

T H E A M E R I C A N I N S T I T U T E O F A R C H I T E C T S



AIA Document B727

Standard Form of Agreement Between Owner and Architect

*for Special Services***1988 EDITION**

*THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH
AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION.*

AGREEMENT

made as of the **24th** day of **October** in the year of
2007

BETWEEN the Owner:*(Name and address)*

**Jonesboro Parks and Recreation
1212 S. Church Street
Jonesboro, Arkansas 72401**

and the Architect:

(Name and address)

**Brackett Krennerich & Associates, P.A.
100 E. Huntington Ave., Suite D
Jonesboro, Arkansas 72401**

For the following Project:

(Include detailed description of Project, location, address and scope.)

**Feasibility Study for proposed
New Aquatics Facility**

The Owner and the Architect agree as set forth below.

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the copyright laws of the United States and will be subject to legal prosecution.

ARTICLE 1
ARCHITECT'S SERVICES

(Here list those services to be provided by the Architect under the Terms and Conditions of this Agreement. Note under each service listed the method and means of compensation to be used, if applicable, as provided in Article 8.)

1. Architect will attend meetings of consultant (Counsilman-Hunsaker), client, and any other designated groups.
2. Architect will coordinate meeting times, locations and participants with client.
3. Architect will record, transcribe, and distribute Minutes of said meetings to participants.
4. Architect will assist consultant in distribution of research information to client.
5. Architect will assist consultant in the study of existing facilities (Earl Ebell Community Center) as required to provide accurate information to the client.
6. The architect will consult and assist the consultant to provide cost estimates based on national estimating guides and infusing local knowledge of construction costs, means, and methods.
7. The architect shall act as a conduit for the services of the "consultant" whose Feasibility Study Agreement is attached.

TERMS AND CONDITIONS OF AGREEMENT BETWEEN OWNER AND ARCHITECT

ARTICLE 2

OWNER'S RESPONSIBILITIES

2.1 The Owner shall provide full information regarding requirements for the Project. The Owner shall furnish required information as expeditiously as necessary for the orderly progress of the Work, and the Architect shall be entitled to rely on the accuracy and completeness thereof.

2.2 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

ARTICLE 3

USE OF ARCHITECT'S DOCUMENTS

3.1 The documents prepared by the Architect for this Project are instruments of the Architect's service for use solely with respect to this Project and, unless otherwise provided, the Architect shall be deemed the author of these documents and shall retain all common law, statutory and other reserved rights, including the copyright. The Owner shall be permitted to retain copies, including reproducible copies, of the Architect's documents for the Owner's information, reference and use in connection with the Project. The Architect's documents shall not be used by the Owner or others on other projects, for additions to this Project or for completion of this Project by others, unless the Architect is adjudged to be in default under this Agreement, except by agreement in writing and with appropriate compensation to the Architect.

ARTICLE 4

ARBITRATION

4.1 Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to and decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise.

4.2 A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of limitations.

4.3 No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement signed by the Owner, Architect and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other

matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

4.4 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 5

TERMINATION OR SUSPENSION

5.1 This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

5.2 If the Owner fails to make payment when due the Architect for services and expenses, the Architect may, upon seven days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Architect within seven days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services.

5.3 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Paragraph 5.4.

5.4 Termination Expenses shall be computed as a percentage of the compensation earned to the time of termination, as follows:

- 5.4.1** For services provided on the basis of a multiple of Direct Personnel Expense, 20 percent of the total Direct Personnel Expense incurred to the time of termination; and
- 5.4.2** For services provided on the basis of a stipulated sum, 10 percent of the stipulated sum earned to the time of termination.

ARTICLE 6

MISCELLANEOUS PROVISIONS

6.1 Unless otherwise provided, this Agreement shall be governed by the law of the principal place of business of the Architect.

6.2 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date payment is due the Architect pursuant to Paragraph 8.4.

6.3 The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither Owner nor Architect shall assign this Agreement without the written consent of the other.

6.4 This Agreement represents the entire and integrated agreement between the Owner and Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

6.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

6.6 Unless otherwise provided in this Agreement, the Architect and Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.

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tect and Architect's employees and consultants in the interest of the Project for:

- .1 expense of transportation and living expenses in connection with out-of-town travel authorized by the Owner;
- ~~.2 long distance communications;XXXXXXXXXXXX~~
- .3 fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 reproductions;
- .5 postage and handling of documents;
- .6 expense of overtime work requiring higher than regular rates, if authorized by the Owner;
- .7 renderings and models requested by the Owner;
- .8 expense of additional coverage or limits, including professional liability insurance, requested by the Architect in excess of that normally carried by the Architect and the Architect's consultants; and
- ~~.9 expense of transportation, investigation, testing, and equipment time when used in connection with the Project.~~

ARTICLE 7

PAYMENTS TO THE ARCHITECT

7.1 DIRECT PERSONNEL EXPENSE

7.1.1 Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions, and similar contributions and benefits.

7.2 REIMBURSABLE EXPENSES

7.2.1 Reimbursable Expenses are in addition to the Architect's compensation and include expenses incurred by the Archi-

7.3 PAYMENTS ON ACCOUNT OF THE ARCHITECT'S SERVICES

7.3.1 Payments on account of the Architect's services and for Reimbursable Expenses shall be made monthly upon presentation of the Architect's statement of services rendered or as otherwise provided in this Agreement.

7.3.2 An initial payment as set forth in Paragraph 8.1 is the minimum payment under this Agreement.

7.4 ARCHITECT'S ACCOUNTING RECORDS

7.4.1 Records of Reimbursable Expenses and expenses pertaining to services performed on the basis of a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

ARTICLE 8

BASIS OF COMPENSATION

The Owner shall compensate the Architect as follows:

8.1 AN INITIAL PAYMENT OF **Zero** Dollars (\$ **0.00**) shall be made upon execution of this Agreement and credited to the Owner's account at final payment.

8.2 COMPENSATION FOR THE ARCHITECT'S SERVICES, as described in Article 1, Architect's Services, shall be computed as follows: **Fee for services \$45,000.00**

(Insert basis of compensation, including stipulated sums, multiples or percentages, and identify the services to which particular methods of compensation apply, if necessary.)

Architects Services \$7,500.00
Consultants Services \$37,500.00

8.3 FOR REIMBURSABLE EXPENSES, as described in Article 7, and any other items included in Article 9 as Reimbursable Expenses, a multiple of **(1.25)** times the expenses incurred by the Architect, the Architect's employees and consultants in the interest of the Project.

8.4 Payments are due and payable **fourteen (14)** days from the date of the Architect's invoice. Amounts unpaid **twenty-one (21)** days after the invoice date shall bear interest at the rate entered below, or in the absence thereof, at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of interest agreed upon.)

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Architect's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletion or modifications, and also regarding other requirements such as written disclosures or waivers.)

8.5 IF THE SCOPE of the Project or of the Architect's services is changed materially, the amounts of compensation shall be equitably adjusted.

**ARTICLE 9
OTHER CONDITIONS.**

This Agreement entered into this of the day and year first written above.

City of Jonesboro, Jonesboro Parks & Recreation

Brackett-Krennerich & Associates, P.A.

OWNER (Signature)


ARCHITECT (Signature)

Doug Formon, Mayor
(Printed name and title)

Jerry W. Brackett, Vice President
(Printed name and title)

Donna K. Jackson, City Clerk
(Printed name and title)



COUNCILMAN • HUNSAKER

The Ultimate Aquatic Advantage

FEASIBILITY STUDY AGREEMENT

THIS AGREEMENT made and entered into at St. Louis, Missouri this _____ day of _____, 2007, by and between **Brackett Krennerich Architects**, hereinafter referred to as "the Architect" and **COUNCILMAN-HUNSAKER** a Missouri corporation, doing business at 10733 Sunset Office Drive, Suite 400, St. Louis, Missouri 63127-1018, hereinafter referred to as "the Consultant".

WHEREAS, **Brackett Krennerich Architects**, is undertaking a Feasibility Study Plan for the City of Jonesboro Arkansas and,

WHEREAS, the Consultant is a consultant in the field of swimming pool complex planning and design, and

WHEREAS, the **Brackett Krennerich Architects**, is desirous of retaining the Consultant as its independent contractor for purposes of planning.

NOW, THEREFORE, in consideration of the covenants and agreements herein contained, the parties hereto agree as follows:

I. SERVICES:

The **Brackett Krennerich Architects**, hereby retains the Consultant as its aquatic planning and design consultant for the proposed project. The scope of the Consultant's services are:

Program Phase (1 trip in basic fee)

1. NEEDS ANALYSIS:

- A. Meet with the steering committee, plus any designated community groups and/or individuals involved in the project to analyze needs and determine objectives. The Consultant will conduct individual interviews as necessary with for example, local education administrators and/or athletic directors, chamber of commerce representatives, business leaders, private and public recreation providers, health professionals, competitive swim groups, swim coaches, instructors, activity programmers, youth and seniors groups, and others if requested in order to ascertain existing levels of service and the perceived needs of various user groups in the community.
- B. In addition to individual meetings, The Consultant will participate in a public or by invitation civic meeting to discuss the various issues concerning the proposed facility. This discussion will include images and/or video presentations with commentary on features of other aquatic centers similar to that being considered for this project, background information on historic and contemporary issues in

the industry, and an open-forum question-and-answer session to discuss concerns and needs of those individuals and groups attending the meeting. A matrix of programming priorities will be developed and discussed to prioritize programming and facility features. The Consultant will use the results of the interviews and public workshop to develop a needs profile.

- C. Conduct research and compile demographic information necessary to appropriately evaluate the proposed facility, including population, age distribution, income, weather analysis and economic considerations that could affect the project's viability.
 - D. Prepare and submit an outline of a Design Program of spaces and features for the proposed aquatic center describing the natatorium, pool size, shape and support spaces based on preliminary discussions and meetings noted above.
 - E. Conduct a preliminary evaluation of the existing Earl Bell pool to determine if the facility is capable of being renovated to address physical and function obsolescence. Make recommendation if detailed engineering study is required.
2. CONCEPTUAL PLAN: (1 trip)
- A. Based on the agreed upon program, the Consultant will prepare three concepts. Typically these concepts consist of an ideal, preferred and minimum acceptable. The **ideal** concept includes areas of programming without taking into account budget considerations. The **preferred** facility supports the design program with costs to meet the proposed budget. The **minimum acceptable** concept is a facility that will be considered if the project experiences limited funding.
 - B. The Consultant will provide a conceptual plan of each building. The purpose of the plans will be to illustrate ways to organize the spaces in a functional arrangement and to confirm that the building footprint will contain the areas proposed in the Design Program.
 - C. The Consultant will meet a second time with the committee to participate in a design workshop. Preliminary concepts and program features will be reviewed and confirmed. A public meeting may or may not be held as a part of this visit.
 - D. Following the meeting, the Consultant will make revisions to the selected plan, if necessary, and mail it to the Committee.
3. COST ANALYSIS: (1 trip)
- A. The Consultant will prepare an Opinion of Probable Construction Cost for the pool(s) and building. Recent project bid figures of similar projects will be used as well as national estimating guides and local cost adjustment factors. The **hard construction cost** figures will be supplemented by a development cost factor, which will include such "soft" costs as professional fees, survey, geotechnical report, document reproduction, advertisement for bids and all anticipated expenses

related to the administration of the project. The sum of these two cost figures will be the total project cost so that the Owner will have a comprehensive overview before making an informed decision about the project.

B. The Consultant will prepare a Feasibility Study and will develop an opinion of operations protocol for the proposed project. The following will be researched and analyzed:

1. Area Aquatic Providers
2. Market Area Demographics
Population, Age, Income
3. Area Aquatic User Groups
Historic Usage and Project Level of Growth
4. Facility Management Outline
Facility Operating Schedule
Facility Capacity Limits
Wage Structure
Marketing Program
Partnership Opportunities
5. Opinion of Probable Revenue
Market Penetration
Seasonal Usage
Develop Fee Structure
Opinion of Attendance By User Group
Opinion of Revenue
6. Opinion of Probable Expenses
Labor Demand
Chemical Demand
Supply Demand
Maintenance and Repair Demand
Utility Demand
7. Opinion of Facility Financial Performance
8. Aquatic Master Plan
Implementation Strategy To Meet Needs For Next 20 Years
9. Analysis of Sources of Funding

C. The Consultant will make a final presentation to the project committee outlining the methods and results of the study.

II. DRAWINGS

Except for reference and coordination purposes in connection with future additions or alterations to the work, drawings, specifications and other documents prepared by Counsilman-Hunsaker are instruments of the service for use solely with respect to this project and, unless otherwise provided, Counsilman-Hunsaker shall be deemed the author of these documents and shall retain all common law, statutory and other reserved rights, including copyright. The Consultant's drawings, specifications or their documents shall not be used by the Architect or others on other projects except by agreement in writing and with

appropriate compensation to the Consultant. The Architect shall be permitted to retain copies, including reproducible copies of the reports.

III. FEES.

Total fees shall be \$37,500 including three (3) site visits and including related travel expenses.

Additional Services Rates:

Officer / Studio Director	\$150.00/hour
Site Visit	\$1,500.00 / day plus expenses
Associate I	\$115.00/hour
Associate II	\$85.00/hour
CAD	\$65.00/hour
Admin	\$45.00/hour

The Consultant shall submit monthly invoices for services and reimbursable expenses incurred, based upon the percentage of the Consultant's services completed at the time of billing. Architect shall make payments to Consultant within forty-five (45) days of the invoice date. Consultant may, after giving seven (7) days written notice to the Architect, suspend services until payment is made in full of all past due invoices for this project.

The Consultant shall submit monthly statements of basic and additional services and for reimbursable expense incurred, based upon the Consultant's hourly rate schedule for services completed at the time of billing. Reimbursable expenses shall include: qualifying travel expenses, postage, express mailings, printing expenses for copies in excess of 10 of the final report and 5 draft copies, and any artwork desired, such as renderings, cad imaging including fly-through segments that might be used in community publicity. Telephone and fax services are included in the basic fee. Owner shall make payment within thirty (30) days after receipt of invoice from Counsilman-Hunsaker. If Architect fails to make any payment due Consultant for services and expenses within forty-five (45) days after receipt of invoice, Consultant may, after giving seven (7) days written notice to the Owner, suspend services under his Agreement until payment in full of amounts due Consultant for services and expenses have been paid.

To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Counsilman-Hunsaker and Counsilman-Hunsaker's officers, directors, partners, employees, agents and Counsilman-Hunsaker's Consultants, and any of them, to Architect and anyone claiming by through or under Architect for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in a any way related to the conclusions and recommendations expressed in the Feasibility Study shall not exceed the total compensation received by Counsilman-Hunsaker under this Agreement.

IV. TERMINATION:

Each party agrees that upon the occurrence of a material breach or default of the other under the terms of this Agreement, it shall provide written notice of such default to the other. Such written notification given by the party shall specifically state the material breach or default under the terms of this Agreement. The notified party shall have thirty (30) days after such notice is given to remedy the specific breach or default. Upon the failure by the defaulting party to cure the specified breach or default within the allotted time, or recurrence of the same breach within thirty (30) days after its initial cure, the other party shall have the right to terminate this Agreement except with respect to any liabilities or obligations which, under the terms of this Agreement are to survive its termination.

V. SCHEDULE OF WORK:

The Consultant shall execute all of the tasks listed above within 120 calendar days of receipt of a signed agreement and authorization to proceed. Review periods by the Owner, postponement of meetings, submittal of Owner information or other delays not caused by the Consultant, will be added to the 120 calendar days.

VI. ENTIRE AGREEMENT:

This agreement constitutes the entire understanding between the parties and cannot be modified except by their mutual written consent.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year first above written.

ACCEPTED:

COUNCILMAN-HUNSAKER

Brackett Krennerich Architects

BY: _____
D. Scot Hunsaker, President

BY: _____

Date: _____

Date: _____

Contact Information:

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