

**FUNDING AGREEMENT BETWEEN THE STATE OF TENNESSEE AND  
THE SPORTS AUTHORITY OF THE METROPOLITAN  
GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY**

This Funding Agreement (the “Agreement”) is made and entered into as of \_\_\_\_\_, 2023, by and between the State of Tennessee, acting through its Department of Finance & Administration (the “State”), and The Sports Authority of the Metropolitan Government of Nashville and Davidson County (the “Authority”). The State and the Authority are collectively referred to herein as “Parties”.

WHEREAS, the Metropolitan Government of Nashville and Davidson County (the “Metropolitan Government”) has formed the Authority pursuant to Tenn. Code Ann. §§ 7-67-101, *et seq.*; and

WHEREAS, the Parties and the Metropolitan Government entered into an agreement dated May 27, 1997, pertaining to the funding of the construction of a sports stadium in Nashville, Tennessee (the “Existing Stadium Agreement”), which stadium (the “Existing Stadium”) was subsequently constructed and leased to Cumberland Stadium, L.P. (“Cumberland”), an affiliate of the National Football League’s Tennessee Football, LLC, d/b/a Tennessee Titans (the “Team”), and which has been in operation since its completion in 1998; and

WHEREAS, the Authority, Cumberland and the Tennessee Board of Regents, on behalf of Tennessee State University (“TSU”) entered into a lease agreement dated as of May 27, 1997 (the “Existing TSU Lease”), whereby TSU was granted certain lease rights in the Existing Stadium; and

WHEREAS, the Parties have found that the capital expenses required to maintain the Existing Stadium in a manner that preserves its intended function are cost-prohibitive; and

WHEREAS, the Parties have determined that a new enclosed professional football stadium on the east bank of the Cumberland River will be a significant public asset and serve a significant public purpose by (i) further enhancing the image of the State and the Metropolitan Government as sports and entertainment centers, (ii) encouraging and fostering economic development and prosperity for the citizens of the Metropolitan Government and the State, and (iii) providing recreational and other opportunities for the citizens of the Metropolitan Government and the State; and

WHEREAS, the Authority, and Tennessee Stadium, LLC, a Delaware limited liability company and affiliate of the Team (“StadCo”) have entered into a Development and Funding Agreement dated \_\_\_\_\_, 2023 (the “Development Agreement”), whereby the parties thereto have agreed to cause an enclosed football stadium with a seating capacity of approximately 60,000 (the “Stadium”) to be funded, in part, and constructed in accordance with its terms; and

WHEREAS, pursuant to a Stadium Lease Agreement, dated as of \_\_\_\_\_, 2023 (the “Stadium Lease”) between the Authority, as lessor, and StadCo, as lessee, the Stadium will be leased to and operated and maintained by StadCo as the home stadium for the Team for an initial term of 30 years; and

WHEREAS, the Authority, StadCo and TSU have agreed that TSU will be granted a leasehold right in the Stadium pursuant to a sublease between StadCo, as sublessor, and TSU, as sublessee (the “TSU Lease”), to allow TSU to play up to a set number of home football games in the Stadium, as further described in the TSU Lease, thereby serving the public purpose of assisting state-funded higher education institutions; and

WHEREAS, StadCo and the Authority have agreed to include up to 10,000 square feet of dark shell space within the Stadium for the Tennessee Sports Hall of Fame (the “TSHF”) to serve as the new permanent location for the TSHF (the “TSHF Space”); and

WHEREAS, in consideration of the foregoing, the State desires to facilitate the construction of the Stadium by providing funds for the construction of the Stadium as described herein; and

WHEREAS, pursuant to Chapter 1133 of 2022 Public Acts, the General Assembly of the State of Tennessee authorized the State, through its State Funding Board, to issue and sell general obligation interest-bearing debt in an amount sufficient to allocate \$500 million to the Department of Finance and Administration for the purpose of making a grant for the construction of the Stadium; and

WHEREAS, the parties wish to define the manner in which the State will contribute such funds to the construction of the Stadium and to ensure the performance of the Authority, StadCo and the Team of their respective obligations under the Project Documents (as defined herein);

NOW, THEREFORE, for and in consideration of the mutual promises and covenants of the Parties contained herein, the sufficiency of which is hereby acknowledged, it is hereby agreed among the Parties as follows:

## **I. DEFINITIONS**

In addition to the terms defined above, capitalized terms used herein shall be as follows:

“Authority Contribution Amount” shall have the meaning ascribed by the Development Agreement.

“Authority Contribution Date” shall mean the date on which each of the Authority Contribution Amount is fully committed pursuant to the terms of Sections 3.2 and 3.3 of the Development Agreement.

“Commissioner” shall mean the Commissioner of Finance and Administration for the State of Tennessee.

“Construction Funds Trust” means that certain trust established by the Construction Funds Trust Agreement.

“Construction Funds Trust Agreement” means that certain Construction Funds Trust Agreement, dated as of \_\_\_\_\_, 2023, among the Authority, StadCo, the State, \_\_\_\_\_, as construction funds trustee, and \_\_\_\_\_, as construction monitor.

“Guaranty” means that certain Team Guaranty dated as of \_\_\_\_\_, 2023, from the Team for the benefit of the Authority.

“Interests of the State” means (i) remedies or damages available to the Authority pursuant to any of the Project Documents, including without limitation the right of the Authority to enforce the performance by StadCo or an affiliate thereof of its obligation under any of the Project Documents, the right of the Authority to recover damages upon an event of default by StadCo or an affiliate thereof under any of the Project Documents, (ii) the availability of the Stadium and related facilities for TSU games as contemplated by the TSU Lease, (iii) any matter affecting the State’s rights under this Agreement, (iv) the term of the Stadium Lease or (v) any provision of the Non-Relocation Agreement or the Guaranty.

“Non-Relocation Agreement” means that certain Non-Relocation Agreement dated as of \_\_\_\_\_, 2023, between the Team and the Authority.

“Project” means the Stadium construction project described herein and in the Development Agreement.

“Project Documents” shall mean, collectively, this Agreement, the Stadium Lease, the Development Agreement, the Guaranty, and the Non-Relocation Agreement, in each case, as the same may be amended, restated, renewed or extended, supplemented or otherwise modified from time to time in accordance with the terms thereof.

“StadCo Contribution Amount” shall have the meaning ascribed by the Development Agreement

“State Contribution Amount” shall mean \$500,000,000, to be funded from the proceeds of the issuance of the State’s general obligation bonds, as authorized by the Tennessee General Assembly pursuant to Public Chapter 1133 of 2022, and allocated to the Department of Finance and Administration for the purpose of making a grant for the construction of the Stadium.

“State Contribution Trust Account” shall mean the account established within the Construction Funds Trust for the deposit of the State Contribution Amount.

“State Officials” shall mean the Commissioner of the Tennessee Department of Finance and Administration and the Tennessee Attorney General.

“Warm Dark Shell Space” shall mean space within the Stadium that is delivered with floor and ceilings in slab condition, columns and exterior walls unfinished, utility lines stubbed to a location(s) on the perimeter of the space as agreed upon by TSHF and StadCo, and HVAC ventilation installed as agreed upon by TSHF and StadCo.

The definitions in this Section I shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” All references to “Party” and “Parties” shall be deemed references to the parties to this Agreement unless the context shall otherwise require. All references to Sections shall be deemed references to Sections of this Agreement, unless the context shall otherwise require. All references herein to Attachments shall be deemed to be references to the Attachments attached to this Agreement. The terms “this Agreement”, “hereof”, “hereunder” and similar expressions refer to this Agreement as a whole and not to any particular Section or other portion hereof and include any agreement supplemental hereto.

## **II. TERMS AND CONDITIONS**

### **A. Obligations of the Authority**

1. The Authority agrees to comply with all of its obligations under each of the Project Documents, and to enforce its rights thereunder against StadCo and/or the Team using all available remedies as described thereunder or as may be available at law or equity if any other party thereto fails to comply with its terms, to the extent such non-compliance may have a material adverse effect on the Interests of the State. The Authority agrees that no provision or term of the Project Documents shall be terminated, waived, amended, revised or modified if such termination, waiver, amendment, revision or modification would have a material adverse effect on the Interests of the State, without the prior written consent of the Commissioner. The Authority shall provide the Commissioner with written notice of the terms of any proposed agreements, termination, consent, waiver, amendment, revision or modification that may affect the Interests of the State. Failure of the Commissioner to object in writing within 15 days of receipt of said written notice shall be deemed approval hereunder. If the

Commissioner reasonably determines that any such agreement, termination, consent, waiver, amendment, revision, or modification adversely affects the State's interest, the Commissioner shall so notify the Authority in writing within 15 days of receipt and any such termination, waiver, amendment, revision, or modification shall require the prior written approval of the Commissioner in order to be effective. Said approval of the Commissioner shall not be unreasonably withheld, conditioned, or delayed.

2. The Authority will provide the Commissioner with copies of any termination, waiver, amendment, revision or modification to the Project Documents.

3. The Authority agrees that it shall promptly pay to the State 40% (representing the State's proportionate contribution towards the Project cost as between the Authority and the State) of any monetary penalties, damages or other payments received by the Authority pursuant to the Development Agreement or the Stadium Lease from StadCo or any insurer with respect to the Project, to the extent such monetary payments are not required by the Development Agreement or the Stadium Lease to be otherwise applied to the costs or completing, repairing or otherwise improving the Project.

4. The Authority and the State agree that any monetary damages recovered from the Team pursuant to Section 5 of the Non-Relocation Agreement, net of any of such monetary damages as may be required to fund the demolition of the Stadium, shall be allocated 60% to the Authority and 40% to the State.

#### **B. State Contribution and Payment of Project Costs**

1. On or before the Authority Contribution Date, the State shall deposit \$500,000,000.00 into the State Contribution Trust Account established by the Construction Funds Trust Agreement. Such deposit shall be made by wire transfer of federal funds. Amounts on deposit in the State Contribution Trust Account shall be administered in the manner set forth in the Construction Funds Trust Agreement; provided that no amounts in the State Contribution Trust Account shall be expended on Project Costs until the Funding Release Date, as defined and described in Section 3.5 of the Development Agreement.

2. The State will cooperate with the Authority and StadCo to facilitate the financing of the Stadium, including collaborating with the Authority and StadCo and their respective affiliates, representatives, officers, and advisors in the efficient documentation and closing of any financing to be incurred by StadCo and the issuance of bonds by the Authority.

3. Upon written request to the Authority, the State shall have the right to have its own construction representative for the Project with rights similar to the rights of the Authority Construction Representative established in the Development Agreement, only for the limited purpose of reviewing the status of the Project but with no authority whatsoever to approve or disapprove any drawing, plan, specification, contract, agreement, change order, work, blueprint, payment request, etc.

4. In the event of termination of the Construction Funds Trust Agreement, sums remaining in the State Contribution Trust Account shall be disbursed to the State in accordance with Section 3.5(e) of the Development Agreement.

### **III. CIVIC EVENTS**

During the Term, the Authority agrees to entertain reasonable requests from the State to use the Stadium for civic-oriented events, and the approval by the Authority shall not be unreasonably withheld,

delayed or conditioned. All terms of such use shall be subject to the terms and conditions of the Stadium Lease.

#### **IV. TERM**

The term of this Agreement (the “Term”) shall commence on the date set forth in the introductory paragraph and shall, except as expressly otherwise provided herein, continue until the expiration of the Initial Term (as defined in the Stadium Lease).

#### **V. ESSENTIAL TERMS AND CONDITIONS OF THIS AGREEMENT**

1. All contracts for construction, erection, or demolition, or to install goods or materials that involve the expenditure of any funds derived from the State concerning the Project, shall require a payment and performance bond in the amount of 100% of the contract amount and any other bond required by law. These bonds shall be executed by an insurance company licensed to do business in Tennessee.

2. StadCo warrants that no part of the State Contribution Amount, StadCo Contribution Amount, or Authority Contribution Amount shall be paid directly or indirectly to any officer or employee of the State of Tennessee as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor, or consultant to the Metropolitan Government, the Authority, StadCo or the Team in connection with any work contemplated or performed relative to this Agreement.

3. No person on the grounds of handicap and/or disability, age, race, color, religion, sex, or national origin, or any other classification protected by federal and/or state constitutional and/or statutory law shall be excluded from participation in, or be denied benefits of, or otherwise be subjected to discrimination in the performance of this Agreement, or in the employment practices of the Authority.

4. The Authority, being an independent contractor and not an employee or agent of the State, is responsible for securing, or requiring StadCo to secure, adequate public liability and other appropriate forms of insurance in the types and amounts as required by Article 13 of the Stadium Lease, and requiring that all taxes incident to this Project are paid. The State shall have no liability whatsoever except as expressly and specifically provided in this Agreement.

5. This Agreement may be modified only by written amendment executed by all Parties hereto and approved in writing by the State Officials shown on the signature page hereto.

6. StadCo shall maintain documentation for all charges against the State under this Agreement. The books, records, and documents of StadCo, insofar as they relate to work performed or money received under this Agreement, shall be maintained for a period of three full years from the date of final maturity of any debt issued by the State to support payments under this Agreement, and shall be subject to audit, at any reasonable time and upon reasonable notice, by the State agency or the Comptroller of the Treasury or their duly appointed representatives. The record shall be maintained in accordance with generally accepted accounting principles. StadCo agrees to abide by any requests or directives from the State regarding documentation for charges as those requirements may change from time to time throughout the Term of this Agreement.

7. All books of account and financial records of the Authority pertaining to the Stadium Project shall be subject to annual audit by the Tennessee Comptroller of the Treasury or the Comptroller’s duly appointed representative. When an audit is required, the Authority may, with the prior approval of the Comptroller, engage a licensed independent public accountant to perform the audit. The

contract between the Authority and the licensed independent public accountant shall be on a contract form prescribed by the Tennessee Comptroller of the Treasury. Any such audit shall be performed in accordance with generally accepted government auditing standards, and the Audit Manual for Government Units and Recipients of Grant Funds published by the Tennessee Comptroller of the Treasury.

8. Upon request of Tennessee Comptroller of the Treasury, the Authority shall provide a copy of any audits the Authority caused to be conducted of StadCo as part of the Stadium Project within 15 days of such request.

9. Any procurement of goods, materials, supplies, equipment, or services (including but not limited to construction and/or design services) shall be done in accordance with applicable law including competitive bidding where applicable.

10. The Authority and StadCo shall comply with all applicable federal, state, and local laws and regulations in the construction of the Stadium.

10. StadCo shall, as part of the construction of the Stadium, include up to 10,000 square of Warm Dark Shell Space within the Stadium for the use and benefit of the TSHF. The specific amount of space shall be determined by the Commissioner of the Tennessee Department of Tourism Development during the design phase of the Stadium. The TSHF shall be responsible for the full buildout of the TSHF Space, and shall be responsible for all costs of operating and maintaining the TSHF Space. StadCo shall be responsible for the payment of utilities for the TSHF Space. StadCo further agrees to install and maintain security cameras within the TSHF Space as part of the buildout. StadCo shall work with the TSHF in good faith to identify the location of the TSHF Space within the Stadium and shall use commercially reasonable good faith efforts to cooperate with the TSHF during the buildout of the TSHF Space.

11.

12. The State is not bound by this Agreement until it is approved by appropriate State officials and executed as indicated on the signature page. This Agreement shall be governed by the laws of the State of Tennessee. The State has not waived its sovereign immunity from suit or extended its consent to be sued with respect to this Agreement. Accordingly, monetary actions against the State for breach of contractual obligations relating to this Agreement shall be heard and determined under current law exclusively in the Tennessee Claims Commission, an administrative tribunal, where liability may be limited to actual damages.

## **VI. REPRESENTATIONS OF PARTIES**

### **A. Representations of the Authority.**

1. The Authority hereby covenants and represents that this Agreement has been duly authorized, executed, and delivered by the Authority, and assuming (a) due execution by the appropriate State officials, as indicated on the signature page of this Agreement and delivery by the State and (b) due execution by the appropriate StadCo official, as indicated on the joinder page of this Agreement and delivery by StadCo, constitutes a legal, valid, and binding enforceable Agreement against the Authority in accordance with its terms.

2. The Authority hereby covenants and represents that the consummation of the transactions contemplated by this Agreement and its fulfillment of the terms hereof will not conflict with,

or result in a breach of any of the terms and provisions, or constitute a default under any indenture, mortgage, deed of trust, lease, loan agreement, license, security agreement, contract, governmental license, permit, or any other agreement or instrument to which the Authority may be a party including but not limited to the Project Documents, or any order, rule, or regulation, of any court or any regulatory body, administrative agency, or governmental body applicable to the Authority or any of its properties.

3. The Authority hereby covenants and represents that it is not in default, nor is there any event in existence which, with notice or the passage of time, or both, would constitute a default by the Authority under any indenture, mortgage, deed of trust, lease, loan agreement, license, security agreement, contract, governmental license, permit, or any other agreement or instrument to which it is a party that would adversely affect the ability of the Authority to perform hereunder or with the Project Documents.

4. The Authority hereby covenants and represents that the Project Documents are in full force and effect, are enforceable in accordance with their terms, and have not been amended or modified except as expressly provided herein.

5. If any entity that is a party to the Project Documents provides notice to another party regarding an actual or potential breach or default, the Authority shall immediately provide a copy of the notice to the State via the Commissioner.

## **B. Representations of the State**

1. The State hereby covenants and represents that this Agreement has been duly authorized, executed, and delivered by the appropriate signatories of the State, and assuming (a) due execution by the appropriate Authority officials, as indicated on the signature page of this Agreement and delivery by the Authority and (b) due execution by the appropriate StadCo official, as indicated on the joinder page of this Agreement and delivery by StadCo, constitutes a legal, valid and binding Agreement against the State in accordance with its terms.

2. The State hereby covenants and represents that the consummation of the transaction contemplated by this Agreement and its fulfillment of the terms hereof will not conflict with, or result in a breach of any of the terms and provisions, or constitute a default under any indenture, mortgage, deed of trust, lease, loan agreement, license, security agreement, contract, governmental license, permit or any other agreement or instrument to which the State may be a party, or any order, rule, or regulation, of any court or any regulatory body, administrative agency, or governmental body applicable to the State or any of its properties.

3. The State hereby covenants and represents that it is not in default, nor is there any event in existence which, with notice or the passage of time, or both, would constitute a default by the State under any indenture, mortgage, deed of trust, lease, loan agreement, license, security agreement, contract, governmental license, permit, or any other agreement or instrument to which the State may be a party that would adversely affect the ability of the State to perform hereunder.

## VII. MISCELLANEOUS

1. Severability. If any provision of this Agreement shall be held to be unlawful, invalid, or unenforceable, all parties agree that all other terms and conditions of the Agreement shall remain in full force and effect.

2. Assignment. The prior written approval of the State shall be necessary in order for the Authority to assign or otherwise convey its interests in this Agreement and in the Project Documents.

3. Waiver. No consent, waiver or excuse of any breach of the terms or conditions of this Agreement shall be held to be a consent, waiver, or excuse of any other or subsequent breach, nor shall any such waiver or excuse be valid or binding unless the same shall be in writing and approved and executed by the party alleged to have granted the waiver as indicated on the signature page of this Agreement.

4. Third Party Beneficiary Right. The parties do not intend to create rights for any third party by this Agreement and no third-party beneficiary rights are created hereby.

5. Compliance with Laws. The Parties shall comply with all applicable federal, state and local constitutions, laws and regulations.

6. Interpretation. The Parties agree that if a dispute arises regarding the construction or interpretation of this Agreement, the Agreement shall not be construed or interpreted in favor of either party.

7. No Implied Covenants. The Parties shall be bound only by the express, written terms contained herein and shall not be bound by any implied covenants or agreements.

8. Entire Agreement. This Agreement constitutes the entire agreement as to the subject matters contained herein.

9. Notices. All notices shall be provided as follows:

If to the Authority, addressed to:

Metropolitan Government Sports Authority  
730 President Ronald Reagan Way, Suite 103  
Nashville, Tennessee 37210  
Attention: Executive Director  
E-Mail: monica.fawknorton@nashville.gov  
Phone: 615-880-1021  
Facsimile: [\_\_\_\_\_]



With a copy to:

Metropolitan Department of Law  
1 Public Square, Suite 108  
Nashville, Tennessee 37201  
Attention: Director of Law  
E-Mail: tom.cross@nashville.gov  
Phone: 615-862-6360  
Facsimile: [\_\_\_\_\_]

With a copy to:

Greenberg Traurig, LLP  
1000 Louisiana Street, Suite 6700  
Houston, Texas 77002  
Attention: Denis C. Braham  
Email: Denis.Braham@gtlaw.com  
Phone: 713-374-3594  
Facsimile: 713-374-3505

If to the State, addressed to:

State of Tennessee  
312 Rosa L. Parks Avenue  
Nashville, Tennessee 37243  
Attention: Commissioner of Finance & Administration  
E-mail: [\_\_\_\_\_]  
Phone: 615-741-2401  
Facsimile: [\_\_\_\_\_]

10. Termination of Existing Stadium Agreement. Upon the deposit of the State Contribution Amount into the Construction Funds Trust, the Existing Stadium Agreement shall be terminated and of no further force and effect.

11. Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall be deemed one original.

*(signature page follows)*

**IN WITNESS WHEREOF**, the parties acting through their duly authorized representatives have executed this Agreement as of the above date shown.

THE SPORTS AUTHORITY OF THE  
METROPOLITAN GOVERNMENT OF  
NASHVILLE AND DAVIDSON COUNTY

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Cathy Bender  
Chair

Attest:

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Emmett Wynn  
Secretary/Treasurer

STATE OF TENNESSEE

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Jim Bryson  
Commissioner, Finance and Administration

Attest:

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Approval as to form and legality as to the State's  
obligations.

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Attorney General

Joinder

StadCo hereby executes this joinder (this “*Joinder*”) to the Funding Agreement between the Authority and the State for the purpose of acknowledging to the Authority and the State, and agreeing to perform and/or comply with, its express obligations arising under the Agreement between the Authority and the State, as the case may be; including, without limitation, obligations arising under Article V.

StadCo represents and warrants to the Authority and the State that: (a) it has full power and authority to enter into this Joinder to the Agreement between the Authority and the State and to perform and carry out all its obligations and covenants hereunder; and (b) this Joinder to the Agreement between the Authority and the State constitutes the legal, valid and binding obligation of StadCo in accordance with the terms hereof, and has been duly authorized by all necessary limited liability company action of StadCo.

StadCo further represents and warrants to the Authority and the State that no further action of any kind or approval on the part of StadCo is or shall be required in order to enable StadCo to perform and carry out all its obligations and covenants under this Joinder to the Agreement between the Authority and the State Lease.

Tennessee Stadium, LLC, a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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