEMBER 18, 2003

Executive Summary

The DeSoto Athletic Club currently owns and manages two facilities in DeSoto County. Our Southaven location consists of 50,000 sq. ft, and opened in August of 1999. The facility includes cardiovascular equipment, four separate lines of strength training equipment, a vast array of free weight equipment, and indoor track, indoor and outdoor swimming pools, full service locker rooms, tanning beds, sauna and steam room, a basketball court, an aerobics studio, racquetball courts, sand volleyball courts, a lifestyle shop, a nursery, a playground, a kids klub room, and rehabilitation services provided by Baptist Hospital. Our Olive Branch location consists of 25,000 sq ft, and opened in November of 2001. The facility includes cardiovascular equipment, three separate lines of strength training equipment, free weight equipment, full service locker rooms, sauna, an aerobics studio, a spinning studio, a karate studio, a lifestyle shop, tanning beds, a nursery, and rehabilitation services provided by the Smith Clinic.

Both Southaven and Olive Branch facilities are staffed with a Club Director, a Membership Director, a Fitness Director, Lifestyle Counselors, Fitness Coaches, a Front Desk Team Leader and staff, a Nursery Team Leader and staff, and a Housekeeping Team Leader and staff. Both facilities also have Physical Therapists on site through our partnerships with The Smith Clinic and Baptist Hospital. In addition to the above staff, the Southaven facility is also home to our Customer Service Manager and Accounting Manager, who service both clubs. All of the staff above has been through the DAC customer service training program, and all staff is CPR and First Aid Certified.

Both DAC facilities provide lifestyle counseling, personal training, nutritional counseling, sports specific training, and specific training and classes for Senior citizens by our degreed and/or certified professionals. Both facilities also offer rehabilitation services onsite with degreed and certified physical therapists. DAC also offers seminars and classes to the public with topics ranging from obesity, diabetes, heart disease, to smoking cessation. We strive to improve the quality of life in the communities we serve, and were named best health and fitness center in DeSoto County in 1999, 2000, 2001, 2002, and 2003. We were also named Small Business of the Year in 2001 and Business of the Year in 2002.

Statement of Purpose

DeSoto Athletic Club (DAC) intends to provide health and wellness management services to the Town of Collierville for the newly renovated Community Center located at Powell Park.

Past Experience

DAC has been through the facility construction process twice in the last four years. We have also been through the process of hiring and training staff, marketing a new facility to the community, selecting club management software, outfitting a facility with fitness and computer equipment, operating a pre sale, and managing the day to day activities that go along with building and opening a new facility. We believe that these experiences enable us to provide an added value in our service to the Town of Collierville.

DAC currently owns and operates two multi-purpose athletic facilities in DeSoto County. We have established ourselves as the market leader in DeSoto County, being named health and fitness center of the year in each year that we have been open. During this time, we have managed to get over 20% of DeSoto County involved in one of our programs or facilities. This percentage doubles the national average in terms of health club involvement, and this has been achieved in Mississippi: a state listed as one of the least healthy in our nation. We are involved in a number of community programs outside the facilities, including our annual DAC to DAC 5k/15k for charity, a community partner's plan which helps promote healthy life choices, and our corporate wellness program.

Scope of Services

DAC intends to provide programs and services at the Collierville Community Center similar in size and scope to that provided at our two current facilities in DeSoto County. Those services include but are not limited to:

- **Lifestyle Counseling:** We understand that the first step in getting started in a fitness program is proper mindset, followed by proper planning. We help set people on the right path with these one on one counseling sessions.
- **Personal training:** one on one or group training with a certified or degreed professional. One we have helped identify fitness goals, we now develop a plan and begin work towards achieving them.
- **Nutritional Counseling:** We make sure that our customers don't underestimate the importance of a healthy diet. What we put into our bodies is just as important as what we do with them.
- **Sports Specific Training:** Many of our current employees are ex-athletes that played at the collegiate or professional level. These fitness coaches now enjoy helping younger athletes maximize their abilities and get to the next level.

- **Senior Citizen Programming:** DAC currently offers programs, services, and classes specific to this age group including potluck lunches, senior group fitness classes, and senior socials.
- **Rehabilitation/ Healthcare Services:** DAC has established a working relationship with Baptist-Collierville and Baptist Rehabilitation to meet this need. Physical therapy services will be provided on site, as well as seminars and clinics addressing such topics as diabetes, obesity, heart disease, and other diseases that can be managed by proper diet and exercise. A referral network will also be established between the health & wellness center and the hospital to identify customers who have a number of risk factors and help in the early detection or prevention of life threatening diseases.
- **Nursery Services:** We will provide nursery services to the Community Center members with children 10 years of age and younger.
- **Youth Programming:** We will provide an educational program for children ages 11-14 that will enable them to use certain fitness equipment outlined by a fitness coach after the child passes a competency test.
- **Front Desk Services:** We will staff and train the front desk. We will teach the staff how to answer the phones, check in members, handle program sign ups for the Town as well as the health center, and all other customer services issues that could arise in the lobby area.
- **Housekeeping Services:** We will clean and maintain the health and wellness center area at a level above and beyond the standards of the Town and our clientele.
- **Additional Services:** We will be glad to provide any additional services that the town feels we are qualified to handle not mentioned above. If there is a specific need that the Town feels is not being met through the services mentioned above, we would be glad to take on that responsibility as long as we felt it fell within the scope of our expertise.

Staffing

DAC intends to staff the Collierville Center in the same manner it would staff its own facility of similar size and scope. The positions below outline the job title and description of responsibility of each staff member. The positions are listed in ascending order in respect to chain of command.

- **Health & Wellness Center Director:** This person reports directly to the DAC Executive Team and will be ultimately responsible for all programs and services we provide. He/She will oversee the day-to-day operations of the facility and directly manage the Fitness Staff, the Assistant Director, all team leaders, and the Accounting/Customer Service Director.
- **Health & Wellness Center Assistant Director:** Directly responsible for creating new membership sales and getting these new members introduced to our fitness staff. Also responsible for the performance of our Lifestyle Counselors on a day to day basis and assisting the Center Director in all other aspects of the center.

- **Accounting/ Customer Service Director:** Responsible for all payables and receivables of the center, handling customer billing issues, and communicating this information to the Center Director and Executive Team.
- **Lifestyle Counselor (2):** Directly responsible for counseling potential new members on the benefits of exercise and nutrition. Responsible for creating new member sales on a daily basis and introducing the new members to our fitness staff.
- **Fitness Coach (3-10):** Responsible for designing and implementing fitness plans for our membership, helping members on the exercise floor, and screening new members for possible health concerns. Reports directly to the Center Director.
- **Front Desk Team Leader:** Responsible for the day-to-day operations, scheduling, training, and maintaining the front desk. Reports directly to the Center Director.
- **Nursery Team Leader:** Responsible for the day-to-day operations, staffing, training, and maintaining of the nursery. Reports directly to the Center Director.
- **Housekeeping Team Leader:** Responsible for the day-to-day operations, staffing, training, and maintaining the cleanliness of the center and it's equipment. Reports directly to the Center Director.

The Health and Wellness Center Director will report directly to the DAC Executive Team: Robert Creech, Jody McKibben, and David Creech. This Executive Team along with the Health and Wellness Center Director will meet annually with the Town of Collierville to get feedback on the job we're doing managing the center.

Equipment

We will equip the health and wellness center with the same vendors DAC currently utilizes. Lifefitness will provide the cardiovascular, machine weight, and free weight equipment. Free Motion will also provide a line of machine weight equipment, as well as Hammer Strength. Please refer to the attached layout for a more detailed look at the equipment of the facility. We will also install a state of the art cardio theater in the cardiovascular area to provide the highest quality entertainment experience for the members of the center.

Facility

DAC would finish out the mezzanine area to provide some additional space for the services provided. We would also request to upgrade some of the specified finishes in the wellness center area that could improve the durability and esthetic appeal of the facility. We would also like to research the possibility of adding a commercial washer and dryer to the facility to enable us to provide towel service to the members of the center. Aside from the above, DAC would like the opportunity to further study the details of the construction plans to see if there are any opportunities to improve operating efficiency on the front end without substantially increasing costs.

Contact Information

If there are any additional questions in regards to any information included in this proposal, please feel free to contact a representative from the list below. We look forward to working with the Town of Collierville on improving its citizen's quality of life through health and fitness.

DAC Executive Team (662) 349-0403

Robert Creech President

Jody McKibben Vice-President

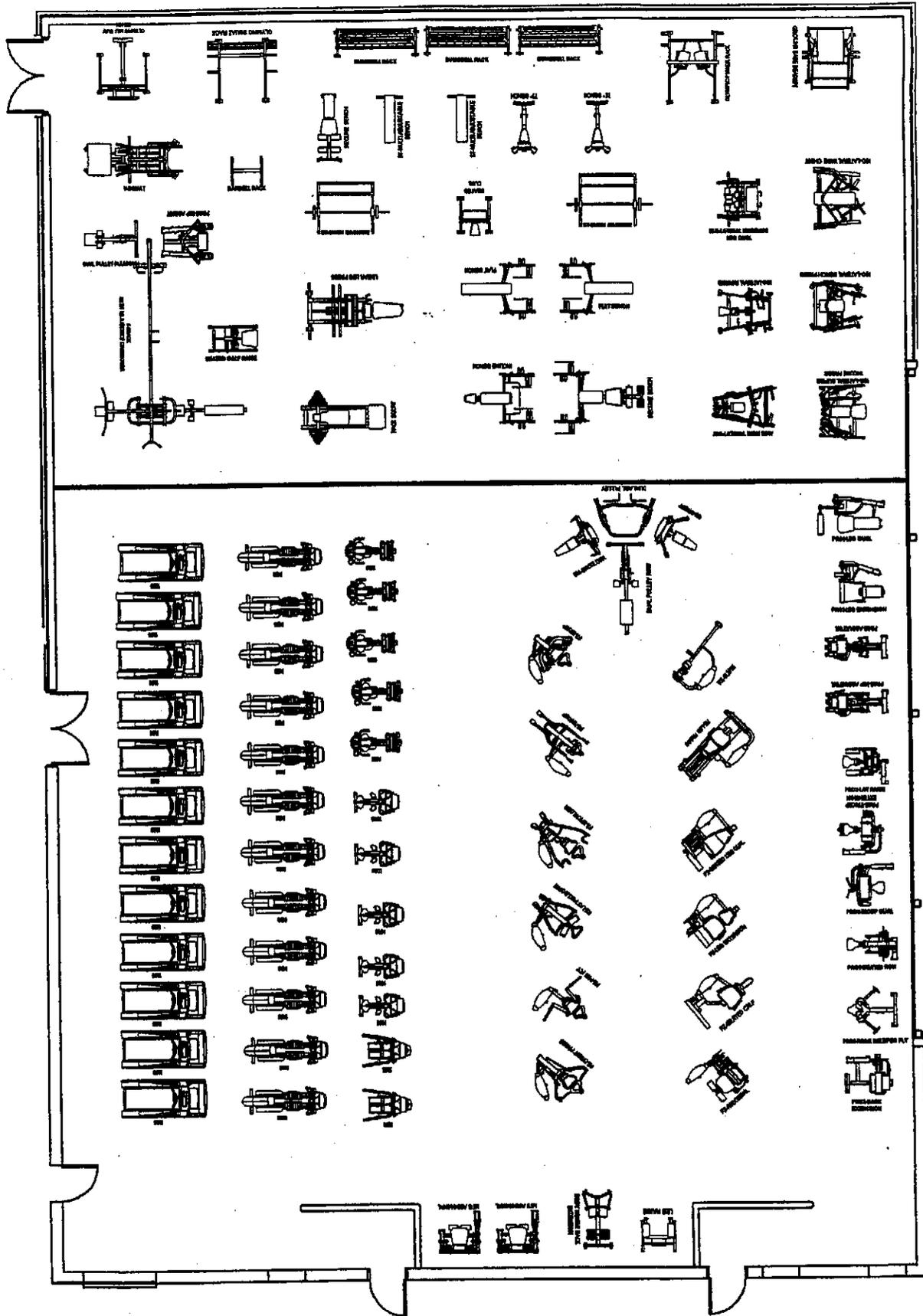
David Creech Vice-President

Baptist Hospital- Collierville (901) 861-9000

Jason Little CEO

Baptist Rehabilitation Services (901) 757-3439

Susan Stralka CEO



LifeFitness

Facility Layout For
Collierville Community Center

Sales Contact: Scott Lyons
 Date: December 16, 2003 Scale: 1/16"=1'-0"

Statement of Purpose

DeSoto Athletic Club intends to provide health and wellness services to the Town of Collierville at a price affordable to all of its citizens. This proposal outlines the cost of access to the facility and services provided within the facility as well as the cost DAC is willing to incur to improve the facility and services available. All fees below are subject to approval by the Town of Collierville.

Hours of Operation

Monday - Thursday	5am - 10pm
Friday	5am - 8pm
Saturday	8am - 8pm
Sunday	10am - 6pm

Facility Access

- **Commitment Fee:** All memberships have a one-time commitment fee of \$150. All new members will be offered a first time incentive of 50% off this fee if they join within 3 days of their initial visit to the facility.
- **Processing Fee:** All memberships have a one-time \$25 processing fee.
- **Individual Access:** All individual memberships will have a monthly cost of \$35 for Collierville residents or \$45 for non-residents.
- **Couple Access:** All married couple memberships will have a monthly cost of \$53 for Collierville residents or \$63 for non-residents.
- **Family Access:** Family memberships including married couples and all dependent children under 21 will have a cost of \$63 for Collierville residents or \$73 for non-residents.
- **Senior Access:** All senior citizens over the age of 55 will have a monthly cost of \$25 for Collierville residents and \$35 for non-residents.
- **Senior Couple Access:** All senior couples over the age of 55 will have a monthly cost of \$43 for Collierville residents and \$53 for non-residents.
- **Student Access:** All full-time students will have a monthly cost of \$25 for Collierville residents and \$35 for non-residents.
- All memberships are on a month-to-month basis and may be cancelled with a written 30-day notice.

Services

- **Lifestyle Counseling:** Included in Commitment Fee. No additional charge.
- **Fitness Coaching:** Packages based on standard rate of \$40/hour. Please see Menu of Services for complete price listing.

- **Weight Management:** Packages based on standard rate of \$40/hour. Please see Menu of Services for complete price listing.
- **Sports Specific Training:** Packages based on standard rate of \$40/hour. Please see Menu of Services for complete price listing.
- **Rehabilitation/ Healthcare Services:** Most services are covered through insurance providers. Please contact Baptist Rehabilitation Services for further details about pricing.
- **Nursery Services:** \$3 per visit for the first child. \$1 per visit for each additional child. Monthly packages available. \$25 per month for one child. \$30 per month for more than one child.
- **Youth Programming:** Included in Commitment fee. No additional charge.
- **Group Fitness Classes:** Included in Commitment fee. No additional charge.

DAC Menu of Services

Fitness Consultation \$20

To create a successful fitness plan, you have to know your exact starting point. This consult will reveal important information regarding your body composition, resting heart rate, blood pressure, level of motivation, and general health history. A Fitness Coach will recommend a fitness program right for you.

MetaCheck \$28

Take advantage of cutting edge technology with this service. MetaCheck allows your fitness coach to pinpoint your body's metabolic rate, identifying exactly how many calories you'll need to take in to gain, maintain, or lose weight.

Fitness Coaching

Fitness Coaching improves upon Personal Training as you know it. Your fitness coach will teach you how to position and use your body, and how to position your mind for your journey to success. Your Fitness Coach will motivate you and offer the guidance needed to make exercise an enjoyable and rewarding experience. Fitness coaching is available in three levels with five packages to choose from. Cost is per client. Please ask a fitness coach to recommend a package that is right for you today.

The Crash Course
 The Introduction
 The Lifestyle Change
 The Transformation
 The Total Evolution

Individual-\$40 Buddy (2 People) -\$30 Group (3 or more) - \$25

Discounts available for higher commitment levels.

Weight Management

Our Weight Management program will teach you how to eat better with a detailed daily meal plan for the life of your program and how to exercise with a DAC-trained Fitness Coach. Your Coach will be available to encourage and educate you until your program becomes a habit.

The Lifestyle Change

The Transformation

The Evolution

6 weeks-\$599

12 weeks-\$899

18 weeks-\$1,149

Meal Plan Only \$149

The meal plan option provides specific nutritional guidance for those seeking assistance with their diet. These healthy recipes provide balanced meals for breakfast, lunch, and dinner, keeping you on track towards your total health and fitness goals.

Fitness Coaching Package Details

The Crash Course \$60

A **fitness consultation** followed by **one session** with a fitness coach. Use this 1:30 wisely and you'll start off on the right foot. Leave the consult with a solid understanding of what you need to do to achieve your goals and how to do it.

The Introduction \$240

A **fitness consultation** followed by **six sessions** with a fitness coach. This program provides ample time to learn some tricks of the trade as well as develop a deeper understanding of the mindset needed to actually achieve success. Will keep you busy until you hit your next plateau of development.

The Lifestyle Change \$480

A **fitness consultation** followed by **twelve sessions** with a fitness coach. With enough time to begin forming good habits and eliminate bad ones, you will actually be able to see some definitive results. A post workout program design is also provided to keep you moving in the right direction.

The Transformation \$960

A **fitness consultation** incorporating a **metacheck**, **twenty four sessions** with a fitness coach, a **second fitness consult** midway to track progress and make program adjustments, and a **post workout program design**. This package establishes a solid foundation from which to build a healthy and productive life. Friends and Family will notice your physical changes, as well as increased energy levels and improved overall outlook on life.

The Total Evolution \$1440

Three fitness consultations spread over thirty-six sessions with a fitness coach. This package also includes a **metacheck** and **post workout program design**. Visualize who you want to become. Think about how you look and feel. Now imagine what life would be like if you were able to become that person. After these thirty-six sessions, you will have built a body that creates muscle and melts away fat.

Weight Management Package Details

The Lifestyle Change \$599

A six-week meal plan derived from foods selected by the client. The meal plan is supplemented with three 30-minute weight-training sessions with a DAC fitness coach each week. Your newly found discipline begins to carry over into other aspects of your life, and people take notice.

The Transformation \$899

This plan builds on the progress made from the initial six weeks. Your meal plan is reevaluated and tweaked to keep pace with your increased metabolism, and your workout is upgraded to overcome your body's muscular adaptations. Workouts are twice a week for the second six weeks, making more efficient use of time. After these twelve weeks, you will feel younger and alive.

The Evolution \$1149

An extension of the first twelve weeks, with another adjustment to your meal plan and workout. The last six weeks entail one workout per week with a DAC fitness coach. After eighteen weeks, you have developed the consistency and healthy habits mandatory for fitness success. You will have changed your body. You will have changed your mindset. You will have changed your life.

DAC Costs

The following is an outline of some of the costs DAC will incur in getting the facility ready to open to the public.

- **Equipment costs:** DAC plans on spending \$261, 458.75 on fitness equipment to outfit the health and wellness center. (Please refer to the attached quote for a detailed explanation)
- **Cardio Theater System:** DAC plans on spending \$40,000 on a top of the line cardio theater and sound system to provide our clients with the most state of the art entertainment while exercising.
- **Computer/ Phone system costs:** DAC plans on spending \$40,000 on computer hardware/software and on the phone system.
- **Additional facility build-out:** DAC estimates that it will spend \$75,000-\$100,000 on finishing the mezzanine area, which will give us the additional space needed to include a nursery, an aerobics studio, and rehabilitation services.

- **Marketing/Advertising:** DAC has budgeted \$72,000 annually on creating awareness about the facility and educating the community on the benefits of exercise and proper nutrition.
- **Payments to the Town of Collierville:** DAC plans on paying 5% of its gross revenues to the town of Collierville on a monthly basis in return for the opportunity to manage the health and wellness center.

EXHIBIT "A"

REQUEST FOR STATEMENT OF QUALIFICATIONS

TOWN OF COLLIERVILLE

**PURCHASING DEPARTMENT
500 POPLARVIEW PARKWAY
COLLIERVILLE, TENNESSEE 38017**

Linda Kerley, Mayor
James H. Lewellen, Town Administrator
Jane Bevill, Finance Director
Derek Honeycutt, Purchasing Agent



REQUEST FOR STATEMENT OF QUALIFICATIONS

RFSOQ DESCRIPTION: HEALTH AND WELLNESS CENTER OPERATIONS

RFSOQ NUMBER: 2003-006

DUE DATE: No Later Than

2:00 P.M.
(Time)

WEDNESDAY
(Day)

DECEMBER 10, 2003
(Date)

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TOWN OF COLLIERVILLE PURCHASING DIVISION

NOTICE OF PROPOSAL LETTING

Request for Statement of Qualifications Contract Number: RFSOQ 2003-006

Proposal Title: Health & Wellness Center Operations

Proposal Due Time & Date: 2:00 P.M. Wednesday December 10, 2003

Pre-Proposal Conference 10:00 AM, December 5, 2003

Conference Location: 500 Poplar View Parkway, Board Chambers, Collierville, TN
38017

Letter Of Intent To Propose Deadline: December 5, 2003

Deadline for Written Questions: December 5, 2003

PLEASE MARK THE RETURN ENVELOPE:

1. Proposal Due Date and Time
2. Title of Proposal
3. RFSOQ Number

RETURN PROPOSALS TO:

Town of Collierville
ATTN: Purchasing Agent
500 Poplar View Parkway
Collierville, TN 38017

PROPOSALS SUBMITTED LATE, BY FAX OR E-MAIL WILL NOT BE ACCEPTED

REQUEST FOR STATEMENT OF QUALIFICATIONS

HEALTH AND WELLNESS CENTER OPERATOR FOR THE TOWN OF COLLIERVILLE, TENNESSEE

SECTION I: INTRODUCTION

1.1 Statement of Purpose

The intent of the Request for Statement of Qualifications (RFSOQ) is to obtain proposals from and the services of qualified Health and Wellness Center Operations companies.

The Town of Collierville, Tennessee, located approximately twenty miles east of Memphis, Tennessee hereinafter referred to as the Town, intends to secure a contract for a Health and Wellness Center Operator for our Community Center.

1.2 Scope of Services

All proposals must be made on the basis of either meeting or exceeding the requirements contained herein. All Proposers must be able to provide professional health and wellness center operations at the Collierville Community Center located at 440 West Powell Road, Collierville, Tennessee. Programs are to focus on overall health and wellness of citizens of various ages including exercise equipment for physical cardio-vascular/fitness, and on-site classes with trained and certified instructors including, a variety of health and wellness related areas.

1.3 Project Description

Facilities:

Approximately 7,400 sq. ft. (old gym) of area of operation to be operated as a health and fitness center. This area will also have to include child care; size to be determined by private operator with approval by the Town of Collierville. This would include any and all code compliance requirements.

Use of Other Facilities:

The vendor will provide programs and medical staffing for on-site health and wellness rehabilitation services including: Physical Therapy, Cardiac Rehabilitation, Lifestyle Counseling, Sport Specific Training, Nutritional Counseling/Disease Management, and Orthopedic Counseling.

Vendor will provide on-site classes/programs excluding the health and wellness operation that are cardio-vascular/fitness related and agreed to between vendor and the Town of Collierville. The Town of Collierville will work with vendor to provide additional space for classes and/or programs, which could include gymnasium and the use of additional indoor meeting room space. The Town will not offer any competing classes or programs.

Equipment:

Vendor agrees to purchase, install, and maintain top quality exercise equipment to provide the services required for operation of a health and wellness facility. Vendor shall provide any additional equipment necessary to provide quality services and programs. Vendor shall be responsible for repair or replacement of equipment. Vendor and Town Oversight Committee shall conduct a yearly review of all equipment and discuss changes to improve service and programs. The vendor agrees to cooperate fully with such annual review.

Hours of Operation:

Vendor agrees to operate the health and wellness services so as to satisfy the demands for member usage. Schedule of operation shall be agreed to by Vendor and Town, and may be, for example, 5:30 AM – 10:00 PM Monday through Saturday and from 1:00 PM to 6:00 PM on Sunday, exclusive of holidays and other mutually agreed dates. Holidays are to be discussed between Vendor and Town of Collierville.

Staffing:

Vendor will provide a trained and certified staff sufficient to provide services and programs during all hours of operation. Vendor shall be responsible for hiring and management of operational staff. Vendor's staff will work with the Town of Collierville employees in operation of the kiosk and/or other services required by the patrons of the facility.

Alternate 1- Vendor staff will be responsible for total operation of the kiosk during operating hours. This would include programs and registrations for the Town of Collierville when town staff is not available.

Fees, Rules and Regulations:

Vendor will be responsible for (i) setting fees, charges and prices applicable to facility patrons, (ii) organizing, promoting and conducting physical fitness and training activities, (iii) determining merchandise sold at the facility and (iv) establishing the rules and regulations applicable to facility programs. The Town of Collierville will work with the vendor in regard to fees, charges and prices. The Town of Collierville agrees to include recognition of vendor in all promotions pertaining to the programs at the facility. Only the vendor and the Town of Collierville shall be allowed to distribute exercise, fitness and health literature and material directly pertaining to the program at the facility.

The vendor will pay the Town of Collierville a sum each month reflecting a percentage of total gross revenue from facility operations as agreed upon by the vendor and the Town of Collierville. The Town will require an annual audit of the vendor's business operations by a certified public accountant approved by the Town of Collierville at the vendor's expense.

Maintenance and Repair:

Maintenance and repairs of the facility, exclusive of the décor, fixtures and machines installed by vendor shall be the responsibility of the Town of Collierville. The Vendor will provide janitorial services for the wellness area and adjacent restrooms and locker rooms. The Town of Collierville will provide janitorial services for all other areas of the facility. The Town of Collierville will provide all utility services for the facility.

Office space:

The Town of Collierville will provide an office for the vendor's operational staff. Vendor will be responsible for all furniture, office equipment and phone service therein. Vendor will acquire its own phone listing and be responsible for all phone service and all phone bills.

Insurance:

Vendor will carry adequate public liability and indemnity insurance protecting both the vendor and the Town of Collierville and naming both as an insured party against loss or damage arising by reason of injury or damages to persons or property. The vendor shall also maintain property insurance to cover the fitness equipment covering fire and other casualty, sufficient to cover replacement cost and shall name the Town of Collierville as an additional insured. The vendor will be responsible for the deductible for the property insurance. The vendor will furnish the Town of Collierville with certificates of insurance evidencing the above requirements.

If a contract is awarded, the facility operator will be required to purchase and maintain during the life of the contract, Comprehensive General Liability insurance, Comprehensive Automobile

Liability insurance, and Worker's Compensation insurance with limits of not less than those set forth below:

Comprehensive General Liability Insurance: Liability limits of \$1,000,000 each occurrence and \$1,000,000 aggregate.

Fire and Legal Liability Insurance: Liability limit of \$1,000,000

Comprehensive Automobile Liability Insurance: Liability limit of \$1,000,000 any 1 accident.

Worker's Compensation Insurance: Statutory coverage, including Employer's Liability coverage.

Professional Liability Insurance: As appropriate with a minimum of \$1,000,000.

The facility operator shall provide the Town with Certificates of Insurance evidencing the coverages required above. Such certificates shall provide that the Town be given at least 30 days prior written notice of any cancellation of, intention to not renew, or material change in such coverage. Facility operator must provide Certificates of Insurance before commencing work in connection with the contract and annually thereafter.

The providing of any insurance required herein does not relieve the facility operator of any of the responsibilities or obligations assumed by the facility operator in the contract awarded or for which the facility operator may be liable by law or otherwise.

Failure to provide and continue in force such insurance as required above shall be deemed a material breach of the contract and shall operate as an immediate termination thereof. If a contract is awarded, the facility operator will be required to purchase and maintain during the life.

HIPAA Privacy Rules:

The vendor will be solely responsible for all compliance requirements relating to HIPAA and privacy rules relating to client health information.

Exclusive Contract:

The vendor will provide the foregoing services to the Town of Collierville on an exclusive basis.

1.4 Contractor Minimum Qualifications

Any Proposer wishing to submit a proposal and be considered for this solicitation shall have had proven experience in successfully operating a health and wellness center. Vendor should include all previous experiences including name of program(s), location and nature of the program(s) operated.

1.5 Proposal Deadline

Proposals shall be submitted no later than the Proposal Deadline time and date detailed in the within the Notice of Proposal Letting. Proposers shall respond to the written RFSOQ and any exhibits, attachments, or amendments. A Proposer's failure to submit a proposal as required before the deadline shall cause the proposal to be disqualified.

Proposers assume the risk of the method of dispatch chosen. The Town assumes no responsibility for delays caused by any delivery service. Postmarking by the due date shall not substitute for actual proposal receipt by the Town. Late proposals shall not be accepted nor shall additional time be granted to any potential Proposer. **Proposals may not be delivered orally, by facsimile transmission, or by other telecommunication or electronic means.**

1.6 Letter of Intent to Propose

A letter indicating a vendor's intent to respond to this RFSOQ with a proposal should be sent to the RFSOQ Coordinator no later than the *Letter of Intent to Propose* deadline date detailed in the Notice of Proposal Letting.

Letters of Intent to Propose may be delivered by facsimile transmission. Vendors may withdraw their *Letter of Intent to Propose* at any time before the deadline for submitting a proposal.

The following information should be included in the *Letter of Intent to Propose*.

Vendor Name
Name and Title of Vendor Main Contact
Address, Telephone Number, and Facsimile Number of Vendor Main Contact
Signed Statement of Intent to Propose

Submittal of a *Letter of Intent to Propose*, by the specified deadline is necessary to ensure a vendor's receipt of RFSOO amendments and other communications regarding the RFSOO.

END OF SECTION

SECTION II: GENERAL REQUIREMENTS AND INFORMATION

2.1 RFSOQ Coordinator

The main point of contact for this RFSOQ shall be:

Marie Michielsen, Buyer
Purchasing Division
500 Poplar View Parkway
Collierville, TN 38017

Telephone: 901/457-2254
Fax: 901/457-2258

The main point of contact shall hereinafter be referred to as the RFSOQ Coordinator.

2.2 RFSOQ Number

The Town has assigned the following RFSOQ identification number – it should be referenced in all communications regarding the RFSOQ:

RFSOQ 2003-006

2.3 Communication Regarding the RFSOQ

2.3.1 Upon release of this RFSOQ, all vendor communications concerning this procurement shall be in writing and must be directed to the RFSOQ Coordinator. Any oral communications shall be considered unofficial and nonbinding on the Town..

2.4 Proposal Submittal

2.4.1 Proposers shall respond to this RFSOQ with a Technical Proposal and a Cost Proposal. No pricing information shall be included in the Technical Proposal. Inclusion of Cost Proposal amounts in the Technical Proposal shall make the proposal nonresponsive.

One (1) original and six (6) copies of the Technical Proposal shall be submitted to the Town in a sealed package and be clearly marked:

“Technical Proposal in Response to RFSOQ # 2003-006 -- Do Not Open”

One (1) original and six (6) copies Cost Proposal shall be submitted to the Town as a separate, sealed package and clearly marked:

“Cost Proposal in Response to RFSOQ # 2003-006 -- Do Not Open”

If the separately sealed proposals, marked as required above, are enclosed in another container for mailing purposes, the outermost container must fully describe the contents of the package and must be clearly marked:

“Contains Separately Sealed Technical and Cost Proposals”

2.4.2 All proposals must be submitted in a sealed envelope, addressed as follows:

Town of Collierville, Tennessee
Purchasing Agent RFSOQ 2003-006
500 Poplar View Parkway
Collierville, TN 38017

by the date and time identified as the Deadline for Submitting a Proposal in the RFSOQ Schedule of Events.

2.4.3 Proposers shall submit only one proposal.

2.5 Proposal Preparation Costs

The Town of Collierville will not be liable in any way for any costs incurred by respondents in replying to any part of this RFSOQ.

2.6 Proposal Withdrawal

To withdraw a proposal, the vendor must submit a written request, signed by an authorized representative, to the RFSOQ Coordinator. After withdrawing a previously submitted proposal, the vendor may submit another proposal at any time up to the deadline for submitting proposals.

2.7 Proposal Amendment

The Town shall not accept any amendments, revisions, or alterations to proposals after the deadline for proposal submittal unless the Town formally requests such, in writing.

2.8 Prohibition of Proposer Terms and Conditions

A Proposer may not submit the Proposers own contract terms and conditions in a response to this RFSOQ. If a proposal contains such terms and conditions, the Town, at its sole discretion, may determine the proposal to be a nonresponsive counteroffer, and the proposal may be rejected.

2.9 Conflict of Interest and Proposal Restrictions

2.9.1 By submitting a proposal, the Proposer certifies that no amount shall be paid directly or indirectly to an employee or official of the Town of Collierville, Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Proposer in connection with the procurement under this RFSOQ.

2.9.2 Any individual, company, or other entity involved in assisting the Town in the development, formulation, or drafting of this RFSOQ or its scope of services which shall be considered to have been given information that would afford an unfair advantage over other Proposers, and said individual, company, or other entity may not submit a proposal in response to this RFSOQ.

2.10 RFSOQ Amendment and Cancellation

The Town reserves the unilateral right to amend this RFSOQ in writing at any time. The Town also reserves the right to cancel or reissue the RFSOQ at its sole discretion. If an amendment is issued it shall be provided to all vendors submitting a *Letter of Intent to Propose*. Proposers shall respond to the final written RFSOQ and any exhibits, attachments, and amendments.

2.11 Right of Rejection

2.11.1 The Town reserves the right, at its sole discretion, to reject any and all proposals or to cancel this RFSOQ in its entirety.

2.11.2 Any proposal received which does not meet the requirements of this RFSOQ may be considered to be nonresponsive, and the proposal may be rejected. Proposers must comply with all of the terms of this RFSOQ and all applicable Town laws and regulations. The Town may reject any proposal that does not comply with all of the terms, conditions, and performance requirements of this RFSOQ.

2.12 Ownership of Proposals

All documents submitted in response to this Request For Statement of Qualifications shall become the property of the Town.

2.13 RFSOQ and Proposal Incorporated into Final Contract

This RFSOQ and the successful proposal shall be incorporated into the final contract.

END OF SECTION

SECTION III: QUALIFICATIONS AND SELECTION PROCEDURES

3.1 Selection Process

3.1.1 The selection process will consist of three major steps.

3.1.1.1 Submittal and evaluation of the Proposer's qualifications, Technical and Cost proposals as covered herein.

3.1.1.2 Optional, interview with each Proposer.

3.1.1.3 Recommendation for approval of contract is made to the Board of Mayor and Aldermen.

3.2 Evaluation Process

3.2.1 The Town's Evaluation Team will read, review, and evaluate each proposal. The Proposers submitting proposals shall include with their proposal statements on the following:

3.2.1.1. Proven management skills and technical competence including medical staff for on-site health and wellness rehabilitation services including: physical therapy, cardiac rehabilitation, lifestyle counseling, sport specific training, nutritional counseling/disease management and orthopedic counseling.

3.2.1.2. Credentials of the awarded Vendor shall include previous proven ability to manage a health and wellness center as outlined above.

3.2.1.3. Compliance with contractual terms

3.2.1.4 Overall quality and completeness of proposal.

3.3 Submission Requirements

3.3.1 The proposal shall contain pertinent information concerning staffing,

3.3.1.1. Be precise about the supervision "chain of command" at the Center

3.3.1.2 Identify past experience in the operations of health and wellness centers

3.3.1.3 Identify clearly the employee positions that will be involved with the Center, as well as their roles/responsibilities.

3.3.2 Proposer shall submit an executive summary giving a brief description of the qualities of programs they are associated with that would qualify them to be selected.

END OF SECTION

EXHIBIT "C"

OPERATIONAL STANDARDS

- **Customer Service** – OPERATOR must handle ALL customer service issues in a timely manner and respond to all comment cards and customer hot line messages. OPERATOR must respond to such issues and messages within 24 hours of receipt of same.
- **Cleanliness** – OPERATOR must maintain the cleanliness of the Equipment (as defined in the Contract) and all areas of the Allocated Space (as defined in the Contract).
- **Equipment Maintenance** – OPERATOR must maintain all Equipment (as defined in the Contract) and ensure that if a unit goes down, it will be fixed in a timely manner, not to exceed 30 days.
- **Maintenance Issues** – OPERATOR must communicate all maintenance issues to the proper TOWN representative. OPERATOR will ensure that such communication occurs in a timely manner and will work with the TOWN to communicate with Center customers.
- **Policies/procedures** – OPERATOR will ensure that proper staff uniforms are worn, that its staff maintains a neat appearance, and that proper paperwork is completed and on file, including all certifications for fitness and for the childcare facility.

FIRST AMENDMENT TO CONTRACT

This FIRST AMENDMENT TO CONTRACT (herein "**Amendment**") is made and entered into as of the 24th day of January, 2005 and has reference to that certain HEALTH AND WELLNESS CENTER OPERATIONS CONTRACT dated March 8, 2004 (herein the "**Contract**") between the TOWN OF COLLIERVILLE, TENNESSEE, a Tennessee municipal corporation (herein the "**TOWN**") and CMC ENTERPRISES, LLC, a Tennessee limited liability company (herein the "**OPERATOR**").

WHEREAS, the parties entered into the Contract to specify the terms and conditions under which the OPERATOR is to operate the Center; and

WHEREAS, the Initial Term of the Contract is for five (5) years from and after the date the Programs go into effect; and

WHEREAS, following the Initial Term, the Contract provides for two (2) Renewal Terms for two (2) successive five (5) year periods; and

WHEREAS, the parties now desire to amend the Contract to provide that the Initial Term is for a period of ten (10) years; and

WHEREAS, the parties now desire to amend the Contract to provide for the TOWN'S option to extend the Contract for a single Renewal Term of ten (10) years following the Initial Term; and

WHEREAS, the parties further desire to provide that the Percentage Fee shall increase during the Initial Term.

NOW, THEREFORE, for good and valuable consideration, received or to be received, the sufficiency of which the parties acknowledge, the parties agree as follows:

1. All capitalized terms used herein that are not defined in this Amendment shall have the meaning ascribed to them in the Contract.
2. Paragraph 1.04 of the Contract is deleted in its entirety and replaced with the following:

1.04. Compensation and Fees. The OPERATOR shall collect fees from Center patrons in accordance with the terms of the Proposal. In accordance with the terms of the Proposal, the OPERATOR shall pay the TOWN a percentage of the total gross revenue, exclusive of sales tax, collected each month by the OPERATOR at the Center (the "**Percentage Fee**") and the OPERATOR shall retain the balance of monthly gross revenue collected at the Center. During the first five (5) years of the Initial Term (as defined in **Paragraph 8.01** hereinbelow), the Percentage Fee shall equal five percent (5%). Thereafter, in the event that the parties are unable to agree on a Percentage Fee for the balance of the Initial Term or for any Renewal Term (as defined in **Paragraph 8.01** hereinbelow), the Percentage Fee shall equal eight percent (8%). In the event that the

TOWN elects a Renewal Term, the parties shall execute an amendment to this Contract, which amendment shall include a statement of the Percentage Fee to be paid during the Renewal Term. The TOWN may require at the TOWN'S option that the OPERATOR produce at the OPERATOR'S expense an audit conducted by an independent auditor appointed by the TOWN; provided, however, that the TOWN shall not request such audit more than once each calendar year during the Term (as defined in **Paragraph 8.01** hereinbelow).

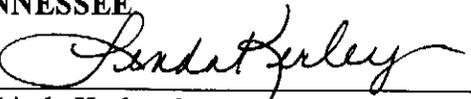
3. Paragraph 8.01 of the Contract is deleted in its entirety and replaced with the following:

8.01. Term. This Contract shall become effective when duly executed on behalf of both parties and the OPERATOR secures adequate financing. Subject to termination as provided hereinafter, this Contract shall remain in effect for ten (10) years from and after the date the Programs go into operation (the "Initial Term"). The TOWN may extend the Initial Term on the same terms contained herein for one (1) additional ten (10) year period or portion thereof (a "Renewal Term") by written notice to the OPERATOR given at least one hundred eighty (180) days before the expiration of the term then in existence.

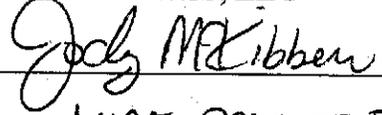
4. All other terms and provisions of the Contract not amended hereby shall remain in full force and effect in the event of any inconsistency between the terms of this Amendment and the Contract, the terms of this Amendment shall govern and control.

WITNESS THE DUE EXECUTION HEREOF.

TOWN OF COLLIERVILLE,
TENNESSEE

By: 
Linda Kerley, Mayor

CMC ENTERPRISES, LLC

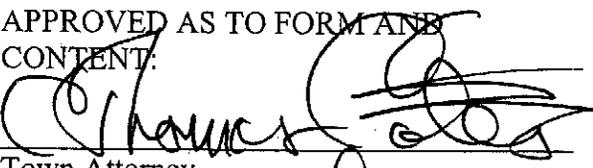
By: 
Its: VICE PRESIDENT

ATTEST:

By: 
Town Clerk/Recorder

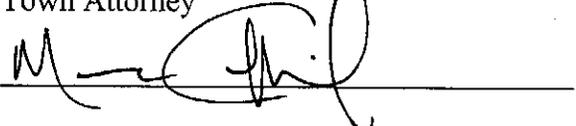
CONSULTANT'S Mailing Address:
~~932 Nestingwood Circle~~ 440 W. POWELL RD
Cordova, TN 38018 COLLIERVILLE, TN 38017

APPROVED AS TO FORM AND
CONTENT:


Town Attorney

CONSULTANT'S Telephone Number:
(901) 861-2110

CONSULTANT'S Facsimile Number:
(901) 861-8002





Town of Collierville
Attn: Greg Clark
Parks and Recreation Director
Collierville, Tennessee 38017

Re: Consent to Sublease; No Relationship Between Town of Collierville and Baptist;
and Privacy of Baptist

Dear Greg:

As we have discussed, we desire to enter into a sublease agreement with Baptist Memorial Hospital-Collierville ("Baptist") for their use of approximately 793 square feet within the Allocated Space (capitalized terms not otherwise defined in this letter shall have the meaning ascribed to them in that certain Health and Wellness Center Operations Contract dated March 8th, 2004, by and between the Town of Collierville and CMC, LLC). Baptist proposes to use the subleased premises for a rehabilitation and physical therapy facility for the treatment of patients and the provision of occupational health and rehabilitation services. In addition to the approximately 793 square feet that Baptist will sublease from us, Baptist shall also have access to other parts of our Allocated Space to use the fitness area, the equipment and the locker rooms.

As you have requested and in consideration for the Town of Collierville's consent and agreement set forth below, Baptist, by its execution of this Letter Agreement below, hereby acknowledges and agrees that the Town of Collierville will not be involved in the rendering of services by Baptist and the relationship between the Town of Collierville, CMC, LLC, and Baptist is only one of landlord, tenant, and subtenant, respectively.

In turn, Baptist has asked that given that the Town shall have the right to enter upon and inspect the subleased premises at any reasonable time, that the Town and any of their agents or representatives respect and maintain Baptist's patient's/client's privacy and confidentiality.

Therefore, in anticipation of Baptist entering into the sublease with us and in consideration for the offerings that Baptist will bring to the Center, we ask that the Town, by its execution below, (i) consent to our proposed sublease with Baptist and (ii) agree that the Town and any of its agents or representatives shall at all times respect and maintain Baptist's patient's/client's privacy and confidentiality.

Sincerely,

CMC, LLC

By: Jody McKibben
Jody McKibben, Vice President

TOWN OF COLLIERVILLE, TENNESSEE

By: Linda Kuley
Its: Mayor

Date: February 28, 2005

BAPTIST MEMORIAL HOSPITAL-COLLIERVILLE

By: [Signature]
Its: ADMINISTRATOR & CEO

Date: February 9, 2005