

# Ohio Arts and Sports Facilities Commission

Review of Paul Brown (Hamilton County) Stadium  
State Funding Application

## Final Report

June 29, 1998



**BRAILSFORD & DUNLAVEY**

Facility Planners • Project Managers

*Catalysts for Building Community*

---

**Ohio Arts and Sports Facilities Commission**  
Review of Paul Brown Stadium  
State Funding Application

**CONTENTS**

Introduction ..... i

Executive Summary ..... ii

I. Eligibility of Project Sponsor ..... 1

II. The Need for the Facility ..... 1

    A. Lease By and Between Hamilton County & Cincinnati Bengals, Inc.

    B. Economic Impact Report

III. State Property Interest ..... 4

IV. Determination of State Share ..... 5

    A. The Financing Plan and Financing Risk Factors

    B. The Construction Plans and Capital Cost Risk Factors

    C. The Operating Plan, Revenue Risk Factors and Operating Cost Risk Factors

V. Timing of State Contribution ..... 16

VI. Local Construction Laws ..... 16

---

## Introduction

The purpose of this document is to provide an independent, third-party review of materials submitted by Hamilton County (referred to herein as the "County"), Ohio in support of its application for state funding for the Cincinnati Bengals (referred to herein as the "Team") N.F.L. Football Stadium under the provisions of Chapter 3383 of the Ohio Revised Code. This report was prepared by Brailsford & Dunlavey, Inc. as Sports Facilities Consultant (referred to herein as the "Consultants") to the Ohio Arts & Sports Facilities Commission (the "Commission"). Its purpose is to advise the Commission of the conformance of the application materials to the criteria established by the Commission's Resolution Number R-97-07 for the award of state funding for Ohio sports facilities, and further to advise the commission of other material factors related to the sports facility which should reasonably be made known to the Commission as it makes a decision regarding funding of the project.

This document therefore follows a format which adheres to the structure of Resolution Number R-97-07, addressing the six key areas of consideration for the Commission in the same order addressed by the Resolution: the eligibility of the project sponsor; the need for the facility; the state property interest in the project; the determination of the State's share of project funding; the timing of the state contribution; the adherence of local construction laws to State requirements; and any other considerations relevant to the Commission's decision-making process.

---

## Executive Summary

- Because this application for funding is made by a governmental agency within the State of Ohio, Hamilton County, the project sponsor is eligible to make such application.
- Hamilton County (hereinafter referred to as the "County") has demonstrated the need for an N.F.L. stadium by providing an executed lease document with the Team, in the name of the Cincinnati Bengals, Inc. The lease term (26 years) exceeds the term of the state bonds previously issued for this and similar projects (15-20 years). Assuming that future appropriations by the State will be financed by debt instruments with similar terms, then current and future appropriations are exceeded by the term of the lease, and the lease is therefore in conformance with the Commission's requirements. The lease contains language which exceeds the requirements of Ohio Revised Code 9.67, which discourages future relocation of the franchise.
- The State's requirement for a property interest in the facility is satisfied, in principle, by the provision of an Assignment Agreement into which the County has represented it will enter, pending an authorizing vote by the County Commissioners. The County Administrator has represented that the County Prosecutor's Office has reviewed the Assignment Agreement and is in agreement that this will satisfy the State's condition to maintain a sufficient property interest in the facility.
- The County has demonstrated its ability to fund at least 85% of the construction costs of the facility, even given consideration of both the financing risks and capital cost risks still faced by the project; however, the dollar amount of the County's request for State funding exceeds 15% of the costs which the Consultant recommends be considered eligible as the basis for the calculation of the State's share. Based on development cost information provided by the County, the Consultants recommend that the State's maximum contribution be established at \$60,378,237, rather than the \$65,169,459 requested. To date, \$15,000,000 has been appropriated by the State.
- The County has met all of the requirements for the achievement of project milestones prior to receiving funding approval from the Commission, including the determination of the need for the facility, acquisition of the project site, completion of a feasibility study, completion of design and construction documents, and the establishment of a GMP.
- The County's application indicates that the County has initiated discussion with the State Department of Administrative Services regarding its conformance with state construction

---

laws relative to the project. The County indicates that a letter from the Director of Administrative Services certifying the compliance of the County's laws with this requirement is forthcoming.

---

## I. Eligibility of Project Sponsor

Resolution Number R-97-07 of the Ohio Arts and Sports Facilities Commission provides that "the Commission will lease, sublease, or otherwise make available [such as through funding] Ohio sports facilities only to a governmental agency within the state of Ohio."

In the case of the Paul Brown Stadium, the Stadium will be built and owned by a governmental agency, Hamilton County, and the project sponsor is therefore eligible.

## II. The Need for the Facility

Pursuant to Section 3383.07(F)(1) of the Ohio Revised Code, state funding may be provided for an Ohio sports facility project only if "The Ohio arts and sports facilities commission has determined that there is a need for the facility in the region of the state for which the facility is proposed to provide the function of an Ohio sports facility. . . ." The Commission's Resolution Number R-97-07 further states that "The Commission will base its findings of the need for a particular sports facility on the existence of an executed lease between the governmental agency and a major or minor league professional sports team. Such lease (a) must be of sufficient duration, as reasonably determined by the Commission, after taking into account the term of the length of the lease relative to the term of the state bonds, the proceeds of which are financing the sports facility, and (b) must contain a provision sufficient to satisfy Ohio Revised Code 9.67."

Hamilton County has demonstrated need for the facility in the form of two documents, namely the Lease Agreement By and Between the Board of Commissioners of Hamilton County, Ohio and the Cincinnati Bengals, Inc. and the Economic Impact Report prepared by the Center for Economic Education at the University of Cincinnati. The Lease Agreement is a fully executed lease document between the County and the Cincinnati Bengals, Inc. The term of the lease (26 years) is greater than the term of the State bonds previously issued to fund this and other projects (15-20 years). Assuming that future funding appropriations by the State will be financed by debt instruments with similar terms, then current and future appropriations are exceeded by the terms of the lease, and the lease is therefore in conformance with the Commission's

---

requirements. The lease contains language which satisfies the requirements of Ohio Revised Code 9.67, which discourages future relocation of the franchise.

The Economic Impact Report is a study conducted for the Hamilton County Administrator by an independent entity and illustrates, in clear terms, the benefits of the Facility and the potential negative impact of the loss of the Bengals, in terms of the City's future economic development.

The Consultant therefore concludes that Hamilton County has demonstrated the need for the Paul Brown Stadium. The County's demonstration of need, the satisfaction of the supporting conditions, and other factors are discussed in further detail below.

A. The Lease Agreement

The County has a lease in place with the Cincinnati Bengals N.F.L. franchise. The Lease Agreement By and Between the Board of Commissioners of Hamilton County, Ohio and the Cincinnati Bengals, Inc. dated May 29, 1997, addresses all of the facility management, maintenance, and cash flow issues which are standard to the professional football industry. The Lease Amendment dated 27 April, 1998 is consistent with these standards.

The Lease term is established for a period of twenty-six (26) years, commencing simultaneously with the opening of the new stadium, and therefore exceeds the term of state bonds previously issued to fund such projects, including the State's current appropriation for this project. Assuming that future State appropriations for this project are to be financed in a similar manner and under similar terms (an assumption which anticipates future action by the Ohio General Assembly and which the Consultants therefore have no ability to verify), the term of the Lease will continue to exceed the term of such financing.

Article 16 of the Lease, "Transfer of Teams Franchise", contains extensive provisions which exceed the requirements of Ohio Revised Code Section 9.67. The code is designed to minimize the risk of a sports franchise relocating away from a publicly funded venue in Ohio in the future. It states that the sports franchise occupying a publicly funded venue in Ohio must continue to play most of its home games in that venue unless it negotiates with the host County to do otherwise, gives the County six months' notice before doing so, and gives the

---

County the opportunity to purchase the Team before the relocation occurs. The Lease Agreement By and Between the Board of Commissioners of Hamilton County, Ohio and the Cincinnati Bengals, Inc. exceeds these requirements by stipulating that the lessee must: not enter into contract or agreement of any kind to transfer the Team during the term of the Lease (without the prior written consent of the County), not make formal application to the NFL for approval to transfer the Team to another location during the term of the Lease, play all of its regular season home games and post-season home games (other than the Super Bowl) at the Stadium. The lease stipulates the placement of a temporary restraining order together with preliminary and permanent injunctive relief in the event the Team violates Article 16, the relevant section of the lease. This requirement is even more firm than Ohio Revised Code 9.67, which merely requires the team to give prior notice, negotiate in good faith, and give the County an option to purchase the team before relocating.

B. Economic Impact Report

The Economic Impact Report prepared by the Center for Economic Education at the University of Cincinnati for the Hamilton County Administrator and dated January 2, 1996, is an extensive study which delineates the tax burden of the funding strategy implemented by Hamilton County for both Paul Brown Stadium and the proposed Cincinnati Reds ballpark (a .5% sales tax increase) and the accompanying economic impact of the construction and operation of the new stadia. The Economic Impact Report also estimates the economic loss that would be suffered if the Reds and Bengals did not operate in Cincinnati. The report demonstrates the projects' significant benefits for Hamilton County, both in terms of a one-time economic impact during the construction periods, as well as long term positive economic impact through the operation of the facilities and franchises. This study illustrates in clear terms the economic need for Paul Brown Stadium.

It is estimated, in the Economic Impact Report, that the amount of sales tax burden attributed to baseball and football stadia construction will be \$32.7M per year. These findings are corroborated in the Preliminary Official Statements for issuance of County bonds, which identify actual revenues from these tax increases. It is further estimated that the economic impact of the projects will enable \$41M in property tax relief. Considering this return on the County's

---

investment, the report concludes that County taxpayers will experience an average net benefit (or decreased tax burden) of \$1 per household per year.

The economic impact analysis indicates a positive impact of over \$1.1 billion on the economy of Greater Cincinnati from the construction of the new stadia for the Cincinnati Reds and Cincinnati Bengals. The construction industry will be the greatest benefactor of this spending; however, retail, service and transportation industries will receive significant positive benefit. The potential negative economic impact that would be realized from fan spending outside Cincinnati if the franchises were to relocate elsewhere would represent a decline of approximately \$32M in regional economic activity.

The Economic Impact Report was completed by an independent academic entity with no vested interest in the implementation of the project. In the opinion of the Consultants, the study utilized the most rigorous known methodology for economic impact analysis (specifically, the Regional Input Output Modeling System or RIMS II defined by the U.S. Department of Commerce) and was highly detailed in its research and analysis.

### III. State Property Interest

Resolution Number R-97-07 of the Ohio Arts & Sports Facilities Commission stipulates that the State of Ohio must have a "sufficient property interest in the sports facility or in the site of the facility prior to expending any funds on the sports facility." The term of such interest must extend for the useful life of the portion of the facility financed with state funds or until the State's financing obligations related to the facility funding are retired, whichever is greater.

The State's requirement for a property interest in the facility is satisfied, in principle, by the provision of the Assignment Agreement which is to be executed after a commitment to enter this agreement is submitted by Hamilton County. In a letter to the Commission dated May 13, 1998, David J. Krings, the County Administrator, indicates that the Prosecutor's Office has thoroughly reviewed the Assignment Agreement and is in agreement that this will satisfy the State's condition to maintain a sufficient property interest in the Project. A resolution of the Hamilton County Commissioners is now required to authorize the County to enter into an Assignment Agreement prior to the Assignment Agreement being

---

executed, and the County has represented that such a resolution is now forthcoming.

#### IV. Determination of State Share

Section 3383.07 of the Ohio Revised Code requires that the Commission receive a financial and development plan satisfactory to it demonstrating that provision has been made for no less than eighty-five percent of the total estimated construction cost of the facility coming from sources other than the State. Resolution Number R-97-07 of the Ohio Arts & Sports Facilities Commission clarifies that the Commission will determine the maximum funding to be contributed by the State after the applicant has "prepared construction documents and detailed construction cost estimates, and provided the Commission with a financial feasibility study and operational plan demonstrating the government agency's ability to fund at least 85% of the construction costs. . . ."

Hamilton County, Ohio, has submitted extensive materials describing the development plans, financing structure, and operating plans for the Paul Brown stadium. These materials include: Resolution of Response and Commitment by the Board of Hamilton County Commissioners which provides for a .5% increase to the County sales & use tax (a referendum authorizing this increase was passed March 19, 1996 by a majority of 61.4%); the Lease Agreement By and Between the Board of Commissioners of Hamilton County and the Cincinnati Bengals, Inc., dated as of May 29, 1997; the Agreement between the County and Turner Construction Company/Barton Malow/D.A.G. Construction Company for construction management services; the Agreement between the County and NBBJ Architects for architectural services; the Agreement between the County and Getz Ventures for Owner's Representative/Project Management services; the 100% Design Development documents and Project Manual dated September 26, 1997; the updated Project Schedule dated May 5, 1998; and the Project Budget Summary and Guaranteed Maximum Price Execution Document Amendment No. 1 dated April 22, 1998 and based on 100% Design Development documents which identifies all Project funding sources and uses.

These materials satisfy the basic criteria of defining a comprehensive development plan in which at least 85% of the project's funding may be secured from sources other than the State, in which there are numerous checks and balances in place in the form of a highly experienced and competent project team

and in which the operating risks (and potential financial upside) of the facility are transferred almost entirely to the Cincinnati Bengals, Inc.

The Consultants therefore recommend that the Commission approve funding for up to 15% of the eligible project budget; however, it is our recommendation that the maximum State share be calculated on the basis of only those budget line items which are eligible for such funding. The details of the County's financing plan and the Consultant's calculation of the eligible budget at the State's 15% share are provided below.

*A. The Financing Plan and Financing Risk Factors*

Calculation of 15% State Share

The Sources and Uses of Funds for the project are identified in the Capital Project Budget Summary prepared by Public Financial Management, Inc. Project budget figures taken from that analysis are summarized under the column entitled "Initial Project Budget 4/22/98," below. The total costs represent an unusually large budget, even for an urban major league stadium facility. The size of this budget results, in part, from the inclusion of various costs which are ineligible for State funding, including land acquisition, off-site roadway and infrastructure costs, and other services, such as public relations, financial consulting, and riverfront planning. These include \$19,870,000 for the Fort Washington Way and Elm Street improvements, \$68,225,675 for site acquisition and \$7,000,000 for the floodwall improvements. The second column indicates those costs which are eligible for State funding.

	<b>Initial Project Budget 4/22/98:</b>	<b>Eligible for State Contribution:</b>
<b>Hard Costs,</b>		
<b>Construction Direct Costs</b>		
General Conditions	\$ 4,416,405	\$ 4,416.405
Site Work	20,125,982	20,125.982
Structure	117,687,498	117,687.498
Enclosure	17,827,900	17,827.900
Interiors	35,804,352	35,804.352
Building Services	50,997,571	50,997.571

<b>Indirect Costs</b>		
Less: OCIP Savings	(1,545,000)	(1,545,000)
Design Contingency	250,000	250,000
Constr. Contingency	5,750,000	5,750,000
Owner Contingency	1,500,000	1,500,000
<b>Owner Direct Costs</b>		
Project Mgmt Fees	3,700,000	3,700,000
Commun. Consultant	350,000	- 0 -
Owner Contingency	925,722	925,722
<b>Land Acquisition</b>		
Haz. Materials Remed.	1,744,500	1,744,500
<b>Site Improvements</b>		
Bldg. Demolition	2,394,500	2,394,500
<b><u>Subtotal Construction</u></b>		
<b><u>Hard Costs:</u></b>	\$ 261,929,430	261,579,430
<b>Ancillary Project Costs</b>		
FFE	\$ 31,007,591	\$ 31,007,591
Design Fees	19,799,998	19,799,998
Construction Manager	15,297,558	15,297,558
Insurance	2,837,000	2,837,000
Other	4,721,486	- 0 -
Structured Parking	72,000,000	72,000,000
Site Acquisition	68,225,675	- 0 -
Fort Washington Way	10,000,000	- 0 -
Floodwall	7,000,000	- 0 -
Elm Street, Pete Rose Way, Mehring Way	9,870,000	- 0 -
<b><u>Subtotal Construction</u></b>		
<b><u>Ancillary Costs:</u></b>	\$ 240,759,308	\$ 140,942,147
<b><u>Subtotal All Costs:</u></b>	\$ 502,688,738	\$ 402,521,577
<b><u>Total Maximum</u></b>		
<b><u>State Contribution @ 15% of Eligible Items:</u></b>		\$ 60,378,237

---

Thus, although the County application has requested \$65,169,459, the Consultants recommend that the State's maximum contribution be established as \$60,378,237.

Funding for 85% of Project Costs

The County has demonstrated its ability to fund at least 85% of the project costs through the sources identified below:

**Project Funding**

**Sources:**

State of Ohio	\$	65,169,460*
Hamilton County Sales Tax Bonds:		
-- Series 1998A Bonds		69,025,349
-- Series 1998B Bonds		266,310,553
Hamilton County Sales Tax Bonds		26,054,252
Hamilton County Parking Revenue Bonds		29,776,288
Charter Operating Agreement Revenues		25,000,000
Construction Fund Investments		13,482,836
City of Cincinnati Contribution		4,870,000
County Engineer Contribution		3,000,000
<b>Total Sources of Funds:</b>	<b>\$</b>	<b>502,688,738</b>

\*To date, \$15 million has been appropriated.

With the recommended State share set at \$60,378,237, the total sources of funds is equal to \$497,897,515. Total sources other than those from the State equal \$437,519,278. or approximately 87% of all project costs. Documentation has been provided for the key sources identified, while representations as to the validity of the others have been obtained from the County.

The most significant source of funding is the Hamilton County Sales Tax bonds, which are budgeted to provide almost 67% of the funding for the Paul Brown Stadium project. This funding is clearly well supported, as the \$32,260,000 in annual public revenues from the tax increase and dedicated to the stadium project far exceeds the Debt Service Schedule provided in the County application. Although market fluctuation of bond

---

values and variations in sales tax receipts are identified as risks by the Official Statement of the Series 1998B Bonds, these risks are very small relative to the scale of the revenues being collected in excess of the debt service requirements, and in fact the risks involved in other funding sources are mitigated by the earmarking of surplus revenues to unanticipated funding shortfalls or increases in expenses for the Project (during the Project construction period). This provision subjugates funds to be used for the proposed future baseball stadium if the need arises during the football stadium construction period.

Another key funding source, Charter Operating Revenues (the sale of Personal Seat Licenses) are identified in Section 4.1.1 of the Lease, "Charter Ownership Agreement". Of the \$25 million identified in the Capital Project Budget Summary, \$18 million is confirmed and \$7 million is anticipated from future sales of PSL's. Judging by the success of PSL programs implemented elsewhere in the N.F.L., it is reasonable to expect that the sales target for the Charter Operating Revenues will be met prior to completion of the Project.

Construction Fund Investment earnings are confirmed at \$13.5M.

Consideration: Remaining Funding for Proposed Cincinnati Bengals Stadium

Although the funding plan for Paul Brown Stadium demonstrates strong capacity to meet at least 85% of the project costs, the flexibility and sheer scale of this funding plan raises consideration of whether sufficient funding will be available for the other major league stadium project currently contemplated for Hamilton County - the stadium for the Major League Baseball Cincinnati Reds. Newspaper accounts report that the County originally anticipated a construction cost of approximately \$500 million for two stadia; the estimates provided in the County's application for Paul Brown Stadium indicates plans to spend in excess of \$500 million for that stadium and related facilities alone. No budget has been established to date for the proposed Cincinnati Reds stadium project, although newspaper accounts report estimates of up to \$323 million. Both local and state funding for the Reds stadium may be impacted by current plans for Paul Brown Stadium.

With regard to local funds, although the flexibility in the funding provided by the Sales Tax bonds provides excellent protection from financing risk for Paul Brown Stadium, it does raise questions about whether sufficient funding will be available from local sources for the Reds ballpark. Any cost overruns that are funded by additional sales tax bond moneys will necessarily reduce the funds available for the Reds ballpark project.

---

In addition, the amount of funding requested from the State for Paul Brown Stadium may impact the amount of State funding potentially available for the Reds ballpark. An excerpt from the state capital appropriations bill (Am. H.B. 748) reads:

*"Sports Facilities Improvements - Cincinnati  
The General Assembly hereby states its intention to appropriate the additional amounts that are necessary to complete the state's participation in the foregoing Ohio sports facilities project for Cincinnati. In accordance with Chapter 3383. Of the Revised Code, state funds shall be used for up to 15 percent of the total estimated construction cost. Total state funds provided for this project shall not exceed \$81 million. It is recognized that this General Assembly cannot commit future general assemblies to make such appropriations."*

The \$81 million referenced is intended to fund both the Cincinnati Bengals and Cincinnati Reds stadium projects. Thus, the expenditure of roughly 75% of the requested State allocation for both projects to Paul Brown Stadium (assuming the maximum State contribution recommended in this report) raises concern about whether sufficient moneys will remain to develop the Reds ballpark.

*B. The Construction Plans and Capital Cost Risk Factors*

The County's development plans for the stadium facility demonstrate a commitment to the utilization of some of the most well-established professionals in the field of stadium design and construction, and all materials reviewed with regard to planning, budget, and schedule generally appear to be pragmatic. While NBBJ is relatively new to sports facility design, their key personnel are experienced and have demonstrated a sophisticated understanding of stadium design.

The innovative treatment of the stadium design represents a unique approach and will serve to provide positive imagery along the City waterfront. As a project marketing tool, this design will set this stadium apart from other NFL stadia currently under development; however, the customization of many of the design treatments may complicate the construction process. The roof and canopy structure's dynamic shape may slow the fabrication and erection process.

Overall, the project has been planned in a manner to mitigate capital cost risks and to date has demonstrated an ability to remain on schedule and within budget. Each component of capital cost risk is discussed below.

---

## The Project Team and Contracts

The County has employed NBBJ Architects as the lead firm for the architectural/engineering team in Hamilton County. Turner Construction Company/Barton Mallow/D.A.G. Construction Company has been retained as construction manager. In addition to these entities, the County has retained the services of Getz Ventures for Project Management services and as owner's representative providing additional expertise and checks on the development process.

The architecture and engineering services contract appears to provide the full standard array of budget review, value engineering and construction administration services. Based on NBBJ Architects' capabilities and experience, these services should represent some of the finest controls available on costs during the design phase. The Contract between the Owner and Architect is Standard Form AIA-B141, however, there remains some level of potential risk within the language of this document in that Article 1.6.18 requires that the Architect render "opinions", rather than "decisions" with regard to claims, disputes or other matters. This may leave some issues open to complicate the construction process.

Turner Construction Company/Barton Mallow/D.A.G. Construction Company is positioned as construction manager, rather than general contractor, enabling the project's contracts to be awarded through multiple bid packages. This method allows for quick project delivery, and its use provides a reasonable expectation that the stadium's schedule goals will be met; however, the method frequently incurs project coordination difficulties, which often have the net effect of increasing project costs to resolve conflicting conditions. The construction management contract assigns to Turner Construction Company/Barton Mallow/D.A.G. Construction Company the responsibility for coordinating all of these contracts and, further, uses explicit language to describe the CM's responsibility to cause the contractors to deliver the project on time and within budget. However, there does not appear to be any contractual incentives for Turner Construction Company/Barton Mallow/D.A.G. Construction Company's to achieve cost savings (which are delegated to return to the Owner). This represents an area of capital cost risk to the County, both through exposure to construction cost overruns and real financial costs of schedule delays, as the Lease document identified specific liquidated damages to be paid by the County to the Team if schedule objectives are not met. Construction cost and schedule risks are discussed in more detail below.

---

### Site Acquisition

The "Final Cash Flow Schedules for Sales Tax Transaction" document prepared by Merrill Lynch dated January 13, 1998, identified Land Acquisition Costs and Reimbursements and originally indicated seven (7) properties for which no cost was associated with a transfer. These now appear to have been settled in terms acceptable to the County although at a cost significantly greater than originally anticipated. Although land acquisition costs have run higher than originally anticipated, construction costs to date have been awarded at values lower than originally scheduled. This lends some credence to the notion that future cost overruns in other areas of the development may be offset by additional savings in the construction budget if awards continue to come in lower than scheduled.

### Design Documents

The 100% Design Development Submittal for the Paul Brown Football Stadium, dated September 26, 1997, appears to define a stadium project which is, in all essential respects, in conformance with the requirements of the Lease. This is evidenced by the fact that the Bengals have signed the lease amendment and approved the Proposed GMP Plans entitled "GMP SET 2/16/98 ADDENDUM #6".

- The design is dissimilar to N.F.L. stadia currently under construction elsewhere. This complicates evaluation of construction schedules and the budget. Additional potential complications due to the design are as follows:
  - The unique shape and configuration of the roof canopy may impact the shop drawing and steel fabrication process.
  - Plaza Level 300, along the South Concourse has two potential problems inherent in the unique asymmetrical design. First, there are several concession stands along the curved south end which occur as the pedestrian concourse is at its narrowest. This is problematic in that patrons wishing to traverse the concourse may find themselves blocked by patrons wishing to purchase food. Also, there is a large grouping of seats which egress onto the concourse at several points adjacent to the concessions. These egress corridors appear long and narrow, causing potential pedestrian traffic jams; furthermore, they meet the concourse precisely where many fans may be congregating. Though this is not an issue which could cause schedule or budget problems during construction, it represents

---

an area of the design which could create a level of annoyance for users and potential dissatisfaction with at least a part of the stadium amongst patrons, ultimately creating a measure of operating cost risk.

### Schedule and Budget

A comparison of the Project Development Schedule dated June 6, 1997 with the original Schedule prepared by Turner/Barton Mallow/D.A.G. indicates no significant changes to milestone dates thru May, 1998.

The project schedule provided by the County appears to allow reasonable time-frames and a logical sequencing of activities, based on the "fast track" methodology. This could be especially critical if a complete examination of soil indications demonstrates the need for either more piles or more sophisticated methods of structural support.

The latest geo-technical reports do not indicate a significant pattern of problematic soil conditions that could hamper progress. Nevertheless, the discovery, recently, of a large chunk of subsurface concrete indicates that there are still some unknown conditions that could impact the schedule. However, the stadium's critical path is roughly on schedule, major milestones to date remain on target and there is no foreseeable reason why completion of the Paul Brown stadium by June of 2000 is not feasible.

Schedule risks to the County were somewhat mitigated by the amendment to the Bengals stadium lease, which reduced the amount of penalties paid to the team for late completion. The County will pay the Team \$2 million in penalties, rather than the \$4 million per game, originally stipulated, if the stadium is not ready for each of the first two games of the 2000 season. Other concessions include a reduction of County liability if the completion target date is not met due to Construction Force Majeure.

The project budget, based on 100% Design Development documents, also appears reasonable, if not conservative, based on comparison to other N.F.L. stadium projects currently underway. The County's application states that this budget is inclusive of contingencies, totaling \$8,425,722 of the \$261.9M in hard costs, or approximately 2.8% of hard costs. Given the stage of the Project, this is a relatively tight contingency. However, evidence of construction contracts let to date (as of May 18, 1998), originally scheduled in the GMP at \$36.7 million, have come in at approximately \$25.9 million. Although it is impossible to project continued savings in the construction contract schedule, this performance to date supports the notion that the initial estimated budget is conservative and future savings may be realized.

---

It should also be noted that there is no provision in any of the contracts or specifications provided by the County to prevent the implementation of a practice which is currently becoming increasingly common when major stadium projects arrive at budget reconciliation problems. This practice is to remove equipment items, such as scoreboards, from the construction budget and finance them through a lease agreement with the manufacturer. Since the lease still represents a cost to the stadium owner (and, in Hamilton County's case, there would be no provision to transfer such costs), this practice might represent an additional area of potential cost overruns.

However, the fact that the budget appears conservative should give the Commission some reassurance that the County will not, in fact, encounter cost overruns beyond the budget, but it also raises consideration of whether the budget estimate is larger than necessary.

The provision of 5,000 parking spaces for the stadium, as per the lease, appears to be a major issue which may ultimately have the greatest impact on both schedule and budget for the project, and it is tied directly to many of the properties now coming under the control of the County. Many of the land acquisition agreements reference future plans for development of additional parking facilities that are currently the subject of discussion between the County and City Council. Because of the evolving nature of these property transactions and subsequent planning for the development of parking, the provision of adequate parking represents both an undetermined capital cost risk and, once the Stadium is open, an area of revenue risk if sufficient parking is not available. This concern is aggravated by the fact that The CM contract does not provide responsibility to the CM for parking and other site development amenities. However, the project appears to be at least keeping pace with the schedule of parking development dictated by the Lease Agreement, and a parking consultant has been hired by the County and preliminary project development budgets have been provided.

Furniture, Fixtures and Equipment is budgeted at \$31,007,591. FF&E costs are eligible for state appropriations if they comply with the requirements of the State Capital Appropriations Bill. Verification that FF&E items identified in the GMP comply with the Lease must be provided prior to reimbursing the County for FF&E expenditures.

C. *The Operating Plan, Revenue Risk Factors and Operating Cost Risk Factors*

The Lease Agreement By and Between the Board of Commissioners of Hamilton County, Ohio and the Cincinnati Bengals, Inc. is a comprehensive document addressing all of the

---

terms and conditions typically considered in an N.F.L. lease. The term is 26 years (with potential extensions), and the Team's rent payment is set at a declining rate from \$1.7M in Year 1 to \$900K per year in Year 9. The Team is entitled to all stadium revenues, including rental of the facility to other users (such as a soccer team or concert promoters), as well as all football-related admissions, premium seating, concessions, advertising, naming rights, and parking revenues. At the same time, stadium expenses are shared between the franchise and the County along specified categories. The County is allowed control of the facility for what is referred to as County Use Days for an undetermined "reasonable number of days".

The majority of revenue risk concerns are passed to the Team, as the County's plan for the operation of the facility anticipates revenues only from a portion of the Stadium's non-football events. There is, however, some exposure to risk related to football revenues for the County. Article 31 of the Lease stipulates a County supported guarantee to the Team of at least 50,000 tickets for general admission seats for each of the Team's first 20 home games. There is no corresponding benefit to the County as a means to mitigate its risk during the time which this guarantee is applicable. The 50,000 general admission tickets is a very high benchmark, and therefore this clause could conceivably represent a substantial risk to the County simply because the revenues which are guaranteed are so high; however, recent experience in newly constructed N.F.L. stadia indicates a strong likelihood that this threshold will be met through ticket sales. This expectation is bolstered by the performance of ticket sales to date. The schedule of ticket sales to date indicates seven (7) seating zones sold at or near 100% of capacity. Two (2) zones are at 86% and 90% respectively. The remaining four (4) zones range from 24%-55%. In the experience of the consultants, this is strong performance given the current stage of construction.

The County's operating cost risks for the facility are potentially substantial as well. The specific categories of operating cost established by the Lease as the County's responsibility are substantial in scale and are subject to inflationary risks. The County's application indicates an expectation that the County's participation will represent negative cash flow, in terms of operating expenses exceeding operating revenues, of several million dollars annually.

Both this revenue risk and operating cost risk are mitigated by the wide margin of annual surplus generated by the Sales Tax funding strategy which exceeds the project's debt service and stadium operational costs.

---

Again, however, the key consideration implied by this tax revenue coverage protection is whether the needs of Paul Brown Stadium will impact the County's ability to support the anticipated Cincinnati Reds stadium project (discussed above).

#### **V. Timing of State Contribution**

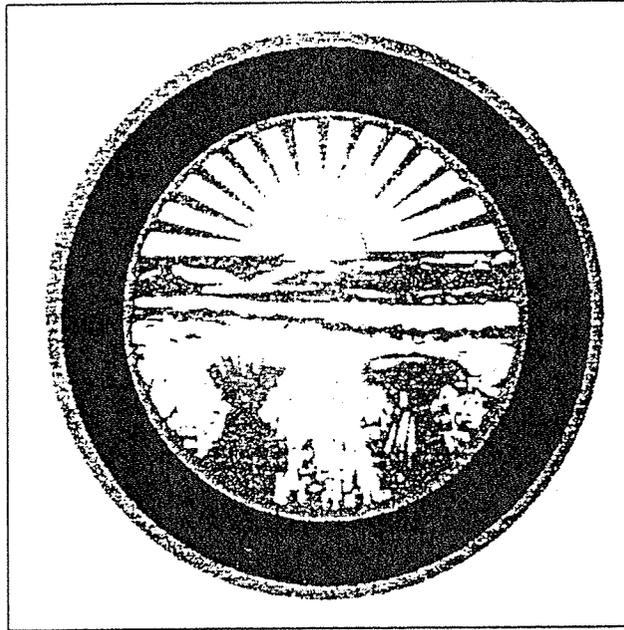
Resolution Number R-97-07 of the Ohio Arts & Sports Facilities Commission states that State funds will not be expended toward facility costs until the Commission has made its determination of the need for the facility, sites have been acquired, design has been completed, construction documents have been produced, budget estimates have been made, the Commission has been provided with a feasibility study for the project, and the determination of the maximum state contribution has been made.

The Paul Brown Stadium N.F.L. Football Stadium meets all of these requirements, with the exception that the Commission has not yet made determinations on the project. A feasibility study/Economic Impact Report has been completed which is titled "The Effects of the Construction, Operation and Financing of New Sports stadia on Cincinnati Economic growth" dated January 2, 1996. This report, conducted for the Hamilton County Administrator by an independent entity, illustrates, in clear terms, the benefits of the Facility and the potential negative impact of the loss of the Bengals, in terms of the City's future economic development.

#### **VI. Local Construction Laws**

Resolution Number R-97-07 of the Ohio Arts & Sports Facilities Commission, in conformance with Section 44 of Am.Sub.S.B. 310, requires that state laws apply to construction services and general building services for sports facilities funded with State capital funds "unless local laws are substantially similar" as determined by the Department of Administrative Services.

The County's application indicates that the County has initiated discussion with the State Department of Administrative Services regarding its conformance with state construction laws relative to the project. The County indicates that a letter from the Director of Administrative Services certifying the compliance of the County's laws with this requirement is forthcoming.



# **Ohio Arts and Sports Facilities Commission**

Review of the New Cincinnati Reds Ballpark  
State Funding Application

June 20, 2000

---

Ohio Arts and Sports Facilities Commission  
Review of New Cincinnati Reds Ballpark  
State Funding Application

CONTENTS

Introduction ..... i

Executive Summary ..... ii

I. Eligibility of Project Sponsor ..... 1

II. The Need for the Facility ..... 1

A. Lease By and Between Hamilton County & Cincinnati Reds, Inc.

B. Economic Impact Report

III. State Property Interest..... 4

IV. Determination of State Share ..... 5

A. The Financing Plan and Financing Risk Factors

B. The Construction Plans and Capital Cost Risk Factors

C. The Operating Plan, Revenue Risk Factors and Operating Cost Risk Factors

V. Timing of State Contribution ..... 18

VI. Local Construction Laws ..... 18

---

## Introduction

The purpose of this document is to provide an independent, third party review of materials submitted by Hamilton County, Ohio (referred to herein as the "County") in support of its application for state funding for the Cincinnati Reds (referred to herein as the "Team") M.L.B. Baseball Ballpark under the provisions of Chapter 3383 of the Ohio Revised Code. This report was prepared by Brailsford & Dunlavey, Inc. as Sports Facilities Consultant (referred to herein as the "Consultants") to the Ohio Arts & Sports Facilities Commission (the "Commission"). Its purpose is to advise the Commission of the conformance of the application materials to the criteria established by the Commission's Resolution Number R-97-07 for the award of state funding for Ohio sports facilities, and further to advise the Commission of other material factors related to the sports facility which should reasonably be made known to the Commission as it makes a decision regarding funding of the project.

This document therefore follows a format which adheres to the structure of Resolution Number R-97-07, addressing the six key areas of consideration for the Commission in the same order addressed by the Resolution: the eligibility of the project sponsor; the need for the facility; the state property interest in the project; the determination of the State's share of project funding; the timing of the state contribution; the adherence of local construction laws to State requirements; and any other considerations relevant to the Commission's decision-making process.

---

## Executive Summary

- Because this application for funding is made by a governmental agency within the State of Ohio, Hamilton County, the project sponsor is eligible to make such application.
- Hamilton County (herein after referred to as the "County") has demonstrated the need for an M.L.B. Ballpark by providing an executed lease document with the Team, in the name of the Cincinnati Reds, Inc. The lease term (35 years) exceeds the term of the state bonds previously issued for Paul Brown Stadium (15-20 years). Assuming that future appropriations by the State will be financed by debt instruments with similar terms, then current and future appropriations will be exceeded by the term of the lease. The lease is therefore in conformance with the Commission's requirements. The lease contains language that exceeds the requirements of Ohio Revised Code 9.67, which discourages future relocation of the franchise.
- As of the date of this report, the State's requirement for a property interest in the facility has not been satisfied, although Hamilton County has indicated that an Assignment Agreement similar to that used for Paul Brown Stadium will be presented to the Hamilton County Board of Commissioners. The Consultants recommend that the Commission make its approval of State funding for the Cincinnati Reds Ballpark contingent upon satisfaction of this requirement.
- The County has demonstrated an ability to fund approximately 85% of the construction costs of the facility from sources other than the State. Sources of funds identified by the County total approximately \$344 million, or 85% of total project costs. However, the County's request for State funding exceeds 15% of the amount of project costs calculated by the Consultant as eligible for State funding. In addition, the capacity of the sources identified, particularly the sales tax bond proceeds, are already strained by a combination of financing risks, capital cost risks, and operating costs risks involved in the joint financing structure for the Reds Ballpark and the N.F.L. Bengals' Paul Brown Stadium. The Consultants recommend that the Commission establish the maximum State share for the Cincinnati Reds Ballpark as \$52,271,506 subject to the following restrictions. The County's request for State funding and the Consultant's calculation of 15% of eligible project costs exceeds the limit of House Bill 748, which set the maximum amount of State funding potentially available to Hamilton County for both the Reds Ballpark and Paul Brown Stadium at \$81 million. Considering the \$60,378,237

---

already established as the maximum State share for the Paul Brown Stadium, the limit of this legislation requires that the Commission approve no more than an additional \$20,621,763 million for the Cincinnati Reds Ballpark.

- As of the date of this report, some key project milestones outlined in Resolution R-97-07 have not been met by the County, including the complete acquisition of the project site and the completion of all of the necessary professional service contracts to meet the design requirements and affix responsibility for the budget. The County's original Project Manager has been terminated and a contract with Parsons Brinkerhoff, the new Project Manager, has not yet been finalized, while agreements with the Construction Manager and Architect are in the form of cursory short-term agreements, rather than comprehensive contracts addressing the entire project scope. The County has provided a "Project Approach" document from Parsons Brinkerhoff and a preliminary agreement for construction management and project planning services with Huber, Hunt & Nichols, although neither of these documents commits the professionals involved to a specific budget. The County has also indicated it has requested a consultant's report on the status of acquisition of each property parcel comprising the project site but provided no further information as to the status of site acquisition. The Consultants recommend that the Commission make its approval of State funding for the Cincinnati Reds Ballpark contingent upon provision of comprehensive professional service agreements addressing the entire project scope and demonstration of control over the project site.
- As of the date of this report, the County has not documented conformance with the requirement for construction procedures that are substantially similar to state construction laws. The County has indicated that a letter from the Director of Administrative Services confirming the County's Conformance with state construction laws relative to the project has been requested. The Consultants recommend that the Commission make its approval of State funding for the Cincinnati Reds Ballpark contingent upon satisfaction of this requirement.

---

## I. Eligibility of Project Sponsor

Resolution Number R-97-07 of the Ohio Arts and Sports Facilities Commission provides that "the Commission will lease, sublease, or otherwise make available [such as through funding] Ohio sports facilities only to a governmental agency within the state of Ohio."

In the case of the New Cincinnati Reds Ballpark, the Ballpark will be built and owned by a governmental agency, Hamilton County, and the project sponsor is therefore eligible.

## II. The Need for the Facility

Pursuant to Section 3383.07(F)(1) of the Ohio Revised Code, state funding may be provided for an Ohio sports facility project only if "The Ohio arts and sports facilities commission has determined that there is a need for the facility in the region of the state for which the facility is proposed to provide the function of an Ohio sports facility. . . ." The Commission's Resolution Number R-97-07 further states, "The Commission will base its findings of the need for a particular sports facility on the existence of an executed lease between the governmental agency and a major or minor league professional sports team. Such lease (a) must be of sufficient duration, as reasonably determined by the Commission, after taking into account the term of the length of the lease relative to the term of the state bonds, the proceeds of which are financing the sports facility, and (b) must contain a provision sufficient to satisfy Ohio Revised Code 9.67."

Hamilton County has demonstrated need for the facility in the form of two documents, namely the Lease Agreement By and Between the Board of Commissioners of Hamilton County, Ohio and the Cincinnati Reds, Inc. and the Economic Impact Report prepared by the Center for Economic Education at the University of Cincinnati. The Lease Agreement is a fully executed lease document between the County and the Cincinnati Reds, Inc. The term of the lease (35 years) is greater than the term of the State bonds previously issued to fund such projects (5-20 years). Assuming that these and future funding appropriations by the State will be financed by debt instruments with similar terms, then current and future appropriations are exceeded by the terms of the lease, and the lease is therefore in conformance with the Commission's requirements. The lease contains language which

---

satisfies the requirements of Ohio Revised Code 9.67, which discourages future relocation of the franchise.

The Economic Impact Report is a study conducted for the Hamilton County Administrator by an independent entity and illustrates, in clear terms, the benefits of the Facility and the potential negative impact of the loss of the Reds, in terms of the City's future economic development.

The Consultants therefore concludes that Hamilton County has demonstrated the need for the New Cincinnati Reds Ballpark. The County's demonstration of need, the satisfaction of the supporting conditions, and other factors are discussed in further detail below.

A. The Lease Agreement

The County has a lease in place with the Cincinnati Reds M.L.B. franchise. The Lease Agreement By and Between the Board of Commissioners of Hamilton County, Ohio and the Cincinnati Reds, Inc. dated April 30, 1999, addresses all of the facility management, maintenance, and cash flow issues which are standard to the professional baseball industry. The First Amendment of the Lease Agreement dated 19 January 2000 is consistent with these standards.

The Lease term is established for a period of thirty-five (35) years, commencing on the date on which the Lease is fully executed and ending on October 31 of the thirty-fifth Lease Year (2034), and therefore exceeds the term of state bonds previously issued to fund the New Cleveland Browns Stadium and Paul Brown Stadium projects. Assuming that future State appropriations for the Cincinnati Reds ballpark are to be financed in a similar manner and under similar terms (an assumption which anticipates future action by the Ohio General Assembly and the Ohio Building Authority, which the Consultants therefore have no ability to verify), the term of the Lease will continue to exceed the term of such financing.

Article 16 of the Lease, Transfer of Teams Franchise, contains extensive provisions, which exceed the requirements of Ohio Revised Code Section 9.67. The code is designed to minimize the risk of a sports franchise relocating away from a publicly funded venue in Ohio in the future. It states that the sports franchise occupying a publicly funded venue in Ohio must continue to play most of its home games in that venue unless it negotiates

---

with the host County to do otherwise, gives the County six months' notice before doing so, and gives the County the opportunity to purchase the Team before the relocation occurs. The Lease Agreement By and Between the Board of Commissioners of Hamilton County, Ohio and the Cincinnati Reds, Inc. exceeds these requirements by stipulating that the lessee must: not enter into contract or agreement of any kind to transfer the Team during the term of the Lease (without the prior written consent of the County), not make formal application to the MLB for approval to transfer the Team to another location during the term of the Lease, play all of its regular season home games and post-season home games and even, if applicable, any "all-star" game at the Ballpark. The lease stipulates the placement of a temporary restraining order together with preliminary and permanent injunctive relief in the event the Team violates Article 16, the relevant section of the lease. This requirement is even more prohibitive than Ohio Revised Code 9.67, which requires the team to give prior notice, negotiate in good faith, and give the County an option to purchase the team before relocating.

B. Economic Impact Report

The Economic Impact Report prepared by the Center for Economic Education at the University of Cincinnati for the Hamilton County Administrator and dated January 2, 1996, is an extensive study which delineates the tax burden of the funding strategy implemented by Hamilton County for both the New Cincinnati Reds Ballpark and the Paul Brown Stadium (a .5% sales tax increase) and the accompanying economic impact of the construction and operation of the new stadia. The Economic Impact Report also estimates the economic loss that would be suffered if the Reds and Bengals did not operate in Cincinnati. The report demonstrates the projects' significant benefits for Hamilton County, both in terms of a one-time economic impact during the construction periods, as well as long-term positive economic impact through the operation of the facilities and franchises. This study illustrates, in clear terms, the economic need for the New Cincinnati Reds Ballpark. Although the report has not been updated since 1996, its key underlying assumptions (such as the construction costs for Paul Brown Stadium and the Reds Ballpark) have all moved in directions favorable to an even greater economic impact than that demonstrated in 1996.

It is estimated, in the Economic Impact Report, that the amount of sales tax burden attributed to football and baseball stadia construction will be \$32.7M

---

per year. These findings have been corroborated in the Preliminary Official Statements from the Paul Brown Stadium bonds for issuance of County bonds, which identified actual revenues from these tax increases. It is further estimated that the economic impact of the projects will enable \$41M in property tax relief. Considering this return on the County's investment, the report concludes that County taxpayers will experience an average net benefit (or decreased tax burden) of \$1 per household per year.

The economic impact analysis indicates a positive impact of over \$1.1 billion on the economy of Greater Cincinnati from the construction of the new stadia for the Cincinnati Bengals and Cincinnati Reds. The construction industry will be the greatest benefactor of this spending; however, retail, service and transportation industries will also receive significant positive benefit. The potential negative economic impact that would be realized from fans spending outside Cincinnati if the franchises were to relocate elsewhere, would represent a decline of approximately \$32M in regional economic activity, according to the report.

The Economic Impact Report was completed by an independent academic entity with no vested interest in the implementation of the project. In the opinion of the Consultants, the study utilized the most rigorous known methodology for economic impact analysis (specifically, the Regional Input Output Modeling System or RIMS II defined by the U.S. Department of Commerce) and was highly detailed in its research and analysis.

### III. State Property Interest

Resolution Number R-97-07 of the Ohio Arts & Sports Facilities Commission stipulates that the State of Ohio must have a "sufficient property interest in the sports facility or in the site of the facility prior to expending any funds on the sports facility." The term of such interest must extend for the useful life of the portion of the facility financed with state funds or until the State's financing obligations related to the facility funding are retired, whichever is greater.

As of the date of this report, the State's requirement for a property interest in the facility has not been satisfied. The County has indicated that a resolution will be presented to the Hamilton County Board of Commissioners to approve an Assignment Agreement similar to that utilized for Paul Brown Stadium. The Consultants recommend that the Commission make approval

---

of State funding for the Reds Ballpark contingent upon the County's approval of that agreement.

#### IV. Determination of State Share

Section 3383.07 of the Ohio Revised Code requires that the Commission receive a financial and development plan satisfactory to it demonstrating that provision has been made for no less than eighty-five percent of the total estimated construction cost of the facility coming from sources other than the State. Resolution Number R-97-07 of the Ohio Arts & Sports Facilities Commission clarifies that the Commission will determine the maximum funding to be contributed by the State after the applicant has "prepared construction documents and detailed construction cost estimates, and provided the Commission with a financial feasibility study and operational plan demonstrating the government agency's ability to fund at least 85% of the construction costs. . . ."

Hamilton County, Ohio, has submitted extensive materials describing the development plans, financing structure, and operating plans for the New Cincinnati Reds Ballpark. These materials include: Resolution of Response and Commitment by the Board of Hamilton County Commissioners which provides for a .5% increase to the County sales & use tax (a referendum authorizing this increase was passed March 19, 1996 by a majority of 61.4%); the Lease Agreement By and Between the Board of Commissioners of Hamilton County and the Cincinnati Reds, Inc., dated April 30, 1999 and First Amendment dated January 19, 2000; the Agreement between the County and Huber, Hunt & Nichols, Inc for Red's stadium construction management services, dated January 20, 1999 for work through December 1999; Agreement between the County and Frank Mësser & Sons Construction Co. for Riverfront Parking and Related Infrastructure construction management and Planning services, dated July 7, 1999, for work through March 31, 2000; the Agreement between the County and Hellmuth, Obata & Kassabaum for architectural services, dated January 20, 1999, for work through August, 1999; the Agreement between the County and THP Limited for design (Master Planning) services, dated March 19, 1996, for work through March 31, 2000; the Agreement between the County and United Consulting Services for Small Business analysis for Paul Brown Stadium, dated March 19, 1996 for services through May 15, 2000; the Agreement between the County and Getz Ventures, dated March 31, 2000 for work through August, 1999, the Design Development documents dated

---

April 18, 2000; and the Project Development Plan Presented by N.W. Getz and Associates dated November 1, 1999.

These materials outline a Project Budget in which 85% of the project's \$404 million funding requirements may be secured from sources other than the State. However, the County's request for State funding exceeds 15% of the amount which the Consultants recommend be considered eligible for State funding, and there are a number of risks faced by the funding sources identified by the County other than the State. More importantly, the amount of funding requested by the County for the Reds Ballpark, in addition to the \$60,378,237 already established as the maximum State share for Paul Brown Stadium, exceeds the limit of State funding for both projects established by previous State capital appropriations legislation (Am. HB. 748). Ultimately, the \$81 million limit for both projects established by this legislation requires that the Commission approve no more than the remaining \$20,621,763 for the Reds Ballpark.

The details of the County's financing plan, the Consultant's calculation of the eligible budget at the State's 15% share, and the ramification of the \$81 million limit are provided below.

*A. The Financing Plan and Financing Risk Factors*

Calculation of 15% Maximum State Share

The Sources and Uses of Funds for the project are identified in the Capital Project Budget Summary prepared by Public Financial Management, Inc. Project budget figures taken from that analysis are summarized under the column below entitled "Requested by Hamilton County". In addition, current details on many project costs have been provided in cost estimates and budget status reports provided by the County, and each line item has been analyzed using those resources.

Analysis of project budget detail shows that the costs projected for construction of the Ballpark and the ancillary parking required by the lease document are within reasonable standards for the industry, given current market conditions. In fact, the ultimate cost for parking related to the Ballpark has not yet been defined, as the number of parking spaces included in County's capital funding request does not necessarily include all of the future parking that will be constructed along the riverfront. The capital

funding request does include funding for more than enough spaces to meet the minimum required spaces established in the team lease. There may be a need for other parking contemplated by the Urban Development Master Plan for the site, which may represent an additional unidentified cost to the County in the future.

The large scale of the overall budget for the Reds Ballpark, however, results in part from the inclusion of various costs that are not typically contemplated as part of a stadium. These costs relate primarily to the continued use and phased demolition of Cinergy Field, as well as the final demolition of Cinergy. They are therefore costs incurred as necessary results of the construction of the new Ballpark and are essential to preserving the business operations of the Reds, with the exception of the final demolition of Cinergy once the new Ballpark is in operation. The Consultants therefore recommend that the Cinergy Field demolition cost not be considered eligible for State Funding and that the associated professional fees for Infrastructure be adjusted accordingly.

Finally, certain professional fees, in particular for Construction Management, appear excessive compared to industry standards. CM fees for each project component are shown at in excess of 7% of the hard cost of construction, while industry standards would dictate a fee closer to 3% of hard costs. In fact, the only documentation provided by the County relative to this fee is the proposal by Huber Hunt & Nichols for CM services, in which a fee of 3% is quoted. The Consultants are able to recommend approval only of the level of fees consistent with industry practice and this documentation. Other professional service fees appear reasonable.

The second column below indicates those costs which the Consultants recommends be considered eligible for State funding as essential components to the Ballpark project.

	Requested by Hamilton County <sup>1</sup>	Eligible for State Contribution
<b>Ballpark</b>		
CM Fee	\$17,294,000	7,087,350
A/E Fee	16,906,000	16,906,000
PM Fee	3,897,000	3,897,000
Other Owners Expenses	5,658,000	- See Note 2 -
Construction	236,245,000	236,245,000

<b>Infrastructure</b>		
CM Fee	\$ 2,595,000	901,200
A/E Fee	2,859,000	2,133,000
PM Fee	650,000	650,000
Other Owners Expenses	956,000	- See Note 2 -
Construction	42,540,000	30,040,000*
*Reduced by \$12.5m for Cinergy Demolition		
<b>Baseball Stadium Parking</b>		
CM Fee	1,477,000	- See Note 3 -
AE Fee	1,441,000	- See Note 3 -
PM Fee	250,000	- See Note 3 -
Other Owner Expenses	483,000	- See Note 3 -
Construction	20,199,000	- See Note 3 -
<b>East Garage Parking</b>		
CM Fee	1,007,000	- See Note 3 -
AE Fee	981,000	- See Note 3 -
PM Fee	250,000	- See Note 3 -
Other Owner Expenses	327,000	- See Note 3 -
Construction	13,585,000	- See Note 3 -
Eligible Costs for Other Owner Expenses <sup>2</sup>		4,871,158
Eligible Costs for Parking <sup>3</sup>		45,746,000
<b>Subtotal All Construction Cost</b>	<b>\$ 369,600,000</b>	<b>348,476,708</b>
Owner's Contingency <sup>4</sup>	6,000,000	- See Note 4 -
Other Parking Structures	28,467,122	- See Note 3 -
<b>Total All Costs:</b>	<b>\$404,467,122</b>	<b>348,476,708</b>

<b>Total Eligible Items</b>	<b>\$</b>	<b>348,476,708</b>
<b>Maximum State Contribution @ 15% of Eligible Items:</b>	<b>\$</b>	<b>52,271,506</b>

1. Capital Project Form – Sports Facility”, Sources & Uses
2. Includes \$4,665,463 in various project-related insurance and \$169,695 of PFM fees calculated as justifiable for Reds Ballpark component of PFM contract, and legal notice fees calculated at \$1,200/notice for a maximum of 30 Bid-Packages.
3. Based on Calculation of Cost for 8,500 spaces necessary to fulfill the terms of the lease (Bengals & Reds) minus \$72 M allocated as part of the Paul Brown Project
  - Calculation includes 1,111 surface spaces, and 7,389 structured parking spaces
4. This item is duplicative of contingencies carried elsewhere in the budget

Although the County application has requested \$60,670,068, the Consultants recognize the maximum state share as 15% of eligible construction as \$52,271,506. The limits of House Bill 748 allow no more than \$20,621,763 to

---

be allocated to the Reds Ballpark based on funds remaining from the predetermined State contribution cap of \$81 million.

Funding for 85% of Project Costs

The County has demonstrated its ability to fund approximately 85% of the project costs through the sources identified below:

**Project Funding<sup>1</sup>**

**Sources:**

State of Ohio (requested)	\$	60,670,068.00
Cincinnati Reds Contribution		30,000,000.00
Sales Tax Bonds		201,237,017.00
Sales Tax Bonds – subordinate		44,142,194.00
Investment Earnings		22,653,239.00
Sales Tax Revenues		46,009,743.00
<b>Total Sources of Funds:</b>	<b>\$</b>	<b>404,712,216.00</b>
<b>Funds w/o requested State Contribution:</b>		<b>344,042,193.00</b>

<sup>1</sup> Capital Project Form – Sports Facility<sup>1</sup>, Sources & Uses

With the County requesting \$60,670,068 from the State, the total source of funds is equal to \$404,712,216. Total sources other than those from the State equal \$344,042,193 or approximately 85% of all project costs.

Documentation has been provided for the key sources identified, while representations as to the validity of the others have been obtained from the County. However, the County's request for \$60,670,068 from the State is not realistic in the face of a legislative mandate cap on State contribution of \$20,621,763.

The most significant source of funding is the Hamilton County Sales Tax bonds, which are budgeted to provide almost 50% of the funding for the New Cincinnati Reds Ballpark project. Looked at purely from the standpoint of its capacity to fund the ballpark project, this funding is clearly well supported. The annual public revenues from the tax increase which are dedicated to the Ballpark project far exceeds the debt service requirements necessary for the Sales Tax Bond proceeds required by the Ballpark funding plan. However, the finite capacity of the revenues from the County-wide sales tax are already

---

being demonstrated when all of the uses of these funds, including debt service for Paul Brown Stadium and operating costs for both Paul Brown Stadium and the Reds Ballpark, are considered. The most recent financial model issued by Public Financial Management on April 19, 2000 reflects the realization of two key financial risks identified in the Consultant's 1998 report on funding for Paul Brown Stadium.

First, the construction costs for Paul Brown Stadium have exceeded projections by approximately \$45 million, and these funds are being financed through a bond issue in that amount, which will be retired through the same sales tax revenue stream as the other financing instruments for the Ballpark and Paul Brown Stadium. Second, the County's major funding source (the .05% sales tax) will be further strained to cover the \$40,048,305 difference between the cap on State participation and the County's request. Third, the PFM report now shows substantially higher operating costs for Paul Brown Stadium than shown in previous analyses. Due to the fact that these operating costs are funded by the same sales tax revenue stream as the debt service for both facilities, the encroachment onto this revenue stream by the increased operating costs means that the growth rate necessary for the sales tax revenues, in order for the County to cover its debt service and operating cost expense obligations, has also grown.

While PFM's 1998 model, submitted in support of the Paul Brown Stadium funding application, showed a relatively modest 2% growth rate in sales tax revenues was necessary for the County to cover its obligations, a more aggressive 3% growth rate is now required. This substantially increases the risk involved in the financing structure.

Another key funding component is a \$30 million contribution anticipated from the Team. This payment has been established in three separate installments of \$10 million, the last to be received on Opening Day.

#### State Funding Limit by Legislation

Although the calculations above identify the appropriate cost basis upon which to calculate the State's 15% maximum share of funding and demonstrate the County's ability to fund the remaining 85% of project costs (both subject to the caveats discussed), existing State legislation provides a further limit on the amount of funding which the Commission may approve for the Reds Ballpark. An excerpt from a previous the state capital appropriations bill (Am. H.B. 748) reads:

---

*“Sports Facilities Improvements – Cincinnati*

*The General Assembly hereby states its intention to appropriate the additional amounts that are necessary to complete the state’s participation in the foregoing Ohio sports facilities for Cincinnati. In accordance with Chapter 3383 of the Revised Code, state funds shall be used for up to 15 percent of the total estimated construction cost. Total state funds provided for this project shall not exceed \$81 million. It is recognized that this General Assembly cannot commit future general assemblies to make such appropriations.”*

The \$81 million maximum allocation is intended to fund both the New Cincinnati Reds Ballpark and the Paul Brown Stadium projects. Of these funds, \$60,378,237 of the \$81 million has already been established as the maximum state share based on the County’s prior funding application for Paul Brown Stadium. Based on the maximum contribution outlined by the state, \$20,621,763 remains for appropriation to the New Cincinnati Reds Ballpark. Therefore, this is the maximum amount for which the Commission may approve State funding.

*B. The Construction Plans and Capital Cost Risk Factors*

The County’s development plans for the Ballpark facility demonstrate a commitment to the utilization of some of the most well established professionals in the field of Ballpark design and construction. HOK, the preeminent Ballpark designer in the country, with three new MLB Ballparks opening in 2000, has experienced personnel and has demonstrated a sophisticated understanding of Ballpark design.

The difficult site and phasing required to construct the Ballpark, while maintaining use of Cinergy Field, will complicate the construction process and could adversely impact an already tight “Fast-Track” schedule. In addition, the complex staging and construction areas for the New Cincinnati Reds Ballpark adjacent to Cinergy Field also represent significant safety hazards for patrons while Cinergy is still in use.

A key concern in the analysis of capital costs by the Consultants is that the County, apparently for cash flow reasons, has been managing the project through a series of incremental projects, retaining key consultants only for a single phase of the project at a time. This results in a large percentage of the professional fee component of the project budget remaining subject to

---

modification, since contracts have not yet been executed for them. Further complicating this analysis is the fact that the County terminated its original project manager, Getz Ventures, and has retained the services of a new project manager, whose contract has not yet been finalized.

Each detailed component of capital cost risk related to the Ballpark is discussed below.

### The Project Team and Contracts

The County has employed HOK Architects as the lead firm for the architectural/engineering team in Hamilton County. Huber, Hunt & Nichols Inc. has been retained as construction manager. In addition to these entities, the County is currently in negotiation with Parsons Brinkerhoff to provide project management services, as well as acting as an owner's representative, providing additional expertise and checks on the development process. No contract has been finalized, although a "Project Approach" document submitted by Parsons Brinkerhoff has been provided by the County. This document addresses a standard range of project controls to ensure delivery of the project in conformance with schedule and budget.

Huber, Hunt & Nichols Inc. is contracted for construction management and planning services. The working contracts submitted to the Consultants are in the form of Agreement for Construction Management and Planning Services. These documents act as short-term work orders for finite amounts of time, as opposed to covering the entire duration of the project.

The architecture and engineering services contract is formatted similar to that of construction management, as an Agreement for Professional Design Services. These agreements contract finite spans of work.

In contrast to more common forms of professional service agreements, such as the American Institute of Architects standard owner-architect B-141 and owner-contractor A-111 formats, these short-term contracts do not bind the professionals involved to the series of project controls and obligations necessary to achieve the goals of the overall project. These standard agreements act as contractual outlines in which to specify time parameters and scheduling constraints, identify special project needs, define the review process, specify budgetary controls, delineate methods of communication, and stipulate additional services including value analysis, scheduling, and phasing plans.

---

A detailed contract with the Construction Manager is necessary to review the methods to be used for bid package awards, the coordination of contracts, administration of contractual incentives and management of schedule milestones, as well as the requirements for professional liability insurance and other ultimate protections for the County. (Currently, professional liability insurance is being carried by the County as an Owner Expense line item). Similarly, a detailed contract with the Architect is necessary with a full array of budget review, value engineering and construction administration services, as well as specified insurance coverage, in order to have appropriate controls and commitment from the architect.

Based on Huber Hunt & Nichols Inc. and HOK Architect's capabilities and experience, these contractually bound services should represent some of the finest controls available on costs during the design phase. The Consultants recommend that the Commission approve funding contingent upon receiving final contracts with the Architect, Construction Manager, and Project Manager, which contain the safeguards recommended above.

#### Site Acquisition

As of the date of this report, evidence has not been provided that the County is fully in control of site acquisition. It has been assumed that the Ballpark land came under ownership of the County upon the acquisition of Cinergy Field in 1996. The Site for the East Garage Parking was acquired and verified through a Quit-Claim Deed dated August 11, 1999. In addition a consultant working for the County has been asked to provide a report outlining the status of each land parcel associated with the stadium projects. The Consultants recommend that the Commission approve funding contingent upon the County's demonstration of complete control of the project site.

#### Design Documents

The Design Development Package Submittal for the Cincinnati Reds Baseball Ballpark, dated April 18, 2000 outlines a modern style concrete, steel and glass structure. These preliminary drawings show a 42,383 seat stadium including 61 suites (1 owner's suite, 3 party suites, and 57 general suites), and 2,679 Club Seats (2,386 Club level and 293 Field Club). These

---

specifications differ slightly from the definition of stadium outlined in the January 19, 2000 Amendment of the Cincinnati Reds Lease Agreement, which states “Stadium shall mean the baseball stadium, which shall contain approximately 42,500 seats (including approximately 3,000 clubs seats) and seating in approximately 63 Private Suites”. Such variations are well within the parameters typically considered reasonable for the transition from architectural program to design; however, this assumes that the Cincinnati Reds have been kept informed of the evolving design capacities and have been required to provide formal approval of each phase of design with this information in hand, so that variations from the requirements of the lease do not become grounds for a legal dispute.

The design is dissimilar to M.L.B. stadia currently under development and construction elsewhere. This design strays from the brick retro and theme-style Ballparks developed in the past decade. This brings some concern for the Community acceptance of a “modern” Ballpark, for the first M.L.B. team.

The coordination and phased demolition of Cinergy field complicates evaluation of construction schedules, budget and revenue generating opportunities. Additional potential complications due to the design are as follows:

- The safety and hazard mitigation necessary to continue regular season play in both Cinergy and the New Cincinnati Reds Ballpark, while active construction and demolition is underway.
- The new Ballpark’s terrace level and west concourse are to be serviced by temporary concessions during demolition of Cinergy. This could have an impact on revenue generation based on diminished points of sale.
- This phased construction process brings with it a myriad of concerns and liabilities including construction safety issues compounded by the fact that Cinergy will be inhabited during demolition and the New Cincinnati Reds Ballpark will be in use during construction.
- The perception of opening an incomplete “New” Ballpark on Opening Day could carry some financial repercussions in the form of lower than projected attendance, concessions sales, and advertising revenues.

- 
- Initially, limited amenities will be available due to the second phase construction of the Reds Museum and exterior themed activities, and because of the long-term development of the Riverfront Urban Development Master Plan. Initially, this could prove less profitable than other new ballparks opening in their entirety and within a developed area.

### Schedule and Budget

A comparison of the Project Development Schedule, updated March 24, 2000 against the original Schedule prepared by N.W. Getz and Assoc., shows significant milestone setbacks in the schematic and design development phase and associated estimates. This will have an impact on the entire project. In addition, a new Project Manager has not been contracted. This is a significant concern for consistency and coordination of the project team. Significant cost over-runs on the Bengals Project were caused by significant change orders and additions to the initial project scope. Proper owners representation is necessary for the completion of the New Cincinnati Reds Ballpark on time and with-in budget.

An updated project schedule provided by the Project Manger is necessary to verify proper time-frames and a logical sequencing of activities, based on the "fast track" and phased methodologies. This could be especially critical if a complete examination of existing structures (Cinergy and parking plaza) demonstrate the need for more sophisticated methods of structural support or demolition.

However, notwithstanding the above concerns, schedule risks to the County were substantially mitigated by the amendment to the New Cincinnati Reds Ballpark lease, which does not outline penalties paid to the team for late completion. Other concessions include a reduction of County liability if the completion target date is not met due to Construction Force Majeure.

The project budget appears reasonable, if not conservative, based on comparison to other M.L.B. Ballpark projects currently underway. Although it is important to note that a GMP has not yet been established, a Design Development estimate dated June 1, 2000 shows the project within budget across all categories. Based on news reports, it appears that the County has

no intent to establish a GMP, which the Consultants consider an unusually and potentially risky approach to a project of this scale.

The provision of 3,500 parking spaces for the Ballpark, necessary to meet the requirements of the lease, is a potential concern and is tied directly to many of the development plans being produced by the County in coordination with the City of Cincinnati. The projects outlined in the Capital Cost Application and the April 28, 2000 Huber Hunt Nichols Construction Budget, include 2,008 parking spaces for the East Garage and Ballpark Parking. Additional funding has been requested under the line item *Other Parking Structures* at over \$28 million, to fulfill the parking needs through development of the central riverfront and the Banks project outlined in the Urban Development Master Plan. The Urban Development Master Plan as well as the Parking Master Plan reference future development of an additional 6,929 parking spaces associated with “the Banks” project, and another 4,350 within the downtown business district. These facilities are still subject to resolution of a variety of planning and funding issues. Because of the evolving nature of these property transactions and subsequent planning for the development of parking, the provision of adequate parking represents both an undetermined capital cost risk and, once the Ballpark is open, an area of revenue risk if sufficient parking is not available. This is of special concern in regard to dates in which events are held simultaneously for any of the three Riverfront venues, Paul Brown Stadium, Cincinnati Reds Ballpark and the existing Firststar Center.

#### Parking Analysis

	Total Seating Capacity	Parking Spaces Required by Lease
Paul Brown Stadium	65,600	5,000
New Cincinnati Reds Ballpark	42,500	3,500

The Riverfront parking master plans outlines a long-term strategy to provide 13,028. Nationally, parking capacities range dramatically depending on the site and existing environment and infrastructure of a stadium. The Maryland Stadium Authority retains 4,500 on-site and 1,500 off-site parking spaces for the 48,268 seat Oriole Park and 69,426 seat PSI Net Stadium situated in an urban setting adjacent to a light-rail system and existing privately owned structured parking. The Kansas City Royals host approximately 14,000

---

parking spaces for the 40,625 seat, Kauffman Stadium situated on a suburban site adjacent to interstate I-70.

Controls can be implemented to minimize the parking burden, including contractual obligations with the teams to avoid scheduling conflicts between adjacent venues and traditional business hours. Agreements with private parking facilities and public or chartered transportation for game-day usage can accommodate fans while minimizing new construction.

C. *The Operating Plan, Revenue Risk Factors and Operating Cost Risk Factors*

The Lease Agreement By and Between the Board of Commissioners of Hamilton County, Ohio and the Cincinnati Reds, Inc. is a comprehensive document addressing all of the terms and conditions typically considered in an M.L.B. lease. The term is 35 years, and the Team's rent payment is set at \$2.5 million per year in years 1-9 declining to \$1 per year for years 10-35. The Team is entitled to all revenues accruing from the operation of the Stadium Project on Team Use Days including, without limitation, ticket revenue, private suite revenue, club seating revenue, seat license revenue, broadcasting rights, concessions, novelty revenue, and parking included in the architectural program, and advertising revenue. Net revenue from "Other Events" shall be divided equally between the County and the Team. In addition to these shared revenues, the County will also receive all revenues earned from the holding of events on "County Use Days".

The Team has full and complete responsibility, at the Team's sole cost and expense for the operation and management of the Stadium Project on all days other than "County Use Days". The County is responsible for acquiring and maintaining the appropriate public liability and property and casualty insurance for "Team Use Day" as well as Capital Repairs for the stadium.

Because the County is responsible for only these two categories of cost and will collect a rent of \$2.5 million annually for the first ten years, the financial plans show the County earning a multi-million dollar positive net income for that first ten-year term. However, because this rental payment declines to \$1 per year over the remaining 25 years of the lease, and because it is during those later years when actual expenditures for capital repairs will begin to aggregate, the Ballpark will show an increasing operating loss for the remaining years. This lease structure is reflected in the County's financing

---

plan and is a component of the need for the sales tax growth to achieve 3% in order for the financing plan to meet all of the identified obligations.

#### V. Timing of State Contribution

Resolution Number R-97-07 of the Ohio Arts & Sports Facilities Commission states that State funds will not be expended toward facility costs until the Commission has made its determination of the need for the facility, sites have been acquired, design has been completed, construction documents have been produced, budget estimates have been made, the Commission has been provided with a feasibility study for the project, and the determination of the maximum state contribution has been made.

As of the date of this report, some of these requirements have not been met by the County, including the complete acquisition of the project site (as discussed above) and the completion of all of the necessary professional service contracts to meet the design requirements and affix responsibility for the budget. The Consultants recommend that the Commission make its approval of State funding for the Cincinnati Reds Ballpark contingent upon provision of comprehensive professional service agreements addressing the entire project scope, and demonstration of control over the project site.

#### VI. Local Construction Laws

Resolution Number R-97-07 of the Ohio Arts & Sports Facilities Commission, in conformance with Section 44 of Am.Sub.S.B. 310, requires that state laws apply to construction services and general building services for sports facilities funded with State capital funds "unless local laws are substantially similar" as determined by the Department of Administrative Services.

In the case of the Paul Brown Stadium, the County indicated that a letter from the Director of Administrative Services certifying the compliance of the County's laws with this requirement is forthcoming. The County Administrator has indicated that the County Prosecutor will be asked to send a letter to the State Department of Administrative Services during the week of June 12<sup>th</sup>. Verification is necessary to prove conformance with Resolution Number R-97-07.

---

In addition, the County is required to enter into a Construction Funding Agreement with the Commission. The Consultants recommend that the Commission approve state funding contingent upon satisfaction of both of these requirements.