

002072

2nd
Draft
11/13/01

**INTERLOCAL AGREEMENT
BETWEEN ALACHUA COUNTY
AND CITY OF GAINESVILLE:
DESTINATION ENHANCEMENT FUNDING PROGRAM**

This agreement is entered into this _____ day of _____, 2001, 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 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 services of the designated Local Arts Agency incorporate all elements of Tourist Destination Enhancement services; and

WHEREAS, the County wishes to establish a funding program from a portion of Tourist Development Tax revenues for Tourist Destination Enhancement 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 Destination Enhancement 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, 2001 and continuing through September 30, 2006.
2. Duties of the City –
 - A. The City shall administer the Destination Enhancement funding program ("program") in accordance with the provisions set forth in §125.0104(5), Florida Statutes, attached hereto as Exhibit A, and the funding formula approved by the Board of Alachua County Commissioners on June 12, 2001, attached hereto as Exhibit B.
 - B. The City shall enter into agreements with agencies falling under the categories described in Exhibit B, based on proposals submitted by each agency documenting specific uses of the funding. City shall establish a committee review process to review agency proposals to ensure conformity to §125.0104(5), Florida Statutes for the proposed uses of the funding.

- C. During the term of this agreement when the funding from the County includes both Tourist Development Tax and non-Tourist Development Tax funds, the City shall account separately for expenditures from each funding source.
 - D. The City shall report in writing to the Alachua County Visitors and Convention Bureau on a quarterly basis (Exhibit C) outlining events and use of the funds disbursed under the program.
 - E. The City shall reimburse the County for Tourist Development Tax monies spent for uses that are not authorized by Section 125.0104(5), Florida Statutes, and/or not spent in accordance with Exhibit B.
 - F. The City shall reimburse the County for any non-Tourist Development Tax monies that are not spent for a public purpose, and/or not spent in accordance with Exhibit B. If the funds to be reimbursed were granted to another organization, the City's reimbursement to the County will be limited to the extent that the City can recover the funds from the organization, its agents, or assigns.
 - G. For each year of this agreement, the City shall return to the County any funds received but not expended, expensed or encumbered during the current year.
3. Duties of the County --
- A. 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 B, and shall notify the City of the estimated amount of funding available in a timely manner. 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.
 - B. The County acknowledges that nine percent (9%) of the annual allocation may be used by the City for the cost of administration of the program.
4. Payment Procedures -
- A. Fiscal Year beginning October 1, 2001

(1) Upon execution of this agreement, the City shall invoice the County for advance payments as follows:

- a.) Sixty-Six Thousand, Six Hundred Sixty-Seven Dollars (\$66,667) of non-Tourist Development Tax revenues
- b.) One Hundred Thousand Dollars (\$100,000.00) of Tourist Development Tax revenues

The County will pay to the City the \$166,667 within thirty (30) days of receipt of the City's invoice. These advance payments are not contingent upon the receipt of Tourist Development Tax revenues in the referenced fiscal year, and are not included in the contingency stipulation governing the payments in 4.A.(2) below.

(2) The City shall invoice the County, on the first of each month, 1/12th of the estimated amount of money allocated to the program as described in Paragraph 3.A. of this agreement, minus the advance payments listed in paragraph 4.A.1. of this agreement.

(3) Payments of amounts invoiced under section 4.A(2) above are contingent upon the cash availability of Tourist Development Tax revenues allocated for the Destination Enhancement Program and will not exceed the amount described in the formula detailed in Exhibit B. 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. 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.

B. Fiscal year beginning October 1, 2002

(1) At the beginning of the fiscal year, the City shall invoice the County for an advance payment of the Thirty-Three Thousand, Three Hundred Thirty-Three Dollars (\$33,333) of non-Tourist Development Tax Fund revenues. The County will pay this \$33,333 within thirty (30) days of receipt of the City's invoice. This advance payment is not contingent upon the receipt of Tourist Development Tax revenues in the referenced fiscal year, and is not included in the contingency stipulation governing the payments in 4.B.(2) below.

(2) The City shall invoice the County, on the first of each month, 1/12th of the estimated amount of money allocated to the program as described in Paragraph 3.A., of this agreement, minus the advance payment described in paragraph 4.B.(1) of this agreement.

(3) Payments of amounts invoiced under section 4.B.(2) above are contingent upon the cash availability of Tourist Development Tax revenues allocated for the Destination Enhancement Program and will not exceed the amount described in the formula detailed in Exhibit B. 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. 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.

C. Fiscal years beginning October 1, 2003 through September 30, 2006

(1) The City shall invoice the County, on the first of each month, 1/12th of the estimated amount of money allocated to the program as described in Paragraph 3.A. of this agreement.

(2) Payments of amounts invoiced under section 4.C(1) above are contingent upon the cash availability of Tourist Development Tax revenues allocated for the Destination Enhancement Program and will not exceed the amount described in the formula detailed in Exhibit B. 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. 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.

D. The City has no obligation or responsibility to promise, expense or expend any funds unless and until such funds are received from the County. The City will not make whole any subrecipient 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: Randall H. Reid
County Manager
PO Box 2877
Gainesville, FL 32602

City: Wayne Bowers
City Manager
PO Box 490
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
PO Box 939
Gainesville, FL 32602
ATTN: Finance and Accounting

6. Liability – 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. 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 an 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.
7. Default and Termination – The failure of either party to comply with any provision of this agreement will place it in default. Prior to terminating the agreement, the non-defaulting party will notify the other 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.

If funds to finance this agreement become unavailable, either party may terminate the agreement with no less than seven (7) days notice in writing to the other. The terminating party will be the final authority as to the availability of funds. The terminating party will pay the other for all work completed prior to any notice of termination.

8. Return of Funds – Any portion of tourist development tax monies (exclusive of County general funds) not expended for the purposes as 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 paragraph 2.E.

9. Program Records - The City will retain all records relating to this agreement in accordance with the provisions of Chapter 119, Florida Statutes, or for a minimum of three years, whichever is 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 available to any State, federal or regulatory authorities who may wish to review, inspect or copy these records.
10. Assignment of Interest – Neither party will assign or transfer any interest in this agreement without prior written consent of the other party.
11. Successors and Assigns – The County and the 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.
12. Third Party Beneficiaries – This agreement in effect creates a relationship with third parties but does not create any rights in favor of any third party.
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 supercedes all prior written or oral agreements, understandings or representations.

ALACHUA COUNTY, FLORIDA

CITY OF GAINESVILLE, FLORIDA

By: _____
Dave Newport, Chair
Board of County Commissioners

By: _____
Wayne M. Bowers
City Manager

ATTEST:

ATTEST:

J. K. "Buddy" 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 – §125.0104(5), Florida Statutes

5) Authorized uses of revenue

(a) All tax revenues received pursuant to this section by a county imposing the tourist development tax shall be used by that county for the following purposes only:

1. To acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote one or more publicly owned and operated convention centers, sports stadiums, sports arenas, coliseums, or auditoriums, or museums that are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public, within the boundaries of the county or subcounty special taxing district in which the tax is levied. Tax revenues received pursuant to this section may also be used for promotion of zoological parks that are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public. However, these purposes may be implemented through service contracts and leases with lessees with sufficient expertise or financial capability to operate such facilities;
2. To promote and advertise tourism in the State of Florida and nationally and internationally; however, if tax revenues are expended for an activity, service, venue, or event, the activity, service, venue, or event shall have as one of its main purposes the attraction of tourists as evidenced by the promotion of the activity, service, venue, or event to tourists;
3. To fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies or by contract with the chambers of commerce or similar associations in the county, which may include any indirect administrative costs for services performed by the county on behalf of the promotion agency; or
4. To finance beach park facilities or beach improvements, maintenance, renourishment, restoration, and erosion control, including shoreline protection, enhancement, cleanup, or restoration of inland lakes and rivers to which there is public access as those uses relate to the physical preservation of the beach, shoreline, or inland lake or river. In counties of less than 100,000 population, no more than 10 percent of the revenues from the tourist development tax may be used for beach park facilities.

(b) Tax revenues received pursuant to this section by a county of less than 600,000 population imposing a tourist development tax may only be used by that county for the following purposes in addition to those purposes allowed pursuant to paragraph (a): to acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote one or more zoological parks, fishing piers or nature centers which are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public. All population figures relating to this subsection shall be based on the most recent population estimates prepared pursuant to the provisions of s. 186.901. These population estimates shall be those in effect on July 1 of each year.

(c) The revenues to be derived from the tourist development tax may be pledged to secure and liquidate revenue bonds issued by the county for the purposes set forth in subparagraphs (a)1. and 4. or for the purpose of refunding bonds previously issued for such purposes, or both; however, no more than 50 percent of the revenues from the tourist development tax may be

pledged to secure and liquidate revenue bonds or revenue refunding bonds issued for the purposes set forth in subparagraph (a)4. Such revenue bonds and revenue refunding bonds may be authorized and issued in such principal amounts, with such interest rates and maturity dates, and subject to such other terms, conditions, and covenants as the governing board of the county shall provide. The Legislature intends that this paragraph shall be full and complete authority for accomplishing such purposes, but such authority shall be supplemental and additional to, and not in derogation of, any powers now existing or later conferred under law.

(d) Any use of the local option tourist development tax revenues collected pursuant to this section for a purpose not expressly authorized by paragraph (3)(l) or paragraph (3)(n) or paragraph (a), paragraph (b), or paragraph (c) of this subsection is expressly prohibited.

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**

Exhibit C – City Reporting Schedule

Quarter #1, for the period of October 1st through December 31st: on or about February 15th

Quarter #2, for the period of January 1st through March 31st: on or about May 15th

Quarter #3, for the period of April 1st through June 30th: on or about August 15th

Quarter #4, for the period of July 1st through September 30th: on or about November 15th