

DRAFT

AGREEMENT BETWEEN
CITY OF GAINESVILLE and ALACHUA COUNTY
REGARDING FUNDING FOR AND CONSTRUCTION
OF SENIOR RECREATION CENTER

THIS AGREEMENT is made and entered into this ____ day of _____, 2009, by and between the CITY OF GAINESVILLE (hereinafter referred to as the “City”), a municipal corporation of the State of Florida, and the COUNTY OF ALACHUA, a charter county and a political subdivision of the State of Florida (hereinafter referred to as the “County”).

WITNESSETH:

WHEREAS, the City and the County desire to provide increased programs and services to benefit the quality of life for seniors in the local community; and,

WHEREAS, the City and the County desire to cooperate in the construction of the Alachua County/City of Gainesville Senior Recreation Center, hereinafter referred to as “Project”, on City-owned property located at 5725 NW 34th Street, Gainesville, Florida, also known as Northside Park, Parcel No. 7879-003-004; and

WHEREAS, it is the intent that the Project will be managed by Eldercare of Alachua County, Inc. (ECAC) under a long term operating and/or lease arrangement and accessible to seniors in the community to provide a broad array of programs and services for seniors; and to provide a general support system to seniors and the local community; and

WHEREAS, it is the intent that the Project will be open and accessible to all on a scheduled basis in providing traditional recreational programs and services; and

WHEREAS, the City and County have entered into an Interlocal Agreement, dated August 5, 2008, for the distribution of local government environmental lands, parks and recreation one-half percent (1/2%) infrastructure sales surtax from the “Wild Spaces and Public Places” referendum, which provides for funding from their respective shares of surtax proceeds,

to construct the Project, using the amount of \$750,000 from each party for each year the surtax is levied, for the total amount of \$1,500,000 from each party; and

WHEREAS, the City and ECAC have co-sponsored a grant application for a Senior Recreation Center Fixed Capital Outlay Grant from the Florida Department of Elder Affairs in the amount of \$2 million dollars to provide grant funding for the construction of the Project.

NOW THEREFORE, in consideration of the covenants contained herein and the performance thereof, the parties do hereby agree as follows:

1. **Shared Responsibilities:**

- A. The City and the County agree to allow the City to serve as the lead agency on development and operation of this project with the intention that ECAC manage the Senior Recreation Center under a lease and/or operating agreement. The City and County will approve the final conceptual design plan for the senior recreation center.
- B. It is anticipated that ECAC will provide to the City scheduled use of the facility for programming to include but not limited to seminars, meetings, workshops, classes, and other traditional recreational programs and services as further described in the lease and/or operating agreement. It is anticipated that the lease and/or operating Agreement shall generally require that ECAC will be responsible for the building and its contents, including insurance, and maintenance of the remainder of the site and for all utility and operating expenses directly related to the operations of the senior recreation center. The intent of the Project is to provide a broad array of programs and services for seniors; and to provide a general support system to seniors and the local community in accordance with City and County policies and practices. The City and County may use the Project during agreed upon times that will not interfere with senior activities and the City and County shall only be responsible for those

expenditures associated with said hours of operation. This will permit the City and County to schedule the use of these recreational facilities for their organized programs, as applicable.

2. **City's Responsibilities:**

The City agrees to perform the following services pursuant to this Agreement:

- A. The City will construct/develop this Project as generally provided in Grant Agreement ("Grant") between the City and the Department of Elder Affairs. In addition to design professionals and contractors engaged by the City, the City's General Services Department shall provide design/construction support to the Project. The City's General Services Department shall be paid for all costs related to providing design/ construction support services to the Project. Payment for these services shall be charged directly to the funds allocated for this Project. Any and all invoices; and pay applications, or costs incurred that are being charged to the Project out of the infrastructure sales tax proceeds shall be approved by the City's General Services Department prior to the submission of the invoices to the City's Budget and Finance Department. Upon approval, the pay request will be forwarded to City's Budget and Finance Department for payment.
- B. The City will act as the fiscal agent for the Project and all funds from allocated from the parties shall be deposited with the City's Budget and Finance Department. The City's Budget and Finance Department will assume responsibility for the accounting and disbursement of all such funds until the completion of the Project. The City's Budget & Finance Department shall be responsible for verifying, and tracking, any applicable requirements in regards to regulations and obligations of the Grant and

- making sure they are incorporated into the contracts for the construction of the Project.
- C. The City shall retain all records relating to this Agreement and the Project for a period of five (5) years, and in accordance with the Grant agreement/regulations, after the completion of all work performed on the Project. The parties to this Agreement shall make available to each other any and all records relating to this Agreement for copying and inspection upon written request. Furthermore, the parties to this Agreement shall make any records relating to this Agreement and the Project available at cost to any state, federal or regulatory authorities that may request to review inspect or copy said records.
- D. The City shall retain the ownership of the land for this Project. The City intends to authorize ECAC to operate its Senior Center and maintain the building facilities and grounds contingent upon approval of a long term lease and/or operating agreement defining the specific needs of the operation and maintenance of the Senior Recreation Center.
- E. In accordance with the Interlocal Agreement, dated August 5, 2008, for the distribution of local government environmental lands, parks and recreation one-half percent (1/2%) infrastructure sales surtax from the “Wild Spaces and Public Places”, the City shall provide a total of \$1,500,000 (\$750,000 in FY 2009 and \$750,000 FY 2010) toward the construction of the Project under the Wild Spaces and Public Spaces Program.
- F. The City and the Florida Department of Elder Affairs will enter into a Memorandum of Understanding (Grant) for the distribution of Senior Center Fixed Capital Outlay State Grants and Aids. All funds under the Grant/MOU shall be deposited with the

City's Budget and Finance Department and shall be disbursed in accordance with the Grant/MOU agreement.

3. **County's Responsibilities:** In accordance with the Interlocal Agreement, dated August 5, 2008, for the distribution of local government environmental lands, parks and recreation one-half percent (1/2%) infrastructure sales surtax from the "Wild Spaces and Public Places", the County shall provide a total of \$1,500,000 (\$750,000 in FY 2009 and \$750,000 FY 2010) toward the construction of the Project under the Wild Spaces and Public Spaces Program.
5. **Depository of Funds.** Within 30 days of the execution of this Agreement, and on a monthly basis thereafter, the City and County shall each deposit its pro rata share of funds as the revenue is generated from the Wild Spaces and Public Places referendum into an interest bearing account identified by the City. Said funds shall solely be used to facilitate the construction of the Project. Any interest accrued in this account shall be accounted for and allocated to the Project.
6. **Default and Termination.** The failure of any party(s) to comply with any provision of this Agreement shall place the party(s) in default. Prior to terminating this Agreement, the non-defaulting party(s) shall notify the defaulting party(s) in writing. Such notification shall make specific reference to the provision, which gives rise to the default. The defaulting party(s) shall then be entitled to a period of fifteen (15) days in which to cure the default. In the event the default is not cured within the 15-day period, this Agreement may be terminated and the remaining funds will be distributed as provided in this section of the Agreement. The failure of either party(s) to exercise this right shall not be considered a waiver of such right in the event of any further default or non-compliance.

In the event the Project does not proceed to construction in accordance with this Agreement, all unexpended surtax funds plus any unexpended interest attributable to such shall be returned to the City and County based on the amount of funds deposited respectively.

6. **Effective Date and Term.** This Agreement and any amendments shall become effective upon approval by the City and the County. Except as otherwise provided herein, this Agreement shall continue in force and effect until Project completion or subject to termination as described in Section 6 above.
7. **Notice.** Except as otherwise provided in this agreement, any notice, request or approval, from either party to the other party must be made in writing and sent by certified mail, return receipt requested, or by personal delivery. For purposes of notice, City and County representatives are:

CITY: Russ Blackburn, City Manager
P O Box 490, Station 6
Gainesville, FL 32602
Phone: 352-334-5010
Fax: 352-334-3119

Fred Murry, Assistant City Manager
P O Box 490, Station 6
Gainesville, FL 32602
Phone: 352-334-5010
Fax: 352-334-3119

COUNTY: Randall Reid, County Manager
12 SE 1st Street
Gainesville, FL 32601
Phone: 352-374-5204
Fax: 352-338-7363

Rick Drummond, Assistant County Manager
12 SE 1st Street
Gainesville, FL 32601
Phone: 352-374-5204
Fax: 352-338-7363

8. **Severability.** If any provision of this Agreement is declared void by a court of law, all other provisions will remain in full force and effect.
9. **Third Party Beneficiaries.** This agreement does not create any relationship with, or any rights in favor of, any third party.
10. **Assignment of Interest.** Neither party will assign or transfer any interest in this Agreement without prior written consent of the other party.
11. **Survival of Provision.** Where applicable, the provisions of this Agreement shall survive the completion of development/construction.
12. **Successors and Assigns.** The City and the County each bind their respective successors and assigns in all respects to all of the terms, conditions, covenants, and provisions of this Agreement.
13. **Non-Waiver.** The failure of any party to exercise any right in this Agreement shall not be considered a waiver of such right.
14. **Governing Law and Venue.** This Agreement is governed in accordance with the laws of the State of Florida. Venue shall be in Alachua County, Florida.
15. **Captions and Section Headings.** Captions and section headings used herein are for convenience only and shall not be used in construing this Agreement.
16. **Construction.** This agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by one of the parties. It is recognized that all parties have substantially contributed to the preparation of this agreement.
17. **Amendments.** The parties may amend this Agreement only by mutual written Agreement of the parties.

18. **Entire Agreement.** This agreement constitutes the entire agreement and supersedes all prior written or oral agreements, understandings, or representations.

IN WITNESS WHEREOF, the parties to this Agreement have caused their names to be affixed hereto by proper officers.

ATTEST:

ALACHUA COUNTY, FLORIDA

J.K. "Buddy" Irby, Clerk of the Circuit
Court

(SEAL)

By: _____
Mike Byerly, Chairman
Board of County Commissioners

APPROVED AS TO FORM

Alachua County Attorney's Office

ATTEST:

CITY OF GAINESVILLE

Kurt M. Lannon, Clerk of the City
Commission

By: _____
Pegeen Hanrahan, Mayor

APPROVED AS TO FORM

City Attorney