

PARTICIPATION AGREEMENT

between

the CITY OF ORANGE

and

PROVIDENCE PROCUREMENT COMPANY, LLC,
a Washington
limited liability company

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Exhibit “A” Quarterly Certification Letter

PARTICIPATION AGREEMENT

Providence Procurement Company, LLC

This Participation Agreement (“Agreement”) is made and entered into as of _____, 2020 by and between the CITY OF ORANGE, a municipal corporation of the State of California (the “City”), and Providence Procurement Company, LLC, a Washington limited liability company (“Providence”). Both of the foregoing parties may be referred to hereafter as a “Party,” and jointly as the “Parties.”

RECITALS

WHEREAS, the general welfare and material well-being of the residents of the City depend in large measure upon the facilities, goods, and services that businesses make available to the public and the City’s residents, which, in turn, generate tax revenues to the City to help pay for necessary services to the City’s residents and such retail services; and

WHEREAS, the continued operation and possible expansion of existing service, commercial, and industrial businesses within the City (i) will continue to attract both local and regional shoppers, (ii) will likely continue to generate increased sales tax revenues to the City, (iii) continue to promote job creation opportunities in the City, (iv) continue to encourage property upgrades and enhancements in the City’s commercial and industrial areas, and (v) will continue to enhance the quality of facilities, goods and services available to the public and the City’s residents; and

WHEREAS, the City wishes to induce and encourage the continued operation and possible expansion of existing service, commercial, and industrial businesses within the City, thereby assisting the City in achieving its goals related to the development of said businesses and maintaining existing and creating new sources of sales tax revenue for the City’s general fund that supports the public services that the City provides to its residents and to said businesses; and

WHEREAS, the City desires to incentivize service, commercial, and industrial business in the City by sharing a portion of the sales tax revenues generated by existing, new and expanding businesses, including the on-going operations of Providence and its Affiliates on certain real property located at St. Joseph Hospital of Orange, 1100 W Stewart Drive, Orange, California (“Site”). During the Term, Providence or its Affiliates may occupy alternate property within the City of Orange for the purpose of operating the Approved Business, as provided in this Agreement. In such event, the “Site” hereunder shall mean and refer to such alternate property upon the satisfaction of all of the following conditions precedent: (1) commencement of the leasehold or fee title ownership of such alternate property within the City of Orange by Providence or one of its Affiliates; (2) commencement of the designation of the alternate property as the point of sale for purposes of the Approved Business; and (3) Providence provides prior written notice to the City Manager of said use of such alternate property.

WHEREAS, the City recognizes that retention of the on-going operations of Providence and its Affiliates in Orange will continue to contribute to the economic vitality of the City, continue to provide jobs in the City, continue to expand the City's tax base and otherwise improve economic and physical conditions in the City.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants of the Parties set forth herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged by the Parties, the Parties agree as set forth hereinafter.

Section 1. Incorporation of Recitals; Definitions.

The Parties agree that each of the foregoing Recitals is true and correct and incorporate each of the Recitals in this Agreement by reference thereto.

"Affiliate" means with respect to any Person, any other Person directly or indirectly controlled by, controlling or under direct or indirect common control with the specified Person. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of that Person, directly or indirectly, whether through the ownership of voting securities or other beneficial interest, by contract or otherwise; and the terms "controlling" and "controlled" have the meanings correlative to the foregoing.

"Approved Business" means the purchasing and selling of supplies by Providence, which may include but not be limited to, medical supplies and equipment, office supplies and other related sales and/or use tax-generating products by Providence to the extent not in conflict with any applicable law, including, without limitation Government Code Section 53084.5. It is the intent of the Parties that nothing in this Agreement or the implementation hereof violate Government Code Section 53084.5.

"Buyout" shall mean the termination of Providence's obligations under this Agreement as of the Buyout Effective Date by paying the Buyout Amount to the City and providing the Buyout Notice as required by this Agreement.

"Buyout Amount" shall mean either:

(a) prior to January 1, 2039, an amount equal to the cumulative amount of Payments actually made by the City for the three (3) months immediately prior to the date of the Buyout Notice or Providence Default Notice, as applicable; or

(b) on or after January 1, 2039, Zero Dollars (\$0).

"Buyout Effective Date" shall mean the date on which the Buyout, if any, shall occur by payment in full of the Buyout Amount to the City and provision of the Buyout Notice.

“Buyout Notice” shall mean the six (6) month prior written notice of termination which may be provided by Providence to the City as described in Section 8.b, below.

"CDTFA" means the California Department of Tax and Fee Administration and any successor agency.

“City” shall mean the City of Orange, a municipal corporation, organized under the laws of the State of California and having its offices at 300 East Chapman Avenue, Orange, California 92866.

“Compliance Period” shall mean a Sales Tax Quarter, commencing with the Quarter in which the Effective Date occurs, and each Quarter thereafter, for the Term.

“Compliance Report” shall mean a report prepared by or on behalf of Providence in accordance with Section 4. f of this Agreement setting forth the information as may be required to determine whether the Performance Requirements have been satisfied and calculating the amount of the hereinafter defined Payment due for the period in question.

“Default Notice” shall mean notice given to Providence in accordance with the notice and cure requirements set forth in Section 8.a., for a default of Providence of any material promise, obligation, covenant or duty under this Agreement, as more particularly described in Section 8.c of this Agreement

"Dispute Notice" shall have the meaning set forth in Section 9.f of this Agreement

“Effective Date” shall mean the date on which all of the following are true: (i) this Agreement has been approved by the City Council following all legally required notices and hearings; (ii) this Agreement has been executed by the appropriate authorities of City and Providence; and (iii) City's receipt of a Compliance Report in accordance with Section 4.c of this Agreement. This Agreement is dated for reference purposes only.

“Participation Agreement” or “Agreement” means this agreement between the City and Providence that provides for the rebate from the City to Providence of a portion of the Sales Tax Increment, at a rate and for a time period as determined in this Agreement.

“Payment” and Payments” shall have the meaning set forth in the definition of “Sales Tax Sharing” below.

“Penalty Assessments” means penalties, assessments, collection costs and other costs, fees or charges resulting from late or delinquent payment of Sales Tax and that are levied, assessed, or otherwise collected from any Approved Business owning or obligated to pay Sales Tax.

“Performance Requirements” shall mean those requirements set forth in Section 3 of this Agreement.

“Person” means any person or entity, whether an individual, trustee, corporation, limited liability company, partnership, trust, unincorporated organization, governmental agency or otherwise.

“Sales Tax” shall mean any and all California sales and uses tax revenue paid pursuant to applicable California law, including (but not limited to) the Bradley-Burns Uniform Local Sales and Use Tax Law (California Revenue and Taxation Code Section 7200 et seq.) and the Sales and Use Tax Law (California Revenue and Taxation Code Section 6000 et seq.), as such laws may be amended from time to time, and regulations of the CDTFA and other binding rulings and interpretations relating thereto, or other funds actually received by the City pursuant to legislation such as, but not limited to, Revenue and Taxation Code, section 97.68, enacted expressly as a substitute for sales tax revenues in order to reimburse the City for sales tax revenues losses resulting from decreases in the 1% rate of sales tax or otherwise.

“Sales Tax Increment” means, on a quarterly basis, the amount of Sales Tax actually generated by the Approved Business and received by the City from the CDTFA after the Effective Date. It is determined by reference to actual receipts by the City of Sales Tax from the CDTFA. Under no circumstance shall the City be liable for any reimbursement of Sales Tax Increment not actually received by the City. Sales Tax Increment shall not include (i) Penalty Assessments; (ii) any administrative fee charged by the CDTFA; or (iii) any Sales Tax attributable to any transaction not consummated within the Term of this Agreement.

“Sales Tax Quarter” means a three-month quarterly period as designated by the CDTFA in its reports to the City.

“Sales Tax Sharing” means the disbursement amount from the City to Providence of a portion of the Sales Tax Increment, as determined each quarter for which this Agreement is in full force and effect. Each such disbursement amount is referred to in this Agreement as a “Payment” and collectively as the “Payments”. All Payments shall be paid by the City to Providence after the conclusion of each Sales Tax Quarter as provided in this Agreement.

“Sales Tax Threshold” shall mean for each Sales Tax Quarter beginning in the first full quarter where Providence reports taxable sales, Sales Tax Increment in the amount of One Hundred Thousand Dollars (\$100,000).

“Term” shall mean twenty (20) years commencing on the Effective Date, unless extended or terminated as expressly provided for herein.

Section 2. Findings.

The City finds and determines that this Agreement serves a valid public purpose through continuing to expand economic opportunities for businesses in the City, continuing to expand the City's employment base, and continuing to generate Sales Tax that the City can utilize to fund general governmental services such as police, fire, street maintenance, and parks and recreation programs, and that entering into this Agreement for this sharing of the Sales Tax Increment is in the best interests of the City and its residents.

Section 3. Performance Requirements for Receipt of Tax Sharing.

Satisfaction of each of the following is a condition precedent to the City's obligation to share Sales Tax Increment with Providence for any Compliance Period (collectively, the "Performance Requirements"):

- a. Providence continuing to operate the Approved Business; and
- b. No event of default on the part of Providence shall currently exist under this Agreement; and
- c. The Sales Tax Threshold has been met.

Section 4. Terms Related to Calculation and Payment of Tax Sharing.

a. The Parties agree that, upon satisfaction in each Compliance Period of the Performance Requirements, the City shall have the obligation to make Payments to Providence for the Sales Tax Sharing. Providence's portion of the Sales Tax Sharing shall be forty nine percent (49%) of Sales Tax Increment.

b. The Parties acknowledge that the receipt of information from the CDTFA is often delayed, and that it is often difficult to separate sales receipts for particular items from sales tax related to other items sold by a business. Accordingly, Providence agrees to use commercially reasonable efforts to provide, or cause to be provided to, the City's Finance Department accurate quarterly sales reports relating to the Approved Business and such other reasonable documentation that the City may request from time to time regarding the transactions contemplated in this Agreement. The City's Finance Department may adopt such procedures or required reports as are reasonably necessary to enable the Finance Department to accurately calculate Sales Tax Increment. The quarterly Payment to Providence shall be based on information provided by the Parties. The Parties agree that past Payments to Providence of the Sales Tax Increment are subject to adjustment (both to increase and decrease Payments) in accordance with the provisions of this Agreement.

c. As a condition to the receipt of any Payments, not later than forty-five (45) days after the end of each Sales Tax Quarter, Providence shall prepare and submit, or cause to be prepared and submitted, to the City Manager a Compliance Report containing the following for

the Compliance Period in question, and calculating the amount of the Payment, if any, that is due to Providence for the Compliance Period:

1. A sales record(s) for the Sales Tax Quarter in question;
2. A copy of the quarterly sales tax filing(s) to the CDTFA for the Sales Tax Quarter in question for the Approved Business; and
3. A certification, signed by an officer, managing general partner, managing member or principal of Providence substantially in the form attached to this Agreement as Exhibit "A" (which is attached hereto and incorporated herein by reference) representing that all the Performance Requirements for the Compliance Period have been satisfied.

d. As consideration for Providence's performance of its obligations set forth in this Agreement and subject to the terms and conditions of this Agreement, the City shall make a Payment to Providence within fifteen (15) days after the City's receipt of confirmation from the CDTFA of the amount of Sales Tax paid with respect to the Approved Business as set forth in each Compliance Report.

e. The Parties agree that Payments shall be subject to adjustments as set forth below:

If, at any time within one (1) year after the receipt by the City of a quarterly confirmation, a payment of Sales Tax by CDTFA is finally determined to be incorrect, then an appropriate adjustment (increasing or decreasing the Payments, as applicable) shall be made.

During the Term of this Agreement and for one (1) year thereafter, Providence shall have the right to request, and upon such request the City shall deliver to Providence within ten (10) days of such request, any documents received by the CDTFA evidencing the actual payment and receipt of Sales Tax with respect to the Approved Business. If, based upon the documents from the CDTFA and quarterly confirmation and payment documentation, any Payment by the City to Providence is less than the amount due to Providence under this Agreement, the City shall disburse to Providence the unpaid balance for the applicable Compliance Period no later than sixty (60) calendar days after Providence demands the City to pay such unpaid balance. If, based upon the documents from the CDTFA and quarterly confirmation and payment documentation, any Payment is larger than the amount due to Providence under this Agreement, the City may deduct the overpaid amount from any future Payments otherwise payable to Providence under this Agreement; provided, that, the City will not deduct the overpaid amounts if Providence has delivered a written notice of objection regarding the determination of the overpaid amounts. If this Agreement has been terminated or is expired, and the City owes Providence any unpaid balance as described in this paragraph, the City shall pay Providence the unpaid balance no later than sixty (60) calendar days after Providence demands the City to pay the unpaid balance. If this Agreement has been terminated or is expired, and Providence owes the City for an overpayment by City as described in this paragraph, Providence shall pay the overpaid amount no later than

sixty (60) calendar days after the City demands Providence to pay such amount. The parties will resolve any disagreement between the City and Providence regarding the amounts owed under this subsection through the dispute resolution process set forth in Section 9(h).

f. In addition and without limiting the adjustment provisions in subsection e. above, if, at any time during or one (1) year after the Term, the CDTFA determines that all or any portion of the Sales Tax Increment received by the City was improperly allocated and/or paid to the City, and if the CDTFA requires repayment of, offsets against future sales tax payments, or otherwise recaptures from the City any of the improperly allocated and/or paid Sales Tax Increment, Providence shall, within sixty (60) calendar days after written demand from the City, repay all Payments (or applicable portions thereof) theretofore paid to Providence that are attributable to such repaid, offset or recaptured Sales Tax Increment. If Providence fails to make such repayment within sixty (60) calendar days after the City's written demand, then the City may deduct any amount required to be repaid by Providence from any future Payments otherwise payable to Providence under this Agreement; provided, that, the City will not deduct such amounts if Providence has delivered a written notice of objection regarding the determination of the repaid, offset or recaptured Sales Tax Increment. The parties will attempt to resolve any disagreement between the City and Providence regarding the amounts owed under this subsection through the dispute process set forth in Section 9(h).

g. If for any reason there is a failure to authorize the release or use of all or any part of sales tax information regarding the Approved Business in a manner reasonably satisfactory to the CDTFA or provide any information reasonably required by the City to perform the City's obligations under this Agreement, or if all or any part of the sales tax information of any Approved Business is unavailable to the City or the City is not legally authorized to use such information for the purposes of performing its obligations under this Agreement, Payments shall be based solely upon the information so received, if any.

h. Payments by City shall be payable from any source of funds legally available to City. In this regard, it is understood and agreed that the Sales Tax Increment is being used merely as a measure of the amount of Payments that are periodically owing by City to Providence, and that City does not pledge any portion of the Sales Tax Increment or any general fund revenue of the City.

Section 5. Reserved

Section 6. Operating Covenants.

a. During the Term of this Agreement, Providence or their Affiliates, collectively, shall employ, or cause to be employed, not fewer than one hundred fifty (150) full-time employees within the City; provided, however, that Providence and their Affiliates, collectively, may employ fewer than one hundred fifty (150) full-time employees (i) with the written consent of the City Manager, which shall not be unreasonably withheld, conditioned or delayed or (ii) if a Force Majeure prevents such a level of employment. For purposes of the preceding sentence, and by

way of illustration and not limitation, it shall be deemed reasonable for fewer than one hundred fifty (150) full-time employees to be employed when economic conditions beyond the control of Providence or any of its Affiliates.

b. Providence covenants and agrees that, during the Term of this Agreement, consistent with all applicable provisions of any laws, Providence's operation of the Approved Business shall be at the Site. Providence covenants and agrees that it shall not designate any other location other than the Site as the point of sale in its operation of the Approved Business. Providence shall obtain or cause to be obtained all federal, state and local licenses and permits required for the operation of any business at the Site. Notwithstanding anything to the contrary, nothing in this Agreement will prohibit or restrict the operations of any Affiliate of Providence (unless such Affiliate is assigned all the rights and obligations of this Agreement by Providence) and nothing in this Agreement will prohibit an Affiliate of Providence from purchasing or selling supplies including medical supplies, equipment, or office supplies.

c. Providence covenants and agrees that during the Term of this Agreement, that Providence shall not directly or indirectly solicit or accept any direct or indirect "Financial Assistance" from any other government or any other public or private Person in operating the Approved Business, if such Financial Assistance is given for the purpose of causing or would directly result in Providence's breach of any of the covenants or terms and conditions of this Agreement and/or would cause or facilitate the relocation of any Approved Business operating on the Site or in the City of Orange and/or the designation as the City of Orange as the point of sale for any Approved Business that is contrary to the point of sale provisions in subsection b. above. For purposes of this Section, the term "Financial Assistance" means any direct or indirect payment, subsidy, rebate, or other similar monetary or non-monetary benefit, including, without limitation, payment of land subsidies, relocation expenses, public financings, property or sales tax relief, rebates, and/or exemptions or credits.

d. During the Term of this Agreement, Providence covenants and agrees to continually maintain and repair or cause to be maintained and repaired, the Site, including but not limited to buildings, structures, parking areas, lighting, signs, and landscaping, to be in good condition conforming to all applicable laws, including all applicable provisions of the City's Municipal Code.

e. During the Term of this Agreement, Providence covenants and agrees Providence shall not discriminate against any person on the basis of sex, marital status, race, color, religion, ancestry, national origin, physical handicap, sexual orientation, or domestic partnership status.

f. The qualifications and identity of Providence are of particular concern to City. It is because of those qualifications and identity that the City has entered into this Agreement with Providence, and Providence acknowledges and agrees that its rights, benefits, duties and obligations under this Agreement are personal to Providence. Accordingly, (a) during the term of this Agreement, Providence, except as permitted in this Section, shall not transfer or assign (hereinafter, "transfer") all or any part of its right to receive the Sales Tax Sharing (or any portion thereof) to any person other than an Affiliate of Providence without City's prior written approval,

which approval City shall not unreasonably withhold, condition or delay; (b) during the term of this Agreement, Providence shall not transfer all or any part of this Agreement or any rights hereunder or any interest in the improvements to a person other than an Affiliate of Providence without City's prior written approval, which approval City shall not unreasonably withhold, condition or delay.

g. Notwithstanding anything to the contrary, it is acknowledged and agreed that Providence and its Affiliates may make such changes to their operations as they deem necessary or appropriate to respond to novel coronavirus or COVID-19 or any of its effects, as well as orders or advisories of the president of the United States, the governor of the State of California or other governmental entities. In no event will any such changes or any continuation of any such changes constitute a breach of any representation, warranty, covenant or other provision of this Agreement.

Section 7. Indemnification; Release.

a. The indemnifications provided in this Section shall survive the termination of this Agreement for one (1) year after the end of the Term or Buyout Effective Date, whichever is earlier.

b. Providence agrees to indemnify, defend and hold the City and its elected officials, officers, employees, and agents harmless from and against all damages, judgments, orders, rulings, costs, expenses and fees, including reasonable attorneys' fees (collectively, the "Providence Claims"), arising from any material breach of this Agreement by Providence, except to the extent such damages, judgments, orders, rulings, costs, expenses and fees arise out of or are in connection with a claim, litigation or cause of action caused by the willful misconduct or negligence of the City or its Affiliates. In no event shall Providence's total liability under the Providence Claims exceed, in the aggregate, the Payments made to Providence under the terms of this Agreement.

c. The City agrees to indemnify, defend and hold Providence, its Affiliates, and their directors, officials, officers, employees, and agents harmless from and against all damages, judgments, orders, rulings, costs, expenses and fees, including reasonable attorneys' fees (collectively, the "City Claims"), arising from or related to any material breach of this Agreement by the City, including the failure of the City to make any Payment when and as due under this Agreement, except to the extent such damages, judgments, orders, rulings, costs, expenses and fees arise out of or are in connection with a claim, litigation or cause of action caused by the willful misconduct or negligence of Providence or its Affiliates.

Section 8. Defaults; Buyout; Termination.

a. Defaults – General. Failure or material delay by any Party to perform any term or provision of this Agreement constitutes a "default" under this Agreement. The injured Party shall give written notice of default to the Party in default, specifying the default complained of by the injured Party. The defaulting Party shall have thirty (30) days from the date of such notice either to cure such default, or, if such default cannot be reasonably cured during such thirty (30) day

period, promptly (in any event, within 10 days after receipt of such notice) commences cure, and thereafter diligently (in any event within ninety (90) days after receipt of such notice) prosecutes such cure to completion. If the City fails to make a Payment to Providence when and as due under the terms of this Agreement, then the City shall have fifteen (15) days from the date of written notice by Providence to cure such default.

Except as required to protect against further damages, the injured Party may not institute proceedings against the Party in default until the time for cure has expired. Any failure or delay by a Party in giving a notice of default or in asserting any of its rights and remedies as to any default shall not constitute a waiver of any default, nor shall it change the time of default, nor shall it deprive such Party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert, or enforce any such rights or remedies.

b. Buyout. Providence may at any time terminate this Agreement by providing both (1) written notice to City of Providence's intent to terminate this Agreement at least 6 (six) months prior to the intended date of termination ("Buyout Notice"); and (2) payment in full to the City of the Buyout Amount. After a Buyout Notice, if any, until the date of termination of this Agreement, the City shall be obligated to make any and all Payments to Providence due hereunder pursuant to the terms and conditions of this Agreement. The liability of Providence under this Agreement after the Buyout Effective Date shall be limited solely to payment of the Buyout Amount (except for indemnity, defense and hold harmless obligations described in Section 7 hereunder) and in no event shall any recourse against any of the other assets of Providence be available to the City or any other person or entity acting on behalf of the City after the Buyout Effective Date except for payment of the Buyout Amount (except that indemnity, defense and hold harmless obligations hereunder shall not be limited by this section).

c. Termination by City. Notwithstanding any other provision in this Agreement to the contrary, the City shall have the right to terminate its obligations under this Agreement if Providence defaults on any material promise, obligation, covenant or duty under this Agreement. To terminate this Agreement, the City shall first provide the Providence Default Notice. The Providence Default Notice shall indicate the reason that City has declared a termination of this Agreement, and shall indicate what steps must be taken to cure the referenced default of this Agreement. If, at the end of the applicable cure period, which shall be no less than thirty (30) days from the date the City received the Providence Default Notice, Providence has not cured the alleged default(s), the City shall have the right, at its sole option, to deem this Agreement terminated without further notice or action by the City; provided, however, that if Providence disputes that it has in fact defaulted as described in the City's Default Notice or that it has not cured such default, then it may give the City a Dispute Notice as provided in Section 9.h hereof. In such event, the City's right to terminate this Agreement shall be tolled until the completion of the dispute resolution process described in Section 9.h hereof and a determination thereunder that Providence had in fact defaulted and had failed to cure such default. In the event of such a termination of this Agreement, Providence agrees to pay the City the Buyout Amount within sixty (60) days following written demand therefor from the City. The liability of Providence under this Agreement for the default(s) alleged in the Providence Default Notice shall be limited solely to the City's receipt of the Buyout Amount and in no event shall any recourse against any of the other

assets of Providence be available to the City or any other person or entity acting on behalf of the City except for the Buyout Amount for the default(s) alleged in the Providence Default Notice.

d. Termination by Providence. Notwithstanding any other provision in this Agreement to the contrary, Providence shall have the right to terminate its obligations under this Agreement if the City defaults on any material promise, obligation, covenant or duty under this Agreement. To terminate this Agreement, Providence shall first provide the City Default Notice. The City Default Notice shall indicate the reason that Providence has declared a termination of this Agreement, and shall indicate what steps must be taken to cure the referenced default of this Agreement. If, at the end of the applicable cure period, City has not cured the alleged default(s), Providence shall have the right, at its sole option, to deem this Agreement terminated without further notice or action by Providence.

e. Termination. On or after the end of the Term, Providence and City shall each have the right to terminate this Agreement by providing a minimum of six (6) months prior written notice to the other Party of the effective date of such termination.

f. Option to Renew. This Agreement and the Term hereof is subject to renewal for one additional 20-year term at the option of Providence upon notice given to City no later than six (6) months prior to the expiration of the original term.

Section 9. Miscellaneous Provisions.

a. All findings and decisions of the City Council taken in connection with this Agreement shall be deemed to be reasonable and supported by an adequate and appropriate record. No such findings or decisions shall be subject to challenge or be the subject of any Claim by Providence.

b. Any action taken by either party, including, but not limited to, the termination of this Agreement under the provisions hereof, shall be at the sole option of such party and in its sole and absolute discretion, except as otherwise expressly provided herein. Each party acknowledges that the other party would not have entered into this Agreement in the absence of this covenant by the parties.

c. All exhibits attached to this Agreement are deemed to be incorporated into this Agreement by reference.

d. The Parties agree to execute any additional documents, forms, notices, applications or other documents that is reasonably necessary to carry out the intent of this Agreement.

e. The Parties agree that, should any provision, section, paragraph, sentence or word of this Agreement be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of legislation, the remaining provisions, sections, paragraphs, sentences and words of this Agreement shall remain in full force and effect and the Parties agree in good

faith to immediately amend this Agreement in such a way as to provide alternative provisions sections, paragraphs, sentences or words as to carry out the intent of this Agreement.

f. Providence or one of its Affiliates shall pay prior to delinquency all real property taxes and assessments assessed and levied on or against the Site at all times during the Term of this Agreement.

g. Providence shall not, without prior written approval of the City, which approval the City may not unreasonably withhold, condition or delay, assign or attempt to assign this Agreement or any right herein. Notwithstanding the foregoing, the following shall not be considered a transfer and shall not require City approval for purposes of this Section: transfers or assignment to an Affiliate of Providence (provided such Affiliates agree to be bound by the obligations under the Agreement).

h. The Parties shall attempt in good faith to resolve any differences, controversy or claim arising out of or relating to this Agreement promptly by negotiations between representatives of the Parties who have authority to settle the difference or controversy. The disputing Party may give the other Party written notice ("Dispute Notice") that a dispute exists between them. Within twenty (20) days after receipt of a Dispute Notice, the receiving Party shall submit to the disputing Party a written response. The Dispute Notice and response shall include (a) a statement of each Party's position and a summary of the evidence and arguments supporting its position, and (b) the name and title of the official who shall represent that Party. The representatives shall meet at a mutually acceptable time and place or by telephone conference within thirty (30) days of the date of the Dispute Notice, and thereafter as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute, up to a maximum of ninety (90) days of the date of the Dispute Notice ("Resolution Period"). In the event any Party fails to provide a response to a Dispute Notice in accordance with this section or fails to cooperate in the scheduling of, or to attend, the meetings, described above, to resolve the dispute, then, with respect to that Party, the Resolution Period shall be deemed to have run so that the dispute may immediately be subject to legal action. If the Parties do not resolve the matter within the Resolution Period, or following such longer period as the parties may agree in writing, the parties will submit the dispute to binding arbitration.

Either party may initiate the arbitration process, by submitting written notification to the other party, including the name of a proposed qualified arbitrator. The party receiving notice of arbitration will have ten days in which to respond, either (i) agreeing to the proposed arbitrator or (ii) proposing the name of another person to act as the single arbitrator. Unless the Parties mutually agree to one arbitrator, either party may apply to Judicial Arbitration and Mediation Services ("JAMS") for the name of a neutral third party who will be the sole arbitrator. The arbitration will commence within 30 days after an arbitrator is selected, unless the parties agree to extend this time period. Arbitration will comply with JAMS arbitration rules, except to the extent they conflict with this Section. The arbitrator will have full power to give such directions and make such orders as the arbitrator deems just. This authority will include authority to hear and rule on pre-hearing

disputes, set deadlines, and hold pre-hearing conferences, as the arbitrator deems necessary. However, the arbitrator will not have the authority, power, or right to alter, change, amend, modify, add, or subtract from any provision of this Agreement. The arbitrator will designate the time, place, and location of the final arbitration hearing as soon as possible after selection and in any event no later than 15 days prior to the arbitration's commencement date. The arbitrator will issue a written decision within 30 days from the conclusion of arbitration hearing. This agreement to arbitrate will be specifically enforceable. The award rendered by arbitration will be final and binding, and any arbitration award may be enforced by judgment entered in any court of competent jurisdiction. Each Party will pay one half of the fees of the arbitrator.

i. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

j. Providence acknowledges that the California legislature has in the past adopted certain legislation that diverted to the State of California a portion of the Sales Tax Increment that was otherwise payable to the City. Providence acknowledges that it is possible that the legislature may enact similar legislation in the future that would cause a corresponding reduction of and/or delay in the payment of the Sales Tax Increment and that such reduction will cause Providence a corresponding reduction and/or delay in the payment of the Payments due to Providence during such time as such legislation is in effect. Furthermore, Providence acknowledges that it is possible that the legislation described above, or some variant thereof, may be enacted and effective during one or more subsequent times during the Term of this Agreement and may materially and negatively impact the amount of Sales Tax Increment and, accordingly, Payments. The City does not make any representation, warranty or commitment concerning the future actions of the California legislature with respect to the allocation of Sales Tax Increment to the City. Providence agrees that it is undertaking its obligations under this Agreement after having considered, and is expressly assuming the risk of, the possibility of the enactment of such legislation.

The foregoing paragraph notwithstanding, City acknowledges that the California legislature may provide for the payment to City of other revenues for the purpose of offsetting any losses in Sales Tax Increment resulting from the enactment of legislation of the type described in the immediately preceding paragraph. City agrees that, should the California legislature provide for such offsetting revenues, then for purposes of this Agreement and the computation of any payments that may become due to Providence hereunder, City will consider, on a quarter- quarter basis, any such offsetting revenues that are (i) indexed to Sales Tax and offset the loss of Sales Tax Increment to the City on a dollar for dollar basis, (ii) actually received by the City, and (iii) not subject to any restrictions on use beyond those that are otherwise generally applicable to sales tax revenues received by California municipalities, to be Sales Tax Increment within the meaning of this Agreement. Notwithstanding anything herein to the contrary, to the extent the City's receipt of Sales Tax Increment is impaired or restricted in any way or otherwise eliminated for any reason, the City shall not be obligated to make any financial assistance payments during the period within which the City's receipt of Sales Tax Increment is so restricted, impaired or eliminated.

k. For ease of administration, Payments shall be payable solely to Providence and shall be delivered to Providence at the address set forth in this Agreement or such other address Providence may provide to City by written notice from time to time.

l. Except with respect to any rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by any other Party. A waiver of a requirement shall not constitute an ongoing waiver of that requirement in the future.

m. Any and all notices, demands or communications submitted by any Party to the other Parties pursuant to or as required by this Agreement shall be proper if in writing and dispatched by messenger for immediate personal delivery, or by registered or certified United States mail, postage prepaid, return receipt requested, to the principal office of the City and Providence, as applicable, as designated below. Any such notice, demand or communication shall be deemed to be received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day that it is dispatched by messenger for immediate personal delivery, or two (2) calendar days after it is placed in the United States mail as heretofore provided.

To City: City of Orange
300 East Chapman Avenue
Orange, California 92866
Attn: City Manager

With copy to: City of Orange
300 East Chapman Avenue
Orange, California 92866
Attn: City Attorney

To Providence: Providence Health & Services – Washington
800 Fifth Avenue, Suite 1200
Seattle, WA 98104
Attention: Department of Legal Affairs
Facsimile No.: (206) 215-5903
Email: officeoflegalaffairs.systemoffice@providence.org

n. No elected official, officer, employee or agent of the City having any conflict of interest, direct or indirect, related to this Agreement shall participate in any decision relating to this Agreement.

o. Providence warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement. Third parties, for the purposes of this Section, shall not include persons to whom fees are paid for professional services if rendered by attorneys, financial or other consultants, accountants, engineers, architects and the like when such fees are considered necessary by Providence. For the purposes of this paragraph, third parties shall include any elected official, officer, employee or agent of the City.

p. No elected official, official or officer, employee, agent or attorney of the City shall be personally liable to Providence, its members or principals, or any successor in interest, or any other party or person whatsoever, in the event of any default or breach by the City or for any amount that may become due to Providence or to its successors, or on any obligations under the terms of this Agreement.

q. Performance by any Party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of public enemy; epidemics; pandemics; quarantine restrictions; freight embargoes or lack of transportation; weather-caused delays; inability to secure necessary labor, materials or tools; acts of any Person not a party to this Agreement (other than an Affiliate of a Party claiming Force Majeure under this subsection); acts or failure to act of any public or governmental agency (other than City or its Affiliates); or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform (each a "Force Majeure"). Any extension of time for any such cause hereunder shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) calendar days of the commencement of the cause. Times of performance under this Agreement may also be extended by mutual agreement in writing by and between the City and Providence.

r. Whenever a reference is made in this Agreement to an action or approval to be undertaken by City, the City Manager of the City (or his or her authorized designee) is authorized to act on behalf of the City unless specifically provided otherwise or the law otherwise requires. The City Manager of the City is authorized to sign on his own authority amendments to this Agreement that are of routine or technical nature.

s. Each Party represents and warrants the following: they have carefully read this Agreement, and in signing this Agreement and agreeing to be bound by the same, they have received independent legal advice from legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement, and they have freely signed this Agreement and agreed to be bound by it without any reliance upon any agreement, promise statement or representation by or on behalf of any other Party, or its respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise. This Agreement shall be interpreted as though prepared jointly by both Providence and the City.

t. If any Party hereto files any action or brings any action or proceeding against any other Party arising out of this Agreement, seeks the resolution of disputes, or is made a party to any action or proceeding brought by a third party with respect to this Agreement, then as between Providence and the City, the prevailing party shall be entitled to recover as an element of its costs of suit or resolution of disputes, and not as damages, its reasonable attorneys' fees as fixed by the court or other forum for resolution of disputes as may be agreed upon by the Parties in such action or proceeding or in a separate action or proceeding brought to recover such attorney's fees.

u. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, and permitted successor and assigns.

v. Unless otherwise indicated with respect to a requirement, all time frames for performance of an act required or permitted by this Agreement shall be calendar days. Time frames measured in months shall be calculated with reference to the actual number of days in the relevant months. Annual time frames shall mean a period of 365 days.

w. Time is of the essence in this Agreement. Except as otherwise expressly provided herein, all periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of California, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday in the State of California, the period shall be extended to include the next business day.

x. This Agreement shall be executed in four (4) duplicate originals each of which is deemed to be an original. This Agreement constitutes the entire understanding and agreement of the Parties. The Parties may sign this Agreement in counterparts.

y. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof.

z. All waivers of the provisions of this Agreement and all amendments hereto must be in writing and signed by the appropriate representatives of the City and/or Providence.

[Signatures appear on following page]

WHEREFORE, the Parties, intending to be bound hereby, have affixed their authorized signatures to this Agreement.

“CITY”

CITY OF ORANGE, a municipal corporation

By: _____

Mark A. Murphy
Mayor of the City of Orange

APPROVED BY:

ATTEST:

Mary E. Binning
Senior Assistant City Attorney

Pamela Coleman, City Clerk

“PROVIDENCE”

PROVIDENCE PROCUREMENT COMPANY,
LLC, a Washington limited liability company

By: _____

Printed Name: _____

Title: _____

Exhibit "A"
Quarterly Certification Letter

[Behind this page]

QUARTERLY CERTIFICATION LETTER

[TO BE PROVIDED ON PROVIDENCE'S LETTERHEAD]

City Manager
City Manager's Office
City of Orange
300 East Chapman Avenue
Orange, California 92866

Re: Certification Pursuant to Participation Agreement between the City of Orange and
Providence Procurement Company, LLC

Dear City Manager:

This Certification is submitted to the City of Orange in accordance with the Participation Agreement ("Agreement"), and is made part of the Quarterly Compliance Report required by the Agreement for the Compliance Period from _____, 2020 through _____, 2020 (and each subsequent Sales Tax Quarter). The undersigned authorized representative(s) of _____ ("____") under the Agreement hereby certifies(y) each of the following statements:

1. During the Compliance Period in question, the Sales Tax Threshold has been met.
2. During the Compliance Period in question, Providence or their Affiliates, collectively, have employed, or cause to be employed, not fewer than one hundred fifty (150) full-time employees within the City, except as otherwise permitted under the Agreement.
3. During the Compliance Period in question, Providence has retained and operated on the Site the Approved Business.
4. During the Compliance Period in question, Providence has continually maintained and repaired, or caused to be maintained and repaired, the Site in compliance with the Agreement.
5. During the Compliance Period in question, Providence has not made a transfer or assignment in violation of the Agreement.
6. The Sales Tax amount paid quarterly to the CDTFA (or other governmental agency to which such payments are to be made during the Term) has been made.

DATED:
PROVIDENCE PROCUREMENT COMPANY, LLC

By: _____
Its: _____