



# Counsleman · Hunsaker

OPERATIONS

## FEASIBILITY STUDY AGREEMENT

THIS AGREEMENT made and entered into at St. Louis, Missouri this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between **Minnetonka Anchor Club**, hereinafter referred to as "**the Owner**" and **Counsleman-Hunsaker Operations, LLC**, a Missouri corporation, doing business at 10733 Sunset Office Drive, Suite 400, St. Louis, Missouri 63127-1018, hereinafter referred to as "**the Consultant**".

WHEREAS, the Owner, is undertaking a Feasibility Study Plan for a competitive aquatic center in Minnetonka, MN and,

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

WHEREAS, the Owner, is desirous of retaining the Consultant as its independent contractor for purposes of planning the aquatic center.

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

### I. SERVICES.

Minnetonka Anchor Club hereby retains the Consultant as its aquatic planning and design consultant for the proposed project. The scope of the Consultant's services are:

#### 1. NEEDS ANALYSIS: (1 trip)

- 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.

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 aquatic concept. The purpose of the plans will be to illustrate ways to organize the spaces in a functional arrangement on the site.
- C. The Consultant will prepare an Opinion of Probable Construction Cost for each concept. 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.
- D. 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.
- E. Following the meeting, the Consultant will make revisions to the selected plan, if necessary, and mail it to the Committee for final acceptance as the conceptual plan.

3. COST ANALYSIS: (1 trip)

- A. The Consultant will prepare a Feasibility Study for each of the studied options 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
  - Organization Chart
  - Wage Structure
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

B. 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 Owner or others on other projects except by agreement in writing and with appropriate compensation to the Consultant. The Owner shall be permitted to retain copies, including reproducible copies of the reports.

III. FEES.

Total fees shall be \$30,000 including three (3) site visits and excluding related travel expenses.

Additional Services Rates:

Principal	\$200.00/hour
Director	\$175.00/hour
Site Visit	\$1,500.00 / day plus expenses
Project Manager	\$150.00/hour
Project Engineer/Architect	\$120.00/hour
Design Associate	\$110.00/hour
Administrative	\$70.00/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. Owner 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 Owner, 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 Owner 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 OWNER and anyone claiming by, through or under OWNER 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:

Counsilman-Hunsaker Operations, LLC

Minnetonka Anchor Club

BY: \_\_\_\_\_  
George Deines, Project Director

BY: \_\_\_\_\_

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

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

Contact Information:

Dan Berve, M.Ed.

Director, Minnetonka Aquatics

Head Coach, Minnetonka HS Boys and Girls Swim & Dive

Assistant Coach, Minnetonka Swim Club

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