

BL-2

On Motion of \_\_\_\_\_, seconded by \_\_\_\_\_ the following Resolution was adopted ...

**RESOLUTION AUTHORIZING AGREEMENT WITH GENSLER SPORTS WITH REGARD TO CAPITAL ASSESSMENT OF COUNTY OWNED REAL ESTATE**

The following Resolution is recommending approval and award of an agreement for a capital assessment and capital improvement plan for Paul Brown Stadium.

**WHEREAS**, the Board of County Commissioners, Hamilton County, Ohio (the "Board") had previously entered into a Memorandum of Understanding with the Cincinnati Bengals, Inc. with regard to several matters including an agreement to have a capital assessment made of Paul Brown Stadium; and

**WHEREAS**, THE Cincinnati Bengals, Inc. had agreed in the Memorandum of Understanding to pay 50% of the cost of the capital assessment of Paul Brown Stadium; and

**WHEREAS**, the Board had previously issued a Request for Qualifications (RFQ 051-19) from consultants to perform a capital assessment and capital improvement plan for Paul Brown Stadium; and

**WHEREAS**, proposals were received from nine different architectural firms proposing plans for the capital assessment review of Paul Brown Stadium; and

**WHEREAS**, representatives of Hamilton County and the Cincinnati Bengals selected four of the architectural firms for further interviews and Hamilton County and the Cincinnati Bengals completed in-person interviews with four of the architectural firms submitting proposals to the County including Gensler Sports, Ewing Cole, HKS and Populous; and

**WHEREAS**, after completing the interviews of the architectural firms selected for further interview, the combined team of representatives of Hamilton County and the Cincinnati Bengals recommended that Gensler Sports be retained for the purpose of conducting the capital assessment of Paul Brown Stadium; and

**WHEREAS**, Hamilton County has negotiated an Agreement with Gensler Sports for the purpose of conducting the capital assessment and providing a capital improvement plan to the County; and

**WHEREAS**, County Administration has recommended to the Board that an agreement for capital assessment for Paul Brown Stadium be awarded to Gensler Sports at a total agreement price not to exceed Three Hundred Seventy-Four Thousand Five Hundred Dollars (\$374,500.00) of which amount fifty per cent (50%) of the cost shall be paid by the Cincinnati Bengals, Inc.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of County Commissioners of Hamilton County, Ohio hereby authorizes the award of a consulting agreement with Gensler Sports for the purpose of providing a capital assessment and capital improvement plan for Paul Brown Stadium at an agreed contract amount not to exceed Three Hundred Seventy-Four Thousand Five Hundred Dollars (\$374,500.00) of which amount fifty per cent (50%) shall be paid by the Cincinnati Bengals, Inc.

**BE IT FURTHER RESOLVED**, that funding for the awarded agreement to Gensler Sports be provided by Fund No.946-010 Paul Brown Stadium Capital Repair.

**BE IT FURTHER RESOLVED**, that the County Administrator, Jeff Aluotto, is hereby authorized to finalize the terms of the agreement with Gensler Sports and to sign an agreement on behalf of the Board with Gensler Sports in an amount not to exceed Three Hundred Seventy- Four Thousand Five Hundred Dollars (\$374,500.00) of which amount fifty per cent (50%) shall be paid by the Cincinnati Bengals, Inc.

**BE IT FURTHER RESOLVED**, that the Clerk of the Board is hereby authorized to and directed to deliver certified copies of the foregoing Resolution to Dusty Rhodes, Hamilton County Auditor; the Cincinnati Bengals, Inc.; Ron Turner of Gensler Sports; Jeff Aluotto, County Administrator, Joe Feldkamp, Director of Stadia Operations; and Roger E. Friedmann, Assistant Prosecuting Attorney.

**ADOPTED** at a meeting of the Board of County Commissioners of Hamilton County, Ohio, this \_\_\_\_ of September, 2020.

Ms. Driehaus \_\_\_\_\_ Ms. Summerow Dumas \_\_\_\_\_ Ms. Parks \_\_\_\_\_

**CERTIFICATE OF THE CLERK**

IT IS HEREBY CERTIFIED that the foregoing is a true and correct transcript of a Resolution adopted by the Board of County Commissioners, Hamilton County, Ohio, in special session the \_\_\_\_ day of September, 2020.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of the Office of the Board of County Commissioners, Hamilton County, Ohio this \_\_\_\_ day of September, 2020.

\_\_\_\_\_  
Jacqueline Panioto, Clerk  
Board of County Commissioners  
Hamilton County, Ohio

# PROFESSIONAL ARCHITECTURAL AND ENGINEERING REVIEW, CAPITAL ASSESSMENT AND MASTER PLAN AGREEMENT

**THIS PROFESSIONAL ARCHITECTURAL AND ENGINEERING REVIEW AND CAPITAL ASSESSMENT AND MASTER PLAN AGREEMENT** (the "Agreement") is made and entered into on \_\_\_\_\_, 2020 (the "Effective Date"), by and between the Board of County Commissioners, Hamilton County, Ohio (the "Board") and Gensler Architecture, Design and Planning P.C., 500 South Figueroa Street, Los Angeles, California 90071 ("Gensler") and Elevar Design Group, Inc., 555 Carr Street, Cincinnati, Ohio 45203 ("Elevar," and collectively and jointly and severally with Gensler, the "Architect"), hereinafter sometimes collectively called "Parties."

## WITNESSETH:

**WHEREAS**, the Board had previously issued a Request for Qualification No. 051-19 seeking proposals from firms capable of performing architectural and engineering capital assessments of Paul Brown Stadium in Hamilton County, Ohio; and

**WHEREAS**, the Board had received responses to the Request for Qualification and had interviewed potential Architectural and Engineering firms for the purpose of providing an facility assessment of and master plan for Paul Brown Stadium; and

**WHEREAS**, after meetings with four of the firms responsive to the Request for Qualification, a team from Hamilton County and from the Cincinnati Bengals made a determination that the most qualified architectural and engineering firm for the purpose of the facility assessment and master plan for Paul Brown Stadium was Gensler Architecture, Design and Planning P.C. in cooperation with Elevar Design Group from Hamilton County, Ohio; and

**WHEREAS**, Gensler Architecture, Design and Planning P.C. and Elevar Design Group (hereinafter together referred to as "Architect" or "Gensler/Elevar") have demonstrated expertise and experience in the area of providing facility assessments and master plans for sports stadiums, including design standards, statements of probable costs, feasibility studies, facility condition reports and maintenance and update reports; and

**WHEREAS**, Architect is willing to provide such professional services to the Board as enumerated herein and in **Exhibit A** attached hereto, upon mutual agreement on the terms and conditions set forth in this Agreement; and

**WHEREAS**, the Board wishes to engage Architect to provide such services on the terms and conditions set forth herein.

**NOW THEREFORE**, in consideration of the mutual promises, terms and conditions contained herein, the Parties, intending to be legally bound, do agree as follows:

## Section 1 Scope of Services

1.1 **The Services.** As requested by the Board, Architect agrees to provide the Board and the Cincinnati Bengals, Inc. (hereinafter "Bengals" or "Team") with certain professional design, architectural, and engineering review and capital assessment of and master plan for Paul Brown Stadium and related services as enumerated herein and in **Exhibit A** as the Professional Scope of Services incorporated by reference herein (the "Services" and sometimes the "Project"). The Board agrees that Architect shall have reasonable access to the Board's staff and resources as necessary to perform the Services. In the event Architect anticipates at any time that it will not be able to provide the Services in the manner agreed to herein, Architect shall immediately notify the Board in writing of such event. The Team agrees that Architect shall have reasonable access to the Team's staff and resources as necessary to perform the Services.

1.2 **Staffing: Relationship of Parties.** In fulfilling its Services, Architect shall provide experienced and qualified individuals. The Board may identify and designate and Architect shall provide specific individuals from Architect, as approved by the Board, to perform and/or oversee certain activities as may be described in the Agreement or in the Services. When executed by the Board and Architect, all Services will be provided under the terms of this Agreement. This Agreement shall be interpreted and construed to harmonize all of the provisions herein and therein to the extent possible. However, in the event of an irreconcilable conflict between provisions of this Agreement or an Exhibit, the provisions of this Agreement shall apply. Architect acknowledges and agrees that Architect shall at all times retain the status of an independent contractor, and that: (i) the Board will have no responsibility to provide to Architect or its assigned employees insurance, vacation, or other fringe benefits normally associated with employee status, including, but not limited to participation in any welfare benefit plan sponsored by the Board for the benefit of its employees; (ii) Architect will not hold itself or its staff out as nor claim to be an officer, partner, joint venture, employee or agent of the Board; (iii) Architect shall be responsible for reporting, withholding and payment of all income, unemployment, FICA or similar taxes for Architect and its staff; and (iv) Architect shall, at its own expense, comply with all applicable laws, including but not limited to the National Labor Relations Act, the Americans With Disabilities Act, all applicable employment discrimination laws, overtime laws, immigration laws, workers' compensation laws, and occupational safety and health laws and any regulations related thereto.

1.3 **Standard of Care.** Architect represents and warrants that it is experienced in large scale and complex projects, including but not limited to, the design and construction of similar National Football League (the "NFL") stadia, in comparable urban areas and under comparable project conditions. Architect covenants with the Board to furnish its professional skill and judgment in performing its professional services and obligations under this Agreement. Given that status, experience and skill, Architect represents, covenants, and agrees that all of the Services to be furnished by Architect and its Consultants under or pursuant to this Agreement shall be performed in a manner consistent with that high standard of professional care, skill, diligence and quality which prevail among professional design and consulting firms engaged in the facility assessment, master planning, design, construction and administration of projects of

similar scope, function, size, quality, complexity and detail in comparable urban areas throughout the United States (the "Standard of Care").

1.4 **Legal Requirements and Standards.** The Architect shall review laws, codes, statutes, regulations, rules and ordinances applicable to the Services. Architect shall also review all requirements of the NFL in any way relating to the Project. All relevant design documents (if any); master planning documents, and any other work product, shall comply with applicable federal, State of Ohio, Hamilton County and City of Cincinnati laws, statutes, regulations, rules, codes, ordinances, the Americans with Disabilities Act, and orders and resolutions of any governmental authority having jurisdiction of the Services (collectively "Legal Requirements") and all NFL requirements. The Architect represents to the Board, the Bengals, and to such other parties as the Board may reasonably request, that on the basis of the Architect's best professional judgment and knowledge consistent with the requirements of the Standard of Care, the Architect's Services, including facility assessment, master planning, and the design documents (if any) and project(s) resulting therefrom, when built in accordance therewith, shall conform to all applicable Legal Requirements and the NFL requirements, in effect at the time any such design documents are issued by Architect to the Board.

1.5 **Personnel, Staffing Plans.**

1.5.1 **Architect's Personnel.** The Architect represents, covenants and agrees that all persons and entities connected with the Architect, including Architect's consultants who are directly supervising the professional architectural and consulting services for the Project or who execute contract documents for the professional architectural and consulting services for the Project, are duly licensed to practice under the laws of the State of Ohio and that all engineering services provided hereunder shall be performed under the direct supervision of an engineer, or engineers, licensed to practice under the laws of the State of Ohio. The Board reserves the right to approve the principals and key management design personnel of Architect that will be scheduled to work on the Project. Attached as **Exhibit C** is a list of the principals and key management design personnel assigned to this Project that will be personally and continually, but not exclusively, involved for the duration of the Project as necessary and appropriate to meet at all times the Standard of Care for the performance of services required in this Agreement. Architect further represents and warrants that it shall commit such personnel, in terms of expertise and number, to fulfill its duties and obligations under this Agreement in accordance with the Standard of Care. No substitutions of any principal or key management design personnel may be made by the Architect without the prior written consent of the Board. In the event that any principal or key design management personnel are no longer employed by Architect, the Architect shall notify the Board within three (3) days after learning of such event. The Architect shall use its best efforts to provide a permanent replacement of any principal or key design management personnel within thirty (30) days after such event. The Board shall have the right to approve the proposed replacement in advance of an assignment to the Project. The Board may require the Architect to remove from the Project any personnel whose performance under this Agreement is not satisfactory.

1.5.2 **Staffing Plan and Work Plan.** The Architect shall submit, for the Board's review, detailed staffing plans with respect to services to be performed by Architect and each of

its Consultants. Such staffing plans shall be similar to the format of Architect's standard staffing plan and shall provide a) a listing of individuals assigned to the Project and to any separate phase thereof (a "Phase"), if any, b) a description of roles/responsibilities for such individuals; and c) anticipated time to be expended by such individuals in performing services required for each such Phase. Architect shall also submit a comprehensive Work Plan to the Board and Team that clearly defines the deliverables and tasks required for each Phase of the Project and for all document packages throughout the design and construction process (the "Work Plan").

1.5.3 **Architect's Consultants.** The Architect may, subject in each instance to the written approval of the Board, enter into written agreements with such structural, mechanical, electrical, plumbing or other engineering or design related firms (individually a "Consultant" and collectively "Consultants") as the Architect deems necessary or appropriate in order to assist the Architect in providing its services hereunder, provided that each such agreement shall provide that: (i) each such Consultant, to the extent of the services to be provided by it, shall be bound by the applicable terms of this Agreement and shall assume toward the Architect all the applicable obligations and responsibilities which the Architect by the terms of this Agreement assumes toward the Board, and (ii) each such Consultant shall be directly liable to the Board, and the Architect shall be responsible to the Board for the performance of such Consultant's services designated in the agreement and for negligent acts or errors or omissions in the performance of such services. The Board shall not, however, have, nor deemed to have, any direct contractual relationship with any such Consultant and shall not be obligated to pay, nor be liable for the nonpayment of, the fees, costs, and expenses of any such Consultant; such fees, costs, and expenses being the obligation of the Architect. To the extent the Architect retains Consultants to perform portions of the Architect's services hereunder, the Architect shall be responsible for their services as though it had been performed directly by the Architect. A list of the Architect's Consultants is attached hereto as **Exhibit D**. All such Consultants are acceptable to Board.

1.6 **Performance of Services.** The Architect and its Consultants will, at all times, meet the Standard of Care when performing its Services, and the Architect represents and agrees that any applicable design documents, master planning, or any other work product or Services, when completed, will be in compliance with all Legal Requirements and NFL requirements and the Standard of Care. The Architect's Services shall at no time be in any way diminished by reason of any acceptance by the Board of any design documents or any other work product of the Architect, nor shall the Architect be released from any liability by reason of such acceptance of the Board. Architect understands that the Board at all times is ultimately relying upon the Architect's skill and knowledge in preparing design documents (if any), facility assessment, master planning, and providing all other Services and work product to be provided pursuant to this Agreement.

1.7 **Basic Services.** The Architect's Basic Services consist of those described in Section 1, and any other services identified in **Exhibit A** (the "Basic Services").

1.8 **Schedule of Architectural Services.** If required by the Board, the Architect shall prepare, for the Board's review and approval, a schedule for the performance of the Services.

The Services schedule shall identify milestones and a reasonable description of tasks and the details thereof to be performed by the Architect and its Consultants during each Phase of the Project and the achievement dates for each such task. The Services Schedule shall also identify in detail which tasks shall be performed by Architect and which tasks shall be performed by Architect's Consultants. Upon the Board's and Team's written approval, the Schedule of Architect's Services shall be attached hereto as **Exhibit B** (the "Services Schedule").

1.9 **Deficiencies**. The Architect represents, covenants and agrees that it shall, at its own cost, promptly correct and remedy any deficiencies in the performance of Architect's and Architect's Consultants' Services, including, but not limited to, any defective, incomplete or erroneous plans, drawings, specifications or instructions furnished by or through the Architect. In the event the Architect refuses or neglects to make good such defects promptly, then the Board shall be entitled to make good such deficiencies at the expense of the Architect. The Architect will reimburse the Board within 30 days of billing all documented costs associated with correcting such deficiencies. The obligations by the Architect pursuant to this Section 1.9 are in addition to, and not in substitution for, any other remedy for defective services which the Board may have either at law or in equity or the remedies set forth herein.

1.9.1 **Omitted Items**. In the event any required item of the Project is for any reason omitted from any applicable design documents, master planning products or any other product or Services rendered under the Agreement or prepared by the Architect, the Architect shall be responsible for additional costs, including additional costs incurred by the Board, necessary for the installation of that item as incurred by omission from any design documents or other Services or delayed addition to the work, provided the Architect is given the opportunity to remedy the problem in another manner satisfactory to the Board and to negotiate the charges with the contractors and vendors. The Architect will reimburse the Board within 30 days of billing all documented costs above the costs that would have been incurred if the omitted item had been included in the original design documents.

1.10 **Progress Reporting; Bi-Weekly Meetings**. Architect shall prepare and submit reports of its performance and its progress as the Board on a bi-weekly basis to the Board and the Team in a form and of content acceptable to the Board and the Team. In addition to such reports, the Architect shall participate in person in on-site biweekly meetings with representatives of the Board and the Team to discuss, among other things, coordination, scheduling, document review, open items, new items, and so forth. Such bi-weekly meetings will be documented via meeting minutes prepared and submitted within five (5) business days after each such meeting by a mutually agreed upon representative of the Team.

#### 1.11 **Books and Records**.

1.11.1 **Accounting**. Architect shall maintain full, accurate and complete financial and accounting books, records and reports ("Records") with respect to the Services provided by Architect and its Consultants hereunder and with respect to the fees, expenses and other charges due and owing by the Board hereunder.

1.11.2 **Maintenance of Records**. Architect and its Consultants shall keep Records

relating to the Services performed pursuant to this Agreement and provide a written summary of records to the Board and the Team not later than thirty (30) days following the completion of the Services. Architect shall maintain a system of bookkeeping adequate for its operations hereunder and shall submit such system to the Board on an annual basis for review and approval. Architect may use its own proprietary computer software. Architect shall keep and preserve for at least seven (7) years following each calendar year all sales slips, rental agreements, purchase orders, sales books, cash register tapes, credit card invoices, payroll records, duplicate deposit tapes and invoices, bank accounts, cash receipts and cash disbursements, bank books, and other evidence of receipts and expenditures relating to the performance of its Services under this Agreement.

1.11.3 **Audit.** Board or Board's designated representative, at Board's cost and expense, shall have the right to audit Architect's Records at any time but shall not unreasonably interfere with Architect's business or operations in connection with any such audit. Architect may be also subject to Audit by the Auditor of the State of Ohio or by other duly authorized agencies.

1.11.4 **Repayment.** If an Audit discloses duplicate or erroneous payments (of any nature) received by Architect from the Board, Architect agrees to repay to the Board within thirty (30) days of the audit report the full amount of such overpayments received by Architect. Architect also agrees that the Board may withhold any money due Architect for Services provided under this Agreement, if evidence exists of duplicate or erroneous billings by Architect. If there is a meritorious dispute as to any money due Architect which is withheld by the Board pursuant to this Section, such amount shall be placed in escrow with a mutually acceptable escrow agent pending full resolution of the dispute.

1.12 **Equipment and Furnishings.** Except to the extent a Schedule provides otherwise, Architect shall supply the necessary equipment (including computers and necessary peripherals), tools, supplies and all other items necessary to perform the Services required under this Agreement.

1.13 **No Control by the Board.** Architect Employees and Consultants are expected to perform the Services without the benefit of direct day-to-day control from the Board personnel. Architect Employees and Consultants may receive instruction on the object(s) and goal(s) for which they are responsible from the Director of Stadia for the Board and from the Bengals, but Architect Employees and Consultants will exercise their own discretion and professional judgment to attain those goals. Architect Employees and Consultants will perform work and labor under the supervision of Architect and not the Board's personnel or Team.

1.14 **Changes and Additional Work.** Changes to the scope of the Services set forth in any Services shall be made only in a writing executed by authorized representatives of both Parties (and consented to in writing by the Bengals). Architect shall have no obligation to commence work in connection with any change in the scope of Services until the Parties (with the written consent of the Bengals), in writing, agree upon the scope, fee and/or schedule impact of the change. If Architect performs work that is not covered by the Services or that exceeds the scope of Services, such work shall not be deemed Services provided pursuant to this Agreement and for which the Board shall be required to compensate Architect unless such additional work is



the subject of a written agreement signed by the Board and consented to in writing by the Bengals.

## **Section 2** **Board and Bengals Responsibilities**

2.1 The Board and the Bengals shall provide criteria and information reasonably necessary regarding the requirements for and limitations of each Schedule. Architect acknowledge that the Bengals can provide various information via hard copy and CD-ROM files, but cannot verify as-built accuracy.

2.2 The Board and the Bengals shall furnish the Architect with information or documentation in the Board's or the Bengals' possession regarding existing conditions and scope of work which is required for the scope of the Services. Architect shall be entitled to rely upon such information as generally accurate, but shall field verify exact conditions.

2.3 The Board and the Bengals shall provide the Architect with reasonable access to Paul Brown Stadium and make all provisions for the Architect to enter upon property as reasonably required for Architect to perform the Services.

2.4 The Board and the Bengals shall designate a representative for the Services. The Board and the Bengals' representatives shall be authorized to act on the Board's and the Bengals' behalf with respect to the project specified in the scope of the Services. The designated representative shall review all studies, reports, specifications, drawings, proposals and other documents presented by Architect to the Board and the Bengals, and render decisions in a timely manner in order to avoid unreasonable delay in the Services.

2.5 The Board and the Bengals shall provide prompt written notice to Architect if it becomes aware of any fault or defect in the project specified in the scope of the Services.

2.6 The Board and the Bengals shall provide Architect with any known budget constraints applicable to the design or planning for specific projects in the scope of the Services.

2.7 To the extent actually known by the Board and the Bengals the Board and the Bengals shall identify to Architect the presence and location of hazardous materials on the site. Architect shall report to the Board and the Bengals the presence and location of any Hazardous Material or Hazardous Conditions which it observes consistent with the Standard of Care. The Board and the Bengals may include in the scope of Services a schedule providing for the testing and abatement of hazardous materials by the Architect or its Consultants.

## **Section 3** **Term and Termination**

3.1 **Term.** This Agreement shall commence as of the Effective Date and, unless terminated earlier pursuant to its terms, shall continue in effect for three hundred and sixty five (365) days. Thereafter, the Board (with the consent of the Bengals) shall have the option to

renew the terms of this Agreement for an additional one hundred eighty (180) days.

3.2 **Termination.** This Agreement may be terminated by either Party upon thirty (30) days prior written notice to the other Party if the other Party breaches any material term of the Agreement, and the breaching Party fails to cure such breach within seven (7) days after receiving notice of such breach from the non-breaching Party. In addition, the Board may terminate this Agreement at any time for any reason or for no reason at all, without penalty or recourse except as provided herein, upon fifteen (15) days written notice delivered to Architect.

3.3 **Return of Materials and Information.** Upon termination of this Agreement, or at any time upon the Board's written request, Architect shall promptly return to the Board all copies of any data, records, information or materials provided to Architect by the Board in connection with this Agreement. Notwithstanding the foregoing, Architect shall be permitted to keep copies or notes as part of its work-paper record of the Services it has performed under this Agreement. Upon payment for the Services performed prior to the termination date, Architect shall furnish to the Board all work in progress or portions thereof, including all incomplete work or work product developed or created by Architect in connection with the Services.

3.3.1 In the event of any termination under this Section 3, the Architect consents to Board's selection of another architect of Board's choice to assist the Board in any way in completing the Services. Architect further agrees to cooperate and provide information requested by Board in connection with the completion of the Services and consents to and authorizes the Board and such other architect as Board may desire making any reasonable changes to the design documents, if any, provided by the Architect, provided, however, Board shall waive any claim against Architect arising from any changes made by the Board or such other architect and Board agrees to defend and hold harmless Architect from all claims, losses, demands and damages, including attorney's fees, against or sustained by Architect arising from such changes to the extent permitted by applicable law. In the event of termination under this Section 3, all Design Documents and any other materials, documents, models, reports, Project records, electronic CADD files, tapes, disks and similar items shall be delivered forthwith to the Board, provided that Architect shall have received all payments properly due under this Agreement.

3.4 **Final Payment.** Within thirty (30) days after any termination of this Agreement, Architect shall submit to the Board an itemized invoice for any fees or expenses theretofore accrued under the Agreement. The Board, upon payment of accrued amounts so invoiced, shall have no further liability or obligation to Architect under the Agreement for any further fees, expenses or other payments of any nature whatsoever for the Services.

3.5 **Resolution of Claims and Disputes.** The Parties agree that, in the event of a dispute or alleged breach subject to Section 3.2, they will work together in good faith first, to resolve the matter internally by escalating it to higher levels of management, and thereafter, where appropriate, to exercise reasonable efforts to use a mutually agreed alternative dispute resolution technique prior to resorting to litigation.

3.6 **No Prejudice to Rights or Remedies.** Provided the parties have complied with the

requirements for giving notice of the existence of a Dispute, no delay in disposing of such Dispute while the parties pursue resolution as provided by this Article shall prejudice the rights of either party; however, nothing contained in this paragraph shall be deemed to relax any requirement contained elsewhere in the Agreement for the giving of notice between the parties.

3.7 **Jurisdiction and Venue.** Board and Architect agree that, subject to those claims, counterclaims, disputes and other matters in question between the parties that are resolved pursuant to Section 3.5 herein, all other actions or proceedings arising in connection with this Agreement shall be tried and litigated only in state courts located in the County of Hamilton, State of Ohio having subject matter jurisdiction over the matter in controversy. The parties further agree that this choice of venue is to be considered mandatory, and not permissive in nature, thereby precluding the possibility of litigation in any venue or jurisdiction other than that specified in this Section 3.7. The parties agree that any final judgment rendered in any such action or such proceeding as provided herein shall be conclusive as to the subject matter of such final judgment, subject only to any right of appeal provided by the laws of the State of Ohio, and that once any such right of appeal has been exhausted or waived, such final judgment may be enforced in other jurisdictions in any manner provided by law.

#### **Section 4** **Fees, Expenses and Payment**

4.1 **Payment for the Services.** In consideration of Architect performing the Services, the Board shall pay Architect the fees described in Section 4.5 below. If the Architect's compensation is based upon time-and-expense, Architect agrees to submit to the Board a monthly invoice, itemized for each Employee and Consultant, including the hours worked and the applicable Direct Personnel Expense. Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project related to their time devoted to the Project and that portion of the labor burden costs directly related thereto. Labor burden costs for purposes of this Section 4.1, shall include all mandatory and customary contributions, benefits and taxes including FICA, State and Federal Unemployment taxes, life insurance, pension, 401K, medical insurance, dental insurance, vacation, sick pay, profit sharing/bonus, automobile allowances and holiday pay. Direct Personnel Expense shall not include any bonus or similar plan or agreement related to Architect's or Consultant's performance on, or profit from, the Project. In lieu of calculating the actual labor burden costs for Architect's and Consultant's personnel dedicated to the Project, the Architect and Board agree that the Direct Personnel Expense incurred by the Architect, without mark-up for overhead and profit shall, be calculated at One Hundred Thirty Five Percent (135%) of the actual wages and salaries received by the personnel of the Architect for the labor or services provided by such employee exclusively for the Project. Architect's and its Consultant's Direct Personnel Expense are attached hereto as **Exhibit E** and incorporated by reference herein. The Board shall pay the amount owed for each invoice within thirty (30) days after the Board's and Team's review and approval of such invoice. In the event Architect is unable to complete the Services, and unless otherwise agreed to by the Board in writing, no further fees for the completion of the Services shall be owed by the Board to Architect under this Agreement or otherwise.

4.2 **Reimbursable Expenses.** Reimbursable Expenses are included in the compensation for Services and include only those reasonable and actual expenditures made by the Architect and the Architect's Employees and Consultants in the interest of the Project, plus a ten percent (10%) mark-up to cover administrative and accounting costs. Reimbursable Expenses shall not exceed the Reimbursable Expense Budget described in by Section 4.5.3 below. The Board shall pay all approved expenses owing to Architect hereunder within thirty (30) days after Architect has submitted to the Board an itemized invoice therefore. Expenses that shall be considered "Reimbursables" include the following:

4.2.1 Expense of transportation and living expenses in connection with out-of-town travel authorized in advance by the Board in accordance with the Board's travel policy;

4.2.2 Long-distance communications;

4.2.3 Fees paid for securing approval of authorities having jurisdiction over the Project;

4.2.4 Reproductions;

4.2.5 Postage and handling of Drawings and Specifications;

4.2.6 Expense of overtime work requiring higher than regular rates, if authorized by the Board, in writing in advance at an agreed upon rate;

4.2.7 Renderings and models requested by the Board;

4.2.8 Expense of additional insurance coverage or limits, including professional liability insurance, requested by the Board in excess of that required to be carried by the Architect and Architect's Consultants pursuant to this Agreement;

4.2.9 Plots and copies;

4.2.10 Online collaboration software;

4.2.11 Parking;

4.2.12 Mileage, not to exceed the IRS Standard, per mile at the time of travel.

4.3 **Payments Following Termination.** In the event Architect terminates this Agreement because of a breach of this Agreement by the Board, or the Board terminates this Agreement for its convenience, Architect shall be entitled to payment for Services performed up to the time the breach or termination occurred as such is reviewed and approved by the Board and the Team.

4.4 **Architect's Accounting Records.** Records of Architect and Architect's Consultants' Reimbursable Expenses and hours for all those services performed on an hourly basis on the Project, or on the basis of a multiple of Direct Personnel Expense pertaining to the

Project, shall be kept in accordance with generally accepted accounting principles, which principles shall be consistently applied. The foregoing records shall be available to the Board or its authorized representatives for inspection and copying upon reasonable notice and during regular business hours during the term of this Agreement and for seven (7) years after the date of the Services are completed. Board or Board's authorized representatives shall have the right to conduct an audit or review of Architect's and Architect's Consultants accounting and financial records, relating to work performed on an hourly basis or on the basis of a multiple of Direct Personnel Expense and invoices tendered for services or Reimbursable Expenses on the Project. Such audit or reviews may require inspection and copying from time to time and at reasonable times and places, of information, materials and data, including records, books, papers, documents, subscriptions, recordings, agreement, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters bearing or pertaining to any matters, rights, duties, or obligations under or covered by this Agreement. Such records subject to audit and review shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement. Said audit or review shall be at Board's expense and at a mutually agreeable time and place. If an audit inspection or examination in accordance with this Section 4.4 discloses overcharges (of any nature) by the Architect to the Board, the Board shall promptly reimburse the Board the amount of such overcharges and, in the event the overcharge is in excess of two percent (2%) of the total compensation paid to Architect pursuant to Section 4.5, the actual cost of the Board's audit, in addition to the overcharge, shall be reimbursed to the Board by the Architect. Board understands and agrees that certain financial and accounting records which will be the subject of the audit or review consist of or contain proprietary data, confidential information and trade secrets, the release of which to competitors or other third parties may irreparably harm Architect and/or its Consultants. Accordingly, Board and its authorized representatives shall keep confidential and not disclose to third persons or to the public information reasonably designated by Architect to contain proprietary data, confidential information or trade secrets and to resist any challenge to said right of non-disclosure to the extent reasonable under Ohio Law against a claimed applicability of the provisions of Ohio Revised Statutes Section 149.43 or otherwise.

#### 4.5 **Basic Compensation.**

4.5.1 **Basic Services.** For Basic Services, as described in herein, including the services of the Consultants, compensation shall be computed as follows: A stipulated sum of Three Hundred Seventy Four Thousand Five Hundred Dollars (\$374,500) including Reimbursable Expenses incurred consistent with Section 4.2 and Section 4.5.3.

See **Exhibit F**, Payment Schedule of Values: Architect shall submit, prior to execution of this Agreement, for Board's review and approval, as part of the Services Schedule, a time-phased Payment Schedule of Values assigned to all intermediate final deliverables and services-related activities which schedule shall total to the stipulated sum provided for in this Agreement. Board and Team shall have thirty (30) days from the execution of this Agreement to approve the Payment Schedule of Values which will be attached as **Exhibit F**. Time-phasing shall be understood to mean that the Architect will specify intermediate and final completion percentages

and dates as to each deliverable that is coordinated with the Services Schedule. It is further understood that Architect will requisition only for the value of that part of each deliverable that has been earned as of the end of the Architect's billing cycle, which values may, at Board's and Team's option, be verified by means of an examination of the progress of the Services that have been declared by the Architect to have been earned.

#### 4.5.2 Compensation for Additional Services

4.5.2.1 Services Beyond Basic Services. For any approved work to be provided by the Architect beyond Basic Services ("Additional Services"), compensation shall be based on a negotiated sum agreed upon between Architect and Board (and approved to by Team) or otherwise compensated as an Additional Service pursuant to Section 4.5.2.2 that follows.

4.5.2.2 Additional Architect's Services. Unless otherwise agreed by the Parties in writing (and approved to by Team), for Additional Services of the Architect, but excluding services of consultants, compensation shall be computed as follows:

Architect's compensation shall be based on the negotiated sum for each such Additional Service provided by Architect, approved in advance, in writing, by the Board (and approved by Team). In the event the Board and the Architect do not agree as to the negotiated sum for such Additional Service, Architect shall perform such Additional Service computed on the basis of Architect's hours actually expended, times the Architect's hourly rates for Architect's personnel performing the Additional Service. Architect's hourly rates shall be calculated on a multiplier of Two and One Half times Architect's Direct Personnel Expense ("D.P.E.") as defined herein (2.5 x D.P.E.) which includes that expense, overhead cost and profit associated with Architect's practice.

4.5.2.3 Additional Consultant Services. For Additional Services of Consultants, the amounts billed to the Architect plus ten percent (10%) for such services provided such Additional Services were approved, in advance, in writing by the Board and Team.

4.5.3 Preparation of Reimbursable Expense Budget. For Reimbursable Expenses, as described herein, and any other items included as Reimbursable Expenses, the expenses actually incurred by the Architect, and the Architect's employees and Consultants in the interest of the Project. Architect shall prepare and submit to the Board, for Board's and Team's review and approval a Reimbursable Expense Budget, which Budget, upon Board's and Team's approval shall be attached hereto as **Exhibit G**. The Architect shall, on a monthly basis, review with the Board and Team, the Reimbursable Expenses incurred as of such date. The Architect shall advise the Board and Team in writing if the remaining balance in the Budget at each such interval is sufficient to complete the Project and advise of any action necessary in order to reduce, control or modify the amount of future Reimbursable Expenses to remain within such Budget. The Board and Team shall not be obligated to pay for any Reimbursable Expenses incurred in excess of the Reimbursable Expense Budget. Any increases in the Reimbursable Expense Budget shall be subject to the Board's and Team's prior written approval.

4.5.4 **Payment Schedule.** Payments are due and payable within thirty (30) days from the date of the Architect's invoice. Amounts unpaid forty-five (45) days after the invoice date shall bear interest at the lower of (a) five percent (5%) per annum or (b) the highest rate then permitted under applicable law.

## **Section 5**

### **Intellectual Property Rights; Ownership of Materials**

5.1 **Board Property.** All Design Documents (if any) and other materials, including but not limited to documents, facility assessment, master or other plans, specifications, models or reports prepared by the Architect and its Consultants as instruments of service pursuant to this Agreement, are and shall be the property of the Board from the time of payment for the services and thereafter. All design documents and other materials, documents, models, reports, electronic CADD files, tapes, disks, PDF zip files, PDF Flash drives, and similar items prepared by the Architect and its Consultants in connection with this Agreement are prepared as "work for hire" as such phrase is defined in Section 101 of Title 17 of the United States Code (Public Law 94-533) and all title, ownership and copyright privileges shall be vested in the Board upon payment for the services. The design documents (if any) and all other materials, documents, models or reports may be used by the Board in whole or in part or in a modified form for such purposes as it deems advisable, without further employment of or payment of additional compensation, provided that payment has been made for the Services necessary to produce the work products, to Architect or any Consultant retained by Architect. The Architect and its Consultants shall be permitted to retain copies, including reproducible copies, of design documents for information and reference. In the event that the Board reuses any of the work or work product for purposes other than those contemplated by this Agreement or an individual Schedule, the Architect's name shall be removed there from and the Board shall assume responsibility for the reuse of such work or work product. The Architect shall have no liability or responsibility arising from such reuse by the Board.

5.2 **The Board's Property.** Architect understands and agrees that all right, title and interest in and to any programs, systems, data, information and other materials furnished to Architect by the Board hereunder are and shall remain the sole and exclusive property of the Board.

5.3 **Design Documents.** The term "design documents" as used in this Agreement shall refer to, as applicable, the Schematic Design Documents, the Design Development Documents and the Construction Documents, if any, as prepared by Architect or its Consultants.

## **Section 6**

### **Ownership of Electronic CADD Items**

6.1 Architect and its Consultants' electronic CADD (Computer Assisted Design and Drafting) files, tapes, disks, PDF zip files, PDF flash drives, and similar items remain the property of the Board. The Architect will exert its reasonable efforts to provide these electronic items with revisions and updated information produced by the Architect during all Phases of the Project. The Architect shall provide documents to others consistent in content and format with

normal document production as determined by the Architect. The Board understands that the use and conversion of Electronic Data to an alternate format may not be accomplished without the potential for introduction of anomalies or errors and that changes or modifications by anyone other than the Architect may result in adverse consequences which Architect can neither predict nor control. Accordingly, the Board agrees that Architect shall not be liable for and hereby waives all claims arising out of or connected with (a) the use, modification or misuse by the Board of such Electronic Data; or (b) the decline of accuracy or readability of the Electronic Data due to storage conditions, the passage of time, or otherwise; or (c) any use of said Electronic Data by any third parties receiving the Electronic Data from the Board. When requested, Architect shall provide the Board with electronic drawings in a .dwg format. All electronic drawing layers shall be provided in accordance with **Exhibit H** attached hereto and incorporated herein.

## **Section 7** **Warranties**

7.1 **Representations of Architect.** Architect represents that: (a) Architect has the full and unrestricted right, power and authority to enter into this Agreement and to perform Architect's obligations in accordance with the terms of this Agreement; (b) Architect and its Consultants will perform all Services exercising due care and pursuant to the Standard of Care and in accordance with Article 1.3, using Architect Employees and/or Consultants having the proper experience, skills, training and professional education to render the Services which such Architect Employees provide to the Board, (c) Elevar is an Ohio corporation, duly organized and good standing under the laws of Ohio, (d) Gensler is a California corporation, duly organized and good standing under the laws of California, and duly qualified to do business in the State of Ohio as a foreign corporation, and (e) Architect has all requisite legal power and authority to execute this Agreement and to carry out its terms, conditions and provisions. All required corporate action needed to authorize the execution; delivery and performance by Architect of this Agreement and the transactions contemplated hereby have been taken and are in full force and effect. This Agreement has been duly executed and delivered and constitutes the valid, legal and binding obligation of Architect, enforceable in accordance with the terms hereof except as the enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and other forms of equitable relief are subject to equitable defenses, the discretion of the court before which any proceedings therefore may be brought and the principles of equity in general. There are no suits, threatened or pending, nor claims against Architect, that might materially adversely affect the ability of Architect to meet and carry out its obligations under this Agreement. Execution of this Agreement by Architect will not contravene any provision of, or constitute a default under, any other agreement or instrument to which it is a party or by which it or its property may be bound.

## **Section 8** **Insurance and Indemnification**

8.1 **Insurance.** During the term of this Agreement, Architect shall, at its cost and expense, maintain the insurance required herein. Insurance shall be purchased from a company admitted to provide insurance in the State of Ohio. The Insurance requirements under this section



require both Gensler and Elevar to maintain the insurance, and comply with all the related insurance requirements, set forth below. For non-admitted excess and surplus insurance carriers, Architect shall provide information regarding the carrier and policy to the Board's risk manager for his approval. Insurance shall be placed with an insurer with an approved A.M. Best rating of no less than A: VII. Architect shall provide the following types of insurance in the following minimum amounts:

8.1.1 Commercial General Liability insurance with coverage contained in Insurance Services Office Occurrence Form CG 00 01 or equivalent with minimum limits of \$1 million per occurrence and \$2 million in the aggregate and at least \$300,000 in legal liability fire damage. Coverages shall include:

- .1 Additional insured endorsement
- .2 Blanket contractual liability
- .3 Broad Form property damage
- .4 Severability of Interests
- .5 Personal Injury
- .6 Joint venture as named insured (if applicable)

8.1.2 Business auto liability insurance of at least \$1,000,000, combined single limit, on all owned, non-owned, leased and hired automobiles.

8.1.3 Umbrella and Excess Liability insurance with limits of at least \$3 million per occurrence and in the aggregate, above the Commercial General and Business Automobile primary policies. Coverages shall include:

- .1 Additional insured endorsement
- .2 Pay on behalf of wording
- .3 Concurrency of Umbrella/Excess Insurance effective dates with primary effective dates
- .4 Blanket contractual liability
- .5 Punitive damages coverage (where not prohibited by law)
- .6 Aggregate attachments: apply where applicable in the primary policy
- .7 Each Umbrella/Excess policy follows form of the primary policy, not underlying Excess or Umbrella policy
- .8 Drop down feature

8.1.4 Professional Liability insurance consistent with limits and coverage which are required and approved by the Board in any individual Schedule, but in no event at any time during the effective period of this Agreement or any of its amendments less than the sum of \$2 million per claim and \$2 million in the annual aggregate.

8.1.5 Worker's Compensation insurance at the statutory limits required by the Ohio Revised Code and Employer's Liability coverage of at least \$1,000,000 per accident for bodily injury or disease for individuals employed by the Architect.

8.1.6 The Board of County Commissioners, Hamilton County, Ohio and the Cincinnati Bengals, Inc. and Paul Brown Stadium Ltd., and their respective employees, officials,

agents and volunteers will be endorsed as additional insureds on the Commercial General Liability, Business Automobile Liability, Umbrella and Excess Liability and Employers Liability policies. An endorsement specifying "Board of County Commissioners, Hamilton County, Ohio and its employees, officials, agents and volunteers" will be attached to the Certificate of Insurance sent to the Hamilton County Risk Manager.

8.1.7 Architect shall declare any self-insured retentions to Board pertaining to liability insurance. Architect shall provide a financial guarantee satisfactory to Board guaranteeing payment of losses and related investigations, claims administration and defense expenses for any self-insured retentions.

8.1.8 If the Architect provides insurance coverage under a "claims-made" basis, the Architect shall provide evidence of either of the following, for each type of insurance which is provided on a claims-made basis: 1) unlimited extended reporting period coverage which allows for an unlimited a period of time to report claims from incidents that occurred after the policy's retroactive date and before the end of the policy period (tail coverage) or 2) continuous coverage from the original retroactive date of coverage. The original retroactive date of coverage means the original effective date of the first claims-made policy issued for a similar coverage while the Architect was under contract with the Board.

8.1.9 Architect will require all insurance policies to include endorsements stating that each underwriter will waive all rights of recovery, under subrogation or otherwise, against the Board of County Commissioners, Hamilton County, Ohio, the Cincinnati Bengals, Inc., and Paul Brown Stadium Ltd. Architect will require Consultants, by appropriate written agreement, to cause similar waivers each in favor of the Board.

8.1.10 Architect and the Board will fully cooperate, participate, and comply with all reasonable requirements and recommendations of the insurers and the insurance brokers issuing or arranging for issuance of the policies required herein, in all areas of safety, insurance program administration, claim reporting and investigation, and audit procedures.

8.1.11 Architect's insurance coverage shall be primary insurance with respect to the Board of County Commissioners, Hamilton County, Ohio, the Cincinnati Bengals, Inc. and Paul Brown Stadium Ltd., and their respective employees, officials, agents and volunteers. Any insurance or self-insurance maintained by the Board of County Commissioners, Hamilton County, Ohio, the Cincinnati Bengals, Inc., or Paul Brown Stadium, Ltd. shall be excess of the Architect's insurance and shall not contribute to it.

8.1.12 Each insurance policy required by this Section shall be endorsed to state that coverage shall not be cancelled or materially changed except after thirty (30) days prior written notice given to: Hamilton County Risk Manager, 707 County Administration Building, 138 East Court Street, Cincinnati, Ohio 45202

8.1.13 Architect shall furnish Hamilton County Risk Manager with original certificates and amendatory endorsements effecting coverage required by this Section. All certificates and endorsements are to be received by the Hamilton County Risk Manager before

this Agreement commences. The Board reserves the right at any time to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

8.1.14 Maintenance of the proper insurance for the Agreement term is a material element of this Agreement. Material changes in the required coverages or cancellation of the coverages shall constitute a material breach of this Agreement.

8.1.15 If any or all of the Services are subcontracted, Architect shall ensure the Consultant complies with all requirements contained within this Section 8, or as otherwise deemed appropriate in writing by the Hamilton County Risk Manager.

## 8.2 **Indemnification.**

8.2.1 To the fullest extent permitted by and in compliance with applicable law, Architect shall and does agree to indemnify, and hold the Board of County Commissioners, Hamilton County, Ohio, the Cincinnati Bengals, Inc., and Paul Brown Stadium Ltd. and their respective employees, officials, agents and volunteers (collectively "Indemnified Parties") harmless from any and all liability, losses, claims, suits, actions, administrative proceedings, regulatory proceedings/hearings, expenses, judgments, subrogation (of any party involved in the subject of this Agreement), attorneys' fees, court costs, defense costs or other costs of injury or damage (collectively, "Damages"), resulting from injury or damages of any kind whatsoever to any business, entity or person (including death), or damage to property (including destruction, loss of loss of use of resulting without injury, damage or destruction) of whatsoever nature, arising out of or incident to in any way, the negligent performance of the terms of the Agreement by Architect, anyone directly or indirectly employed by Architect, Architect's Consultants or anyone for whose acts the Architect may be liable.

8.2.2 To the fullest extent permitted by and in compliance with applicable law, Architect shall and does agree to defend, indemnify, protect, and hold the Indemnified Parties harmless from and against all Damages, of any nature, kind or description, which result from any claimed infringement of any copyright, patent or other intangible property rights by the Architect, anyone directly or indirectly employed by Architect, Architect's Consultants or anyone for whose acts the Architect may be liable.

8.2.3 Architect shall cause each agreement between it and any of its Consultants to contain an indemnification provision for the benefit of the Indemnified Parties in the form contained in this Section 8.2.

8.2.4 The provisions of this Section 8.2 shall survive any termination of the Agreement.

## **Section 9** **Miscellaneous**

9.1 **Governing Law.** The validity, terms, performance and enforcement of this

Agreement shall be governed and construed by its provisions and in accordance with the laws of the State of Ohio (without regard to conflicts of laws principles) as if this Agreement were negotiated, executed, delivered and performed solely in the State of Ohio. Architect hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the state and federal courts located in Cincinnati, Ohio for any action, suit or proceeding arising out of or relating to this Agreement and the transactions contemplated hereby. The provisions of this Section 9.1 shall survive any termination of this Agreement.

9.2 **Waiver; Amendment.** Neither the failure of any party to this Agreement to take any action or to demand compliance with its terms shall be deemed to be a waiver of any right or remedy of any party hereunder nor shall any action taken pursuant to this Agreement, including any investigation by any party hereto or any demand for partial relief or for compliance with its terms in a single instance, be deemed to constitute a waiver by the party taking such action or making such demand of any right or remedy hereunder. No waiver of any particular term hereof or in any particular instance shall in any event be deemed a waiver of any subsequent occurrence under the same or any other term contained herein. The waiver by any party of any of the conditions precedent to its obligations under this Agreement shall not preclude it from seeking a remedy for breach of this Agreement. No waiver of any right or remedy hereunder shall be binding on any party hereto unless it is in writing and is signed by the party to be charged. This Agreement (and the exhibits and schedules hereto) may be amended only in a writing signed by both the Board and Architect (and consented to in writing by the Bengals.)

9.3 **Headings.** The headings and titles to the Sections in this Agreement are inserted for convenience only and shall not be deemed a part hereof or affect the construction or interpretation of any provision hereof.

9.4 **Notices.** All notices provided for in this Agreement, including, but not limited to, notices of default hereunder and termination of this Agreement, shall be in writing and shall be deemed to have been properly given (a) upon receipt if delivered in person or by a nationally recognized overnight courier service or sent by electronic facsimile with receipt confirmed (provided a copy is sent the same day by either overnight courier or certified mail) or (b) as of the third business day after being sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Board: Joseph Feldkamp, Director of Stadia and Parking Facilities  
3 Paul Brown Stadium  
Cincinnati, Ohio 45202

With a copy to: Roger E. Friedmann  
Assistant Prosecuting Attorney - Civil Division  
Hamilton County Prosecutor's Office  
230 East Ninth Street • Suite 4000  
Cincinnati, OH 45202

And to: Thomas L. Gabelman  
Frost Brown Todd LLC  
301 East Fourth Street, Suite 3300  
Great American Tower  
Cincinnati, OH 45202

If to Architect: Ron Turner  
Gensler Architecture, Design and Planning P.C.  
500 South Figueroa Street  
Los Angeles, California 90071

Gregory Otis  
Elevar Design Group  
555 Carr Street  
Cincinnati, Ohio 45203

Copies of All  
Notices shall also  
be sent to:

Steve Johnson, Capital Projects Manager  
Paul Brown Stadium Ltd.  
Two Paul Brown Stadium  
Cincinnati, Ohio 45202

Or such other address as may be furnished in writing by either party to the other. A party may change its address for the purpose of receiving notices under this Agreement by written notice to the other parties in the manner set forth above.

9.5 **Assignability.** This Agreement is a professional service agreement for the services of Architect and Architect's interest in this Agreement, duties hereunder and or fees due hereunder may not be assigned, subcontracted or delegated to a third party without the prior written consent of the Board.

9.6 **No Assurances.** Architect acknowledges that, by entering into this Agreement, the Board is not making any guaranty or other assurance as to the extent, if any, that the Board will utilize Architect's services.

9.7 **Duplicate Originals.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be a duplicate original, but all of which, taken together, shall be deemed to constitute a single instrument.

9.8 **Entire Agreement.** This Agreement and the exhibits and schedules attached hereto set forth the entire understanding between the Parties concerning the subject matter hereof and supersede all contemporaneous and prior negotiations, understandings, and agreements with respect to the subject matter hereof. There are no covenants, promises, agreements, conditions or

notwithstanding, the provisions of this Section 9.11 are not intended to cover information which is (i) in the public domain, or becomes generally known, through no fault of the Architect; (i) is rightfully known to the Architect without obligation of confidence prior to disclosure hereunder, (iii) is lawfully obtained without obligation of confidence by the Architect from a third party whose disclosure does not violate an obligation of confidence; or (iv) is independently developed by Architect outside the scope of Services.

9.12 **Conflict of Interest.** Architect agrees that there is no financial interest involved on the part of any Board officers or employees involved in the development or negotiation of this Agreement. Architect also has no knowledge of any situation which would be a conflict of interest. It is understood that a conflict of interest occurs when a Board officer or employee will gain financially or receive personal favors as a result of the signing or implementation of this Agreement.

9.13 **Equal Employment Opportunity.** In connection with the performance of Services under this Agreement, Architect shall not discriminate against any employee, contract worker, or applicant for employment or contract work because of race, color, religion, sex, national origin, ancestry, handicap, age, political belief, Vietnam-era veteran status or place of birth. The aforesaid provisions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. Architect agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. Architect will, in all solicitations or advertisements of employees placed by or on behalf of Architect; state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, ancestry, handicap, age, political belief, Vietnam-era veteran status or place of birth. Architect shall incorporate the foregoing requirements of this Section 9.13 in all of its contracts for any of the services described herein and will require all of its Consultants for any part of such services to incorporate such requirements in all subcontracts for such services.

9.14 **Survival of Representations and Warranties.** The representations, warranties and indemnifications set forth in this Agreement and the Exhibits, Schedules and other attachments hereto, and in any document, instrument or agreement executed or given in connection herewith, which by their terms are applicable after the term of this Agreement, will survive the expiration or termination of this Agreement.

9.15 **Drafting of this Agreement.** This Agreement shall be deemed to be drafted by both Parties hereto, and no one party shall benefit from any claimed ambiguity in this Agreement based on a theory that the other party drafted this Agreement.

9.16 **Manufacturer Provided Documentation.** In its specification of manufactured products and systems for the Project, Architect shall be entitled to rely upon manufacturers' written or electronic publications, shall not be required to undertake testing, analysis, or research regarding the design or performance of the products or systems, and in the event that any manufactured product or system is defective, Board shall have recourse against the

manufacturers but not against the Architect for any damages sustained by the Board, unless the specification of the product or system by the Architect was inappropriate due to compatibility, durability, general misapplication or known ineffectiveness or unreliability of the product or system.

9.17 **No Third Party Beneficiary other than the Bengals.** Except for the Bengals, who are and shall be deemed an express third party beneficiary of this Agreement, this Agreement is for the exclusive benefit of the parties hereto and not for the benefit of any third person, and this Agreement shall not be deemed to have conferred any rights, express or implied, upon any third person unless otherwise expressly provided for herein.

9.18 **Joint and Several Obligation.** The Architect's obligations hereunder shall be the joint and several obligations of each of Gensler and Elevar.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their duly authorized representatives on the date first above written.

**Board of County Commissioners**

**Gensler Architecture, Design and Planning P.C.**

By: \_\_\_\_\_  
Jeff Aluotto  
County Administrator

By: \_\_\_\_\_  
Ron Turner, FAIA  
Principal in Charge

Reviewed and Consented to:

**Elevar Design Group, Inc.**

By: \_\_\_\_\_  
Gregory Otis, AIA  
Principal in Charge

**Cincinnati Bengals, Inc.**

By: \_\_\_\_\_  
Katherine B. Blackburn  
Executive Vice President

Recommended by:

Hamilton County Department of  
Stadia and Parking Facilities

By: \_\_\_\_\_  
Joseph Feldkamp

Approved as to form:

\_\_\_\_\_  
Roger E. Friedmann  
Assistant Prosecuting Attorney



**List of Exhibits:**

- Exhibit A**    **Scope of Services**
- Exhibit B**    **Services Schedule**
- Exhibit C**    **Architect's Key Personnel**
- Exhibit D**    **Consultant's Key Personnel**
- Exhibit E**    **Direct Personnel Expense of Architect and Consultants**
- Exhibit F**    **Payment Schedule of Values**
- Exhibit G**    **Reimbursable Expense Budget**
- Exhibit H**    **Electronic CADD Items**

understandings, whether oral or written, among the Parties hereto relating to the subject matter of this Agreement other than those set forth herein. No representation or warranty has been made by or on behalf of any party to this Agreement (or any officer, director, employee or agent thereof) to induce any other party to enter into this Agreement or to abide or consummate any transactions contemplated by any terms of this Agreement, except representations and warranties, if any, expressly set forth herein.

9.9 **Partial Invalidity.** If any term or provision of this Agreement or the application thereof to any person, entity or circumstance, shall be invalid or unenforceable, the remainder of this Agreement shall be unaffected thereby and each remaining term or provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

9.10 **Press Releases.** Architect shall not issue any press releases or engage in any dialogues or interviews regarding the Services with the media or any other persons or entities for the dissemination to the general public without the prior written consent of the Board.

9.11 **Confidential Information.**

9.11.1 **Protection of the Board's Confidential Information.** All information owned, possessed or used by the Board which is communicated to, learned, developed or otherwise acquired by Architect, in the performance of the Services ("Confidential Information"), shall be confidential Architect shall not, beginning on the date of first association or communication between the Board and Architect and continuing through the term of this Agreement and thereafter, disclose, communicate or divulge or permit disclosure, communication or divulgence to another, or use for Architect's own benefit or the benefit of another, any such Confidential Information without the prior written consent of the Board. This section shall be binding upon Architect, Architect Employees, Consultants and all individuals assigned by Architect to perform Services for the Board and shall survive termination of this Agreement.

9.11.2 **Compliance with Legal Demands.** If Architect receives a "public record" request pursuant to Ohio Revised Code 149.43, a subpoena or other validly issued administrative or judicial process requesting discovery or disclosure of Confidential Information, it shall provide prompt notice to the Board of such receipt. The Board shall within 48-hours of receipt of the notice from the Architect, notify the Architect that either 1) the Architect is permitted to disclose the requested Confidential Information upon which Architect is entitled to comply with such public record request, subpoena or other process to that extent required by law or 2) it objects to the release of the Confidential Information and that it intends to take immediate legal action to prevent the release of the requested Confidential Information to a third party. Upon Architect's receipt of notification from the Board not to disclose the Confidential Information as provided in Section 9.11 herein, Architect shall take no further action with regard to the public record request, subpoena or other process unless explicitly ordered to do so by a court of competent jurisdiction. A failure by the Board to respond within 48-hours shall be deemed permission to the Architect to release the requested Confidential Information.

9.11.3. **Exclusions.** Anything contained in this Section 9.11 to the contrary

## EXHIBIT A

### SCOPE OF SERVICES

The Board has engaged the Gensler/Elevar Team to provide to the Board and Team a Facility Condition Assessment (hereinafter "FCA") and a Master Plan of the on-going capital needs of Paul Brown Stadium (hereinafter "PBS") and to obtain a long-term capital repair, replacement, and improvement program, including potential architectural and technological upgrades, which takes a broad look at the PBS and offers design options for the parties to consider over the next 20 years. It is anticipated that a complete and comprehensive FCA will be used by the Board and Team to develop a comprehensive capital repair, replacement and improvement program for PBS through 2026 ("CIP"). The FCA will provide an architectural and engineering capital assessment of Paul Brown Stadium in Hamilton Board Ohio and prepare documentation, as described herein, regarding the condition of PBS, recommendations with respect to a capital repair and replacement plan and matters relating thereto.

The objective of the FCA will be to evaluate the condition of the existing facility, document issues or defects based on observations, provide estimates of the expected life of the various components, recommendations for repair and replacement and the range of costs associated with such capital plan recommendations of associated repair/replacement costs.

The objective of the Master Plan will be to assess and identify opportunities for existing systems to be upgraded to respond to new materials or technology, or what is occurring at other NFL stadia in other markets, or where changes may be desirable to improve fan experience, operational efficiencies, or revenues to the Team. These upgrades would be clearly identified and broken out separately from the long-term capital assessment.

The Gensler/Elevar Team as consultants will conduct all necessary interviews with representatives of the Cincinnati Bengals including the Paul Brown Stadium, Ltd. Stadium management team and the Board stadia and Parking Facilities department, as identified in Exhibit F, to identify current needs, adequacy of current space, and projections of needs for the next twenty (20) years.

The scope of the facility condition assessment will include, but is not limited to:

1. Architectural and interiors
2. Mechanical, electrical, plumbing, HVAC and fire suppression
3. Structural
4. Seating
5. Technology (A/V, communications/IT/WIFI)
6. Roofing systems
7. Vertical transportation and circulation
8. Food service/concession
9. Retail
10. Ingress/egress, Safety (Codes)/ADA requirements

11. Security/Life safety systems
12. Playing surfaces
13. Surrounding infrastructure/parking/access
14. Preventive maintenance program
15. Capital expense matrix (Including high, medium and low priority)

## **SCOPE OF SERVICES:**

The Scope includes the following:

- **On-Site Facility Condition Assessment.** Gensler/Elevar will conduct a detailed on-site condition assessment of PBS. The on-site assessment will be performed using both component-level and system-level inspection methods. The Gensler/Elevar will evaluate PBS to determine whether sufficient evidence is available to warrant complete replacement of a particular system or component, or if repairing only portions of the system is preferable or more cost effective. The On-Site Assessment shall:
  - Outline the steps needed to assess the PBS and its building components and systems.
  - Provide methodology for evaluation of PBS and its building components and systems.
  - Assess structures, utilities and their integral components/systems. Copies of PBS floor plans and maintenance history records will be made available to the Gensler/Elevar.
  - Identify and document current condition of PBS, including the structural integrity, physical state, and compliance with modern building codes.
  - Identify and report all civil, structural, roof, mechanical, electrical deficiencies, and recommended upgrades and/or improvements.
  - Identify and immediately report to the Board and Team components or situations that are considered urgent (endangering life and/property).
  - Identify all maintenance, repair, and replacement requirements including recommendations from the energy efficiency audit to enhance operations.
  - Provide an assessment of maintenance efforts to-date as compared to industry standards. Also, provide preventative maintenance recommendations, to include minimum standards of day-to-day upkeep and their associated costs based on industry standards (including but not limited to: on-going building maintenance, equipment replacement, janitorial needs and staffing, basic cleaning/deep cleaning, paint, flooring replacement, lighting replacement, etc.).
  - Identify cost effective and/or necessary and/or appropriate repair and replacement options to correct defects and defective conditions or to provide lifecycle replacement/repair and modernization projects anticipated over a 10- and 20-year horizon of anticipated building use.
  - Recommend cost estimates for corrections, replacement, and/or reconstruction work for all deficiencies.
  - Provide a suggested priority list (high, medium and low) and/or timeline for accommodating the recommended replacement and/or reconstruction work.
  - Forecast future facility renewal/reconstruction costs.

- Review and analyze the Capital repairs and replacements since 2000 set forth in Request for Qualification #051-19 including the recent \$11 million in improvements in 2015-2017 in the context of future capital requirements.
- Identify upgrades in components and systems that would provide improved fan experience, operating efficiencies, and/or additional revenue opportunities for Team.
- Provide a tentative schedule of each scope of work to be performed and time frames to conduct the work given the required uninterrupted NFL football schedule for public use of PBS.
- Perform a thorough visual assessment of all architectural, civil/structural, mechanical, electrical, fire, plumbing, and sewer components/systems.

The facility condition assessment will focus on the following elements:

**Architecture/  
Interiors/Lighting:**

Condition of interior and exterior components, finishes, function of spaces; event space upgrades (Club lounge areas, suites, locker rooms); formal assessment of installed assets useful life

**Concession/Catering/  
Retail:**

Assessment of Stadium club lounge and suite areas, concessions areas and associated equipment and kitchens; food service

**Structural:**

Building structure, roof/canopy structure, plaza structure, expansion joints, waterproofing; including floors, bearing walls, columns, beams, roofs (survey and estimate by others in a separate study), and exterior closure (exterior walls, windows and doors); consider the accessible shell components and ancillary elements for signs of distress and document findings (with photo log if possible).

**Flatwork/Concrete:**

Sidewalks, Curbs, Tunnels, Concourses, Ramps, Plaza

**Seating:**

Stadium seating

**MEP/HVAC:**

Assessment of mechanical, electrical and plumbing systems and equipment, sanitary pipes, domestic pipes, fixtures

**Security/Fire Detection/  
Protection/Life**

**Safety Systems/**

**Disabled Accessibility:**

**AV/Technology:**

ADA/Code Requirements  
Assessment of IT systems, Wi-Fi, phone, security, video display/production systems

## **Vertical Transportation:**

Elevators/escalators/lifts

### **Analysis of Facility Condition Assessment.**

The Gensler/Elevar shall evaluate, analyze, and provide projections for the following areas:

- Deficiency costs summarized by building system
- Deficiency costs summarized by priority
- Deficiency costs summarized by category type
- Multi-year annual expenditure forecast
- Develop recommendations that the Board and Team can use in developing a comprehensive capital repair, replacement and improvement program for PBS through 2026.
- Develop 10- and 20-year Capital expenditure plan, which is a schedule of all capital expenditures and actions required to maintain and repair facilities, including projects developed during the analysis of facility condition information, unconstrained by available funding limitations.
- Analysis will include the calculation of the Facility Condition Index.
- FCI will provide a simple measure of the relative condition of PBS. The FCI is the ratio of the deficiencies (regular and deferred maintenance, repair, and replacement cost) to the current replacement value.
- Gensler/Elevar shall utilize life cycle analysis for component renewal and propose to the Board review of the standards proposed to develop component renewal costs. Building components will be evaluated based on their individual life cycles, determined by an evaluation of the age. The renewal cost for the components will be computed and identified by renewal year. The Gensler/Elevar will report the life cycle costs at the component-level, building-level, and will provide a total.

**Facility Condition Assessment Report.** Using the data collected during the On-Site Facility Condition Assessment and Analysis Phase, the Gensler/Elevar shall provide a separate comprehensive Condition Assessment Report. The report shall contain the following minimum information:

- Overview and Executive Summary
- Capital requirement costs summarized by building systems.
- Capital requirement costs summarized by priority (high, medium, low).
- Capital requirement costs summarized by category type.
- Calculation of the Facility Condition Index.
- Multi-year annual expenditure forecast, based on historical data with future forecasted percentage cost increases.
- Detailed description of building assets and equipment detailing the observed condition and deficiency cause providing recommendations to correct the deficiency.
- List of the information provided and collected such as equipment type, manufacturer, etc.
- Digital photographs for each element recommended for potential action. Interior photographs will be used to document critical or unusual conditions. Photographs will be used to explain and /or justify the prioritization of corrective actions.

- A schedule of annual forecast expenditures itemizing each deficiency against each asset classification of the total cost for the actions required to correct the deficiencies by building system.
- List of all upgrades in components and systems that would provide improved fan experience, operating efficiencies and/or additional revenue opportunities for Team. As to each, identify other facilities (NFL stadium or otherwise) that have implemented such upgrades and construction and other costs associated with implementing the upgrade at PBS.
- Based on the facilities condition assessment, create a suggested priority list (high, medium, and low) and timeline of recommended maintenance improvements, capital repair/replacement of building components and systems, and upgrades of components and systems. This list shall include current and deferred maintenance costs for the proposed work.

The comprehensive final report (both hard copy and electronic version) shall include the following:

- Executive Summary
- Methodology Description
- Facility Inventory
- Full Condition Assessment of the scope items listed above.
- Listing of all potential upgrades of components/systems
- Priority List (high, medium and low) and timeline, including life cycle information and estimated expiration of equipment/products.
- Recommendations that the Board and Team can use in developing the CIP, including:
  - Preliminary design concepts
  - Projected construction costs for items contemplated
  - Phased timeline for implementing elements in a manner that does not interfere with PBS events.
  - Overall recommended approach on schedule
  - Proposed costs for design work contemplated
  - Identification of elements needed to execute the contemplated program

**Preparation and Presentation.** The Gensler/Elevar shall present the assessment findings through reports, graphs, and charts to provide a visual representation of the condition assessment data via hard copies and electronic flash drives and/or zip files. The material prepared shall be clear, detailed, and sufficient to reflect the scope of the funding needed.

**The Report shall include the following Documentation:**

- 1) A comprehensive assessment of the areas to be examined with representative photos and narrative to explain current/existing condition of the facility and recommended repairs and/or replacement as applicable.
  - a. The comprehensive assessment narrative shall be reflected in the 7-,10-, and 20-year comprehensive assessment

- b. Proposed format shall be coordinated and approved by Board and Team.
- 2) 7-, 10-, and 20-year comprehensive financial assessment of the areas to be examined with capital costs associated in applicable years for recommended repairs and/or replacement as applicable
    - a. Additional line items within the areas to be examined should be included to associated specific areas of repair and/or replacement
    - b. Proposed format shall be coordinated and approved by Board and Team staff.
  - 3) Preventative Maintenance Program
  - 4) Capital Expense Matrix

**Master Plan.** Using the data collected during the On-Site Facility Condition Assessment and Analysis Phase and drawing upon your expertise in industry and stadium trends, additional revenue opportunities, and varied concession and sponsorship approaches, the Gensler/Elevar shall provide a separate comprehensive Master Plan. The report shall focus on such issues as revenue enhancements, fan experience and amenities, operating efficiencies, and potential branding and imaging. Areas to be considered shall include, but not be limited to,

1. Targeted/segmented experience: develop and create an experience for different unique fan segments.
2. Review potential opportunities for adding flexible social areas within the bowl and within the stadium for hospitality, in-stadium activations, or other gameday uses.
3. Evaluate any opportunities to change the seating bowl to optimize views, bring fans closer to the action, or otherwise enhance their gameday experience.
4. Review bowl seating to see if we can create premium seating area(s) with value added amenities.
5. Evaluate the ideal number of suites and mix of suites, premium and group areas.
6. Review the layout of the suites for appeal to current customers.
7. Consider catering accommodation enhancements within suites.
8. Review community, national and team trends for food & beverage concepts.
9. Consider opportunities for improving and expanding in-seat service or other enhanced Food and Beverage experiences.
10. Review retail experience on each level to increase merchandise space and availability of product.
11. Stadium ingress/egress/access: consider alternatives to enhance stadium ingress, egress and access, facilitate security scanning, extend the fan experience, and create connections between Paul Brown Stadium and its plaza and downtown Cincinnati, The Banks, Smale Park, the Andrew J Brady ICON Music Center, and the surrounding city.
12. Consider opportunities to lengthen the game-day experience and enhance pre-game and post-game activity in areas surrounding the stadium – the plaza, parking lots, parking garages, Smale Park, Brady ICON Music Center.
13. Enhance access to the stadium from parking lots and parking garages.



14. Consider approaches for ride-sharing to and from Bengals events.
15. Consider opportunities to utilize the Transit Center for Bengals events.
16. Review team spaces for optimal operating performance and development, particularly in light of industry and stadium trends.
17. Review functioning of Field/Service Level for game-day efficiencies.
18. Consider necessity of and alternative uses for two of the four ramp structures.
19. Seek opportunities for storage needs to be better addressed.
20. Exterior: Identify locations for Team's history and other ideas on activating and enhancing those spaces.
21. Consider opportunities to enhance patron access to and involvement with training camp activities at Paul Brown Stadium.
22. Considerations for locations throughout the facility that evolve with our society, such as:
  - a. Family/Nursing/Quiet space
  - b. Peanut free zones
  - c. Alcohol free zones
23. Technology: Consider opportunities to incorporate fan engagement technologies in the stadium.
24. Factor interactive technologies into social spaces, fan amenities and concourses.
25. Security: Ensure all technology is integrated for cameras, viewing rooms and storage, metal detectors, access control on all entryways.

The comprehensive final report (both hard copy and electronic version) shall include the following:

- Executive Summary
- Methodology Description
- Listing of all potential upgrades of components/systems
- Identity of other facilities (NFL stadium or otherwise) that have implemented such upgrades and construction and other costs/challenges associated with implementing the upgrade at PBS.