

**VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE**

<b>CHARLOTTESVILLE AREA FITNESS CLUB</b>	)	
<b>OPERATORS ASSOCIATION, ATLANTIC</b>	)	
<b>COAST ATHLETIC CLUBS OF VIRGINIA, INC.,</b>	)	
<b>GYM QUEST, INC. d/b/a GOLD'S GYM</b>	)	
<b>CHARLOTTESVILLE, and TOTAL</b>	)	<b>Case No. _____</b>
<b>PERFORMANCE SPORT AND FITNESS, LLC.</b>	)	
<b>Plaintiffs</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>CHARLOTTESVILLE CITY COUNCIL and</b>	)	
<b>MAURICE JONES. in his official capacity,</b>	)	
	)	
<b>Defendants</b>	)	

**COMPLAINT**

COME NOW the Plaintiffs, Charlottesville Area Fitness Club Operators Association, Atlantic Coast Athletic Clubs Of Virginia, Inc., Gym Quest, Inc. d/b/a Gold's Gym Charlottesville, and Total Performance Sport and Fitness, LLC, by counsel, and for their Complaint against the Defendants Charlottesville City Council (the "Council") and Maurice Jones in his official capacity as City Manager, state as follows:

**THE PARTIES**

1. Plaintiff Charlottesville Area Fitness Club Operators Association (the "Coalition") is an unincorporated association composed of the other three listed plaintiffs, who are for-profit fitness providers in the Albemarle-Charlottesville area.

2. Plaintiff Atlantic Coast Athletic Clubs Of Virginia, Inc. ("ACAC") is a Virginia corporation with its principal place of business in Albemarle County, Virginia.

**FILED**

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CIRCUIT COURT CLERK'S OFFICE  
CHARLOTTESVILLE, VA  
K. J. BURNETT, CLERK

3. Plaintiff Gym Quest, Inc. d/b/a Gold's Gym Charlottesville ("Gold's") is a Nevada corporation with its principal place of business in Sparks, Nevada, which does business in Albemarle County.

4. Plaintiff Total Performance Sports and Fitness, LLC ("Total Performance") is a Virginia limited liability company with its principal place of business in Albemarle County, Virginia.

5. Defendant Charlottesville City Council is the governing body of the City of Charlottesville, Virginia, and consists of five elected councilors representing the citizens of the City of Charlottesville.

6. Defendant Maurice Jones is the Acting chief administrative officer for the City of Charlottesville.

#### **JURISDICTION AND VENUE**

7. The cause of action arose in the City of Charlottesville, Virginia.

8. The Court has jurisdiction of this matter pursuant to § 17.1-513, 8.01-184 and 8.01-620 of the Code of Virginia (the "Va. Code").

9. Venue is proper in this Court pursuant to Va. Code § 8.01-262.

#### **GENERAL ALLEGATIONS**

10. On November 2, 2005, representatives of the Piedmont Family Young Men's Christian Association (the "YMCA") spoke at a regular meeting of the Albemarle County Board of Supervisors. Albemarle County Board of Supervisors minutes of November 2, 2005, pg. 15, attached hereto as Exhibit 1.

11. The YMCA was seeking to form a partnership with Albemarle County (the “County”) to construct a new fitness facility on the grounds of Piedmont Virginia Community College (“PVCC”), which had agreed to contribute the land. *Id.*

12. The YMCA requested that the County agree to contribute \$2 million towards the project. The Board of Supervisors ultimately voted to contribute \$2.03 million dollars towards the project.

13. Thereafter, the YMCA approached the City of Charlottesville about a potential partnership that would allow the YMCA to build a fitness and recreation center within McIntire Park. This proposal was discussed by the City Council at a work session on July 9, 2007, the result of which was a referral of the matter to the Parks and Recreation Advisory Board.

Charlottesville City Council minutes of July 9, 2007, attached hereto as Exhibit 2.

14. On August 15, 2007 the Parks and Recreation Advisory Board formally recommended that the City Council pursue a lease agreement (the “Lease”) with the YMCA. *See* December 17, 2007 Agenda memorandum from Mike Svetz, attached hereto as Exhibit 3.

15. On September 17, 2007, the City Council authorized staff to advertise a proposed ground lease for bidding, pursuant to Va. Code §15.2-2100(B).

16. The proposed Lease was restricted so that the only acceptable use was for a “non-profit youth and family community recreation program to construct a facility to operate their program.” *See* September 17, 2007 City Council Agenda memorandum, “McIntire Park – Authorization to Receive Proposals,” attached hereto as Exhibit 4.

17. The property was to be 3-5 acres in the western side of McIntire Park, and could encompass either the picnic shelters or the softball fields. The Lease was to be for a period of 40 years, at a nominal rent of \$1.00 per year. *Id.*

18. The proposed Lease was advertised in the *Daily Progress* on October 4 and 11, 2007.

19. Specifically, the Notice of Public Hearing and advertisement for bids stated that the “lease is for the purpose of developing and operating a non-profit fitness and recreational center.” Notice of Public Hearing on Proposed Lease for Portion of McIntire Park, *Daily Progress*, October 4 and 11, 2007, attached hereto as Exhibit 5.

20. Significantly, the public notice does not mention that the rent will be only \$1 per year.

21. The notice requires that all bids be in writing and submitted to the City by October 15, 2007, and that it “describe the benefits, financial and otherwise, that the bidder offers to the city in return for the privileges set forth within the proposed lease.” *Id.*

22. While the proposed Lease on file had, as Exhibit B, a proposed Use Agreement, the City required that any bids for the Lease must include a proposed Use Agreement as part of the bid.

23. As referenced in the public notice and September 17 Council agenda memo, this Use Agreement was to describe everything from the hours of operation to the reduced rate membership benefits for City and County residents.

24. As the minutes of the November 5, 2007 meeting reflect, the City contemplated that the Use Agreement would be subject to negotiation well after the public meetings regarding the granting of the leasehold interest.

25. Not surprisingly, given the 11 day bid period, the narrow description of eligible bidders, and the limited class of potential users described in the public notice, the YMCA was the only organization to submit a bid.

26. That bid was approved, and the YMCA and the City began negotiations over the exact language of the Lease and Use Agreement. Indeed, negotiations had been ongoing since at least January 2007, well before any bids were solicited. See October 29, 2007 letter from Kurt Krueger, counsel for the YMCA, to the City Council, attached hereto as Exhibit 6.

27. The Use Agreement provides for discounted membership fees for residents of the City of Charlottesville and the County of Albemarle, the two signatories thereto. Attached hereto as Exhibit 7 is a true copy of what Plaintiffs believe to be the Use Agreement as subsequently executed.

28. The City has also allocated an additional \$1.25 million to the YMCA for the construction of a larger pool, and to guarantee exclusive access to that pool for the Charlottesville High School swim team. Charlottesville City Council minutes of December 17, 2007, attached hereto as Exhibit 8.

29. The City never publicly advertised the Use Agreement under Va. Code §§2.2-4300 *et seq.* or had any formal request for bids under that same section.

30. As a non-profit entity, the YMCA will not be required to pay any real estate taxes to the City of Charlottesville.

**COUNT I – DECLARATORY JUDGMENT  
(THE LEASE)**

31. Plaintiffs incorporate herein all prior factual allegations by reference.

32. In the public notice requesting proposals on the proposed Lease, the City limited the bids it would accept to those which would provide for the construction of a “non-profit” fitness and recreation center, thereby excluding any for-profit entity or facility from competition. The City repeated this exclusion in the lease ordinance which authorized the Lease.

33. This exclusion prevented any for-profit entity from submitting a bid on the Lease, even if that entity was capable of constructing a superior facility which would be available to City residents on the same or more favorable terms while at the same time paying applicable taxes.

34. Had the City instead advertised simply for the construction of a fitness and recreation center while continuing to require the reduced membership prices contained in the Use Agreement, it would still have received the bid from the YMCA.

35. However, the City would also have received a bid from one or more of the Plaintiffs, each of whom has a proven track record of successfully running fitness facilities in the Charlottesville-Albemarle area.

36. These additional bids would have been required to meet the terms of the Use Agreement, and may have contained a more upscale or advanced facility while at the same time paying increased rent or real estate taxes.

37. The City Council did not provide any reasons as to why only the construction of a non-profit facility was appropriate or able to meet the City's desire to procure reduced rate fitness memberships for its citizens.

38. Without any such justification, the decision to limit the notice for Lease and lease ordinance to non-profits was an arbitrary and capricious exercise of the Council's power which exceeded the scope of the authority of City Council and which also violated the Plaintiffs' right to equal protection and due process under the Fifth and Fourteenth Amendments to the Constitution of the United States, and Sections 3 and 11 of the Constitution of Virginia.

39. Plaintiffs were aggrieved by this exclusion, and suffered actual injury as a result of their being excluded from bidding on the proposed Lease and Use Agreement.

40. As such, the Court should declare the lease ordinance an arbitrary and capricious exercise of the Council's authority, and therefore void.

**COUNT II – DECLARATORY JUDGMENT  
(THE USE AGREEMENT)**

41. Plaintiffs incorporate herein all prior factual allegations by reference.

42. Though the Use Agreement was included as an exhibit to the Lease, it actually represents a unique contract between the City, YMCA, and County. This matches the understanding of Council, to whom it “was specified that there is a difference between the lease agreement and the use agreement.” Charlottesville City Council minutes of September 17, 2007, attached hereto as Exhibit 9.

43. While parts of the Use Agreement are in the nature of an operating agreement between landlord and tenant, there are specific deviations from a standard operating agreement that render it a separate legal contract.

44. First, the Use Agreement is signed by not only the City and YMCA but also Albemarle County, which is not a party to the Lease.

45. The Use Agreement begins with contractual recitals detailing the obligations of each of the three parties, and spells out the conditions under which those obligations become operative.

46. In the case of the City, the City has agreed to provide valuable real estate to the YMCA for 40 years at the lease rate of \$1 per year.

47. In return for this consideration, the YMCA agrees to provide all City residents access to the facility at rates well below those available to the general public.

48. The Use Agreement also indicates that it requires the approval of both City and County attorney, a standard requirement for contracts with either entity.

49. Finally, the Use Agreement provides that the City may insure the construction of additional aquatic space, as well as exclusive use of that space, for the payment of an additional \$1.125 million.

50. By providing an essentially free Lease to the YMCA, the City negotiated for and procured the availability of fitness services at a favorable rate and the right to acquire exclusive use of a portion of that space.

51. Because the City procured a service from the YMCA, namely the provision of fitness services at more favorable rates and the right to acquire exclusive use of a portion of that space, in exchange for valuable consideration, that transaction was governed by the Virginia Public Procurement Act (“VPPA”), Va Code 2.2-4300 *et seq.*

52. Pursuant to Va. Code 2.2-4300, Council is a governmental body, while the YMCA is a nongovernmental source.

53. Pursuant to the VPPA, Council was required to issue a specific Request for Proposal (“RFP”) or an Invitation to Bid to determine if it could procure the same or better services for its citizens at the same or a more competitive rate.

54. An RFP would ensure that the City was receiving the best value possible, as well as insuring that all qualified vendors would have access to this business opportunity.

55. Because the Use Agreement was awarded to the YMCA without the City having followed the requirements of the VPPA, the award and allocation of funds was *ultra vires* and therefore invalid.

56. In addition, the City’s award under the Use Agreement to the YMCA without regard for the requirements of the VPPA was an unlawful arbitrary and capricious exercise of authority which exceeded the scope of the authority of City Council and also violated the

Plaintiffs' right to equal protection and due process under the Fifth and Fourteenth Amendments to the Constitution of the United States, and Sections 3 and 11 of the Constitution of Virginia.

57. As such, the Court should declare that the Use Agreement and subsequent \$1.25 million payment were in violation of the VPPA, and therefore outside the lawful authority of the City, and that the Use Agreement is therefore void.

### **COUNT III – TEMPORARY INJUNCTIVE RELIEF**

58. Plaintiffs hereby incorporate all prior factual allegations by reference.

59. Because the act of Defendants in assigning a lease and allocating public funds was *prima facie* an *ultra vires* act, was arbitrary and capricious and violated the Plaintiffs' rights under the United States Constitution and the Constitution of the Commonwealth of Virginia, all as set forth above, the City should be enjoined from permitting any construction in accordance with the Lease, as well as any payment pursuant to the Use Agreement, until such time as this Court can determine the propriety of such payment.

60. Temporary injunctive relief is appropriate in this matter because:

a. There is a strong likelihood of prejudice to the Plaintiffs in the event that the permits construction pursuant to the Lease, or makes payment for the exclusive use of aquatic space, without giving Plaintiffs and others the opportunity to respond to an RFP and bid on the contract which must ultimately be issued;

b. There is no harm to the City by reason of delay. By properly issuing an RFP which is neither arbitrary nor capricious, and which conforms to the terms of the VPPA, the City can do no worse than accepting a bid on the same terms from the YMCA, with the possibility that it will receive a more favorable bid from Plaintiffs or others.

c. It is likely that Plaintiffs will succeed on the merits; and

d. The public interest weighs strongly in favor of the injunction. As discussed in (b) above, the worst case scenario is that the City finds itself in exactly the same position following properly issued RFPs. Coupled with the possibility that the City and its taxpayers may actually receive a preferred outcome at a lower cost, there is a strong public interest in insuring that the requirements of the Va. Code 15.2-2100 *et seq.* and the VPPA are followed.

61. Because all four factors to be considered in injunctive relief weigh in favor of the Plaintiff, it is appropriate to grant injunctive relief while the Court makes its determination.

WHEREFORE, the Plaintiffs request that the Court grant the following relief:

- a. That the Court render declaratory judgment finding that the exclusion of for-profit entities from bidding on the Lease exceeded the authority of City Council, was arbitrary and capricious, and violated the Plaintiffs' rights to equal protection and due process, and that the grant of the Lease is therefore void; and
- b. That the Use Agreement is a separate contract subject to the VPPA, and that the actions of the City in not complying with the provisions of the VPPA were *ultra vires*, exceeded the authority of City Council, were arbitrary and capricious, and violated the Plaintiffs' rights to equal protection and due process and therefore void; and
- c. That the Court grant temporary injunctive relief enjoining the City from proceeding under the Lease and the Use Agreement pending a determination on the merits; and
- d. Any other relief as the Court feels is necessary or proper in this matter.

Respectfully submitted,  
CHARLOTTESVILLE AREA FITNESS  
CLUB OPERATORS ASSOCIATION,  
ATLANTIC COAST ATHLETIC CLUBS  
OF VIRGINIA, INC., GYM QUEST, INC.  
d/b/a GOLD'S GYM  
CHARLOTTESVILLE, and TOTAL  
PERFORMANCE SPORT AND FITNESS,  
LLC  
By Counsel



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**VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ALBEMARLE**

**CHARLOTTESVILLE AREA FITNESS CLUB )  
OPERATORS ASSOCIATION, ATLANTIC )  
COAST ATHLETIC CLUBS OF VIRGINIA, INC., )  
GYM QUEST, INC. d/b/a GOLD'S GYM )  
CHARLOTTESVILLE, and TOTAL )  
PERFORMANCE SPORT AND FITNESS, LLC. )  
Plaintiffs )**

**Case No. \_\_\_\_\_**

**v.**

**ALBEMARLE COUNTY BOARD OF )  
SUPERVISORS and )  
ROBERT W. TUCKER, JR. in his official capacity, )  
Defendants )**

2016 JUL 12 PM 1:22  
CIRCUIT COURT FOR THE COUNTY OF ALBEMARLE

**COMPLAINT**

COME NOW the Plaintiffs, Charlottesville Area Fitness Club Operators Association, Atlantic Coast Athletic Clubs Of Virginia, Inc., Gym Quest, Inc. d/b/a Gold's Gym Charlottesville, and Total Performance Sport and Fitness, LLC, by counsel, and for their Complaint against the Defendants Albemarle County Board of Supervisors and Robert W. Tucker, Jr. in his official capacity as Albemarle County Executive, state as follows:

**THE PARTIES**

1. Plaintiff Charlottesville Area Fitness Club Operators Association (the "Coalition") is an unincorporated association composed of the other three listed plaintiffs, who are for-profit fitness providers in the Albemarle-Charlottesville area.

2. Plaintiff Atlantic Coast Athletic Clubs Of Virginia, Inc. ("ACAC") is a Virginia corporation with its principal place of business in Albemarle County, Virginia.

3. Plaintiff Gym Quest, Inc. d/b/a Gold's Gym Charlottesville ("Gold's") is a Nevada corporation with its principal place of business in Sparks, Nevada, which does business in Albemarle County.

4. Plaintiff Total Performance Sports and Fitness, LLC ("Total Performance") is a Virginia limited liability company with its principal place of business in Albemarle County, Virginia.

5. Defendant Albemarle County Board of Supervisors (the "Board") is the governing body of Albemarle County, Virginia, and consists of six elected supervisors representing the citizens of Albemarle County.

6. Defendant Robert W. Tucker Jr. is the Chief Executive Officer of Albemarle County.

### **JURISDICTION AND VENUE**

7. The cause of action arose in Albemarle County, Virginia.

8. The Court has jurisdiction of this matter pursuant to § 17.1-513, 8.01-184 and 8.01-620 of the Code of Virginia (the "Va. Code").

9. Venue is proper in this Court pursuant to Va. Code § 8.01-262.

### **GENERAL ALLEGATIONS**

10. In December 2004 the Board of Supervisors received a "Needs Assessment Report" which indicated the need for additional indoor recreation space within the County. Albemarle County Board of Supervisors minutes of November 2, 2005, pg. 15, attached hereto as Exhibit 1.

11. The Board directed staff to approach the YMCA about partnering to construct and operate such a facility within Albemarle County. *Id.*

12. On November 2, 2005, representatives of the Piedmont Family Young Men's Christian Association (the "YMCA") spoke at a regular meeting of the Board of Supervisors. *Id.*

13. A representative of the YMCA, Kurt Krueger, informed the Board that the YMCA was proposing a three-way partnership with Albemarle County and the Piedmont Virginia Community College ("PVCC"). *Id.* at 15-16.

14. The YMCA requested that the Board provide \$2 million dollars in the Capital Improvements Plan ("CIP") for FY2006-2007 towards the construction costs of this facility, while PVCC would provide the land on which the facility would be built. *Id.*

15. For its part, the YMCA would provide capital support through private donors, health and wellness programs, child care, and education programs, as well as facility and staff management and scholarships for those in need. *Id.* at 16.

16. The YMCA projected the total fundraising campaign at \$7 million, including the County's \$2 million dollar allocation. *Id.* However, less than two years later, the YMCA had already projected the cost of the facility to double to "\$14 to \$15 million." Charlottesville City Council minutes of July 9, 2007, attached hereto as Exhibit 2.

17. At the March 1, 2006 regular meeting of the Board, Mr. Tucker announced that \$2 million had been placed in the CIP "for the indoor recreational program that is a partnership with the YMCA and Piedmont College (PVCC)." Albemarle County Board of Supervisors minutes of March 1, 2006, pg. 34, attached hereto as Exhibit 3.

18. The FY2006 budget, including the five year CIP which earmarked the aforementioned \$2 million, was adopted by the Board on April 12, 2006. Albemarle County Board of Supervisors minutes of April 12, 2006, pgs. 15-16, attached hereto as Exhibit 4.

19. At the March 13, 2006 regular meeting of the Board, Roxanne White, Assistant County Executive, informed the Board that County staff was working on a Memorandum of Agreement between the County, PVCC, and the YMCA. Albemarle County Board of Supervisors minutes of March 13, 2006, pg. 10, attached hereto as Exhibit 5.

20. Though the money had already been allocated, it was subject to a final partnership agreement, which had not yet been worked out or signed. See Albemarle County Board of Supervisors minutes of June 13, 2007, pg. 4, attached hereto as Exhibit 6.

21. It was at this June 13, 2007 meeting of the Board that the YMCA first informed the Board it was looking to build a competitive pool in McIntire Park, and that it would make sense to also locate the main facility there as well. *Id.*

22. At the November 14, 2007 meeting, the Board adopted a resolution endorsing the YMCA facility, whether it be located at PVCC as originally planned or located in McIntire Park, and that the funding would follow the facility "subject to an acceptable agreement." Albemarle County Board of Supervisors minutes of November 14, 2007, pg. 8, attached hereto as Exhibit 7.

23. On January 9, 2008, the YMCA presented to the Board a Use Agreement governing the facility which had been negotiated between the YMCA and the City. Albemarle County Board of Supervisors minutes of January 9, 2008, pgs. 29-30, attached hereto as Exhibit 8.

24. After some discussion, the Board voted to authorize Mr. Tucker to execute the agreement in substantially the same form as had been provided to the Board, subject to approval by the County Attorney. *Id.*

25. This Use Agreement, dated January 15, 2008, is attached hereto as it appears in the minutes of the January 9, 2008 meeting. *Id.* at 37-40.

26. On December 3, 2008, the Board was informed, without objection, that because of delays in the timeline for the YMCA project it had been moved out of the five-year window, and was therefore not officially part of the CIP. Albemarle County Board of Supervisors minutes of December 3, 2008, pg. 37, attached hereto as Exhibit 9.

27. Then, on December 9, 2008, in response to a question from the public, Mr. Letteri confirmed that the \$2.03 million appropriation had been removed, and would have to be re-appropriated to be placed back in the CIP. Albemarle County Board of Supervisors minutes of December 9, 2008, pg. 10, attached hereto as Exhibit 10.

28. At no point during either the December 3 or December 9 discussion did the County Attorney, or any other person, state or otherwise suggest that the County was obligated to make payment of the money, or keep the allocation in the CIP.

29. It was not until the March 5, 2009 meeting that the Board agreed the money needed to be placed back into the CIP budget for allocation. Albemarle County Board of Supervisors minutes of March 5, 2009, pg. 12, attached hereto as Exhibit 11.

30. Plaintiffs believe that, if given the opportunity, one or all of them will be able to submit a proposal in response to an RFP which would provide the County with superior services at a cost to the County less than that provided for in the Use Agreement.

## COUNT I – DECLARATORY JUDGMENT

31. Plaintiffs hereby incorporate all prior factual allegations by reference.

32. Though the Board of Supervisors originally discussed allocating the funds in question as a capital contribution, the actual allocation was made contingent upon the signing of an “acceptable agreement” between the County and the YMCA.

33. This agreement was necessary for the County to insure that it received fair value for its capital contribution.

34. Specifically, the County wanted to insure that its citizens would receive the benefit of the facility on favorable terms not otherwise available to the general public.

35. In fact, in exchange for the \$2.03 million payment, the County negotiated for and procured the availability of fitness services at a favorable rate.

36. Because the County procured a service from the YMCA, namely the provision of fitness services at more favorable rates, in exchange for a cash payment, that transaction was governed by the Virginia Public Procurement Act (“VPPA”), Va. Code 2.2-4300 *et seq.*

37. Pursuant to Va. Code 2.2-4300, the Board is a governmental body, while the YMCA is a nongovernmental source.

38. Pursuant to the VPPA, the Board was required to issue a Request for Proposal (“RFP”) or an Invitation to Bid to determine if it could procure the same service or better service for its citizens at the same or a more competitive rate.

39. An RFP would ensure that the County was receiving the best value possible, as well as insuring that all qualified vendors would have access to this business opportunity.

40. This became particularly true once the facility was relocated to a location outside the County, such that the favorable rates were then to allow County residents to use a facility located in another jurisdiction.

41. Because the contract was awarded without the County having followed the requirements of the VPPA, the award and allocation of funds were *ultra vires*.

42. In addition, the County's award under the Use Agreement to the YMCA without regard for the requirements of the VPPA was an unlawful arbitrary and capricious exercise of authority which exceeded the scope of the authority of the Board of Supervisors and also violated the Plaintiffs' right to equal protection and due process under the Fifth and Fourteenth Amendments to the Constitution of the United States, and Sections 3 and 11 of the Constitution of Virginia.

43. As such, the Court should declare that the \$2.03 million allocation was outside the lawful authority of the County, and order that such payment may not be made without compliance with the requirements of the VPPA.

## **COUNT II – TEMPORARY INJUNCTIVE RELIEF**

44. Plaintiffs hereby incorporate all prior factual allegations by reference.

45. Because the act of Defendants in allocating public funds was *prima facie* an *ultra vires* act, was arbitrary and capricious and violated the Plaintiffs' rights under the United States Constitution and the Constitution of the Commonwealth of Virginia, all as set forth above, the County should be enjoined from making payment until such time as this Court can determine the propriety of such payment.

46. Temporary injunctive relief is appropriate in this matter because:

a. There is a strong likelihood of prejudice to the Plaintiffs in the event the County makes the payment without giving Plaintiffs and others the opportunity to respond to an RFP and bid on the contract which must ultimately be issued;

b. There is no harm to the County by reason of delay. By properly issuing an RFP pursuant to the VPPA, the County can do no worse than accepting a bid on the same terms from the YMCA, with the possibility that it will receive a more favorable bid for the same or better services from Plaintiffs or others.

c. It is likely that Plaintiffs will succeed on the merits, as set forth above; and

d. The public interest weighs strongly in favor of the injunction. As discussed in (b) above, the worst case scenario is that the County finds itself in exactly the same position following a properly issued RFP. Coupled with the possibility that the County and its taxpayers may actually receive the same or superior service at a lower cost, there is a strong public interest in insuring that the requirements of the VPPA are followed.

47. Because all four factors to be considered in injunctive relief weigh in favor of the Plaintiff, it is appropriate to grant injunctive relief while the Court makes a determination as to the applicability of the VPPA to the County's allocation to the YMCA.

WHEREFORE, the Plaintiffs request that the Court grant the following relief:

a. That the Court render a declaratory judgment finding that the \$2.03 million allocation by the County to the YMCA is subject to the VPPA, that the actions of the County in not complying with the provisions of the VPPA were *ultra vires*, exceeded the authority of the County, were arbitrary and capricious, violated the Plaintiffs' rights to equal protection and due process and are therefore void on each and all of those grounds; and

- b. That the Court grant temporary injunctive relief enjoining the County from proceeding under the Use Agreement pending a determination on the merits; and
- c. Any other relief as the Court feels is necessary or proper in this matter.

Respectfully submitted,  
CHARLOTTESVILLE AREA FITNESS  
CLUB OPERATORS ASSOCIATION,  
ATLANTIC COAST ATHLETIC CLUBS  
OF VIRGINIA, INC., GYM QUEST, INC.  
d/b/a GOLD'S GYM  
CHARLOTTESVILLE, and TOTAL  
PERFORMANCE SPORT AND FITNESS,  
LLC  
By Counsel



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