

**INTERLOCAL AGREEMENT BETWEEN
ALACHUA COUNTY AND THE CITY OF GAINESVILLE
FOR NEW PROGRAMS**

THIS AGREEMENT, made and entered into this _____ day of _____, 2002, by and between Alachua County, a charter county and political subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as "COUNTY," and the City of Gainesville, hereinafter referred to as "CITY";

WITNESSETH:

WHEREAS, the City has proposed to actively engage in the development of Alachua County as a tourist destination; and

WHEREAS, the County finds that developing and promoting new programs for Alachua County is in the best interest of its citizens by increasing tourist-related business activities with the County; and

WHEREAS, the County has determined that promoting and developing tourist programs and events in Alachua County serves a public purpose; and

WHEREAS, the City and the County have entered into an Interlocal Agreement for Destination Enhancement Programs dated November 15, 2001 which includes a New Programs component to be implemented by the City; and

WHEREAS, Florida Statutes 125.0104 provides that funding may be provided from the Tourist Development Tax for this purpose.

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 from the date of recording in the Official Records of Alachua County through September 30, 2006.
2. **Duties of the City** – the City shall have and perform the following duties, obligations, and responsibilities to the County:
 - a. Prepare an annual plan and budget and submit to the Director of the Visitors and Convention Bureau (VCB) during the last quarter of the fiscal year.
 - b. For the fiscal year beginning October 1, 2001, use the funding provided under this Agreement to promote "A. T. rex Named Sue", through marketing, media, and ancillary events.
 - c. Apply for and aggressively seek grants from VISIT FLA., the State tourism promotion program.

- d. Seek cooperative ventures with local eco-heritage organizations, arts organizations, and the Gainesville Sports Organizing Committee, and involve them, the Tourist Development Council, and the VCB in a yearly planning workshop to develop new programs for Fiscal Years beginning 2002-2006.
- e. Actively assist the VCB with marketing the Alachua County area to tourists.
- f. Assist in implementation of the County Tourism Plan.
- g. Assist in obtaining special authorizations, road closings, accommodations, and assistance of local governmental entities as required for special tourism events.
- 8. Provide Quarterly Reports and an Annual Report to the County of programs and activities undertaken throughout the year.
- i. There is no prohibition against generating revenues with these funds, providing the revenues are used in accordance with this contract.
- j. Reimburse the County for Tourist Development Tax monies spent for uses not authorized by Section 125.0104, Florida Statutes.

3. Duties of the County -

- 9. The County shall in its sole discretion determine the amount of money, if any, allocated to the program each year.
- 10. The County shall make its determination as to the availability of funds for New Programs through the County budget process, and shall notify the City as to the amount of funding available in a timely manner. It is acknowledged by both parties that this amount will vary annually and is dependent upon actual tax revenues collected.
- 11. The Board of County Commissioners shall consider for approval the City's annual plan and budget by October 15th of each year that the Agreement remains in effect.

4. Method of Payment - For all duties, timely and faithfully performed, the City will be paid as follows:

- a. The City shall be paid in accordance with the funding formula detailed in the Interlocal Agreement between Alachua County and the City of Gainesville for the Destination Enhancement Funding Program, Exhibit B (attached hereto as Exhibit A).
- 12. All expenditures must be allowable expenses under § 125.0104, Florida Statutes.
- c. The County will pay the City for costs incurred from October 1, 2001 through the termination date of this Agreement.

d. The City shall invoice the County, on the first of each month, for 1/12th of the estimated amount of money allocated to the program as described in Section 3 of this Agreement. The City's invoice shall specify activities undertaken on behalf of the County.

e. The City shall submit invoices to the County at the following address:

Visitors and Convention Bureau
30 East University Avenue
Gainesville, FL 32601

f. 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 with Alachua County's prompt payment policy. Payments shall be made to the following address:

City of Gainesville
Department of Cultural Affairs
Station 30
P.O. Box 490
Gainesville, FL 32602

g. Payments of amounts invoiced under section 4.e.d. above are contingent upon the cash availability of Tourist Development Tax revenues allocated for the Destination Enhancement Program and will not exceed the amount allocated for New Programs in the formula contained 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 succeeding month. Underpayment resulting from deficits can and will be made up to the extent that excess amounts are received in following months of the fiscal year.

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, County's and City's representatives are:

County: Randall Reid
County Manager
P.O. Box 2877
Gainesville, FL 32602-2877

City: Wayne Bowers
City Manager
P.O. Box 490
Station 6
Gainesville, FL 32602

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

J. K. "Buddy" Irby
Clerk of the Court
P. O. Box 939
Gainesville, FL 32602
Attn: Finance and Accounting

6. **Default and Termination** – The failure of either party to comply with any provision of this Agreement will place the non-compliant party in default. Prior to terminating the Agreement, the non-defaulting party will notify the defaulting party in writing. This notification will make specific reference to the provision which gave rise to the default. The non-defaulting party will give the defaulting party seven (7) days to cure the default.

Either party may terminate the Agreement without cause by first providing at least thirty (30) days written notice to the other party prior to the termination date.

The County Manager is authorized to provide written notice of termination 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.

The City Manager is authorized to provide written notice of termination on behalf of the City, and if the default situation is not corrected within the allotted time, the City Manager is authorized to provide final termination notice on behalf of the City to the County.

If funds to finance this Agreement become unavailable, the County may terminate the Agreement with no less than thirty (30) days 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. **Program Records** - The City will retain all records relating to this Agreement for three years after the completion of all work is performed or as required by Florida Statutes 119 (Public Records) and schedules established by the Bureau of Archives and Records Management, whichever shall be greater. The City will make available to the County any and all records relating to this Agreement for copying and inspection upon written request of the County. The City will make any records relating to this Agreement available to any state, federal or regulatory authorities who may wish to review, inspect or copy these records.
8. **Return of Funds** - Any portion of Tourist Development Tax monies not expended for the purposes described in Section 2 shall be returned to the County without the requirement of any demand or notice by the County to the extent that non-ad valorem funds are legally available. The City's obligation to reimburse the County is limited to any previous three fiscal years from the date of discovery of any monies not spent in accordance with Section 125.0104, Florida Statutes.
9. **Permits** – The City will obtain and pay for all necessary permits, permit application fees, licenses or any fees required.

10. **Laws & Regulations** – Both the County and the City will comply with all laws, ordinances, regulations, and building code requirements applicable to the work required by this Agreement. Both the County and the City are presumed to be familiar with all State and local laws, ordinances, code rules and regulations that may in any way affect the work outlined in this Agreement.
11. **Indemnification – Liability** – The County, as a political subdivision of the State of Florida as defined in §768.28, Florida Statutes, agrees to be fully responsible for its negligent acts or omissions which in any way relate to or arise out of this Agreement. The City, as a political subdivision of the State of Florida as defined in §768.28, Florida Statutes, agrees to be fully responsible for its negligent acts or omissions which in any way relate to or arise out of this Agreement. Nothing herein shall be construed as consent by any agency or subdivision of the State of Florida to be sued by third parties in any matter arising out of this contract or as a waiver of sovereign immunity by any party to which sovereign immunity applies. Nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the provisions of §768.28, Florida Statutes.
12. **Assignment of Interest** – Neither party will assign or transfer any interest in this Agreement without prior written consent of the other party.
13. **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 the Agreement.
14. **Third Party Beneficiaries** – This Agreement does not create any relationship with or any right in favor of any third party.
15. **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.
16. **Non Waiver** – The failure of any party to exercise any right in this Agreement shall not be considered a waiver of such right.
17. **Governing Law and Venue** – This Agreement is governed in accordance with the laws of the State of Florida. Venue shall be in Alachua County.
18. **Attachments** – All exhibits attached to this Agreement are incorporated into and made part of this Agreement by reference.
19. **Amendments** – The parties may amend this Agreement only by mutual written agreement of the parties.
20. **Captions and Section Headings** – Captions and section headings used herein are for convenience only and shall not be used in construing this Agreement.
21. **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.

22. 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, FLORIDA

By: _____
Robert Hutchinson, Chair
Board of County Commissioners

By: _____
Wayne Bowers
City Manager

ATTEST:

WITNESS:

J. K. "Buddy" Irby, Clerk

(SEAL)

WITNESS:

Approved as to Form:

Approved as to Form and Legality:

Alachua County Attorney's Office

City of Gainesville Attorney's Office

TOURISTTAX/NEWPROGRAMS/Final12-04-01

EXHIBIT B

DESTINATION ENHANCEMENT FORMULA*

Destination Enhancement Fund Allocation (DEF):

FY2002	90% of Tourist Development Tax revenues from 3 rd Cent plus \$66,667 Non-Tourist Development Tax revenues plus \$100,000 transfer from BoCC Special Projects Fund
FY2003	90% of Tourist Development Tax revenues from 3 rd Cent plus \$33,333 Non-Tourist Development Tax revenues
FY2004	85% of Tourist Development Tax from 3 rd Cent
FY2005	85% of Tourist Development Tax from 3 rd Cent
FY2006	85% of Tourist Development Tax from 3 rd Cent

Distribution Formula to Categories from Destination Enhancement Fund

Annual Destination Enhancement Fund Allocation = DEF
Amount Paid Annually to the Center for Performing Arts = CPA

FY2002

Cultural Affairs Administration

Fees: (DEF minus CPA) x 9%

Professional Arts Producing Institutions (PAPI):

(DEF minus CPA minus Cultural Affairs Administrative Fees minus the flat rate of \$280,000*) x 20% + \$82,500

Community Arts Agencies:

(DEF minus CPA minus Cultural Affairs Administrative Fees minus the flat rate of \$280,000*) x 20% + \$82,500

Ecoheritage Tourism Council (ETC):

(DEF minus CPA minus Cultural Affairs Administrative Fees minus the flat rate of \$280,000*) x 35% + \$115,000

Cultural Affairs New Programs:

(DEF minus CPA minus Cultural Affairs Administrative Fees minus the flat rate of \$280,000*) x 25%

*Flat rate of \$280,000:	PAPI	\$82,500
	Community Arts	\$82,500
	ETC	\$100,000 transferred from BoCC Special Events Fund
	ETC	\$15,000

FY2003 - FY2006

Cultural Affairs Administration

Fees: (DEF minus CPA) x 9%

PAPI: (DEF minus CPA minus Cultural Affairs Administrative Fees minus the flat rate of \$180,000*) x 20% + \$82,500

Community

Arts: (DEF minus CPA minus Cultural Affairs Administrative Fees minus the flat rate of \$180,000*) x 20% + \$82,500

ETC: (DEF minus CPA minus Cultural Affairs Administrative Fees minus \$180,000*) x 35% + \$15,000

Cultural Affairs New Programs

(DEF minus CPA minus Cultural Affairs Administrative Fees minus \$180,000*) x 25%

*Flat Rate of \$180,000:	PAPI	\$82,500
	Community Arts	\$82,500
	ETC	\$15,000

*** All Tourist Development Tax amounts in this Exhibit are subject to Tourist Development Tax Cash Availability**