Approved _____ Mayor

Veto _____

Override _____

Agenda Item No. 8(F)(1)(C)

01-25-07

OFFICIAL FILE COPY
CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

RESOLUTION NO. R-36-07

RESOLUTION WAIVING FORMAL BID PROCEDURES PURSUANT TO SECTION 4.03(D) OF THE HOME RULE CHARTER AND NON-COMPETITIVE BID WAIVER PROVISIONS OF SECTION 2-8.1(B) OF THE CODE OF MIAMI-DADE COUNTY BY A TWO-THIRDS (2/3) VOTE OF THE BOARD MEMBERS PRESENT, AND RATIFYING THE COUNTY MANAGER'S EXECUTION OF A MANAGEMENT AGREEMENT BETWEEN THE COUNTY AND DAC MANAGEMENT GROUP, LLC, FOR $150,000 ANNUALLY, TO OPERATE THE MIAMI-DADE COUNTY EMPLOYEE FITNESS CENTER AT THE STEPHEN P. CLARK CENTER; AND AUTHORIZING THE COUNTY MANAGER TO EXERCISE ANY AND ALL OTHER RIGHTS CONFERRED THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference ,

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby waives formal bid procedures pursuant to Section 4.03(D) of the Home Rule Charter and noncompetitive bid waiver provisions of Section 2-8.1(b) of the Code of Miami-Dade County by a two-thirds (2/3) vote of the Board members present, and ratifies the County Manager's execution of a Management Agreement between the County and DAC Management Group, LLC, for $150,000 annually, in substantially the form attached hereto and made a part hereof; authorizes the County Manager to execute same for and on behalf of Miami-Dade County; and authorizes the County Manager to exercise any and all other rights conferred therein.

The foregoing resolution was offered by Commissioner Jose "Pepe" Diaz , who moved its adoption. The motion was seconded by Commissioner Rebeca Sosa and upon being put to a vote was as follows:

Bruno A. Barreiro, Chairman	absent		
Barbara J. Jordan, Vice-Chairwoman	aye		
Jose "Pepe" Diaz	aye	Audrey M. Edmonson	aye
Carlos A. Gimenez	aye	Sally A. Heyman	aye
Joe A. Martinez	aye	Dennis C. Moss	aye
Dorrin D. Rolle	absent	Natacha Seijas	absent
Katy Sorenson	aye	Rebeca Sosa	aye
Sen. Javier D. Souto	aye		

The Chairperson thereupon declared the resolution duly passed and adopted this 25th day of January, 2007. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

COUNTY COMMISSIONERS DADE COUNTY FLORIDA

KAY SULLIVAN
Deputy Clerk

Approved by County Attorney as to form and legal sufficiency.
Hugo Benitez

Memorandum

MIAMI-DADE COUNTY

Date: January 25, 2007

Agenda Item No. 8(F)(1)(C)

To: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Resolution Waiving Formal Bid Procedures and Authorizing Execution of a Management Agreement with DAC Management Group, LLC at Stephen P. Clark Center, 111 NW 1 Street, Miami

---

It is recommended that the Board retroactively waive formal bid procedures pursuant to Section 4.03(D) of the Home Rule Charter and noncompetitive bid waiver provisions of Section 2-8.1(b) of the Code of Miami-Dade County by a two-thirds (2/3) vote of the Board members present, and ratify the County Manager's execution of a Management Agreement between the County and DAC Management Group, LLC (DAC) to operate the Miami-Dade County Employee Fitness Center at the Stephen P. Clark Center, and further authorize the County Manager to exercise all provisions contained therein.

FACILITY:	Stephen P. Clark Fitness Center 111 N.W. 1 Street, Miami
OWNER:	Miami-Dade County
PROPOSED PROVIDER:	DAC Management Group, LLC
COMPANY PRINCIPALS:	Gene J. Meehan – Managing Partner David Weissman – Managing Partner
USE:	Miami-Dade County seeks to enter into a management agreement with DAC to operate, maintain and manage the Fitness Center at the Stephen P. Clark Center, which will offer fitness and wellness activities and programs to the employees of Miami-Dade County.
CONTRACT TERM:	The management agreement is for a term of one (1) year, with one additional one (1) year renewal option period.
EFFECTIVE DATES:	Commencing retroactively upon approval by the Board of County Commissioners for October 16, 2006.
MANAGEMENT FEE:	The fee to be paid by Miami-Dade County to the DAC for their professional services is $150,000 per annum. To the extent that the Fitness Center generate revenues other than from membership fees – such as, from food and beverage sales; personal training and massage fees; activity fees, clinical services charges, and merchandise sales – the net profit of such additional revenue shall be split equally between the County and DAC.
CANCELLATION:	The County has the right to terminate this Agreement for any reason or no reason upon the provision of not less than one hundred twenty (120) days' prior written notice to DAC. The County may terminate this

agreement upon the occurrence of any default by DAC, which remains uncured for a period of thirty (30) days' following written notice from the County to DAC.

BACKGROUND:

The Fitness Center project was approved during the FY05-06 Budget process, and capital funding was allocated at that time for the design and construction of the facility. With the exception of certain specialty trades, the design and construction of the facility was entirely performed in-house by GSA personnel. The design process commenced early in 2006 and construction was completed on-schedule in late September of this year. Exercise equipment was installed October 23, 2006, and the Grand Opening was held November 1, 2006.

This state-of-art facility includes a good mix of cardiovascular units (treadmills, exercise bikes, elliptical cross trainers, and stair-climbers), and all of these units come equipped with LCD TV screens to enable exercisers to monitor their workouts and/or tune in to music or video as workout aids. Strength training will be accomplished via use of free weights and by working out at a series of individual equipment stations that target specific muscle groups. The entire equipment area is laid out with the intent of facilitating the steady, efficient movement of users through their various exercise routines.

The facility contains ample shower and locker facilities for men and women. All facilities, including the lockers, shower rooms, bathrooms, and equipment area meet the accessibility requirements of the Americans with Disabilities Act (ADA).

JUSTIFICATION:

It is in the County's best interest to waive competitive bidding and enter into this Management Agreement with DAC rather than manage and operate the new Employee Fitness Center with County staff due to the time constraints and unexpected operating complexities associated with this facility.

Original plans called for the facility to be operated by the Park and Recreation Department. The Proposed FY2006-2007 Resource Allocation Plan submitted on May 31, 2007 to the Mayor and Board was based upon that assumption, and the Parks Department began the staff recruitment process earlier this summer.

Over the summer, however, as staff began to prepare in a more concrete fashion for the operational opening of the facility, it became increasingly evident that this is a highly-specialized service area that requires a degree of business experience and professional expertise that is not easily achievable through in-house staff, at least not in the short-term. As a result, staff modified its recommendation, from employing County staff, to hiring a private provider to manage the facility. That change was highlighted in the September 7th Manager's

Memorandum to the Board for the first Budget Hearing, which noted the change and deleted the three positions from the proposed Parks budget that were associated with the Center's operation.

In order to properly implement the above recommendation, staff will conduct a competitive Request for Proposals process to identify and select a private provider to manage and operate the County's Fitness Center over the long-term. In the interim, staff has surveyed and identified a well-qualified service provider currently operating in the downtown area that can operate the County's facility until the competitive process is complete.

That service provider, Miami Fitness, is one of this area's premiere public and corporate fitness center operators. Miami Fitness currently operates the Downtown Athletic Club at One Biscayne Tower; Paradise Gym, at 1236 South Dixie Highway (across from the University of Miami); and the Executive Health Club, in the Bank of America Building, at 100 SE 2nd Street. Because of the close proximity of its downtown Miami locations to the Stephen P. Clark Center, Miami Fitness is willing and able to provide management services to the facility for the interim period, during which time staff will be able to complete an open competitive solicitation for a permanent operator.

Staff's negotiations with Miami Fitness have resulted in a cost arrangement that is somewhat less expensive than performing the services internally. In large part, this is due to the personnel cost savings associated with using existing staff resources in its other locations to avoid overtime and provide administrative support and senior operations management. Miami Fitness will operate under the name of DAC Management Group, LLC.

FUNDING: The funding necessary to operate the Employee Fitness Center has been allocated in the General Services Administration's approved FY06-07 budget.

COMMENTS: Membership fees for employees who pay on a month-to-month basis, without a contract, will be set at $15 per month. Employees entering into one-year membership contracts and paying via payroll deduction will receive a discounted rate of $12 per month. Non-member County employees may use the facility with a $5 daily fee.

Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

DATE: January 25, 2007

FROM: Murray A. Greenberg, County Attorney

SUBJECT: Agenda Item No. 8(F)(1)(C)

Please note any items checked.

_____ **"4-Day Rule" ("3-Day Rule" for committees) applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Bid waiver requiring County Manager's written recommendation**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **Housekeeping item (no policy decision required)**

_____ **No committee review**

4

MIAMI-DADE EMPLOYEE FITNESS CENTER
MANAGEMENT AGREEMENT

THIS AGREEMENT is made and entered into as of the ____ day of _____, 2006 by and between MIAMI-DADE COUNTY (the "County"), a political subdivision of the State of Florida through the General Services Administration ("GSA") and DAC Management Group, LLC (the "Service Provider").

RECITALS

A. **Whereas** the County desires to provide an Employee Wellness Center ("the Center") to facilitate improvements in the overall health and fitness of its employees in space developed for the purpose and located on the ground floor of the Stephen P. Clark Center at 111 NW 1st Street, Miami, Florida, 33128, and;

B. **Whereas** the County is committed to commencing Center operations November 6, 2006, and;

C. **Whereas** the initial goal of the Center and the Service Provider is to make available to County employees basic fitness center services, which shall include the use of free weights, cardiovascular and strength equipment, and instruction, supervision and personalized training in the use thereof, as well as the availability of support facilities such as lockers and showers, and;

D. **Whereas** the County wishes to evaluate the feasibility and methodology of expanding the services available in the Center by the Service Provider to include additional programmed fitness activities and classes, as well as services that will address the overall health and wellness needs of employees, such as baseline fitness testing, health risk assessments, educational seminars and programs in various health risk factors, nutrition counseling and the like, and other wellness services, and;

E. **Whereas** an Interim agreement provides immediate service for the operation of known components of the Center while the County develops the full scope and long-term goals of the Center; and,

F. **Whereas** the County has determined that the Service Provider has the experience and expertise to run the operations of the Center, commence operations by the required date, provide the requisite services, and meet the performance objectives desired by the County; and,

G. **Whereas** the effective date of this Management Agreement shall be the 16TH day of October, 2006,

7

NOW THEREFORE, for and in consideration of good and valuable consideration specified below, the County and Service Provider agree as follows:

1. RECITALS. Recitals to this Agreement are true and correct and hereby incorporated by reference and made a part hereof.

2. CERTAIN DEFINED TERMS. As used herein the following terms shall have the following meaning:

2.1. Costs of Operation shall include, but not be limited to, (a) costs for servicing the exercise equipment performed by outside contractors (Service Provider's employees, however, shall be responsible for daily cleaning and preventative maintenance of the exercise equipment); (b) contractor fees (excluding those contractor fees associated with the capital upgrade to the physical facility made at the County's request).

2.2. Gross Receipts means all revenues and receipts from all business conducted from the Center and all orders taken from the Center including, without limitation, sale of goods, food and beverages and fees for personal training, massage therapy, fitness evaluation, guest fees (if any), aerobic and other classes and wellness seminars; provided, however, that Gross Receipts shall not include any of the following (i) sales, excises, gross receipts, and other taxes now or hereafter imposed upon the sale or value of goods or services, (ii) the amount of any cash or credit refund made upon any sale of any products or services claimed to be defective or unsatisfactory; (iii) sales of fixtures and manufacturers for credit.

2.3. County's Contract Administrator shall be the General Services Administration's Director or designee.

3. SCOPE OF WORK. Service Provider's services to be performed relating to the operation and management of the Center in a manner consistent with a first class fitness facility in a manner designated to take into account the needs of the members thereof and the reputation of Miami-Dade County.

3.1. Rate and Hours of Operation.

a) Service Provider shall operate and manage the Center from 5:30 am to 8:00 pm, Monday through Friday.

b) Hours of Operation are set by the County's Contract Administrator, and may be changed by Service Provider during the term of this Agreement only with the prior written approval of the County's Contract Administrator.

c) Reduction of operating hours, outside of the agreed-upon holidays, will yield a credit to the County and conversely, increases in operating hours will result in the County's providing additional compensation to Service Provider. The negotiated rate per hour for staffing services will be used for these adjustments.

3.2. Uniforms: Service Provider shall issue and require Center employees to wear a uniform and identification with the Center's logo and colors that will distinguish its staff as fitness center personnel versus Government employees utilizing the Center. County will supply Service Provider with the appropriate logo.

3.3. Use and Operation of Center. Service Provider shall:

a) Use the Center only for the purpose of operating a first class fitness Center, including providing to qualified persons facilities to learn and practice fitness and wellness activities and for no other purpose, unless expressly approved by the County's Contract Administrator.

b) Maintain the highest standard in the operation of the Center so that it shall be operated in a fashion comparable to other first class fitness facilities in the Downtown/Brickell market.

c) Except as agreed by the County, provide staffing to the Center as follows:

- General Manager to be on site not less than 40 hours each week
- AM desk staffing, from Center opening to 12:30pm

- PM desk staffing, from 4:00pm to Center closing
- Fitness Director, not less than 8 hours each week
- Operations Manager, not less than 5 hours each week

d) Provide prompt, efficient and courteous service at all times to Center members and visitors.

e) Develop a policies and procedures manual.

f) Monitor, instruct and supervise individuals utilizing the Center to include, but not limited to, providing instruction and training to members on equipment usage and benefit.

g) Have the know-how to administer fist aid, and provide appropriate methods of assistance in emergency situations.

h) Keep the Center, including the workout areas, massage rooms, and studios, clean, neat and orderly and free from all dirt and other refuse or matter.

i) Service Provider shall be responsible for supervising the work of the Day Porter assigned to the Center, as appropriate to the operations of the Center.

j) Process in a prompt and courteous manner all complaints with respect to personal injury and property damage, accidents and thefts, operation of the Center, conduct of employees and any other matter relating to Center operations. Make and maintain records of all such incidents (which records shall be available for the County's inspection at all times).

k) Meet with the County at the Center monthly to discuss the schedule of activities and sessions.

l) No additional services beyond the scope of this agreement shall be provided by the Service Provider without the prior written consent of the County. Terms of these services, including compensation, will be negotiated prior to implementation.

3.4. Marketing and Promotion: Service Provider shall:

a) Develop the tools and materials necessary to advertise the Center and encourage participation by County Employees.

b) Coordinate Center efforts and participate in any special programs that the County may be involved in to promote physical fitness and wellness (e.g., National Fitness Month, Presidential Physical Fitness, Race for the Cure, walk-a-thons, Corporate Run, etc.).

c) Work with the County to design, create and update the Center's web presence (Site). Service Provider will be responsible for providing to the County all content of the Site including regular updates. County will be responsible for the programming and maintenance of the Site.

d) Use its best efforts to maintain and increase the numbers of members and not divert, or cause or allow to be diverted, any businesses from the Center to other facilities, whether or not owned or operated by Service Provider or its affiliate.

e) Work with the County, and its affiliates, to promote and/or cross market related services and/or goods for mutual benefit (i.e. food service, pharmacy etc.).

3.5. Membership Accounts Management: Manage all aspects of membership management process including, but not limited to, registration and contracting, electronic database management, member cards issuance and control, fees collection (excluding membership fees), and issuance of guest passes.

a) Acquire, install, and administer full-service club management software

b) Manage and track all aspects of membership base, from member check-in, with attendance tracking, to generating management and member reports.

c) Interface with or manage County's access control system for facility so as to control entry.

d) Review management and membership reports on a regular basis to better understand membership base, analyze

11

trends and make adjustments to membership policies, programming schedules, etc.

e) Work with County's Contract Administrator to develop and implement attendance or other programming incentives.

3.6. Data Collection, Evaluation and Dissemination: Service Provider shall:

a) Submit a Monthly Work Achievement Report before the 10th of each month to the County. The report should at a minimum contain the following information:

1. Total aggregate and monthly visits to the Center
2. Average daily visits to the Center
3. Fitness orientation/assessments completed
4. Fitness Reassessments completed
5. Individual employees using the Fitness Center that month
6. Average number of employees at peak period
7. Number of personal training sessions

b) The County reserves the right to add, amend, and/or delete any information to be included in regular reporting.

c) Meet with the County at the Center monthly to discuss the Monthly Work Achievement Report.

3.7. Member Fitness Readiness: Service Provider shall have the responsibility and authority to require that every member, prospective member and/or guest complete (1) a liability waiver form, and (2) a Physical Activity and Readiness Questionnaire (PAR-Q), prior to obtaining membership or utilizing any of the physical and aerobic fitness activities and/or fitness evaluation testing services of the Center. No one shall be permitted to use Center facilities without executing the liability waiver form. Additionally, Service Provider shall have the right, based on the answers given to the PAR-Q, to limit an individual's use of Center facilities or to require written permission or guidance from a physician or primary health care provider prior to granting such utilization.

4. TERM AND TERMINATION. The term of this agreement shall begin October 16, 2006 (the "Effective Date"). The Contract Mobilization Period shall extend from the Effective Date to the Commencement Date, which shall be that date that the facility opens for regular hours of operation, currently anticipated to be November 6, 2007. The term of the agreement, unless sooner terminated, shall continue for twelve (12) months following the Commencement Date (the "Initial Term"). Following the Initial Term, the County and Service Provider may mutually agree to extend the Term of this Agreement for up to one additional year, unless sooner terminated as provided herein: (a) either the County or Service Provider may terminate this Agreement for any reason or no reason upon not less than one hundred twenty (120) days' prior written notice to the other, and (b) the County may terminate this Agreement upon the occurrence of any default by Service Provider, which remains uncured for a period of thirty (30) days' following written notice from the County's Contract Administrator to Service Provider, or (c) if the Board of County Commissioners fails to approve this Management Agreement, the Service Provider agrees to cease operations and vacate the Center not later than ninetieth (90th) day from the Commencement Date.

5. COMPENSATION

5.1. Management Fee. In consideration of Service Provider performing the duties and obligations under this Agreement, the County agrees to pay to Service Provider an administrative fee of $150,000.00. It is understood that the Service Provider shall be entitled to an annual administrative fee, which shall be payable, in advance, in equal monthly installments pursuant to the terms herein. Each monthly billing period will commence upon the same day of the month as the Commencement Date. Provided that the Service Provider submits an invoice no later than ten (10) days prior to the beginning of each monthly billing period, the County agrees to pay said invoice by the beginning date of each monthly billing period.

5.2. Profit Percentage. To the extent that additional revenue, as defined herein, derives from the operation of the Center in any month during the Term, Service Provider and the County agree that the net profit of such additional revenue, net of direct expenses, shall be split between

the parties on the following basis: 50% for the County, and 50% for the Service Provider. Such additional revenues include, but are not limited to monies received from food and beverage sales; personal training and massage fees; activity fees, clinical services charges, and merchandise sales.

5.3. Additional Revenue Reporting and Payment. Service Provider shall submit to County on or before the 20th day following the end of each billing period during the term of this Agreement, and on or before the 20th day of the month following the expiration or earlier termination of the term: 1) a statement detailing gross revenue, expenses, and net revenue for each revenue stream; and 2) payment for the County's share of profit as contained in this Agreement. The revenue statement must be accompanied by the supporting documentation necessary to substantiate and/or audit the statement. The statement referred to herein shall be in such form and style and contain such details and breakdowns as County may reasonably determine or require.

5.4. Failure to receive Board approval, or with Mayoral Veto without a Board override. In the event that the Board of County Commissioners fails to approve this Management Agreement, or the Mayor vetoes the approval, and the veto is not overridden by the Board, Service Provider will be paid for all services performed in accordance with this Agreement. Compensation for services provided for any partial billing period will be for a prorated percentage of the monthly Management Fee. The prorated percentage will be based on the number of days of service divided by the number of days in that billing period.

5.5. Additional Revenue Guarantee. The County and Service Provider acknowledge that there is no guarantee of any additional revenue from Center operations.

6. PAYMENT FOR COSTS OF OPERATION

a) The County shall be responsible for general building liability insurance, utilities including electricity, hot water, chilled water and telephone, costs of mechanical and HVAC operations and preventive maintenance costs and repair costs to any and all of the building systems (except to the extent that the need for the repair is caused by the act or omission of Service Provider or its employees, in which case Service Provider shall be fully responsible for reimbursing The County for the costs of repair).

b) Service Provider shall pay, and hereby agrees to defend, indemnify and hold harmless the County from and against, the amount of any taxes, interest and/or penalties thereon, together with costs of defense, settlement and reasonable attorneys' fees, which may be levied, assessed or otherwise payable by or imposed by the State of Florida or any subdivision thereof or any other governmental body or authority for (i) any income taxes payable to Service Provider under this Agreement, or (ii) any sales tax caused by (A) any failure by Service Provider to collect and remit any sales tax required to be collected and/or remitted by it; or (B) any federal or state withholding, employment or similar taxes shall be paid together with the corresponding amounts due under this Agreement, and the obligation to pay same shall survive the expiration or earlier termination of this Agreement. Service Provider shall promptly complete and file monthly sales tax forms and promptly pay all taxes assessed against Service Provider or in connection with the operation and management of the Center.

c) Service Provider is responsible for costs associated with a Digital Subscriber Line (DSL) line in order to provide fast internet connectivity, procuring goods for sale including food and beverages and wellness components. Service

Provider shall install a Point of Sale (POS) system that would allow Service Provider to charge for pro-shop services, wellness services and daily fees. Software to manage membership will be the responsibility of the Service Provider. The computer used for this function will be provided by Miami-Dade County.

d) Service Provider is responsible for costs associated with acquiring and providing XM Radio subscription service to the Center. Equipment required to broadcast will be provided by the County.

7. No Partnership, Joint Venture, Lease, etc. Nothing in this Agreement shall be construed as creating a partnership, joint venture or other similar relationship between the County and Service Provider. The County and Service Provider are independent contractors and shall not in any way be considered partners, agents, servants or employees of each other. The parties acknowledge that this Agreement is solely a management agreement and does not constitute license or other interest in real property. The Service Provider shall be issued a set of keys and access card to the Center for the sole purpose of performing its services hereunder and has no rights of possession to any portions of the Center. Upon termination of this Agreement, the Service Provider shall return all keys to the Center and the County shall have the right to change the locks to the entry doors thereof.

8. PERMITS AND LICENSES. Service Provider, at its own expense shall obtain, retain and renew all permits, occupational and other licenses, registrations and certifications required by any Federal, State, local, or quasi-public authority or agency, including without limitation, the operation of the Center as a fitness facility, health studio or massage facility, including any registrations required by employees or contractors providing such services. Service Provider shall post any bond which may be required under applicable law. Damages, penalties and or fines imposed on the County or the Service Provider for failure to obtain required licenses, permits or fines shall be borne by the Service Provider.

9. COMPLIANCE WITH LAW. Service Provider shall comply with and shall cause its agents, servants, and employees to comply with all laws, statutes, municipal

ordinances, rules and regulations of public authorities having jurisdiction with respect to the condition, use, operation and maintenance of the Center, except for any which would require any structural alterations to the Center. Service Provider shall mail to the County a copy of all pertinent notices which it receives from any public authority or agency concerning the Center within two (2) days of the receipt thereof by Service Provider. Service Provider shall also notify the County promptly of any unusual condition or situation which develops in the course of the operation of the Center, such as, but not limited to: fire, flood, breakage, casualty, damage to property or injury to persons, or claims by or against employees.

10. RULES AND REGULATIONS. Service Provider shall comply with all rules and regulations of the County as from time to time may be issued for the Office Building and the Center and shall use every reasonable precaution against fire, accident, injury to persons and damage to property consistent with the operation of the Center.

11. MAINTENANCE, REPAIR AND ALTERATIONS.

a) Service Provider shall take good care of the Center and keep the same in good order and condition and permit no waste or damage thereto and shall not allow vermin or other pests to exist in the Center. The cost thereof shall be borne by the Service Provider. Service Provider shall be responsible for the costs (and not as a Cost of Operation) for repairs necessitated by the negligent or intentional act or omission of Service Provider or its employees.

b) The County, at its cost, shall have responsibility to maintain the Office Building, including the common areas, lobbies, restrooms, structural elements, improvements and building systems serving the Center (except to the extent that the need for repair is caused by the act or omission of Service Provider or its employees).

c) Service Provider's employees shall be responsible for periodic daily cleaning and preventative maintenance of the exercise equipment.

d) The County shall provide the services of the janitorial company servicing the Office Building, Service Provider shall arrange for all trash removal from the Center. All trash shall be placed in airtight containers by Service Provider and deposited in central locations, as designated by the County. Service Provider agrees to use best efforts to minimize odors emanating from trash receptacles and to follow the County's directives with respect to trash removal.

e) Service Provider shall regularly visually monitor exterior surfaces of the Center for the presence of mold including, but not limited to, observed instances of water damage, condensation, seepage, leaks, or any other water penetration (from any source, internal or external), mold growth, mildew, repeated complaints of respiratory ailments or eye irritation by Service Provider's employees or any other users of the Center, or any notice received by Service Provider from a governmental agency of complaints regarding the indoor air quality at the Center (the Mold Conditions); and immediately notify the County in writing if it observes , suspects, has reason to believe, or should know of, mold or Mold Conditions present at the Center.

f) Service Provider shall make no alterations or additions in the Center without the prior written consent of the County's Contract Administrator in each instance.

12. INDEMNIFICATION AND INSURANCE.

12.1. Service Provider shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or

resulting from the performance of this Agreement by the Service Provider or its employees, agents, servants, partners principals or subcontractors. Service Provider shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Service Provider expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Service Provider shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

12.2. The Service Provider shall furnish to General Services Administration, Facilities Management Division, 200 NW 1st St, Miami, FL 33128, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

a) Worker's Compensation Insurance for all employees of the Service Provider as required by Florida Statute 440.

b) Public Liability Insurance on a comprehensive basis in an amount not less than $1,000,000 combined single limit per occurrence for bodily injury and property damage. Miami-Dade County must be shown as an additional insured with respect to this coverage.

c) Automobile Liability Insurance covering all non-owned and hired vehicles used in connection with the work, in an amount not less than $300,000 combined single limit per occurrence for bodily injury and property damage. Should, at any time during the contract term, the Service Provider operate owned vehicles, then automobile liability insurance must be modified to cover such owned vehicles in the amounts listed above.

12.3. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with either of the following qualifications:

a) The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division; OR,

b) The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida" issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

12.4. Certificates will indicate no modification or change in insurance shall be made without thirty (30) days in advance notice to the certificate holder.

12.5. The County reserves the right to amend insurance requirements as services are added and/or the scope of services changes.

13. CAPITAL IMPROVEMENTS AND EQUIPMENT. If the County directs Service Provider to purchase any equipment or materials or to make any capital improvements to be used in connection with the Center, the costs thereof shall be considered a capital cost to be paid by the County. Service Provider shall maintain all equipment in good working order and condition and shall cause all repairs to be made when necessary. Service Provider shall periodically inspect all fitness equipment and Center facilities to ensure that the same are in good working order. Each year during the Term, the County and Service Provider shall meet and agree upon a budget or capital improvements to be made to the Center.

14. RECORDS AND REPORTING.

a) Reporting Service Provider shall prepare and furnish to the County, at the address specified for notices to the County herein: (a) within 20 days after the end of each month during the Term, a written statement (the "Monthly Statement") duly executed on behalf of Service Provider showing accurately and in reasonable detail the full amount of Gross Receipts, and Service Provider's Profit Percentage during the preceding month.

b) Records. Service Provider shall keep and maintain at Service Provider's office true and complete records and accounts.

c) Audit Rights. The County shall have the right at any time(s) to have the records of the Center reviewed or audited by the County's Audit and Management Services, Inspector General, or any outside auditor of the County's choosing.

15. ATTORNEY'S FEES. In the event either party defaults in the performance of any of the terms of this Agreement and the other party employs an attorney in connection with the enforcement of any remedy of such default, the prevailing party shall be entitled to receive from the other party full reimbursement of such prevailing party's reasonable attorneys', paralegals, expert witnesses' and accountants' fees, and costs of court, whether such fees and costs are incurred before, during or after any trial or administrative proceeding or on appeal.

16. ASSIGNMENT; LIMITED RECOURSE. The parties acknowledge that this Agreement is a personal services contract by Service Provider for the benefit of the County and shall not be assignable by Service Provider without the prior written consent of the County, in its sole and absolute discretion.

17. NOTICES. All notices, requests, demands, payments or other communications required to be given hereunder shall be in writing and shall be sufficiently given, if mailed by certified mail, postage prepaid, return receipt requested, addressed to the following:

The County: Miami-Dade County
200 N.W. 1st Street, Suite 201
Miami, Florida 33128
Attn: Director
Mr. Jerry S. Hall

Service Provider: DAC Management Group, LLC
200 South Biscayne Boulevard, Suite 15A
Miami, FL 33131
Attn: Operations Officer
Mr. David Weissman

18. HEADINGS. The designated headings of this Agreement are for convenience of reference only, and in no way define, limit or describe the scope or intent or in any way affect this Agreement.

19. ENTIRE AGREEMENT. This Agreement is the entire Agreement between the parties hereto and there are no agreements, promises, conditions, representations or covenants expressed or implied other than as expressly set forth herein.

20. AMENDMENT. No amendment for modification of this Agreement shall be valid unless in writing and duly signed by the party affected by the amendment or modification.

21. BINDING EFFECT. This Agreement shall be binding upon the parties and their respective representatives, successors and assigns.

22. WAIVER. Waiver by either party of any breach of any provision of this Agreement shall not be considered as constituting a continuing waiver or waiver of any other breach of the same or other provisions of this Agreement.

23. GOVERNING LAW. All questions concerning the validity, construction and effect of this Agreement shall be determined according to the laws of the State of Florida, without regard to principles of conflicts of laws.

24. OFFICE OF THE COUNTY INSPECTOR GENEARL. The County Inspector General (the "IG") is authorized and empowered to review past, present and proposed the County and Public Health Trust programs, agreements, transactions, accounts, records and programs. In addition, the IG has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. The IG is empowered to retain the services of Independent Private Sector Inspectors General ("IPSIG") to audit, investigate, monitor, oversee, inspect and review proposals, operations, activities and performance of the Service Provider, its officers, agents and employees, lobbyists, the County staff and elected officials to ensure compliance with agreement terms and conditions and to detect fraud and corruption.

Upon five (5) business days' prior written notice to Service Provider from the IG or IPSIG retained by the IG, Service Provider shall make all requested records and documents available to the IG or IPSIG for inspection and copying. The IG and IPSIG shall have the right to inspect and copy all documents and records in Service Provider's possession, custody or control which, in IG's or IPSIG's sole judgment, pertain to performance of this Agreement including, but not limited to original estimate files, change order estimate files, worksheets proposals and agreements from and with successful and unsuccessful subconsultants and suppliers, all Project-related correspondence, memoranda, instructions, financial documents, and contract documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

Nothing in this Agreement shall impair any independent right of the County to conduct, audit or investigative activities. The provisions of this paragraph are neither intended nor shall they be construed to impose any liability on the County by Service Provider or third parties.

25. JURISDICTION. Exclusive jurisdiction and venue for any lawsuit proceeding arising out of this Agreement shall be in the federal and state courts situated in Miami-Dade County, Florida. Each party irrevocably consents to the personal jurisdiction of such courts in any such civil action or legal proceeding and hereby waives any objection to the laying of venue of any such civil action or legal proceeding in such courts.

26. RIGHTS TO BE EXERCISED. Wherever in this Agreement rights are reserved to the County, such rights may be exercised by the County Manager or his designee unless otherwise specifically stated.

27. EQUAL EMPLOYMENT OPPORTUNITY. Service Provider shall ensure that applicants for employment and employees are treated without regard to their race, religion, sex, sexual orientation, color, age, disability or national origin.

28. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT: Any person or entity that performs or assists Miami-Dade County with a function or activity involving the use or disclosure of "individually identifiable health information" (IIHI) and/or Protected Health Information (PHI) shall comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Miami-Dade County Privacy Standards Administrative Order. HIPAA mandates for privacy, security and electronic transfer standards, that include but are not limited to:

a) Use of information only for performing services required by the contract or as required by law;

b) Use of appropriate safeguards to prevent non-permitted disclosures;

c) Reporting to Miami-Dade County of any non-permitted use or disclosure;

d) Assurances that any agents and subcontractors agree to the same restrictions and conditions that apply to the Service Provider and reasonable assurances that IIHI/PHI will be held confidential;

e) Making Protected Health Information (PHI) available to the customer;

f) Making PHI available to the customer for review and amendment; and incorporating any amendments requested by the customer;

g) Making PHI available to Miami-Dade County for an accounting of disclosures; and

h) Making internal practices, books and records related to PHI available to Miami-Dade County for compliance audits.

PHI shall maintain its protected status regardless of the form and method of transmission (paper records, and/or electronic transfer of data). The Service Provider must give its customers written notice of its privacy information practices including specifically, a description of the types of uses and disclosures that would be made with protected health information.

29. CONFIDENTIALITY AND NON-SOLICITATION

a) Service Provider recognizes and acknowledges that it shall have access to confidential information of the County, including lists of customers, operational policies, and pricing and cost policies that are valuable, special and unique assets of the County. Service Provider agrees that it will not, except as may be required by law or valid legal process, disclose such confidential information to any person for any purpose or reason whatsoever, except in connection with marketing activities for the Center as are approved by the County.

b) Service Provider agrees for a period of three (3) years following the date of termination of this Agreement, not to directly or indirectly, (i) induce any customer or patron of the Center to patronize any business which is directly or indirectly in competition with the Center; (ii) canvass, solicit or accept from any person which is a customer or patron of the Center, any such competitive business; or (iii) request or advise any customer or patron of the Center to withdraw, curtail or cancel any such customer's business with the Center or the County.

c) Service Provider and the County hereby agree that the County may assign, without limitation, the foregoing covenants to any successor to the County's interest in the Stephen P. Clark Center.

IN WITNESS WHEREOF, the County and Service Provider have caused this Management Agreement to be executed by their respective and duly authorized officers the day and year first above written.

(CORPORATE SEAL)

DAC Management Group, LLC
a Florida limited liability company

WITNESS

WITNESS

By:_____
David Weissman, Operations Officer
(Service Provider)

(OFFICIAL SEAL)

ATTEST:

HARVEY RUVIN, CLERK

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

By:_____
Deputy Clerk

By:_____
George M. Burgess
County Manager (County)

Approved by the County Attorney as
to form and legal sufficiency.____