

**FIRST AMENDMENT TO INTERLOCAL AGREEMENT BETWEEN
ALACHUA COUNTY AND THE CITY OF NEWBERRY
FOR TOURIST DEVELOPMENT TAX FUNDING
FOR THE CONSTRUCTION OF CITY OF NEWBERRY NATION'S PARK**

THIS FIRST AMENDMENT TO INTERLOCAL AGREEMENT, made and entered into this 10th day of October, A.D., 2011, by and between Alachua County, Florida, a charter county and political subdivision of the State of Florida (hereinafter the "COUNTY"), and the City of Newberry, Florida, a municipal corporation of the State of Florida (hereinafter the "CITY");

W I T N E S S E T H:

WHEREAS, the parties hereto have previously entered into an Interlocal Agreement, dated July 13, 2010, for tourist development tax funding for the construction of City of Newberry's Nation's Park; and

WHEREAS, the parties desire to amend the Interlocal Agreement to clarify the City's obligations;

NOW THEREFORE, in consideration of the mutual covenants of this Agreement, the CITY and the COUNTY agree as follows:

1. Section 2, Covenants of the COUNTY, is amended as follows:

SECTION 2. Covenants of the COUNTY. The COUNTY agrees:

a. To provide for (i) the assignment to the City and pledge on a first lien basis of an amount equal on an annual basis to the lesser of \$625,000 or the amount generated by the 1st percent tourist development tax within the County, and (ii) an assignment and pledge from the 2nd and 3rd percent tourist development tax imposed within the county in such amount as shall be necessary to transfer to the City the \$625,000 referenced in (i) above in the event that proceeds of the 1st tourist development tax in a given year are insufficient to do so; provided, that the County may grant a pledge of and lien on proceeds of the 2nd and 3rd percents of the tourist development tax to secure other indebtedness of the County, which other indebtedness shall have a lien on said proceeds of the 2nd and 3rd percents of tourist development tax superior in lien to that referenced in this subclause (ii). The amounts transferred to the City as described herein will in turn be pledged by the City to secure bonded indebtedness to finance the Nations Park baseball complex for a loan period not to exceed 20 years. The COUNTY's obligation described herein is contingent upon the CITY securing financing for the construction or purchase of Nation's Park. The County shall make payments to the City on a semi-annual basis commencing during the calendar year after Nations Park is completely constructed, a final certificate of occupancy has been issued and the City issues bonds to pay for the capital costs for Nation's Park. In the event Nation's Park is constructed after the City's debt services payments are due; County agrees to reimburse City for payment of the debt service payments after Nation's Park is completely constructed, a final certificate of occupancy has been issued; provided, however, the County agrees to pay the City by November 15, 2011, the amount of \$606,262.07 for bond debt service payments due during calendar year 2011. Payments shall be made on the dates which are 30 days prior to the scheduled semi-annual debt service dates associated with the City's indebtedness,

until the County's obligation under this agreement is fully satisfied. In the event amounts transferred to the City as described herein are in excess in any year to the amount necessary to pay such indebtedness, any excess amount shall be returned to the County by December 1 each year.

b. To segregate, from amounts accumulated from tourist development taxes, an amount equal to \$625,000 to be pledged as a reserve to secure the Newberry indebtedness and to be used for no other purpose. Such amount would be available to service the Newberry indebtedness only in the event that proceeds from the 1st percent tourist development tax identified above fail to reach \$625,000 in a given year (and prior to any use of moneys derived from the 2nd or 3rd percent tourist development tax for such purpose). In the event a draw is made on the reserve amount, then in any future year in which the \$625,000 annual distribution is in excess of Newberry debt service, any excess amount would go first to refill the reserve before being transferred elsewhere. Any amounts remaining in the reserve account as of the last year of the Newberry debt would be used to pay such last year's Newberry debt service.

c. To reimburse the City after Nation's Park is completed constructed and a final certificate of occupancy has been issued the lesser of the actual costs of the following enhancements to Nation's Park or \$277,303.00:

- (1) a spectator stand;
- (2) shade structures;
- (3) second floor for scorer's building;
- (4) canopy entrance to administration building; and
- (5) improved landscaping.

2. Section 3, Covenants of the CITY, is amended as follows:

SECTION 3. Covenants of the CITY. The CITY agrees:

a. To arrange for the construction of a 16-field youth baseball park ("Nation's Park") located on property specifically described in Exhibit A and pursuant to the conceptual plan and park facilities identified in Composite Exhibit B.

b. To comply with the COUNTY'S purchasing, small business enterprise and local preference requirements. A copy of the County's Small Business Enterprise Program is attached as Exhibit "C."

c. To own, maintain and operate Nation's Park in a manner that will attract tourists to attend multiday baseball and fast-pitch softball tournaments conducted at least 12 weeks each year subject to the following criteria:

(1) Multi-day tournament is defined as having scheduled games on at least 3 consecutive days.

(2) A baseball or fast-pitch softball tournament shall have at least 40 teams scheduled for competition.

(3) A tournament will be deemed filled when at least 80 teams are scheduled for competition for a multi-day period. A tournament must be filled before placing any teams competing in the tournament at an alternative site in Alachua County.

d. Use its best efforts to meet the criteria stated in subparagraphs 3 (a) through (c), above, before January 1, 2015. After December 31, 2014, meet the criteria set forth in subparagraphs 3 (a) through (c), above.

e. To sell or otherwise transfer or dispose of Nation's Park during the term of this Agreement only with the written consent of the COUNTY.

f. To provide access to Nation's Park on a priority basis to the COUNTY so that the park can be used for events that promote tourism. The COUNTY shall have the right of first refusal to use Nation's Park for events that promote tourism, except that baseball and fast pitch softball tournaments scheduled and conducted by the contractor the CITY retains to operate and maintain Nation's Park shall take precedence over all other events. Any entity that uses Nation's Park to conduct events that promote tourism other than the COUNTY shall be required to pay actual personnel and operational expenses necessary to operate the Park during the period of that entity's use.

g. To prepare a statement of the amount payable by the COUNTY to the CITY thirty (30) days prior to the payment date supported by a statement of the actual interest and principal payment amount charged to the city on this debt issuance.

h. To restrict the use of the concession stand revenues and spectators fees revenue to maintenance and operation of the park, including payment due to any private operator of the park.

i. To use tourist development tax revenue received from the COUNTY only for the purposes set forth herein.

j. To ensure that its agreement with Nation's Park, LLC for the operation and maintenance of Nation's Park provides that Nation's Park, LLC, and any subsidiary of Nation's Park, LLC will not schedule events at a facility that competes with Nation's Park unless the requirements section 3, paragraph c are met during each calendar year for the term of this agreement.

k. To provide the COUNTY annual financial statements, including Nation's Park LLC, annual balance and income statement.

SAVE AND EXCEPT as expressly amended herein, all other terms and provisions of the original Interlocal Agreement between the parties, dated July 13, 2010, shall be and remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this First Amendment to Interlocal Agreement to be executed for the uses and purposes therein expressed on the day and year first above-written.

ALACHUA COUNTY:

BOARD OF COUNTY COMMISSIONERS OF
ALACHUA COUNTY, FLORIDA

ATTEST:

Steve Donahay, D.C.
J. K. Irby, Clerk

(SEAL)

By: 
Lee Pinkoson, Chair

APPROVED AS TO FORM


Alachua County Attorney

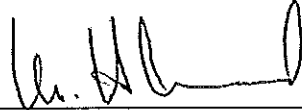
CITY OF NEWBERRY:

CITY COMMISSION
CITY OF NEWBERRY

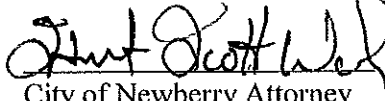
ATTEST:

Gayle B. Pons
Gayle Pons, Clerk

(SEAL)

By: 
Bill Conrad, Mayor

APPROVED AS TO FORM


City of Newberry Attorney