

FIRST AMENDMENT TO GROUND LEASE

THIS FIRST AMENDMENT TO GROUND LEASE (this "**Amendment**") is made as of _____, 201_, in San Francisco, California, by and between CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**" or "**Landlord**"), acting through its Public Utilities Commission ("**SFPUC**") and ORCHARD SUPPLY COMPANY, LLC, a North Carolina limited liability company ("**Tenant**").

RECITALS

THIS AMENDMENT is made with reference to the following facts and circumstances:

A. City and Tenant's predecessor in interest entered into that Ground Lease dated April 26, 1984 (the "**Lease**"), for the lease of approximately 4.7505 acres of land commonly known as 900 El Camino Real, Millbrae, San Mateo County, California, and known in SFPUC records as a portion of Parcel 29, Millbrae Pump Station Lot (the "**Premises**"), as further described in the Lease. The Premises are under SFPUC's jurisdiction.

B. The Lease provides for an initial term of 30 years, commencing May 1, 1984, and expiring April 30, 2014, with two options to extend the term for additional periods of ten (10) years each. Tenant exercised the first option to extend the term for an additional 10-year period, commencing on May 1, 2014, at an annual rent (as determined by appraiser arbitration) of One Million One Hundred Seventeen Four Hundred Thirty-two Dollars (\$1,117,432.00), subject to a rental adjustment on May 1, 2019, as required in Section 5.01(f) of the Lease.

C. SFPUC is undertaking the Regional Groundwater Storage and Recovery Project to enhance the capacity and reliability of SFPUC's regional water system. City desires to use portions of the Premises for the Project, and Tenant is willing to agree to such use, on the terms and conditions set forth in this Amendment.

ACCORDINGLY, in consideration of the matters described in the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the City and Tenant agree as follows:

1. Effective Date; Commencement Dates.

1.1 Effective Date. The date on which this Amendment shall become effective (the "**Effective Date**") is the date upon which both of the following shall have occurred: (a) City's Mayor and Board of Supervisors, in their sole and absolute discretion, shall have adopted a resolution or enacted an ordinance approving this Amendment in accordance with all applicable laws, and (b) this Amendment shall have been duly executed and delivered by the parties hereto.

1.2. Building Commencement Date. The "**Building Commencement Date**" shall be September 28, 2015. If City's contractor first enters the portion of the Premises identified as "**Build & Well Area**" on **Exhibit A** (the "**Building and Well Site**") and the Temporary Staging Area, as defined in **Section 2.2**, to commence staging and well construction for the Project pursuant to a Permit to Enter between City and Tenant ("**Permit**") before this Amendment is

executed, then such date of first entry shall be deemed the Building Commencement Date for purposes of determining the expiration date of the 18-month Building Construction Period, as defined in **Section 2.2**, and City's use of the Building and Well Site and Temporary Staging Area during the period from the Building Commencement Date until the Effective Date shall be governed by such Permit.

1.3 Utility Line Commencement Date. The "Utility Line Commencement Date" shall be the date on which City's contractor commences using the areas identified as "Temporary Work Area" on attached **Exhibit A** to commence construction of the subsurface utility lines identified on **Exhibit A** and/or to commence construction staging associated with the installation of the well station in the Building and Well Site. The Utility Line Commencement Date shall be no earlier than the Building Commencement Date and no later than nine (9) months after the Building Commencement Date. City shall provide, or cause its contractor to provide, at least fourteen (14) days' advance written notice to Tenant of the Utility Line Commencement Date. At the request of either party, Tenant and City shall confirm in writing the Utility Line Commencement Date. If City's contractor first uses the Temporary Work Area to commence construction of the subsurface utility lines before the Effective Date, pursuant to a Permit (as defined in **Section 1.2**), then such date of initial use shall be deemed the Utility Line Commencement Date for purposes of determining the expiration date of the Utility Line Installation Period (as defined in **Section 2.3**); however, City's use of the Temporary Work Area during the period from the Utility Line Commencement Date until the Effective Date shall be governed by such Permit.

2. Modification of Premises.

2.1. Permanent Deletion of Building and Well Site. On the later of the Building Commencement Date or the Effective Date, the Building and Well Site shall be deleted from the Premises for the balance of the Term, including any Extended Term. On the Building Commencement Date, Tenant shall tender possession of the Building and Well Site to City's contractor free and clear of any and all trash, vehicles, equipment, inventory, other personal property, and structures, except that Tenant, at its option, may leave the existing fence for City's contractor to demolish.

2.2. Temporary Deletion of Temporary Staging Area. Commencing on the later of the Building Commencement Date or the Effective Date, and continuing until the expiration of the Building Construction Period, as defined below, the portion of the Premises identified as "Temporary Staging Area" on **Exhibit A** (the "Temporary Staging Area") shall be deleted from the Premises. The Temporary Staging Area includes those areas shaded in Cyan, green and red (for underground utilities) where they overlap with the pink/magenta area on **Exhibit A**. On the Building Commencement Date, Tenant shall tender possession of the Temporary Staging Area to City's contractor free and clear of any and all trash, vehicles, equipment or other personal property, and structures. The "Building Construction Period" shall be the period commencing on the Building Commencement Date and expiring on the last day of the 18th full calendar month thereafter; however, City shall have the option to extend the Building Construction Period beyond that date on a month-to-month basis. A 14-day written notice will be given to Tenant if City elects to exercise its option for any such extension. For any such extension, City shall pay Tenant monthly in advance the sum of Two Thousand Sixteen Dollars (\$2,016) per month

(which is the same rate as the portion of the Compensation (as defined in **Section 4**) paid for the Temporary Staging Area for the initial 18-month Building Construction Period, prorated on a monthly basis). Upon the expiration of the Building Construction Period, City shall restore the surface of the Temporary Staging Area as provided in **Section 3**, and such space shall again be part of the Lease Premises.

City shall indemnify, defend and hold harmless (“**Indemnify**”) Tenant from and against any and all claims, costs and expenses, including, without limitation, reasonable attorneys’ fees (collectively, “**Claims**”), to the extent caused by (a) City’s use of the Temporary Staging Area during the Building Construction Period, or (b) any negligence of City or its Agents (as defined below) in, on or about the Temporary Staging Area during the Building Construction Period; provided, however, City shall not be obligated to Indemnify Tenant or its Agents to the extent any Claim arises out of the negligence or willful misconduct of Tenant or its Agents. In any action or proceeding brought against Tenant by reason of any Claim Indemnified by City hereunder, City may, at its sole option, elect to defend such Claim by attorneys in City’s Office of the City Attorney, by other attorneys selected by City, or both. City shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that Tenant shall have the right, but not the obligation, to participate in the defense of any such Claim at its sole cost. City’s obligations under this Section shall survive the expiration of the Building Construction Period. The term “**Agents**” when used in this Amendment with respect to either party shall include the agents, employees, officers and contractors of such party

2.3. Shared Use of Temporary Work Area. During the Utility Line Installation Period, as defined below, City shall have the right to use the Temporary Work Area for the installation of the subsurface water, sewer, electrical, and telephone lines in the locations identified on **Exhibit A** (the “**New Utilities**”) and for construction staging and activities associated with the installation of the well station in the Building and Well Site. The Temporary Work Area includes the portions of the areas shown in red, light blue and green that overlap with the gray area on **Exhibit A**, as well as the entire blue “**Water Out**” area shown on such Exhibit running along the boundary of the Premises to El Camino Real. Tenant and City’s contractor shall cooperate in good faith to schedule the installation of such utilities at such times and in such manner as to reasonably minimize disruption to Tenant’s operations; provided that such efforts (i) do not result in a material increase in the cost of performing the utility line installation work, (ii) do not diminish the quality of utility installation work performed, and (iii) do not unreasonably restrict Tenant’s ability to take delivery of necessary supplies and merchandise. During any scheduled installation, Tenant shall keep the Temporary Work Area free and clear of parked vehicles, equipment, supplies, merchandise and other obstructions, except for delivery trucks loading or unloading materials at Tenant’s loading dock at mutually agreed upon times. The “**Utility Line Installation Period**” shall be the period commencing on the Utility Line Commencement Date and expiring on the last day of the ninth (9th) full calendar month thereafter; however, City shall have the option to extend the Utility Line Installation Period beyond that date on a month-to-month basis. A 14-day written notice will be given to Tenant if City elects to exercise its option for any such extension. For any such extension, City shall pay Tenant monthly in advance the sum of Seven Thousand Four Hundred Seventy-nine Dollars (\$7,479) per month (which is the same rate as the portion of the Compensation (as defined in **Section 4**) paid for the Temporary Work Area for the initial Utility Line Installation Period,

prorated on a monthly basis). During the Utility Line Installation Period, the Temporary Work Area shall remain part of the Lease Premises.

City shall Indemnify Tenant from and against any and all Claims, to the extent caused by (a) City's use of the Temporary Work Area during the Utility Line Installation Period, or (b) any negligence of City or its Agents in, on or about the Temporary Work Area during the Utility Line Installation Period; provided, however, City shall not be obligated to Indemnify Tenant or its Agents to the extent any Claim arises out of the negligence or willful misconduct of Tenant or its Agents. In any action or proceeding brought against Tenant by reason of any Claim Indemnified by City hereunder, City may, at its sole option, elect to defend such Claim by attorneys in City's Office of the City Attorney, by other attorneys selected by City, or both. City shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that Tenant shall have the right, but not the obligation, to participate in the defense of any such Claim at its sole cost. City's obligations under this Section shall survive the expiration of the Utility Line Installation Period.

2.4 Maintenance, Operation and Protection of the New Utilities. Landlord's easement under Section 2.02 of the Lease to enter the Premises to repair, replace, maintain, operate and remove existing utility facilities shall extend to and include the future repair, replacement, maintenance, operation and removal of the New Utilities installed in the Temporary Work Area by City pursuant to **Section 2.3**. Tenant's obligation to use reasonable efforts to protect improvements and pipeline appurtenances and prevent damage to City's underground pipelines, under Section 2.03 of the Lease, shall extend to and include the protection of the New Utilities.

3. Restoration of Temporary Work Area and Temporary Staging Area. On the earlier of expiration of the Utility Line Installation Period (including any extension) or City's completion of the Project, City shall restore, as nearly as reasonably possible, the surface of the Temporary Work Area to its condition immediately prior to the commencement of the work related to the Project. On the earlier of expiration of the Building Construction Period (including any extension) or City's completion of the Project, City shall restore, as nearly as reasonably possible, the surface of the Temporary Staging Area to their condition immediately prior to the commencement of the work related to the Project, and such premises shall again become part of the Lease Premises.

4. Compensation. Within thirty (30) days after the Effective Date (as defined in **Section 1.1**), City shall pay Tenant the sum of Four Hundred Sixty Thousand Six Hundred Seventy-three Dollars (\$460,673.00) (the "**Compensation**") as compensation for (i) the termination of the Lease with respect to the Building and Well Site, (ii) deletion of the Temporary Staging Area from the Lease Premises during the Building Construction Period (provided that additional compensation will be payable for any extension, in accordance with **Section 2.2**), (iii) City's use of the Temporary Work Area during the Utility Line Installation Period (provided that additional compensation will be payable for any extension, in accordance with **Section 2.3**), and (iv) City's permanent use of subsurface portions of the Premises for the New Utilities. Tenant acknowledges that such payment will compensate Tenant in full, and Tenant shall not be entitled to any rental abatement or rental reduction for the permanent deletion of the Building and Well Site, the temporary deletion of the Temporary Staging Area from the

Premises, Landlord's shared use of the Temporary Work Area, or City's permanent use of the subsurface areas for the New Utilities. If City's contractor commences using any part of the Premises before the Effective Date, pursuant to a Permit, as defined in **Section 1.2**, then City shall receive a credit toward the Compensation in the amount of any use fees paid by City (either in cash or as offsets against the Lease rent) under such Permit. Upon request, Tenant shall submit any standard forms required by the City's Controller as a condition of releasing the payment, including federal form W-9 and City form P-25.

5. City Lease Provisions. The provisions set forth in attached **Exhibit B** are incorporated into and made a part of the Lease as of the Effective Date.

6. No Joint Venture. Neither this Amendment nor any activity by the City hereunder creates a partnership or joint venture between the City and Tenant relating to the Lease or otherwise. This Amendment does not constitute authorization or approval by the City of any activity conducted by Tenant, and the City shall in no way be responsible for the acts or omissions of Tenant on the Premises or otherwise.

7. Attorneys Fees. In the event a dispute arises concerning this Amendment, the party not prevailing in such dispute shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Amendment, reasonable fees of attorneys of City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

8. References. No reference to this Amendment is necessary in any instrument or document at any time referring to the Lease. Any future reference to the Lease shall be deemed a reference to such document as amended hereby.

9. Applicable Law. This Amendment shall be governed by, construed and enforced in accordance with the laws of the State of California.

10. Further Instruments. The parties hereto agree to execute such further instruments and to take such further actions as may be reasonably required to carry out the intent of this Amendment. Without limiting the foregoing, the parties agree to negotiate in good faith a memorandum of agreement setting forth their agreement concerning construction details such as scheduling of City's installation of utility lines within the Temporary Work Area.


11. Counterparts; Electronic Signature. This Amendment may be executed in counterparts. This Amendment shall be considered executed by a party when counterparts bearing the signing party's original signature are delivered to the other party or when a counterpart bearing the signature of such signing party is delivered in an Adobe .pdf file by email transmission to the other party. Such electronic signature shall be treated in all respects as having the same effect as an original signature.

12. Miscellaneous. The Lease shall remain in full force and effect as modified by this Amendment. The Lease as amended by this Amendment constitutes the entire agreement of the parties concerning the subject matter hereof, and supersedes and conceals any and all previous negotiations, agreements, or understandings, if any, regarding the matters contained herein. The execution of this Amendment shall not constitute a waiver of relinquishment of any rights that City may have relating to the Lease. Tenant and City hereby ratify and confirm all of the provisions of the Lease as amended by this Amendment.

[Remainder of page intentionally blank]

In witness whereof, the parties hereto have executed this Amendment as of the first date written above.

TENANT: ORCHARD SUPPLY COMPANY, LLC, a
North Carolina limited liability company

By: 
Name: Bob Sellen
Its: President

By: _____
Name: _____
Its: _____

LANDLORD: CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
HARLAN L. KELLY, JR.
General Manager
San Francisco Public Utilities Commission

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney


By: 
Carolyn Johnson Stein
Deputy City Attorney

EXHIBIT A

**Diagram of Temporary Work Area, Building and Well Site,
and Temporary Staging Area**

Site	APN	Total OSH Lease Area	Site Area	Type	Color
Bldg & Well Area	093-220-010	206,931 sq.ft.±	5,393 sq.ft.±	Perm. Area	Blue
Temp Work Area	093-220-010	206,931 sq.ft.±	20,005 sq.ft.±	Temp. Access Area	Gray
Sub-Surface Telephone	093-220-010	206,931 sq.ft.±	862 sq.ft.±	Perm. Underground Area	Green
Sub-Surface Water/SS/SD	093-220-010	206,931 sq.ft.±	481 sq.ft.±	Perm. Underground Area	Red
Sub-Surface Water Out	093-220-010	206,931 sq.ft.±	6,887 sq.ft.±	Perm. Underground Area	Cyan
Temp Staging	093-220-010	206,931 sq.ft.±	4,373 sq.ft.±	Temp.Const. Area	Magenta

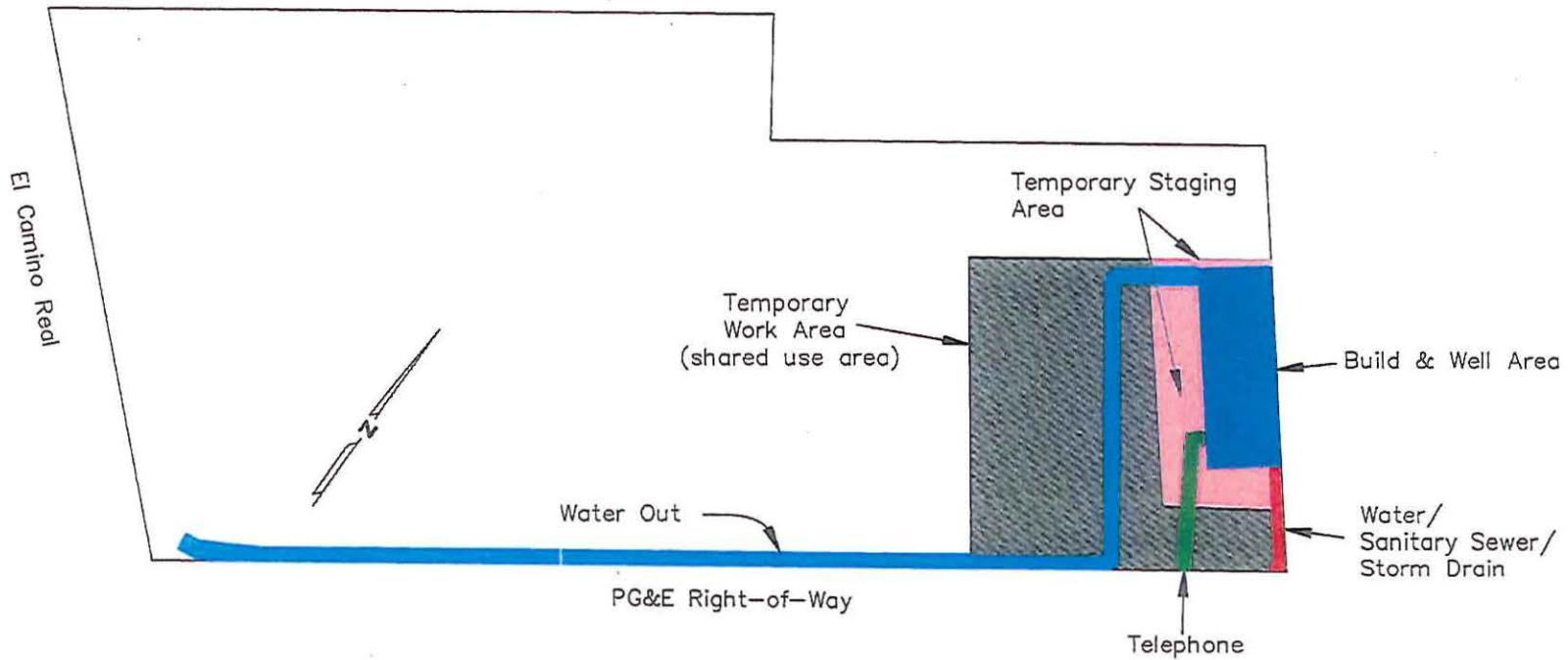


Exhibit "A"

City and County of San Francisco
Public Utilities Commission
Real Estate Services

Easement Diagram
Millbrae Corporation Yard
Conjunctive Use Project Site 13

City of Millbrae, San Mateo Co.
02/23/2015

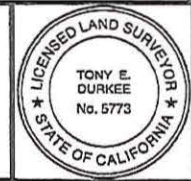


EXHIBIT B

City Lease Provisions

A. Local Hiring Requirements

If Tenant proposes to make improvements or alterations to the Premises that exceed Seven Hundred Fifty Thousand Dollars (\$750,000) in cost ("**Covered Alterations**"), unless otherwise exempt, Tenant shall comply with the Local Hiring Policy set forth in San Francisco Administrative Code Section 6.22(g) (the "**Local Hiring Policy**") in the construction or performance of the Covered Alterations. Because the Premises are located within 70 miles from the jurisdictional boundary of the City, the percentage requirements will apply in proportion to City's actual cost, if any, of the Covered Alterations compared to the total cost of the project, pursuant to Administrative Code Section 6.22(g)(3)(C). Before starting any such Covered Alterations, Tenant shall contact City's Office of Economic Workforce and Development to verify the Local Hiring Policy requirements that apply to the Improvements or Alteration, and Tenant shall comply with all such requirements. Failure to comply shall be deemed a breach of the Lease, and may subject Tenant to penalties as set forth in the Local Hiring Policy.

Any capitalized term used in this **Section A** that is not defined will have the meaning given to such term in the Local Hiring Policy.

B. Non-Discrimination in City Contracts and Benefits Ordinance

1. Section 20.10 and Exhibit F of the Lease are replaced in full with this **Section B** effective as of the Effective Date (as defined in Section 1.1 of the First Amendment to Ground Lease to which this Exhibit is attached). Section 20.10 and Exhibit F of the Lease remain applicable until the Effective Date.

2. Covenant Not to Discriminate

In the performance of the Lease, Tenant agrees not to discriminate against any Tenant employee, any City employee working with Tenant, or any applicant for employment with Tenant, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

3. Subleases and Other Subcontracts

Tenant shall include in all Subleases and other subcontracts relating to the Premises entered into or amended on or after the Effective Date a non-discrimination clause applicable to such Subtenant or other subcontractor in substantially the form of Subsection (a) above. In addition, Tenant shall incorporate by reference in all subleases and other subcontracts entered into or amended on or after the Effective Date the provisions of Sections 12B.2(a), 12B.2(c)-(k),

and 12C.3 of the San Francisco Administrative Code and shall require all Subtenants and other subcontractors under such subleases and subcontracts to comply with such provisions. Tenant's failure to comply with the obligations in this Subsection shall constitute a material breach of the Lease.

4. Non-Discrimination in Benefits

As of the Effective Date, Tenant does not, and will not during the Term, in any of its operations in San Francisco, on real property owned by City, or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

5. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of the Lease as though fully set forth in this Amendment. Tenant shall comply fully with and be bound by all of the provisions that apply to the Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Tenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Amendment may be assessed against Tenant and/or deducted from any payments due Tenant.

C. Notification of Limitations on Contributions

By its execution of this Amendment, Tenant acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that City elective officer serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Tenant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Tenant further acknowledges that the prohibition on contributions applies to each entity constituting Tenant; each member of Tenant's board of directors, and Tenant's chief executive officer, chief financial officer, and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in

Tenant; any subcontractor listed in the contract with City; and any committee that is sponsored or controlled by Tenant. Additionally, Tenant acknowledges that Tenant must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Tenant shall provide City with the names of each person, entity, or committee described above.

D. MacBride Principles - Northern Ireland

City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Tenant acknowledges that it has read and understands the above statement of City concerning doing business in Northern Ireland.

E. Bottled Drinking Water

Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the San Francisco Bottled Water Ordinance, as set forth in San Francisco Environment Code Chapter 24, including the administrative fines, remedies, and implementing regulations provided in that statute, as the same may be amended from time to time. The provisions of Chapter 24 are incorporated by reference and made a part of the Lease as though fully set forth.

F. Tropical Hardwood and Virgin Redwood Ban

City urges companies not to import, purchase, obtain, or use for any purpose any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Tenant shall not provide any items to the construction of the Improvements or the Alterations, or otherwise in the performance of the Lease that are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. If Tenant fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Tenant shall be liable for liquidated damages for each violation in any amount equal to Tenant's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

G. Prohibition of Tobacco Sales and Advertising

Tenant acknowledges and agrees that no advertising or sale of cigarettes or tobacco products is allowed on the Premises. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product.

H. Prohibition of Alcoholic Beverage Advertising

Tenant acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Premises. For purposes of this Section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This

advertising prohibition includes the placement of the name of a company producing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product

I. Disclosure

Tenant understands and agrees that the City's Sunshine Ordinance (San Francisco Administrative Code Chapter 67) and the State Public Records Law (California Gov't Code Section 6250 et seq.), apply to the Lease and any and all records, information, and materials submitted to the City in connection with the Lease. Accordingly, any and all such records, information, and materials may be subject to public disclosure in accordance with the City's Sunshine Ordinance and the State Public Records Law. Tenant hereby authorizes the City to disclose any records, information, and materials submitted to the City in connection with the Lease.

J. Food Service Waste Reduction

Tenant agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided in that statute, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated in the Lease by reference and made a part of the Lease as though fully set forth in this Amendment. This provision is a material term of the Lease. By entering into this Amendment, Tenant agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine. Without limiting City's other rights and remedies, Tenant agrees that the sum of One Hundred Dollars (\$100.00) liquidated damages for the first breach, Two Hundred Dollars (\$200.00) liquidated damages for the second breach in the same year, and Five Hundred Dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Amendment was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Tenant's failure to comply with this provision.

K. Criminal History in Hiring and Employment Decisions

Unless exempt, Tenant agrees to comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions; "**Chapter 12 T**"), which are hereby incorporated as may be amended from time to time, with respect to applicants and employees of Tenant who would be or are performing work at the Premises.

Tenant shall incorporate by reference the provisions of Chapter 12T in all subleases of some or all of the Premises, and shall require all Subtenants to comply with such provisions. Tenant's failure to comply with the obligations in this Subsection shall constitute a material breach of the Lease.

Tenant and any Subtenants shall not inquire about, require disclosure of, or if such information is received, base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (i) Arrest not leading to a Conviction, unless the Arrest is

undergoing an active pending criminal investigation or trial that has not yet been resolved; (ii) participation in or completion of a diversion or a deferral of judgment program; (iii) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (iv) a Conviction or any other adjudication in the juvenile justice system; (v) a Conviction that is more than seven years old, from the date of sentencing; or (vi) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

Tenant and any Subtenants shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in Subsection (c) above. Tenant and Subtenants shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

Tenant and any Subtenants shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Tenant or subtenant at the Premises, that the Tenant or subtenant will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

Tenant and any Subtenants shall post the notice prepared by the Office of Labor Standards Enforcement (“OLSE”), available on OLSE’s website, in a conspicuous place at the Premises and at other workplaces within San Francisco where interviews for job opportunities at the Premises occur. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Premises or other workplace at which it is posted.

Tenant and any Subtenants understand and agree that upon any failure to comply with the requirements of Chapter 12T, City may pursue any rights or remedies available under Chapter 12T or the Lease, including but not limited to a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of the Lease.

If Tenant has any questions about the applicability of Chapter 12T, it may contact the City’s Real Estate Division for additional information. City’s Real Estate Division may consult with the Director of the City’s Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

