

STATE OF NORTH CAROLINA

COUNTY OF WAKE

SIXTH AMENDMENT TO
TRI-PARTY AGREEMENT

THIS SIXTH AMENDMENT TO THE TRI-PARTY AGREEMENT, effective this _____ day of _____, 2020, (“SIXTH Amendment”), between the COUNTY OF WAKE, a political subdivision of the State of North Carolina (the “County”), acting by and through its board of County Commissioners (the “County Board”); the CITY OF RALEIGH, a municipal corporation of the State of North Carolina (the “City”), acting by and through its City Council (the “City Council”); and the CENTENNIAL AUTHORITY, a public agency of the State of North Carolina created pursuant to North Carolina General Statute 160A-480.1, et seq., (the “Authority”), acting by and through its appointed membership.

WITNESSETH:

WHEREAS, the Authority has constructed and operates a multi-purpose regional sports, entertainment and convocation arena complex (the “Arena”) in Wake County, North Carolina, pursuant to authority and direction of the North Carolina General Assembly; and

WHEREAS, the County and the City have at various times allocated funds, from the proceeds of a prepared foods and beverage tax and a room occupancy tax, to provide for debt service required for repayment of bonds issued for initial construction and subsequent enhancement, upgrades and repairs of the Arena Project upon conditions set forth in the Arena Project Tri-Party Agreement dated June 20, 1997, as amended (the “Amended Tri-Party Agreement”); and

WHEREAS, the Authority has now requested that the County and the City allocate additional funds to be received by the Authority beginning in the fiscal year 2021 and continuing each year through and including fiscal year 2029 to further assist with long term capital enhancements, improvements, extraordinary repairs and replacements to, as well as operations of, the Arena and Parking Areas; and

WHEREAS, the County and the City have entered into the Twenty-Second Amendment to the Revised Interlocal Agreement Relating to Countywide Room Occupancy and Prepared Food and Beverage Tax Revenues (the “22nd Amendment”) to reflect the present allocation of proceeds of taxes described above; and

WHEREAS, the County and the City have, upon conditions hereinafter set forth, agreed to the Authority’s request for assistance in preserving this public facility and maintaining its competitive success.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the County, the City and the Authority agree as follows:

SECTION 1. New Funding Commitment.

a. In addition to the funds previously committed to the Centennial Authority under earlier amendments to the Tri-Party Agreement, the County and City will make available to the Centennial Authority from previously uncommitted proceeds of the Room Occupancy and Food and Beverage Taxes to be collected beginning in fiscal year 2021 and ending in fiscal year 2029 the annual sum of Nine Million (\$9,000,000.00) Dollars to provide for long term capital enhancements, improvements, extraordinary repairs and replacements to, as well as maintenance and operation of, the Arena and Parking Areas (hereinafter collectively referred to as “Authorized Uses of the New Funding Commitment”). During this period, the Parties shall jointly review the physical condition of the Arena and the status of the Authority leases with building tenants to inform a decision by the County Board and the City Council on whether future funding should be applied to the existing facility and grounds or to partially fund a replacement Arena. As stated in the 22nd Amendment, funding identified as “Reserved for Future Sports/Entertainment Facility Capacity” for the period FY30 through FY2045 is to provide for future capital needs of the current Arena or a similar sports and entertainment facility. The “Reserved for Future Sports/Entertainment Facility Capacity” funding amounts in the 22nd Amendment are for planning purposes only and are not binding funding commitments for the Authority (PNC Arena) or any other entity. Future amendments for the Prepared Food and Beverage Tax and Room Occupancy Tax as approved by Wake County Commission and Raleigh City Council will determine the future allocation amounts and timing for the planned funding amounts listed in the “Reserved for Future Sports/Entertainment Facility Capacity.”

b. The annual allocation for fiscal years 2021 through 2029 shall be wired monthly to the Authority or to a Trustee designated by it, if a part of an approved loan or bond agreement, at such locations as may be specified by the Authority in writing to the County and City. Any funds not transferred directly to an approved trustee pursuant to the approved loan or bond agreement shall be applied directly to Authorized Uses of the New Funding Commitment or shall be upon receipt deposited by the Authority in the Authority Building Enhancement Fund.

c. No loan or bond or related financing agreement, however titled, shall be for a term extending beyond June 30, 2029 without prior approval of the chief finance officers of the County and the City and in any event shall include a “call” provision allowing the prepayment of indebtedness. It is anticipated any new Authority borrowing(s) will take the form of an interim bank loan(s), evidenced by a note(s) of the Authority, from one or more bank(s) and a bond issue of the Authority, the proceeds of which will be used to prepay and refund the bank loan(s).

SECTION 2. Parties Best Efforts.

a. Consistent with its obligations as a public agency set forth by the North Carolina General Assembly, the Authority shall use its best effort to operate the Arena Project in a sound fiscal manner, to maintain its “state of the art” competitive condition as a national entertainment and concert venue and extend its useful life expectancy for at least the duration of the funding allocation provided for herein. The Authority Executive Director shall report to the City and

County Managers semi-annually regarding the status of Arena long term lease commitments and report annually to the elected bodies of the City and County regarding the Authority capital spending program.

b. The first priority for the Centennial Authority's use of the Amended Tri-Party Agreement funds shall be to continue to maintain the current Arena facility and grounds in a first class condition and extend their useful life for at least the duration of the funding allocation provided for in the 22nd Amendment to the Revised Interlocal Agreement.

c. The Parties anticipate a phased approach to any Authority's borrowings to finance capital improvements and enhancements to the Arena Project. The initial priority will be to address improvements designed to continue attracting and providing spectator entertainment and cultural events which would otherwise not be available to the citizens of our region which the North Carolina General Assembly has directed the Centennial Authority to serve.

d. Any remaining balance of the annual Room Occupancy and Food and Beverage Tax allocation shall be used to finance construction funds primarily addressing Arena enhancements designed to serve and maintain its suitability as a long term major league professional and collegiate sport venue.

e. Consistent with their obligations as public agencies under North Carolina law, the County and the City shall refrain from any action to repeal, discontinue or decrease the Room Occupancy and/or Prepared Food and Beverage Taxes, or to reduce the priority of the proceeds allocated by the County and the City to the Authority as set forth in Exhibit A (Major Facilities Cash Flow Model: 22nd Amendment) to provide for Arena Project debt service, until any outstanding debt for the Arena Project has been retired.

SECTION 3. Transfer of 7% Funds. Beginning in October of 2020, the 7% of the prepared food, beverage and room occupancy taxes allocated to the Centennial Authority under Section 14(b) of the Enabling Acts, shall be calculated for the prior month and transferred in a monthly payment using actual receipts from the prior month. The first payment in October 2020 will be based on actual receipts for the period July 1, 2020 through September 30, 2020.

SECTION 4. Ad Valorem Taxes.

The term of annual payments in lieu of property taxes to the County and City provided for in earlier amendments to the Tri-Party Agreement shall expire with a final payment due in fiscal year 2022. Authority funds which would otherwise have been applied to the tax payments shall instead be applied to Authorized Uses of the New Funding Commitment or deposited in the Authority Building Enhancement Fund.

SECTION 5. Sponsorship Revenues.

The provisions of earlier versions of this Tri-Party Agreement requiring specific apportionment or otherwise addressing Arena Sponsorship Revenues are hereby deleted and of no

further effect. Parties acknowledge that the Naming Rights Memorandum of Understanding remains in place among the Authority, North Carolina State University, and Gale Force Holdings, Limited Partnership, and that this Sixth Amendment is not intended to alter the apportionment of funds from arena naming rights agreements prescribed by that Naming Rights Memorandum of Understanding. Any portion of Arena naming right's or Sponsorship Revenues accruing to the Authority shall be applied directly to Authorized Uses of the New Funding Commitment or shall upon receipt by the Authority be deposited in the Authority Building Enhancement Fund.

SECTION 6. Duration.

This Agreement shall remain in effect until all Arena debt service, if any, in connection with anticipated construction borrowing(s) are retired and satisfied as well as for the duration of the increased funding commitment set forth in Section 1 hereof, at which time the County, City and Authority shall renegotiate the terms of their continuing relationship.

SECTION 7. Conflicts with Prior Agreement.

Except where in conflict herein, the Arena Project Tri-Party Agreement of June 20, 1997 as previously amended shall remain in full force and effect.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Agreement is executed the day and year first above written pursuant to resolutions by the governing boards of the County, the City and the Authority.

CITY OF RALEIGH

By: _____
Mayor

Attest: _____
Clerk

APPROVED AS TO FORM:

City Attorney

COUNTY OF WAKE

By: _____
Chair

Attest: _____
Clerk

APPROVED AS TO FORM:

County Attorney Counsel

CENTENNIAL AUTHORITY

By: _____
Chair

Attest: _____
Secretary

Date: _____