

**INTERLOCAL AGREEMENT BETWEEN THE CITY OF ORLANDO, FLORIDA AND
THE BOGGY CREEK IMPROVEMENT DISTRICT REGARDING THE OWNERSHIP
AND MAINTENANCE OF DISTRIBUTED ANTENNAE SYSTEM EQUIPMENT**

THIS INTERLOCAL AGREEMENT (the “**Interlocal Agreement**”), dated as of _____, 20__, is entered into by and between the City of Orlando, Florida (the “**City**”), a municipal corporation organized and existing under the laws of the State of Florida and the Boggy Creek Improvement District (the “**District**”), a community development district created pursuant to the provisions of the “Uniform Community Development District Act of 1980,” as codified in Chapter 190, *Florida Statutes* (the “**Act**”), with offices located at 12051 Corporate Blvd., Orlando, Florida 32817.

RECITALS:

WHEREAS, the District was established by Ordinance bearing document number 011126701, as amended, of the City Council of the City of Orlando, Florida (the “**Ordinance**”), for the purpose of planning, financing, constructing, acquiring, operating and/or maintaining certain public infrastructure; and

WHEREAS, the District is limited to the performance of those general and specialized functions authorized by the Act and the Ordinance; and

WHEREAS, located within the boundaries of the “Lake Nona Medical City,” a health and life sciences cluster which is home to hospitals, universities, research institutions and life science companies consisting of, but not limited to, the University of Central Florida Health Sciences Campus, the Sanford-Burnham Medical Research Institute, the VA Medical Center, the Nemours Children’s Hospital, the University of Florida Academic and Research Center and the MD Anderson Orlando Cancer Research Institute; and

WHEREAS, upon conclusion of construction, several of the foregoing institutions desire to improve the quality of the reception of the City’s public safety radio signal within the core of these institutions’ infrastructure; and

WHEREAS, the District desires to provide services relating to the ownership and maintenance of components of a Distributed Antennae System (“**DAS Equipment**”) that would amplify the City’s public safety radio signal, improving first-responders’ ability to communicate effectively throughout properties located in the District when emergencies arise; and

WHEREAS, the DAS Equipment provides both a public benefit and a benefit to properties located in the District; and

WHEREAS, the provision of the DAS Equipment is not currently a general or specialized function specifically delineated by the Act and/or the Ordinance; accordingly, the District desires to enter into this Interlocal Agreement, granting the District the power to provide the DAS Equipment pursuant to subsection 190.012(1)(h), *Florida Statutes*; and

WHEREAS, the District has presented this Interlocal Agreement to the District’s Board of Supervisors for approval; and

WHEREAS, it is in the mutual interest of the City and the District to continue intergovernmental relations that encourage, promote and improve the coordination, overall effectiveness and efficiency of governmental activities and services within the boundaries of the district; and

WHEREAS, section 163.01, *Florida Statutes*, known as the "Florida Interlocal Cooperation Act of 1969" (the "**Cooperation Act**") permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities; and

WHEREAS, the City and the District find this Interlocal Agreement to be necessary, proper and convenient to the exercise of their powers, duties and purposes authorized by law; and

WHEREAS, the City and the District desire to exercise jointly their common powers and authority concerning the provision of the DAS Equipment; the avoidance of inefficiencies caused by the unnecessary duplication of services and facilities; and the clarification of responsibilities, obligations, duties, powers, and liabilities of each of the governmental bodies.

NOW, THEREFORE, in consideration of the mutual understandings and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the District agree as follows:

ARTICLE I INTRODUCTION

Section 1.01. Authority. This Interlocal Agreement is entered into pursuant to the authority set forth in the Cooperation Act, the Act, and other applicable laws.

Section 1.02. Recitals. The recitals so stated are true and correct and by this reference are incorporated into and form a material part of this Interlocal Agreement.

Section 1.03. Authority to Contract. The execution of this Interlocal Agreement has been duly authorized by the appropriate body or official(s) of the City and the District, each party has complied with all applicable requirements of law, and each party has full power and authority to comply with the terms and provisions of this instrument.

ARTICLE II POWER FOR DISTRICT TO PROVIDE DAS EQUIPMENT

Section 2.01. Exercise of Power to Provide DAS Equipment. The District may provide for the DAS Equipment, which is a Condition of Approval set forth in MPL2013-00019 (Lake Nona Town Center – Phase 1 SPMP Amendment) as approved by the City of Orlando, which provides a public benefit in terms of amplifying the City's public safety radio signal, improving first-responders' ability to communicate effectively throughout properties located within the District's boundaries when emergencies arise.

ARTICLE III
MISCELLANEOUS PROVISIONS

Section 3.01. Limitations on Governmental Liability. Nothing in this Interlocal Agreement shall be deemed a waiver of immunity limits of liability of either the City or the District beyond any statutory limited waiver of immunity or limits of liability contained in section 768.28, *Florida Statutes*, as amended, or other statute. Nothing in this Interlocal Agreement shall inure to the benefit of any third party for the purpose of allowing any claim, which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

Section 3.02. Negotiation at Arm's Length. This Interlocal Agreement has been negotiated fully between the parties as an arm's length transaction and with the assistance of legal counsel. Both parties participated fully in the preparation of this Interlocal Agreement. In the case of a dispute concerning the interpretation of any provision of this Interlocal Agreement, both parties are deemed to have drafted, chosen, and selected the language, and the language in question will not be interpreted or construed against either party.

Section 3.03. Notices. Any notices required or allowed to be delivered shall be in writing and be deemed to be delivered when: (i) hand delivered to the official hereinafter designated, or (ii) upon receipt of such notice when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to a party at the address set forth opposite the party's name below, or at such other address as the party shall have specified by written notice to the other party delivered in accordance herewith.

If to the City:	City Clerk City Hall, 2 nd Floor 400 South Orange Avenue Orlando, Florida 32801
With Copy to:	Office of Legal Affairs City Hall, 3 rd Floor 400 South Orange Avenue Orlando, Florida 32801
If to the District:	Boggy Creek Improvement District c/o Fiskind & Associates, Inc. 12051 Corporate Boulevard Orlando, Florida 32817 Attn: Joe MacLaren
With Copy to:	Hopping Green & Sams, P.A. 119 South Monroe Street, Suite 300 Tallahassee, Florida 32301 Attn: Tucker F. Mackie

Notwithstanding the foregoing, in the event DAS Equipment maintained by the District experiences a malfunction which detrimentally affects the amplification the City's public safety

radio signal, upon being made aware of such malfunction, the District shall notify as soon as practical the Radio Systems Administrator by contacting the OPD Communications Center, at 321-235-5300.

Section 3.04. Assignment or Transfer. Neither party may assign or transfer its rights or obligations under this Interlocal Agreement to another unit of local government, political subdivision or agency of the State of Florida without the prior written consent of the other party. Neither party may transfer its rights or obligations under this Interlocal Agreement to a private party or entity.

Section 3.05. Binding Effect. This Interlocal Agreement shall be binding upon and shall inure to the benefit of the City, the District, and their respective successors.

Section 3.06. Actions by City. Any action required to be taken by the City or any notices to be given to the City shall be taken or given, as applicable, by the City Administrative Officer, unless otherwise provided herein.

Section 3.07. Amendment. This Interlocal Agreement shall constitute the entire agreement between the parties and may be modified in writing only by mutual agreement of both parties.

Section 3.08. Filing. The City Clerk is hereby authorized and directed, after approval of this Interlocal Agreement by the respective governing bodies of the City and the District and the execution thereof by the duly qualified and authorized officers of each of the parties hereto, to cause this Interlocal Agreement to be filed with the County Comptroller for Orange County, Florida. The District shall be responsible for the payment of all recording fees incurred in connection with the recording of this Interlocal Agreement.

Section 3.09. Applicable Law and Venue. This Interlocal Agreement and the provisions contained herein shall be governed by and construed in accordance with the laws of the State of Florida. In any action, in equity or law, with respect to the enforcement or interpretation of this Interlocal Agreement, venue shall be in Orange County, Florida.

Section 3.10. Severability. If any part of this Interlocal Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, such invalid, illegal or unenforceable part shall be deemed severable and the remaining parts of this Interlocal Agreement shall continue in full force and effect provided that the rights and obligations of the parties are not materially prejudiced and the intentions of the parties can continue to be effected.

Section 3.11. Construction. This Interlocal Agreement is the result of the negotiations among and between the City and the District such that all parties have contributed materially and substantially to its preparation, and shall not be construed more strictly against one party than the other.

Section 3.12. Entire Agreement. This instrument constitutes the entire agreement between the parties and supersedes all previous discussions, understandings and agreements between the parties relating to the subject matter of this Interlocal Agreement. Amendments to, and waivers of, the provisions herein shall be made by the parties in writing by formal amendment.

Section 3.13. Effective Date. This Interlocal Agreement shall become effective upon the date of execution by the authorized representatives of both parties.

IN WITNESS WHEREOF, the parties hereto, by and through the undersigned, have entered into this Interlocal Agreement on the date and year first above written.

CITY OF ORLANDO, FLORIDA

ATTEST:

Buddy Dyer, Mayor

Alana Brenner, City Clerk

STATE OF FLORIDA }
COUNTY OF ORANGE }

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by Buddy Dyer and Alana Brenner, as the Mayor and City Clerk of the City of Orlando, Florida, and who have acknowledged that they executed the same on behalf of the City of Orlando, Florida and that each was authorized to do so. Each is personally known to me or has produced _____ as identification.

In witness whereof, I hereunto set my hand and official seal.

Notary Public, State of Florida

BOGGY CREEK IMPROVEMENT
DISTRICT

Thad Seymour, Chairman

ATTEST:

Joe McLaren
Name (Print): JOE MACLAREN

STATE OF FLORIDA }
COUNTY OF ORANGE }

The foregoing instrument was acknowledged before me this 1st day of November, 2014, by Thad Seymour and Joe McLaren, as the Chairman of the Board of Supervisors and District Manager for the Boggy Creek Improvement District, and who have acknowledged that they executed the same on behalf of the Boggy Creek Improvement District and that each was authorized to do so. Each is personally known to me or has produced _____ as identification.

In witness whereof, I hereunto set my hand and official seal.



Notary Public, State of Florida