

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT (“Agreement”) made and entered into this _____ day of _____, 2014, by and between the City of Tallahassee, a Florida municipal corporation, created and existing under the laws of the State of Florida (“City”), and LEON COUNTY, a political subdivision of the State of Florida (“County”).

RECITALS

WHEREAS, the County and the City recognize that the Council on Culture and Arts (“COCA”) was created to stimulate greater governmental and public awareness and appreciation of the arts in the Leon County community; encourage and facilitate greater opportunities for County and City residents to participate in artistic activities; promote the creative development of local artists, art institutions, and community organizations which sponsor artistic activities; and to assess the needs of the community in regard to the arts, artists, art institutions and community organizations sponsoring arts activities; and provide financial and technical assistance to artists, art institutions and audiences; and

WHEREAS, the Cultural Plan Review Committee adopted the Capital Area Cultural Plan on December 16, 2013, which was accepted by the County on February 25, 2014 and the City on February 12, 2014; and

WHEREAS, the County and City wish to enter into an agreement that will ensure that appropriate levels of funding are made available to support COCA in its mission to serve the community in the realm of the arts and to support programming designed to enhance economic development through tourism; and

WHEREAS, the County and City desire to enter into an agreement to accomplish the public purposes set forth in these recitals.

NOW, THEREFORE, in consideration of the following mutual promises and covenants, and other good and valuable consideration, the sufficiency of which is being acknowledged, the County and City hereby agree as follows:

1. Term and Effective Date.

The Term of this Agreement shall commence on October 1, 2014 and shall continue until September 30, 2021. This Agreement shall be effective upon full execution by the Parties hereto.

2. County Obligations.

The County has the following obligations under this Agreement:

- a. For five (5) fiscal years, beginning with fiscal year 2014-15 and ending with fiscal year 2019-20, the County shall collect and allocate for use by COCA

one and twenty-five one hundredths (1.25) cent of the five (5) cent Tourist Development Tax imposed by the County. The funds shall be utilized by COCA for the support of the cultural grant program and implementation of the Cultural Plan. Any such expenditures must be authorized as provided under and in accordance with section 125.0104, Florida Statutes.

The funds comprising one (1) cent of the Tourist Development Tax shall be available for the use by or on behalf of COCA in the fiscal year the funds are collected.

The funds comprising twenty-five one hundredths (0.25) cent of the Tourist Development Tax shall be available for the use by or on behalf of COCA in the fiscal year immediately following the year in which the funds are collected. For example, the funds comprising twenty-five one hundredths (0.25) cent of the Tourist Development Tax collected in fiscal year 2014-15, shall be disbursed to or on behalf of COCA in fiscal year 2015-16.

b. For five (5) fiscal years, beginning with fiscal year 2014-15 and ending with fiscal year 2019-20, the County shall budget and allocate not less than One Hundred Fifty Thousand Dollars (\$150,000.00) per annum from its general revenue fund for use by COCA for its operational expenses and implementation of the Cultural Plan.

3. City Obligations.

The City shall have the following obligations under this Agreement:

For five (5) fiscal years, beginning with fiscal year 2014-15 and ending with fiscal year 2019-20, the City shall allocate not less than One Hundred Fifty Thousand Dollars (\$150,000.00) per annum from its general revenue fund for use by COCA for its operational expenses and implementation of the Cultural Plan.

4. Tourist Development Council.

Upon the request of COCA, the Tourist Development Council shall offer and provide guidance on the eligibility of expenditures of Tourist Development Tax funds in support of cultural grant program funding by COCA.

5. Termination.

If either Party fails to comply with any of the terms or conditions of this Agreement or defaults in any of its obligations under this Agreement and shall fail, within thirty (30) calendar days after written notice from the other Party, to correct such default or noncompliance, the non-defaulting Party may, at its option, upon compliance with the provisions set out in Section 5, terminate its performance and any duties arising under this Agreement.

6. Conflict Resolution.

a. The Parties shall attempt to resolve all disputes that arise under this Agreement in good faith and in accordance with this section. The provisions of the "Florida Governmental Conflict Resolution Act" shall not apply to disputes under this Agreement, as an alternative dispute resolution process is hereby set forth in this section. The aggrieved Party shall give notice to the other Party in writing, setting forth the name of the Party involved in the dispute, the nature of the dispute, date of occurrence (if known), and proposed resolution, hereinafter referred to as the "Dispute Notice."

b. Should the Parties be unable to reconcile any dispute, the City Manager and County Administrator, or their designees, shall meet at the earliest opportunity, but in any event within ten (10) days from the date that the Dispute Notice is received, to discuss and resolve the dispute. If the dispute is resolved to the mutual satisfaction of the Parties, they shall report their decision, in writing, to the City Commission and Board of County Commissioners. If the City Manager and County Administrator, or their designees, are unable to reconcile the dispute, they shall report their impasse to the City Commission and Board of County Commissioners, who shall then convene a meeting at their earliest appropriate opportunity, but in any event within forty-five (45) days following receipt of a Dispute Notice, to attempt to reconcile the dispute.

c. If a dispute is not resolved by the foregoing steps within forty-five (45) days after receipt of the Dispute Notice, unless such time is extended by mutual agreement of the Parties, then either Party may require the dispute to be submitted to mediation by delivering written notice thereof (the "Mediation Notice") to the other Party. The mediator shall meet the qualifications set forth in Rule 10.100(d), Florida Rules for Mediators, and shall be selected by the Parties within ten (10) days following receipt of the Mediation Notice. The mediator shall also have sufficient knowledge and experience in the subject of the dispute. If agreement on a mediator cannot be reached in that ten (10) day period, then either Party can request that a mediator be selected by an independent conflict resolution organization, and such selection shall be binding on the Parties. The costs of the mediator shall be borne equally by the Parties.

d. If an amicable resolution of a dispute has not been reached within sixty (60) calendar days following selection of the mediator, or by such later date as may be mutually agreed upon by the Parties, then, upon the agreement of both Parties, such dispute may be referred to binding arbitration; otherwise, each Party may pursue whatever remedies may be available at law, in equity, or otherwise. If the dispute is so referred, such arbitration shall be conducted in accordance with the Florida Arbitration Code (Chapter 682, Florida Statutes).

1. Such arbitration shall be initiated by delivery, from one Party (the "Claimant") to the other Party (the "Respondent"), of a written demand therefore

containing a statement of the nature of the dispute and the amount, if any, involved. The Respondent, within ten (10) days following its receipt of such demand, shall deliver an answering statement to the Claimant. After the delivery of such statements, either Party may make new or different claims by providing the other(s) with written notice thereof specifying the nature of such claims and the amount, if any, involved.

2. Within ten (10) days following the delivery of such demand, each Party shall select an arbitrator and shall deliver written notice of that selection to the other. If either Party fails to select an arbitrator within such time, the other Party may make application to the court for such appointment in accordance with the Florida Arbitration Code. Within ten (10) days following delivery of the last of such written notices, the two arbitrators so selected shall confer and shall select an additional arbitrator.

3. The arbitration hearing shall be commenced in Leon County, Florida within sixty (60) days following selection of the additional arbitrator. Except as may be specifically provided herein, the arbitration shall be conducted in accordance with Rules R-23 – R-48 of the Commercial Arbitration Rules of the American Arbitration Association.

7. Indemnification.

To the extent permitted by law and subject to the limitations, conditions, and requirements of Section 768.28, Florida Statutes, which the Parties do not waive, each Party agrees to indemnify, defend and hold harmless the other Party, their officials, officers, and employees, from and against all liabilities, damages, costs and expenses, resulting from or arising out of any acts or omissions by the indemnifying Party, or its officials, officers, or employees, relating in any way to performance under this Agreement.

8. General Provisions.

- a. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Any action to enforce any of the provisions of this Agreement shall be maintained in Tallahassee, Leon County, Florida.
- b. Waiver. Failure to insist upon strict compliance with any term, covenant or condition of this Agreement shall not be deemed a waiver of it. No waiver or relinquishment of a right or power under this Agreement shall be deemed a waiver of that right or power at any other time.
- c. Modification. This Agreement shall not be extended, changed or modified, except in writing duly executed by the Parties hereto.

- d. Binding Effect. This Agreement shall be binding upon the successors and, subject to below, assigns of the Parties hereto.
- e. Assignment. Because of the unique nature of the relationship between the Parties and the terms of this Agreement, neither Party hereto shall have the right to assign this Agreement or any of its rights or responsibilities hereunder to any third Party without the express written consent of the other Party to this Agreement, which consent shall not unreasonably be withheld.
- f. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the matters contained herein, and all prior agreements or arrangements between them with respect to such matters are superceded by this Agreement.
- g. Headings. Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.
- h. Ambiguity. This Agreement has been negotiated by the Parties with the advise of counsel and, in the event of an ambiguity herein, such ambiguity shall not be construed against any Party as the author hereof.
- i. Public Bodies. It is expressly understood between the Parties that the City is a public body corporate under the laws of the State of Florida and that the County is a political subdivision of the State of Florida. Nothing contained herein shall be construed as a waiver or relinquishment by either of the Parties to claim such exemptions, privileges or immunities as may be provided to that Party by law.
- j. Force Majeure. A Party shall be excused from performance of an obligation under this Agreement to the extent, and only to the extent, that such performance is affected by a "Force Majeure Event" which term shall mean any cause beyond the reasonable control of the Party affected, except where such Party could have reasonably foreseen and reasonably avoided the occurrence, which materially and adversely affects the performance by such Party of its obligation under this Agreement. Such events shall include, but not be limited to, an act of God, disturbance, hostility, war, or revolution; strike or lockout; epidemic; accident; fire; storm, flood, or other unusually severe weather or act of nature; or any requirements of law.
- k. Costs and Attorney Fees. In the event of litigation between the Parties to construe or enforce the terms of this Agreement or otherwise arising out of this Agreement, the prevailing Party in such litigation shall be entitled to recover from the other Party its reasonable costs and attorneys fees incurred in maintaining or defending the subject litigation. The term litigation shall include appellate proceedings.
- l. Severability. It is intended that each Section of this Agreement shall be viewed as separate and divisible, and in the event that any Section, shall be held to be

invalid, the remaining Sections and parts shall continue to be in full force and effect.

IN WITNESS WHEREOF, the Parties hereto, through their duly authorized representative, have executed this Interlocal Agreement as of the date set forth above.

LEON COUNTY, FLORIDA

CITY OF TALLAHASSEE, FLORIDA

By: _____
Mary Ann Lindley, Chairman
Board of County Commissioners

By: _____
Andrew D. Gillum, Mayor

ATTEST:
Bob Inzer
Clerk and Comptroller
Leon County, Florida

ATTEST:

By: _____

By: _____
James O. Cooke, IV
City Treasurer-Clerk

Approved as to Form:
Leon County Attorney's Office

Approved as to Form:

By: _____
Herbert W. A. Thiele, Esq.
County Attorney

By: _____
Lewis E. Shelley, City Attorney