

LEGISLATIVE

090307

**INTERLOCAL AGREEMENT
BETWEEN ALACHUA COUNTY
AND CITY OF GAINESVILLE:
TOURISM PRODUCT DEVELOPMENT PROGRAM**

This Agreement is entered into this _____ day of _____, 2012, between Alachua County, a charter county and political subdivision of Florida, by and through its Board of County Commissioners, hereinafter referred to as "County," and the City of Gainesville, a municipal corporation organized under the laws of the State of Florida, hereinafter referred to as "City."

WITNESSETH:

WHEREAS, the County and the City are authorized by §163.01, Florida Statutes, to enter into interlocal agreements to cooperatively and efficiently use their powers to provide public services that will advance the general health, safety and welfare of the citizens of Alachua County; and

WHEREAS, the City of Gainesville, through its Department of Parks, Recreation and Cultural Affairs is the designated Local Arts Agency for Alachua County, administering the arts and cultural resources of Alachua County through its Cultural Plan, the Cultural Element of the City's Comprehensive Plan and the Gainesville-Alachua County Cultural Affairs Board; and

WHEREAS, the County wishes to establish a program from a portion of Tourist Development Tax revenues for Tourism Product Development activities that will increase tourism in Alachua County under the provisions set forth in §125.0104, Florida Statutes; and

WHEREAS, the City is willing to administer Tourism Product Development funds on behalf of the County,

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereto do mutually agree as follows:

- 1. Term** – This Agreement is effective beginning on October 1, 2012 and continues through September 30, 2015, unless earlier terminated as provided herein. Pending satisfactory performance, the County will have the option at the end of the contract term to extend the Agreement for an additional one-year period under the same terms and conditions. Up to two such extensions are allowed, pending satisfactory performance, negotiation of fees and appropriation of funds. All extensions and adjustments to services and compensation shall be in writing and signed by both the County and the City.

2. Duties of the City

- 2.1. The City shall administer the Tourism Product Development Program (“Program”) in accordance with the funding formula attached hereto as Exhibit A, the Alachua County Tourist Development Council Tourism Product Development Program Guidelines, and the provisions set forth in §125.0104, Florida Statutes.
- 2.2. The City shall enter into agreements with agencies awarded by the Tourist Development Council (TDC). The City shall review requests for funding reimbursement from these agencies, and disburse funds for authorized expenditures as funding becomes available.
- 2.3. During the term of this Agreement, the City shall maintain separate accounts for County funds.
- 2.4. The City shall reimburse the County for Tourist Development Tax monies that are not spent for a public purpose, not spent in accordance with §125.0104 Florida Statutes, and/or not spent in accordance with Exhibit A. If the funds to be reimbursed have been granted to another organization, the City’s liability for reimbursement to the County will be limited to the extent that the City can recover the funds from the organization, its agents or assigns.
- 2.5. For the term of this Agreement and any extension(s) thereto, City shall annually return any Tourist Development Tax monies received from the County under this Program that it has not expended, encumbered or expensed as of September 30. The City shall return such monies by April 15 of the following year. Unexpended monies designated for the “New Programs” and “Administration” sections shall remain in the City specified account for that program and are not subject to being returned to the County until this term of this contract expires or the contract is terminated as stated herein.
- 2.6. The City shall submit a report in both written and electronic format to the Visitors and Convention Bureau (VCB) on a semiannual basis (Exhibit B) outlining events and use of the funds disbursed under the Program.
- 2.7. The City shall maintain an active presence at VCB meetings and play a role in the Visit Florida Committee structure.
- 2.8. The City shall utilize the Tourism Product Development Grant Program as matching funds to apply for grants and enhance the assistance they provide for local arts agencies.
- 2.9. The City shall continue the educational component of its services to local arts agencies and artists strengthening their capacity for success.
- 2.10. The City shall enhance its communication and planning efforts with the VCB through quarterly meetings between the agencies.
- 2.11. The City and VCB shall work cooperatively to establish a centralized and coordinated public relations and marketing system for all future grant recipients.

3. Duties of the County

- 3.1. The County shall in its sole discretion, through the County’s budget process, determine the estimated amount of money, if any, allocated to the Program each year, pursuant to the distribution formula described in Exhibit A, and shall notify the City in a timely manner of the estimated amount of funding to be allocated. In addition, upon receipt of Tourist

Development Tax revenues from the Tax Collector each month, the County shall notify the City of the actual amount received.

- 3.2. The County acknowledges that ten percent (10 %) of the annual allocation will be used by the City for the cost of administration of the Program.

4. Payment Procedures

- 4.1. The City shall invoice the County for one-half of the available amount designated for administration and programming at the beginning of each fiscal year and the remaining half of the available amount designated for administration and programming on January 15. The City shall invoice the County for the entire amount designated for the Capital portion of the program at the beginning of the fiscal year.
- 4.2. Payments of amounts invoiced under Section 4.A above are contingent upon the cash availability of Tourist Development Tax revenues allocated for the Program and will not exceed the amount described in the formula detailed in Exhibit A. It is acknowledged by the parties that payments may vary, based upon Tourist Development Tax revenues collected. The Tourist Development Tax funds allocated to this agreement are a cumulative measure over the course of the fiscal year. Excesses over budgeted, allocated amounts in any month can and will be used to offset deficits in any in any succeeding month. Underpayments resulting from deficits can and will be made up to the extent that excess amounts are received in following months of the fiscal year.
- 4.3. The County shall make payment to the City of all sums properly invoiced under the provisions of this paragraph, in accordance with the provisions of Chapter 218, Part VII (“Florida Prompt Payment Act”), Florida Statutes and the County’s prompt payment procedures. Payments shall be made to the following address:

City of Gainesville
Billing and Collections
PO Box 490
Gainesville, FL 32627-0490

- 4.4. The City has no obligation or responsibility to promise expense or expend any funds unless and until such funds are received from the County. Neither the City nor the County will make whole any sub recipient organization whose funds may be less than anticipated due to Tourist Development Tax shortfalls or any other nonpayment or underpayment to the City by the County.
- 5. Notice** Except as otherwise provided in this Agreement any notice of default or termination from either party to the other party must be in writing and sent by certified mail, return receipt requested or by personal delivery with receipt. For purposes of all notices, the representatives of the County and the City are:

County: Richard Drummond
 Acting County Manager
 PO Box 2877

Gainesville, FL 32602

City: Russ Blackburn
City Manager
PO Box 490
Gainesville, FL 32627-0490

A copy of any notice, request or approval to the County must also be sent to:

J. K. Irby	Office of Management and Budget
ATTN: Finance and Accounting	ATTN: Grants/Contracts
Clerk of the Court	105 SE 1st Avenue, Suite 6
PO Box 939	Gainesville, FL 32601
Gainesville, FL 32602	

6. Default and Termination

- 6.1. The failure of the City to comply with any provision of this Agreement will place the City in default. Prior to terminating the Agreement, the County will notify the City in writing. This notification will make specific reference to the provision which gave rise to the default. The County will give the City seven (7) days to cure the default. The VCB Director is authorized to provide written notice of default on behalf of the County, and if the default situation is not corrected within the allotted time the County Manager is authorized to provide final termination notice on behalf of the County to the City
- 6.2. The County may also terminate the Agreement without cause by providing written notice to the City. The County Manager is authorized to provide written notice of termination on behalf of the County. Upon such notice, City will immediately discontinue all services affected (unless the notice directs otherwise); and, deliver to the County all data, drawings, specifications, reports, estimate, summaries, and such other information and materials as may have been accumulated by the City in performing this Agreement, whether completed or in process. In the event of such termination for convenience, City's recovery against County shall be limited to that portion of the Agreement amount earned through the date of termination, but City shall not be entitled to any other or further recovery against County, including, but not limited to, damages, consequential or special damages, or any anticipated fees or profit on portions of the work not performed.
- 6.3. If funds to finance this Agreement become unavailable, the County may terminate the Agreement with no less than twenty-four hours notice in writing to the City. The County will be the final authority as to the availability of funds. The County will pay the City for all work completed prior to any notice of termination.

7. Project Records

- 7.1. For a period of five (5) years, or fifteen (15) years if related to a capital improvement project, after the completion of all work to be performed, or as required by Chapter 119, Florida Statutes (Public Records Act) and schedules published by the Florida Bureau of Archives and Records Management, or federal requirements, whichever period is greater,

the City shall keep and make available to the County for inspection and copying, upon written request by the County, all records in City's possession relating to the Agreement. Additionally, the City shall make said records available, upon written request by the County, to any state, federal, or other regulatory authority, and any such authority may review, inspect and copy said records unless exempted under Chapter 119, Florida Statutes.

7.2. Any document submitted to the County may be a public record and is open for inspection or copying by any person or entity. "Public records" are defined as all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. Section 119.011(11), Florida Statutes. Any document is subject to inspection and copying unless exempted under Chapter 119, Florida Statutes.

8. **Indemnification**

Each party shall be solely responsible for the negligent or wrongful acts of their employees and agents. Nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the provisions of §768.28, Florida Statutes.

9. **Assignment of Interest** For all assignments, neither party will assign, convey, pledge, sublet, transfer or otherwise dispose any interest in this Agreement and shall not transfer any interest in same without prior written consent of the other party.

10. **Successors and Assigns** The County and City each bind the other and their respective successors and assigns in all respects to all of the terms, conditions, covenants, and provisions of this Agreement

11. **Independent Contractor** In the performance of this Agreement, the City is acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venturer, or associate of the County. The City is solely responsible for the means, method, technique, sequence, and procedure utilized by the Contractor in the full performance of the agreement.

12. **Conflict of Interest** The City warrants that it nor any of its employees have any financial or personal interest that conflicts with the execution of this Agreement. The City shall notify the County of any conflict of interest due to any other clients, contracts, or property interests.

13. **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

14. **Non Waiver** The failure of any party to exercise any right in this Agreement shall not be considered a waiver of such right.

15. **Governing Law and Venue** This Agreement is governed in accordance with the laws of the State of Florida. Venue shall be in Alachua County.

- 16. Attachments** All exhibits attached to this Agreement are incorporated into and made part of this Agreement by reference.
- 17. Amendments** The parties may amend this Agreement only by mutual written agreement of the parties.
- 18. Captions and Section Headings** Captions and section headings used herein are for convenience only and shall not be used in construing this Agreement.
- 19. 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 both parties have substantially contributed to the preparation of this Agreement.
- 20. Entire Agreement** This Agreement constitutes the entire agreement and supersedes all prior written or oral agreements, understandings, or representations.

ALACHUA COUNTY, FLORIDA

CITY OF GAINESVILLE

By: _____
Paula DeLaney, Chair
Board of County Commissioners

By: _____
Russ Blackburn
City Manager

ATTEST

J.K. Irby, Clerk

(SEAL)

APPROVED AS TO FORM:

APPROVED AS TO FORM AND
LEGALITY:

Alachua County Attorney's Office

City of Gainesville Attorney's Office

Exhibit A– Funding Formula

The Tourism Product Development Program will receive annually 85% of the 3rd Cent of Tourist Development Tax.

Administration

The City of Gainesville shall receive an amount not to exceed 10% of the total budgeted amount for the Program

Tourism Product Development Program

The Tourism Product Development Program shall receive the remaining budgeted amount to be divided in the following categories:

- Programming and Events 85%
- Capital Improvement 5%
 - (In addition to the 5% allotted, this category will receive all unexpended encumbrances and unbudgeted revenue. This percentage will not be billed to the County by the City. The funding for this portion comes from fund balance. The 5% of the new revenue will continue to ensure that this portion has sufficient funds to continue.)
- New Programs/Marketing 10%
 - (This program will be administered by the City of Gainesville and is a continuation of the program established under the Destination Enhancement Interlocal Agreement)

Exhibit B – City Reporting Schedule

Mid-year, for the period of October 1st through March 31st: on or about May 15th

Final Report, for the period of April 1st through September 30th: on or about November 15th