

NATURE AND CULTURE DESTINATION ENHANCEMENT GRANT
PROGRAM AGREEMENT

This Agreement is entered into by and between Alachua County, a charter county and political subdivision of the State of Florida, by and through its Board of County Commissioners (the "County") and _____ ("Applicant"), collectively, the County and Applicant are referred to herein as the "Parties".

WITNESSETH

WHEREAS, in accordance with §125.0104, Florida Statutes, the County has allocated a portion of the Local Option Tourist Development Tax to create and fund the Nature and Culture Destination Enhancement Grant Program ("Program"), the purpose of which is to promote and advertise activities, services, venues, and events that will attract tourist to Alachua County; and

WHEREAS, pursuant to the Program, the County sought applications for its Nature and Culture Destination Enhancement Grant Program from qualified entities that desire grant funding for qualified activities, services, venues and events that have as one of their main purposes the attraction of tourists to Alachua County, as evidenced by the promotion of the activity, service, venue or event to tourists; and

WHEREAS, Applicant is a qualified entity who applied for grant funding for the event described in this Agreement ("Event"); and

WHEREAS, the County finds the Event is in the best interest of the citizens of Alachua County, will promote and advertise tourism in Alachua County, has as one of its main purposes the attraction of tourists as evidenced by the promotion of the Event to tourists, and will to increase tourist-related business activities within Alachua County; and

WHEREAS, the County further finds that the Event complies with and will further the purposes of the Alachua County Tourist Development Plan set forth in §38.02, Alachua County Code, and meets the requirements of §125.0104(5), Florida Statutes.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

- 1. Recitals.** The Parties agree that the recitals set forth above are true, correct and are incorporated into this Agreement.
- 2. Term.** The term of this Agreement shall commence upon execution of this Agreement by both Parties and continue through September 30, 20____, unless earlier terminated through the process provided below. The County's performance and obligation to pay under this Agreement is contingent upon a specific annual appropriation by the Alachua County Board of County Commissioners. The Parties hereto understand that this Agreement is not a commitment of future appropriations.
- 3. Grant Award.** The County hereby approves the Applicant's application for grant funding for the Event described in **Exhibit "1"**, attached hereto and incorporated, and agrees to funding to Applicant in the amount of \$_____. All grant funding shall be available to Applicant on a reimbursement basis only.
- 4. Duties of the Applicant.** Applicant shall have and perform the duties, obligations, and responsibilities in accordance with the application attached as **Exhibit "1"**. Applicant agrees

Applicant shall only be eligible for reimbursement if Applicant meets all of the following requirements:

- 4.1 All grant funding must be used for the Event in accordance with the provisions of §125.0104, Florida Statutes;
- 4.2 At least of Twenty-Five Percent (25%) of the total grant funding award (*i.e.*, \$_____) must be used to for “Out of County” marketing of the Event. “Out of County” marketing is defined as advertising, promotion, direct sales, publicity and sales activities that take place and are directly targeted to persons and groups that live outside the boundaries of Alachua County, and whose purpose is to attract tourists to Alachua County;
- 4.3 No more than Seventy-Five Percent (75%) of the total grant funding award (*i.e.*, \$_____) may be used for Operational expenses for the Event, as set forth in the application (**Exhibit “1”**) and Revised Event Budget for Tourist Development Fund Expenditures, which is attached hereto and incorporated by reference as **Exhibit “2”** to this Agreement;

The Parties acknowledge that Non-Allowable Expenses under this Agreement include:

- Annual operating expenditures of the Applicant;
- Professional, legal, medical, engineering, accounting, auditing, or other consulting services;
- Salaries of full-time staff or supplements for salaries of existing staff and employment of personnel not directly related to the Event;
- Real property purchases, capital improvements, including but not limited to new construction, renovation, restoration and installation or replacement of fixtures;
- Tangible personal property, including but not limited to office furnishings or equipment, tents or other outdoor items, electronics, permanent collections or individual pieces of art;
- Interest or reduction of deficits or loans, and expenses incurred or obligated prior to or after the funding period;
- Travel, accommodations, and personal expenses for the Applicant’s staff or board members;
- Events which are restricted to private or exclusive participation and private entertainment, food or beverages (*i.e.*, members only events);
- Making payments or reimbursements for good or services purchased for previous or other events, or invoices paid outside of the Term of this Agreement;
- Fundraisers that benefit organizations other than the Applicant;
- Awards;
- Political events;
- Contest prizes; and
- Alcohol.

- 4.4 All funds are available on a reimbursement basis only. Copies of paid invoices, cancelled checks, tear sheets, printed samples or other backup information that shows proof-of-payment must accompany all requests by Applicant for funds. All requests for reimbursement must be received in a timely fashion from the close of the Event;
- 4.5 Applicant shall submit a year-end report to the Alachua County Visitors and Convention Bureau no later than November 30, 20__, which documents Applicant's overall activities during the entire grant period;
- 4.6 Applicant shall allow the County, or its agents, full access to the Event to facilitate information gathering on the impact of the Event;
- 4.7 Applicant shall comply with the following requirements to be eligible for reimbursement of marketing expenses on social media:

Facebook:

- Tag your sponsored content post with Visit Gainesville Alachua County; and/or
- Include the Visit Gainesville Alachua County logo on graphics; and/or
- Include text in your post/caption stating, "Funded in part by Visit Gainesville Alachua County."

Twitter:

- Include the Visit Gainesville/Alachua County logo on graphics; and/or
- Use the hashtag #WhyILoveGNV, or #WhatsGoodAlachuaCounty, or #visitAlachuaCounty.

Instagram:

- Include the Visit Gainesville Alachua County logo on graphics; and/or
- Use the hashtag #WhyILoveGNV, or #WhatsGoodAlachuaCounty, or #visitAlachuaCounty.

YouTube:

- Include the Visit Gainesville Alachua County logo within the video; and/or
- Include sponsorship text in the video description "Funded in part by Visit Gainesville Alachua County."

5. Method of Payment. For all eligible expenses actually, timely and faithfully incurred by Applicant, the County will reimburse Applicant as follows:

- 5.1. Applicant is eligible to be reimbursed to up the total amount listed in Sections 3 and 4 for eligible expenses incurred by Applicant under this Agreement, including those incurred since October 1, 20__. Reimbursement shall be provided for the budgeted line items listed in **Exhibit "2"**. Upon request by Applicant, the County's Tourism Development Manager may authorize changes to the budgeted line items, but may not increase the total grant award amount or decrease the amount of the grant funding that must be spent on "Out of County" marketing of the Event. Any expense claimed for reimbursement that is not authorized by §125.0104(5), Florida Statutes, will not be reimbursed, approval of the grant application and the Applicant's budget notwithstanding.
- 5.2. To receive payment, Applicant must submit an invoice to the County requesting reimbursement under the terms of this Agreement. The invoice must describe with reasonable particularity the reimbursement due based on categories approved by the grant

award and the related dates. Invoices must have attached copies of all invoices and cancelled checks showing the amount paid for all eligible expenses for which reimbursement is being requested from the County, and such other documentation or data in support of expenses for which payment is sought as the County may require. Each invoice shall constitute Applicant's representation to the County that the expenses indicated in the invoice are eligible for reimbursement, meet all requirements of this Agreement, have been properly and timely incurred as required herein, that all expenses incurred were for a public purpose, that the amount requested has not and will not be reimbursed by another party; there being no reason known to the Applicant that payment of any portion thereof should be withheld. Each invoice shall contain the following certification and the certification shall be signed by an authorized representative of the Applicant, and the County may rely on the certification and representation:

"I hereby certify that the expenses requested for payment, as represented in this invoice, are for allowable, properly documented and eligible for reimbursement in accordance with the **Nature and Culture Destination Enhancement Grant** Agreement between Alachua County and _____ [Applicant] for the RFA.

5.3. Applicant shall submit invoices to the County at the following address:

Visit Gainesville, Alachua County, FL
33 N Main Street
Gainesville, FL 32601
Attn: Manager

5.4. Payments will be processed and paid in accordance with the provisions of Chapter 218, Part VII Florida Statutes, Local Government Prompt Payment Act. The Parties agree that the County will readmit payments to Applicant at the address listed in paragraph 6 below, unless otherwise directed by Applicant.

6. 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. All notices shall be deemed delivered two (2) business days after mailing, unless deliver is by personal delivery in which case delivery shall be deemed to occur upon actual receipt by the other party. For purposes of all notices, the County's and Applicant's representatives are:

County:
Kathy Munden
Visit Gainesville, Alachua County, FL
33 N Main Street
Gainesville, FL 32601

With copy to:
J.K. "Jess" Irby, Esq.
Clerk of the Court
12 SE 1st Street
Gainesville, FL 32602
ATTN: Finance and Accounting
and
Procurement Division
12 SE 1st Street
Gainesville, Florida 32601
Attn: Contracts

Applicant:

Name: _____

Address: _____

City, State, Zip: _____

Attn: _____

7. Default and Termination.

- 7.1 In the event the Applicant fails to meet the “Out of County” marketing requirements set forth in paragraph 4.2, the total award set forth in paragraph 3, will be reduced by a ratio of three dollars (\$3.00) for every one dollar (\$1.00) that the Applicant fails spend on required “Out of County” marketing. If the County pays the Applicant an amount that exceed the adjusted Grant Award amount, which was reduced due to the Applicant’s failure to meet the “Out of County” marketing expense, the Applicant shall immediately reimburse the difference to the County. All payments by the Applicant to the County that are required by this sub-paragraph must be paid within sixty (60) days of the Event date or, if the Event is comprised of more than one (1) activity or event, by the end of the Event cycle period, whichever is applicable. If funding is not timely reimbursed to the County, the County may elect to disqualify the Applicant from future grant funding eligibility for two (2) grant cycles. If the Applicant does not voluntarily reimburse the County, the Applicant shall be automatically disqualified from future grant funding eligibility for three (3) grant cycles.
- 7.2 The failure of the Applicant to comply with any material provision of this Agreement will place the Applicant in default. Prior to terminating the Agreement, the County will notify the Applicant in writing referencing the provision in default. The County will give the Applicant ten (10) calendar days from the date of the writing to cure the default. The Alachua County Tourism Development Manager is authorized to provide written notice of default on behalf of the County, and if the default is not corrected within the allotted time, the County Manager is authorized to provide final termination notice on behalf of the County to the Applicant.
- 7.3 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 Applicant. The County will be the final authority as to the availability of funds. The County will pay the Applicant for all eligible expenses incurred prior to any notice of termination. The County Manager is authorized to provide notice of termination to Applicant under this sub-paragraph.

8. Public Records.

8.1. General Provisions:

- 8.1.1. 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 per §119.011(12), Florida Statutes. Any document is subject to inspection and copying

unless exempted under Chapter 119, Florida Statutes, or as otherwise provided by law.

8.1.2. In accordance with §119.0701, Florida Statutes, the Applicant, *when acting on behalf of the County*, as provided under §119.011(2), Florida Statutes, shall keep and maintain public records as required by law and retain them as provided by the General Record Schedule established by the Department of State. Upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time unless exempted under Chapter 119, Florida Statutes, or as otherwise provided by law. Additionally, the Applicant shall provide the public records at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

8.1.3 The Applicant shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement if the Applicant does not transfer the records to the County.

8.2. Confidential Information:

8.2.1. During the term of this Agreement, the Applicant may claim that some or all of Applicant's information, including, but not limited to, manuals, written methodologies and processes, pricing, discounts, or other considerations (hereafter collectively referred to as "Confidential Information"), is, or has been treated as confidential and proprietary by Applicant in accordance with §812.081, Florida Statutes, or other law, and is exempt from disclosure under the Public Record Act. Applicant shall clearly identify and mark Confidential Information as "Confidential Information" or "CI" and the County shall use reasonable efforts to maintain the confidentiality of the information properly identified by the Applicant as "Confidential Information" or "CI."

8.2.2. The County shall promptly notify the Applicant in writing of any request received by the County for disclosure of Applicant's Confidential Information and the Applicant may assert any exemption from disclosure available under applicable law or seek a protective order against disclosure from a court of competent jurisdiction. Applicant shall protect, defend, indemnify, and hold the County, its officers, employees and agents free and harmless from and against any claims or judgments arising out of a request for disclosure of Confidential Information. Applicant shall investigate, handle, respond to, and defend, using counsel chosen by the County, at Applicant's sole cost and expense, any such claim, even if any such claim is groundless, false, or fraudulent. Applicant shall pay for all costs and expenses related to such claim, including, but not limited to, payment of attorney fees, court costs, and expert witness fees and expenses. Upon completion or termination of this Agreement, the provisions of this paragraph shall continue to survive. Applicant releases the County from claims or damages related to disclosure by County.

8.3. **Completion:** Upon completion of, or if this Agreement is terminated, the Applicant, *when acting on behalf of the County* as provided under §119.011(2), Florida Statutes, shall transfer, at no cost, to the County all public records in possession of the Applicant or keep and maintain public records required by the County to perform the service. If the Applicant transfers all public records to the County upon completion or termination of the Agreement, it must destroy any duplicate public records that are exempt or confidential and exempt

from public records disclosure requirements. If the Applicant keeps and maintains public records upon the completion or termination of the Agreement all applicable requirements for retaining public records shall be met. All records stored electronically shall be provided to the County, upon request from the Counties custodian of public records, in a format that is compatible with the information technology systems of the County.

If the Applicant fails to provide the public records to the County within a reasonable time, the Applicant may be subject to penalties under §119.10, Florida Statutes.

IF THE APPLICANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE APPLICANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE VISITORS AND CONVENTION BUREAU AT E-MAIL kmunden@alachuacounty.us. PHONE AT (352) 374-5231, OR US MAIL AT 33 North Main Street, GAINESVILLE, FL 32061.

9. Permits. The Applicant will obtain and pay for all necessary permits, permit application fees, licenses or any fees required to perform its obligations under this Agreement.

10. Laws & Regulations. The Applicant will comply with all laws, ordinances, regulations, and building code requirements applicable to the Event and all requirements of this Agreement. The Applicant is presumed to be familiar with all state and local laws, ordinances, code rules and regulations that may in any way affect this grant award and this Agreement. If the Applicant is not familiar with state and local laws, ordinances, code rules and regulations, the Applicant remains liable for any violation and all subsequent damages or fines.

11. Indemnification. **APPLICANT HEREBY WAIVES AND RELEASES, AND AGREES TO PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS THE COUNTY AND ITS BOARD OF COUNTY COMMISSIONERS, OFFICERS, EMPLOYEES, VOLUNTEERS, REPRESENTATIVES, ATTORNEYS, AND AGENTS (HEREINAFTER, COLLECTIVELY "ALACHUA COUNTY") FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, ACTIONS, AND CAUSES OF ACTION OF ANY AND EVERY DESCRIPTION, AND DAMAGES, INCLUDING ATTORNEYS' FEES AND COSTS, BROUGHT AGAINST ALACHUA COUNTY RESULTING FROM ANY ACCIDENT, INCIDENT OR OCCURRENCE ARISING OUT OF, INCIDENTAL TO OR IN ANY WAY RESULTING FROM THIS AGREEMENT OR IN CONNECTION WITH THE EXECUTION, PERFORMANCE, AND EXERCISE OF ANY RIGHT, PRIVILEGES, OR USES ALLOWED OR GRANTED IN THIS AGREEMENT OR FROM APPLICANT'S ENTRY ONTO COUNTY OWNED PROPERTY AND ANY AND ALL IMPROVEMENTS THEREON, WHETHER OR NOT CAUSED BY THE NEGLIGENCE ACTS OR OMISSIONS OF ALACHUA COUNTY.** In the event Alachua County is alleged to be liable on account of alleged acts or omissions, or both, of Applicant, its employees, representatives, agents, guests or invitees, then Applicant will investigate, respond to and provide a defense for any allegations and claims, at Applicant's sole costs and expense, through counsel chosen by the County. Furthermore, Applicant will pay all costs, fees and other expenses of any defense, including but not limited to, all attorneys' fees and expenses, court costs, and expert witness fees and expenses. Applicant and the County agree to jointly cooperate with each other in the event of any litigation, including any request for documentation. This indemnification provision will

survive the termination of this Agreement.

With respect to any service, work or goods provided under or arising from this Agreement, Applicant shall indemnify, defend, and hold harmless the County from any suits, actions, damages, and costs of every name and description, including attorneys' fees and costs, arising from or relating to violation or infringement of trademark, copyright patent, trade secret or intellectual property right, provided, however, that the foregoing obligation shall not apply to a County's misuse or modification of Applicant's products or logo or County's operation or use of Applicant's products or logos in a manner not contemplated by this Agreement. If any product is the subject of an infringement suit, or in Applicant's opinion is likely to become the subject of such a suit, Applicant may, at its sole expense, procure for the County the right to continue using the product or to modify it to become non-infringing. If Applicant is not reasonably able to modify or otherwise secure for the County the right to continue using the product, Applicant shall remove the product and refund the County the amounts paid in excess of a reasonable rental for past use. The County shall not be liable for any royalties.

Nothing contained herein shall constitute a waiver by the County of sovereign immunity or the provisions of §768.28, Florida Statutes.

12. Successors and Assigns. The County and Applicant 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.

13. Independent Contractor. In the performance of this Agreement, the Applicant is acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venturer or associate of the County. The Applicant is solely responsible for the Event and the means, method, technique, sequence, and procedure utilized by the Applicant to perform of this Agreement.

14. Collusion. By signing this Agreement, the Applicant declares that this Agreement is made without any previous understanding, agreement, or connections with any persons, contractors or corporations and that this Agreement is fair, and made in good faith without any outside control, collusion, or fraud.

15. Conflict of Interest. The Applicant warrants that neither it nor any of its employees have any financial or personal interest that conflicts with the execution of this Agreement. The Applicant shall notify the County of any conflict of interest due to any other clients, contracts, or property interests.

16. Third Party Beneficiaries. This Agreement does not create any relationship with, or any rights in favor of, any third party.

17. 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.

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

19. Governing Law and Venue. This Agreement is governed in accordance with the laws of the State of Florida. The sole and exclusive venue for any action under this Agreement shall be Alachua County, Florida.

20. Amendments. The Parties may amend this Agreement only by mutual written agreement

that is executed by the Parties.

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 in any number of and by the different Parties hereto on separate counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument. Receipt via fax or email with pdf attachment by a party or its designated legal counsel of an executed counterpart of this Agreement shall constitute valid and sufficient delivery in order to complete execution and delivery of this Agreement and bind the Parties to the terms hereof.

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

24. Electronic Signatures. The Parties agree that an electronic version of this Agreement shall have the same legal effect and enforceability as a paper version. The Parties further agree that this Agreement, regardless of whether in electronic or paper form, may be executed by use of electronic signatures. Electronic signatures shall have the same legal effect and enforceability as manually written signatures. The County shall determine the means and methods by which electronic signatures may be used to execute this Agreement and shall provide Applicant with instructions on how to use said method. Delivery of this Agreement or any other document contemplated hereby bearing an manually written or electronic signature by facsimile transmission (whether directly from one facsimile device to another by means of a dial-up connection or whether mediated by the worldwide web), by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing an original or electronic signature.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed for on the day written below.

ALACHUA COUNTY, FLORIDA

By: _____
Michele Lieberman, County Manager

Date: _____

APPROVED AS TO FORM

Alachua County Attorney's Office

APPLICANT

Witness:

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Date: _____

Title: _____

Date: _____

**IF THE APPLICANT IS NOT A NATURAL PERSON, PLEASE PROVIDE A
CERTIFICATE OF INCUMBENCY AND AUTHORITY, OR A CORPORATE
RESOLUTION, LISTING THOSE AUTHORIZED TO EXECUTE CONTRACTS ON
BEHALF OF YOUR ORGANIZATION OR ENTITY.**

**EXHIBIT 1: APPLICANT'S NATURE AND CULTURE DESTINATION
ENHANCEMENT GRANT PROGRAM (NCDEGP) APPLICATION**

**EXHIBIT 2: REVISED EVENT BUDGET FOR NATURE AND CULTURE
DESTINATION ENHANCEMENT GRANT PROGRAM EXPENDITURES**