

**THIS INSTRUMENT PREPARED BY
AND RETURN TO:
Roy K. Payne, Esq.
Chief Assistant City Attorney
City of Orlando
400 S. Orange Ave.
Orlando, FL 32802
(407) 246-2295**

ORLANDO HEALTH SAMPLING STATION AGREEMENT

THIS SAMPLING STATION AGREEMENT (the “**Agreement**”) is made and entered into as of the ____ day of _____, 2014, by and between **ORLANDO HEALTH, INC.**, a Florida non-profit corporation, whose mailing address is 1414 Kuhl Ave., MP2, Orlando, Florida, 32806, (“**OH**” or “**Owner**”), and the **CITY OF ORLANDO**, a municipal corporation organized and existing under the laws of the State of Florida, whose mailing address is 400 S. Orange Avenue, Orlando, FL, 32802 (the “**City**”).

W I T N E S S E T H:

WHEREAS, the City is the owner of certain wastewater infrastructure, “Utilities,” within the right-of-way for Orange Avenue, “Roadway,” located in Orange County, Florida and owned and maintained by the State of Florida Department of Transportation, “FDOT;” and

WHEREAS, in order to access the Utilities, City constructed and maintains a manhole, “Manhole,” located as shown in **Exhibit “A”**, attached hereto and made a part hereof by reference; and

WHEREAS, OH owns and operates a hospital facility consisting of hospital and medical office buildings, including parking garages, (the “Hospital Campus”) on property generally located at 1414 Kuhl Avenue, Orlando, FL, 32806; and

WHEREAS, OH desires to utilize the Utilities to accommodate wastewater from the Hospital Campus, including future development; and

WHEREAS, as a condition of OH’s use of the Utilities under **Permit # CO143TA**, OH must monitor the wastewater discharged from the Hospital Campus into the Utilities; and

WHEREAS, one of the methods of monitoring wastewater discharge is by means of a sampling station and attendant improvements, “Sampling Station,” generally consisting of the equipment shown in **Exhibit “B”** attached hereto and made a part hereof by reference; and

WHEREAS, OH has requested that the City grant to OH the right to install, construct, operate and maintain a Sampling Station within the Manhole and City has agreed to OH’s request under the terms and conditions set forth herein.

NOW, THEREFORE, for an in consideration of the premises hereof, of the sum of Ten and no/100ths Dollars (\$10.00) paid by OH to the City, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, OH and the City hereby agree as follows:

1. **Recitals.** The recitals set forth above are true and correct and are incorporated herein by this reference.

2. **Grant of Right.** The City hereby grants to OH the right to access the Manhole for purposes of installing, constructing, operating, maintaining and repairing the Sampling Station and all activities incidental and related thereto. This Grant of Right is strictly limited to the extent reasonably necessary to install, construct, use, operate, repair, replace and maintain the Sampling Station and may not be expanded to include any other activities or equipment except as may be permitted by the City through amendment of this Agreement. Ownership of the Sampling Station within the Manhole shall at all times be and remain the sole and exclusive property of OH.

3. **Design and Installation of the Sampling Station.**

(a) **Review of Construction Plans.** OH is solely responsible for the design of the Sampling Station but shall coordinate said design with City staff designated by the City's Public Works Director. The City's review herein is in addition to the City's regulatory authority with respect to permitting the construction plans for the Sampling Station.

(b) **Construction.** OH is solely responsible for the construction, installation, operation, maintenance, repair and removal of the Sampling Station and shall conduct all such activities, including access to the Manhole, in a safe and reasonable manner and in compliance with any and all applicable laws, codes and regulations, including those promulgated by FDOT.

(c) **Insurance During Construction/Installation of Sampling Station.** OH shall require that the construction contractor (the "Contractor"), at all times during the construction/installation of the Sampling Station, possesses: 1) worker's compensation insurance in the amount of the Florida Statutory Limit; 2) automobile liability insurance of at least \$1,000,000; and 3) general liability insurance in the amount of at least \$3,000,000. All liability insurance shall be maintained throughout the course of the construction/installation and for a period of time thereafter as required by the City in order to protect the City from any covered liability, claims, damages, losses or expenses arising from or out of in any way connected with the construction. The City shall be listed as an additional insured on the automobile and general liability policies. OH shall require the Contractor to provide to the City proof of such insurance coverages, as described above, ten (10) days prior to commencement of construction. This needs to be approved by our Contractor.

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~~(d) **Payment & Performance Bonds.** OH shall require the Contractor to obtain performance and payment bonds, prior to commencement of construction and in a form acceptable to the City, with the penal amount of each bond equal to the contract~~

~~amount. The Surety must be authorized to issue bonds in Florida, must be listed in the most recently issued United States Department of the Treasury's "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," as published in the Federal Register and is subject to the final approval of the City. The City shall be listed as an obligee on each bond.~~

~~(e) **Warranty/Maintenance Bond.** Prior to certification as described in subparagraph (g) below, OH shall obtain from the Contractor a two year warranty (in a form acceptable to the City) on the materials and work performed with regard to the Sampling Station. The City shall be named as additional beneficiary of the warranty/bond. The commencement date of the warranty/bond shall be the date upon which the Sampling Station is completed and certified as described in subparagraph (e) below, unless otherwise agreed by the parties.~~

~~(f) **Non Conforming Work.** In the event work is discovered, whether by the City or OH, its consultants or contractors, which is defective or otherwise non-conforming to the requirements of the construction plans which have been permitted by the City, the City or OH shall promptly notify the other party of such defect or non-compliance. OH shall immediately cause such work to be removed and replaced with conforming work or otherwise remedy the non-conforming work to the satisfaction of the City. OH is responsible for correcting such deficient work and all costs related thereto. The foregoing shall not create any obligation or liability on the part of City to undertake any corrective or remedial action.~~

~~(g) **Certification.** Upon completion of the Sampling Station, OH shall cause the Contractor to submit a final completion certification to the City for the Sampling Station. This certification shall be accompanied by the As Built drawings as well as any necessary warranties, waivers and releases from contractors, subcontractors and suppliers, test certifications, operation manuals and documentation of approval of the construction by governmental agencies having jurisdiction other than the City, if any. The foregoing shall not create any obligation or liability on the part of the City.~~

~~(h)~~ **Independent Contractors.** OH, its agents, Contractor, subcontractors or design engineer, shall perform all activities that are outlined in this Agreement as independent entities and not as agents, employees or representatives of the City, or their employees or representatives. Nothing herein operates to impose any obligation, responsibility or liability upon the City with respect to the Manhole, Manhole property or the construction, operation or maintenance of the Sampling Station.

4. **Insurance.** During the entire term of this Agreement, OH shall maintain: 1) worker's compensation insurance in the amount of the Florida Statutory Limit; 2) automobile liability insurance of at least \$1,000,000; and 3) general liability insurance in the amount of at least \$3,000,000 to protect the City from any liability arising from this Agreement or OH's operation, repair and maintenance of the Sampling Station, or which is caused in whole or in part, directly or indirectly, by OH or any of its contractors, subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. The City shall be listed as an additional insured on the above-referenced liability policies and OH shall provide proof to the City of said policies within ten (10) days of certification as described in

subparagraph 3(g) above. Notwithstanding anything to the contrary contained herein, OH shall have the right to self-insure for the risks described herein. The City acknowledges and agrees that OH cannot list the City as an additional insured on its self-insurance program. If OH decides to self insure the risks described herein, OH shall notify City in writing and provide written confirmation that said risks are covered by OH's self insurance program. This provision shall survive termination of this Agreement to the extent necessary to protect the City from liability arising during the term of this Agreement.

5. **Indemnification.** To the extent permitted by law, OH shall indemnify, release and hold harmless the City, its agents, employees and elected and appointed officials, from and against all claims, damages, losses and expenses (including all costs and attorney's fees and all costs and attorney's fees on appeal), arising out of or resulting from this Agreement, construction, installation, operation, use, replacement or maintenance of the Sampling Station, or which are caused in whole or in part, directly or indirectly, by OH or any of its subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. Notwithstanding the foregoing, OH shall not be required to indemnify, release, or hold City harmless for any matters caused by the gross negligence or willful misconduct of the City. This provision shall survive termination of this Agreement to the extent necessary to protect the City from liability arising during the term of this Agreement. Nothing herein operates as a waiver of the City's grant of sovereign immunity or the limits of liability established under Florida law.

6. **Maintenance and Repairs.** The Sampling Station shall be constructed, installed, used, owned, maintained, replaced and repaired by OH, and OH hereby assumes any and all responsibility and liability with respect to, or arising from, or in any way associated therewith, including, though not exclusively, any and all damage to the Utilities, the Roadway or any other improvements to the extent that said damage is caused by the operation, maintenance and repair of the Sampling Station and OH's activities arising under this Agreement. Notwithstanding the foregoing, City shall be solely responsible for any damage to the Sampling Station, the Utilities, and the Roadway or any other improvements, which is caused by the City's negligence or willful misconduct. operation, maintenance and repair of the Utilities. In addition to equipment maintenance and repair, OH shall also access the Sampling Station daily as reasonably required by OH to retrieve data and other monitoring information. OH shall conduct said access, maintenance and repair activities in a safe and reasonable manner and in compliance with any and all applicable laws, codes and regulations, including those promulgated by FDOT. OH shall provide City with prior, written notice of activities (except for OH's routine and regular access to retrieve data and other monitoring information and access for routine maintenance activities, provided such access does not interfere with the Utilities or the Roadway) within the Manhole and shall not access the Manhole for such activities without City's approval. OH and the City agree that City must approve OH's manner of access to the Manhole and OH shall conform any activities under this Agreement, including the manner of OH's access to the Manhole, to the directives of the City. In the event OH fails to maintain the Sampling Station in good condition and in accordance with applicable laws and regulations, or in the event that the operation, maintenance or repair of the Sampling Station has caused damage to the Utilities, the Roadway or any other improvements, the City may give OH notice thereof and OH shall be obligated to promptly and diligently conduct such maintenance and/or and correct such deficiency within a reasonable period of time, or within forty-eight (48) hours after written notice from the City, in the case of an emergency situation. In the event OH fails to maintain the Sampling Station and

correct any such deficiency within a reasonable time after such notice by the City, or within forty-eight (48) hours after notice from the City, in the case of an emergency situation, then the City shall have the right, but not the obligation, to correct any such deficiency and OH shall then reimburse the City for the City's reasonable expenses in connection therewith, no less than sixty (60) days after written request by the City, failing which the full amount shall bear interest at the highest rate allowed by law and shall become a lien in favor of the City upon the adjacent OH property. Such liens shall become effective upon the filing of a Claim of Lien by the City in the Official Records of Orange County, Florida and may be foreclosed in the manner as provided by Florida law. The City's conduct of remedial action shall not operate to impose any obligation, responsibility or liability whatsoever upon the City.

7. **Termination.** This Agreement may be terminated by either party, with or without cause, at any time. Except as otherwise agreed by the parties, OH shall remove the Sampling Station within ninety (90) days of termination of this Agreement, said removal to occur in compliance with any and all applicable rules, laws and regulations. If OH fails to remove the Sampling Station within said ninety (90) day period, the City may do so without liability to OH, and, in such case, OH shall reimburse the City for the City's reasonable expenses in connection therewith, no less than sixty (60) days after written request by the City, failing which the full amount shall bear interest at the highest rate allowed by law and shall become a lien in favor of the City upon the adjacent OH property. Nothing herein obligates the City to take any action to remove the Sampling Station and the City's removal of the Sampling Station shall not operate to impose any obligation, responsibility or liability whatsoever upon the City with respect to this Agreement. Upon any such termination, this Agreement and all rights and obligations created hereunder shall be deemed null and void and of no further force or effect, except as otherwise provided herein. Notwithstanding any provision contained herein to the contrary, no termination of this Agreement by the City pursuant to this Section 7 shall adversely affect or impact any of OH's rights under Permit No. CO143TA.

8. **Defaults.** Failure by either party to comply with or perform any of the terms, conditions, covenants, agreements or obligations contained in this Agreement to be performed by each of them respectively, shall constitute a default under this Agreement, and (i) if such default is not cured or remedied within sixty (60) days after the non-defaulting party provides written notice to the defaulting party specifying with particularity the nature of such default, or (ii) if such default cannot be reasonably cured or remedied within such sixty (60) day period, the defaulting party fails to commence to cure or remedy the default within such sixty (60) day period and thereafter fails to diligently and expeditiously pursue such cure or remedy, the non-defaulting party, in its sole discretion, shall be entitled to exercise any and all rights and remedies available to it under this Agreement, at law and in equity.

9. **Litigation and Attorneys' Fees.** In the event either party to this Agreement should bring suit to enforce or interpret any provision hereof, the prevailing party shall be entitled to payment of its ~~own~~ attorneys' fees, experts' fees and costs by the non-prevailing party, in addition to any other relief granted as a result of such litigation.

10. **Binding Effect.** The terms and conditions of this Agreement shall run with the title to the real property owned by OH as of the date hereof and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

11. **No Waiver of Regulatory Authority.** OH acknowledges that the City may be the entity responsible for issuing building permits and certain other types of permits which will be required in connection with activities herein and further acknowledges that nothing in this Agreement constitutes or is intended to operate as a waiver of such regulatory authority or the application of any applicable laws, rules or regulations. Furthermore, nothing herein operates to vest any particular manner or means of development of any property owned by OH. Lastly, Sampling Station remains subject to the City's police power and shall not be operated or utilized in any manner so as to interfere with the operation and maintenance of the Utilities or the Roadway or any other public improvements.

12. **FDOT.** OH and City acknowledge that the Manhole is located within Orange Avenue, a roadway owned and maintained by FDOT. City makes no representations with respect to FDOT's consent to the installation/maintenance of the Sampling Station and OH acknowledges that it is its sole responsibility to ensure compliance with any FDOT regulations or permitting requirements applicable to OH's installation and maintenance of the Sampling Station within the Manhole.

13. **Notices.** Any notices required or permitted under this Agreement, and copies thereof, shall be addressed to OH and the City at the following addresses, or at such other addresses designated in writing by the party to receive notice:

City: City of Orlando
Public Works Director
400 S. Orange Avenue
Orlando, FL 32802

With a copy to: City of Orlando
City Attorney's Office- 3rd Floor
400 S. Orange Avenue
Orlando, FL 32802

OH: Attn: _____
Orlando Health, Inc.
1414 Kuhl Avenue, MP 2
Orlando, FL 32806

With a copy to: Thomas R. Harbert, Esq.
Mateer & Harbert, P.A.
222. E. Robinson Street, Suite 600
Orlando, FL 32801

Notices shall be either: (i) personally delivered (including delivery by Federal Express or other overnight courier service) to the addresses set forth above, in which case they shall be deemed delivered on the date of delivery; or (ii) sent by certified mail, return receipt requested, in which case they shall be deemed delivered on the date shown on the receipt unless delivery is refused or intentionally delayed by the addressee, in which event they shall be deemed delivered on the date of deposit in the U.S. Mail.

14. **Amendment.** This Agreement may not be terminated, modified or amended except by an instrument in writing signed by each of the parties.

15. **Taxes/Fees.** OH shall be responsible for the payment of all taxes or fees which may be assessed or levied against the Sampling Station or any equipment or other personal property located in or upon the Manhole and all taxes or fees associated with OH's use of the Manhole. City agrees that it will not charge OH any taxes or fees on the Sampling Station or for OH's use of the Manhole pursuant to this Agreement.

16. **Effective Date.** This Agreement shall become effective on the date of full and complete execution by all parties hereto.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, OH and the City have executed this Utility Easement Agreement in manner and form sufficient to bind them as of the day and year first written above.

Signed, sealed and delivered
in the presence of:

Orlando Health, Inc., a Florida not-for-profit
corporation (Corporate Seal)

Print Name: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

**STATE OF FLORIDA
COUNTY OF ORANGE**

The foregoing instrument was acknowledged before me this ____ day of
_____, 2014, by _____, as
_____ of Orlando Health, Inc., a Florida not-for-profit corporation.

Signature of Notary Public

(Print Notary Name)

My Commission Expires: _____

Commission No.: _____

☐ Personally known, or

☐ Produced Identification

Type of Identification Produced

AFFIX NOTARY STAMP

CITY OF ORLANDO

ATTEST:

Alana C. Brenner, City Clerk

By: _____

Mayor / Pro Tem

APPROVED AS TO FORM AND LEGALITY
for the use and reliance of the
City of Orlando, Florida only.

Chief Assistant City Attorney

_____, 2014

**STATE OF FLORIDA
COUNTY OF ORANGE**

PERSONALLY APPEARED before me, the undersigned authority,
_____ and, Alana C. Brenner, well known to me and known by me
to be Mayor _____ and City Clerk, respectively, of the City of Orlando, Florida, and
acknowledged before me that they executed the foregoing instrument on behalf of the City of
Orlando as its true act and deed, and that they were duly authorized so to do.

WITNESS my hand and official seal this _____ day of _____, 2014.

Notary Public
Print Name: _____
My Commission expires: _____

EXHIBIT “A”

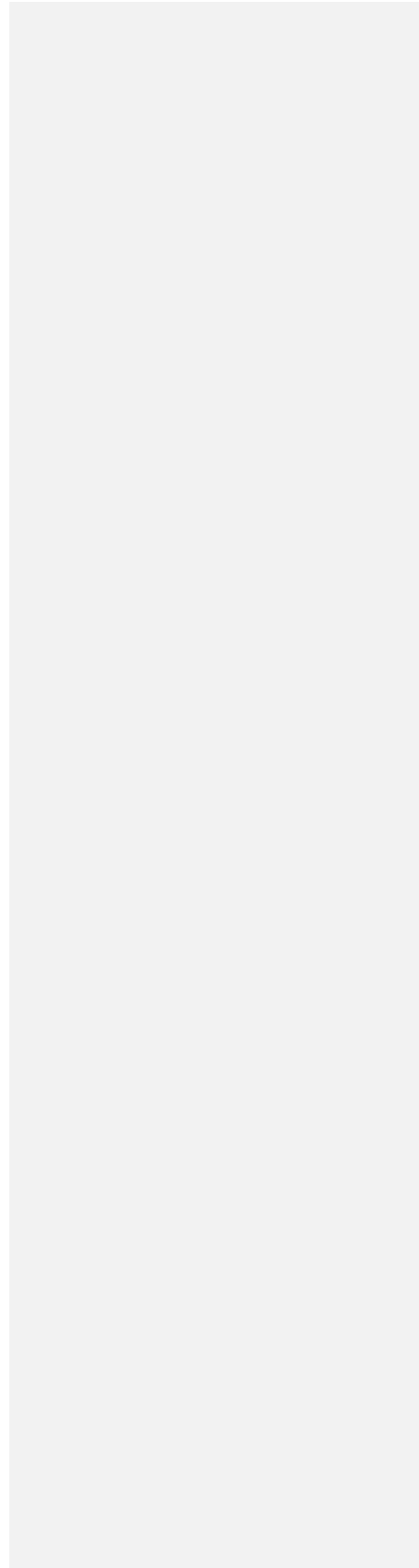


EXHIBIT “B”

