

SECOND AMENDMENT
TO THE REVISED INTERLOCAL AGREEMENT
BETWEEN
WAKE COUNTY AND THE CITY OF RALEIGH
RELATING TO ROOM OCCUPANCY AND PREPARED FOOD
AND BEVERAGE TAX REVENUES

This Agreement entered into this the 1st day of May, 1997, by and between the County of Wake, North Carolina, hereinafter referred to as "County," and the City of Raleigh, North Carolina, hereinafter referred to as "City," pursuant to the provisions of Article 20 of Chapter 160A of the North Carolina General Statutes, and in accordance with the requirements of Chapter 594 of the 1991 Session Laws of North Carolina and Chapter 458 of the 1995 Session Laws of North Carolina, hereinafter referred to as the "Enabling Acts".

WITNESSETH:

WHEREAS, the County has levied room occupancy and prepared food and beverage taxes as allowed by law; and

WHEREAS, as required by law, the County and the City have entered into agreements setting out the projects to receive funding from these taxes and, have further agreed on a schedule of funding setting out the amount of money to be received by each project and a schedule upon which the money will be disbursed; and

WHEREAS, funding for the projects committed by the 1995 Interlocal Agreement, as amended, will be completed by June 30, 1999; and

WHEREAS, the County has previously decided to repeal the prepared food and beverage tax effective June 30, 2000; and

WHEREAS, the City and County are required by the Enabling Acts to provide, through an interlocal agreement, for the use of the funds collected under the authority of the Enabling Acts; and

WHEREAS, the County and the City are mutually agreed that additional funds should be made available to the Children's Museum project, now known as Exploris, the Performing Arts Center, and to the Centennial Authority created by the Enabling Acts for use in constructing a multi-purpose arena; and

WHEREAS, to effect this change the County and the City agree to amend the September 5, 1995 Revised Interlocal Agreement as amended in December of 1996.

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

1. Paragraph 6 of the Revised Interlocal Agreement of September 5, 1995, as amended December 3, 1996, is amended to add the following subparagraph:

D. In addition to the disbursement of any funds accumulated in the Children's Museum Reserve Fund, the sum of Four Million Five Hundred Thousand Dollars (\$4,500,000) shall be disbursed from the Future Projects Reserve fund for this project according to the schedule attached hereto as Attachment "A".

2. Paragraph 8 of the Revised Interlocal Agreement of September 5, 1995, as amended December 3, 1996, is amended by deleting the amount Two Million One Hundred Thousand Dollars (\$2,100,000) appearing therein and substituting in lieu thereof the amount Twelve Million One Hundred Thousand Dollars (\$12,100,000). Paragraph 8 is further amended by adding the following:

The last Ten Million Dollars (\$10,000,000) in funding shall be contingent upon supporters of the Performing Arts Center raising at least Five Million Dollars (\$5,000,000) for the project and providing evidence satisfactory to the City that such funds will be available. Upon this contingency being met, payments to the City for this project shall be made according to Attachment "A", attached hereto.

3. A new paragraph, Paragraph 11.1 is added to read as follows:

11.1 In addition to the funds transferred to the Centennial Authority under the provisions of the Enabling Acts, it is agreed that the City and the County will make available to the Centennial Authority, from the previously uncommitted proceeds of the Room Occupancy and Prepared Food and Beverage Taxes to be collected beginning in Fiscal Year 2000-01, sufficient funds to provide for the debt service required to retire the balance of a borrowing sufficient to have yielded Forty-Eight Million Dollars (\$48,000,000) in net construction funds, contingent upon the following:

A. The funds shall be used exclusively for the construction of the Regional Facility and related roadway, water and sewer improvements to be constructed adjacent to the Carter-Finley Stadium, or at such alternate location as may be approved by the City and County. It is contemplated that the facility will be completed in 1999.

- B. With the exception of borrowed funds which must be expended by the Authority immediately so as to qualify for tax-exempt financing, no portion of the net Forty-Eight Million Dollar (\$48,000,000) borrowing shall be spent until after the North Carolina General Assembly has enacted legislation providing that, beginning for vacancies occurring after January 1, 1999, the appointment process for Authority members shall be altered to provide that a majority of the Authority shall be appointed by the City, County and the mayors of the cities in the County, with the City and County each appointing an equal number of the members. A majority of any executive committee, or other committee, however termed, having supervisory or management authority over the arena to be constructed by the Authority shall consist of Authority members appointed by the City, County, and the mayors of the cities within the county.
- C. With the exception of borrowed funds which must be expended by the Authority immediately so as to qualify for tax-exempt financing, no portion of the Forty-Eight Million Dollars (\$48,000,000) net construction borrowing shall be used in any way for facility construction until:
- (i) a voluntary annexation petition for all lands under the control of the Centennial Authority shall have been submitted to the City of Raleigh;
 - (ii) the Centennial Authority has entered into an agreement with the City and the County to make an annual payment in lieu of property taxes to the City and the County for any property under the Authority's control which is otherwise exempt under the General Statutes from ad valorem property taxes. The amount of the payment in lieu of taxes shall be based on current city and county property tax rates in effect at the time the payment is due and payable. The valuation of any property subject to the payment in lieu of taxes shall be determined by the Wake County tax assessor in the same manner used to determine the valuation of non-tax-exempt properties.

- D. Until and unless the City and County agree otherwise, once all of the funding obligations contained in this agreement, other than the arena Forty-Eight Million Dollars (\$48,000,000) net construction borrowing, have been satisfied, available revenues from the Room Occupancy and Prepared Food and Beverage Taxes (after distributions to the City and County have been made as specified herein) shall be reserved for arena debt service. The process and schedule by which the funds are paid to the Centennial Authority shall be determined jointly by the chief financial officers of Wake County and the City of Raleigh, who shall also approve any loan or bond agreement, however termed, entered by the Centennial Authority to obtain the construction funds. Any loan or bond agreement shall include a "call" provision allowing the prepayment of indebtedness mid-term.
- E. If the Authority chooses to construct the regional facility on the Carter-Finley Stadium property, the State of North Carolina shall have leased the property and adjacent surface parking areas to the Centennial Authority on terms no less favorable to the Authority than \$1.00 per year for 99 years prior to the Authority awarding a construction contract for the facility.
- F. If the Authority chooses to construct the regional facility on the Carter-Finley Stadium property, North Carolina State University shall have, prior to the Authority awarding a construction contract for the facility:
- (i) transferred all of its funding share of Twenty-Two Million Dollars (\$22,000,000) to the Authority. The University may be credited with up to Four Million Dollars (\$4,000,000) for expenses incurred by the University for the project prior to the transfer of funds. The University shall provide documentation to the City, County and Authority of all such expenses; and
 - (ii) entered into an arena use agreement with the Authority for a minimum of fifteen (15) events annually, for a term extending at least through June 30, 2019, at an annual rental of at least Six Hundred Thousand Dollars (\$600,000).

4. A new paragraph, Paragraph 11.2, is added to read as follows:

11.2 Beginning in Fiscal Year 2000-01, the sum of One Million Dollars (\$1,000,000) shall annually be distributed to each of the City and County. The County and City may, in their sole and independent discretion, use those funds for any of the purposes enumerated in the Enabling Acts. Distributions under this paragraph shall be made prior to applying revenues from the room occupancy tax to arena debt unless otherwise agreed to by the City and County.

5. A new paragraph, Paragraph 11.3, is added to read as follows:

11.3 Prior to awarding any construction contracts for the arena, the Authority must enter into a contract with the City and County providing that, until or unless the City and County agree otherwise, the Authority will annually transfer to the City and County all profits and excess operating funds generated by the Facility. Profits, as used herein, shall mean all revenues from whatever source (excepting funds paid to the Authority pursuant to this Agreement), less reasonable expenses and capital reserves of not more than Six Hundred Fifty Thousand Dollars (\$650,000) per year. For the term of the Authority's debt the funds returned from the Authority to the City and County shall be used to offset payments made pursuant to this Agreement to the Authority or to repay the Authority's debt; thereafter, the funds shall be distributed according to the terms of the Enabling Acts.

6. In the event that any of the allocations and appropriations set out in this agreement are found to be improper according to the terms of the enabling authority, it is the intent of the City and County that the other allocations shall remain in effect, with the questioned funds being reallocated to the future projects reserve account.

7. Paragraph 18 is deleted in its entirety and substituted therefore is the following:

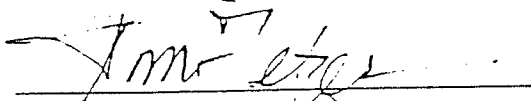
18. This Agreement shall remain in effect until all Arena debt service in connection with the Forty-eight Million Dollars (\$48,000,000) net construction borrowing provided for in this agreement is retired and satisfied, at which time the City and County shall renegotiate the allocation of monies collected to that date and future expected revenues, if any.

8. All other terms of the September 5, 1995 Revised Interlocal Agreement, as amended December 3, 1996, shall remain in the same force and effect.

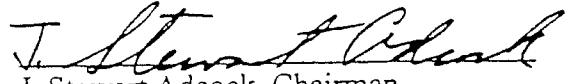
IN WITNESS WHEREOF, the Agreement is executed the day and year first above written pursuant to resolutions adopting by the governing boards of the County and the City.

CITY OF RALEIGH

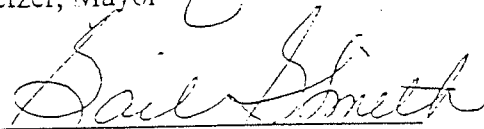
COUNTY OF WAKE



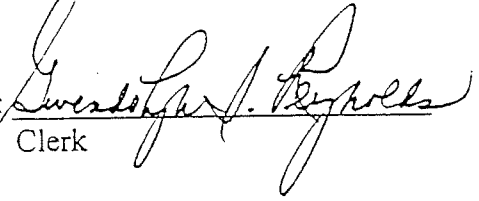
Tom Fetzer, Mayor



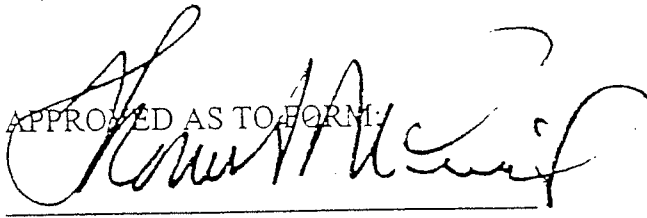
J. Stewart Adcock, Chairman

Attest: 


Clerk

Attest: 

Clerk

APPROVED AS TO FORM:


City Attorney



County Attorney

ATTACHMENT A
WAKE COUNTY AND CITY OF RALEIGH
OCCUPANCY AND PREPARED FOOD TAXES
CAPITAL PROJECTS DISTRIBUTION

| PROJECT | FY96-97 | FY97-98 | FY98-99 | FY99-00 | FY00-01 | FY01-02 | FY02-03 | FY03-04 |
|----------------------------------|--------------|--------------|--------------|--------------|-------------|-------------|-------------|-------------|
| Raleigh Civic Center | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| N.C. Natural Science Museum | \$0 | \$1,000,000 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Children's Museum | \$6,000,000 | \$10,500,000 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Five County Stadium | \$500,000 | \$4,500,000 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Performing Arts Center land | \$0 | \$0 | \$2,100,000 | \$10,000,000 | \$0 | \$0 | \$0 | \$0 |
| Sports Facility (Soccer) | \$0 | \$0 | \$9,500,000 | \$0 | \$0 | \$0 | \$0 | \$0 |
| City of Raleigh | \$0 | \$0 | \$0 | \$0 | \$1,000,000 | \$1,000,000 | \$1,000,000 | \$1,000,000 |
| Wake County | \$0 | \$0 | \$0 | \$0 | \$1,000,000 | \$1,000,000 | \$1,000,000 | \$1,000,000 |
| Centennial Center | \$11,000,000 | \$0 | \$0 | \$0 | \$5,745,000 | \$5,745,000 | \$5,745,000 | \$5,745,000 |
| Total by fiscal year | \$17,500,000 | \$16,000,000 | \$11,600,000 | \$10,000,000 | \$7,745,000 | \$7,745,000 | \$7,745,000 | \$7,745,000 |
| ANTICIPATED REVENUE | | | | | | | | |
| Previous Year's Balance | \$10,240,092 | | | | | | | |
| Occupancy & Prepared Food Tax | \$11,332,000 | \$12,097,897 | \$12,529,000 | \$13,528,000 | \$6,593,000 | \$7,143,000 | \$7,737,000 | \$8,378,000 |
| Estimated Operations net Revenue | \$0 | \$0 | \$0 | \$0 | \$500,000 | \$500,000 | \$500,000 | \$500,000 |
| Total Revenue by fiscal year | \$21,572,092 | \$12,097,897 | \$12,529,000 | \$13,528,000 | \$7,093,000 | \$7,643,000 | \$8,237,000 | \$8,878,000 |
| RESERVE | N/A | N/A | N/A | N/A | \$3,000,000 | \$872,989 | \$492,000 | \$1,133,000 |
| Cumulative Balance | \$4,072,092 | \$169,989 | \$1,098,989 | \$4,626,989 | \$974,989 | \$0 | \$0 | \$0 |

ATTACHMENT A
WAKE COUNTY AND CITY OF RALEIGH
OCCUPANCY AND PREPARED FOOD TAXES
CAPITAL PROJECTS DISTRIBUTION

| PROJECT | FY04-05 | FY05-06 | FY06-07 | FY07-08 | FY08-09 | FY09-10 | FY10-11 |
|----------------------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| Raleigh Civic Center | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| N.C. Natural Science Museum | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Children's Museum | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Five County Stadium | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Performing Arts Center land | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Sports Facility (Soccer) | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| City of Raleigh | \$1,000,000 | \$1,000,000 | \$1,000,000 | \$1,000,000 | \$1,000,000 | \$1,000,000 | \$1,000,000 |
| Wake County | \$1,000,000 | \$1,000,000 | \$1,000,000 | \$1,000,000 | \$1,000,000 | \$1,000,000 | \$1,000,000 |
| Centennial Center | \$5,745,000 | \$5,745,000 | \$5,745,000 | \$5,745,000 | \$5,745,000 | \$5,745,000 | \$5,745,000 |
| Total by fiscal year | \$7,745,000 | \$7,745,000 | \$7,745,000 | \$7,745,000 | \$7,745,000 | \$7,745,000 | \$7,745,000 |
| ANTICIPATED REVENUE | | | | | | | |
| Previous Year's Balance | | | | | | | |
| Occupancy & Prepared Food Tax | \$9,071,000 | \$9,819,000 | \$10,628,000 | \$11,500,000 | \$12,443,000 | \$13,461,000 | \$14,560,000 |
| Estimated Operations net Revenue | \$500,000 | \$500,000 | \$500,000 | \$500,000 | \$500,000 | \$500,000 | \$500,000 |
| Total Revenue by fiscal year | \$9,571,000 | \$10,319,000 | \$11,128,000 | \$12,000,000 | \$12,943,000 | \$13,961,000 | \$15,060,000 |
| RESERVE | \$1,826,000 | \$2,574,000 | \$3,383,000 | \$4,255,000 | \$5,198,000 | \$6,216,000 | \$7,315,000 |
| Cumulative Balance | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |