

FROM : ALACHUA COUNTY UCB

FAX NO. :

Jan. 04 2007 12:29PM P3

070260a

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

This agreement is entered into this 12th day of December, 2006, 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, 2006 and continues through September 30, 2009, 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 -
 - A. 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.
 - B. The City shall enter into agreements with agencies awarded funding 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.
 - C. During the term of this agreement, the City shall maintain separate accounts for County funds.
 - D. 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

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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.

- E. 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.
- F. The City shall submit a report in both written and electronic format to the Visitors and Convention Bureau on a quarterly basis (Exhibit B) outlining events and use of the funds disbursed under the Program.

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 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.
- B. The County acknowledges that nine percent (9%) of the annual allocation will be used by the City for the cost of administration of the Program.

4. Payment Procedures --

- A. The County will reimburse the City for direct expense incurred by the City in the provision of services under this agreement for the period beginning October 1, 2006 through the effective date of this agreement.
- B. 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 Exhibit A.
- C. 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.
- D. 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
Division of Cultural Affairs
Station 30, PO Box 490
Gainesville, FL 32602

- E. 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.

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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: Russ Blackburn
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

Office of Management and Budget
105 SE 1st Avenue, Suite 6
Gainesville, FL 32601
ATTN: Grants/Contracts

6. Liability – Each party hereto agrees to be responsible for the actions and omissions of its employees during their scope of employment under this Agreement. Each of the parties hereto warrants and represents that each is self funded for liability insurance, both public and property, with such protection being applicable to each party's trustees, officers, employees, servants, and agents while acting within the scope of their employment by their respective parties. The parties further agree that nothing contained herein shall be construed or interpreted as (1) denying to any party any remedy or defense available to each party under the laws of the State of Florida; (2) the consent of the City, County, the State of Florida, and their agents and agencies to be sued, or (3) a waiver of the sovereign immunity of the City, County, and/or the State of Florida, and their agents and agencies beyond the waiver provided in §768.28, Florida Statutes.
7. Return of Funds – Any County 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 the City can recover the funds from the groups within the categories, their agents or assigns.
8. 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. The VCB Director is authorized to provide written notice of default on behalf of the County and the Director of Parks, Recreation and Cultural Affairs is authorized to provide written notice of default on behalf of the City. If the default situation is not corrected within the allotted time, the non-defaulting party shall provide the final written notice of termination to the defaulting party. The County

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Manager is authorized to provide written notice of termination on behalf of the County and the City manager is authorized to provide written notice of termination on behalf of the City. 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 twenty-four (24) hours 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.

9. Assignment of Interest - Neither party will assign or transfer any interest in this agreement without prior written consent of the other party.
10. 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.
11. 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.
12. 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.
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. Survivability - Any term, condition, covenant, or obligation which requires performance by either party subsequent to termination of this agreement shall remain enforceable against such party subsequent to such termination.
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.
17. Amendments - The parties may amend this agreement only by mutual written agreement of the parties.
18. Conflict of Interest - The City warrants that neither it nor any of its employees has 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.
19. Laws and Regulations - The City will comply with all laws, ordinances, regulations, and building code requirements applicable to the work required by this agreement. The City is 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. If the City is not familiar with state and local laws, ordinances, code rules and regulations, the City remains liable for any violation and all subsequent damages or fines.
20. Prohibition Against Contingent Fees - The City warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the City to solicit or secure

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this agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the City any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of 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. Counterparts - This agreement may be executed by the parties in several counterparts, each of which shall be deemed to be an original.
23. Captions and Section Headings - Captions and section headings used herein are for convenience only and shall not be used in construing this agreement.
24. Entire Agreement - This agreement constitutes the entire agreement and supersedes all prior written or oral agreements, understandings or representations.

ALACHUA COUNTY, FLORIDA

By: *Mark A. DeBruin*
Chair
Board of County Commissioners

CITY OF GAINESVILLE, FLORIDA

By: *Russ Blackburn*
Russ Blackburn
City Manager

ATTEST:

J. K. "Buddy" Irby
J. K. "Buddy" Irby, Clerk

(SEAL)

Approved as to Form:

D. Wagon

Alachua County Attorney's Office

ATTEST:

Rosemary Shell

James P. Smith

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 9 % 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 | 80% |
| Capital Improvement <i>(In addition to the 5% allotted, this category will receive all unexpended encumbrances and unbudgeted revenue)</i> | 5% |
| New Programs/Marketing | 10% |
| Contingency | 5% |

Exhibit B – 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