

TAX SHARING AGREEMENT

This Tax Sharing Agreement ("Agreement") is entered into by and between the City of Tracy ("City"), a California municipal corporation, and Fisher Scientific Company L.L.C., a Delaware limited liability company ("Fisher Scientific"). City and Fisher Scientific are sometimes referred to individually as "Party" and collectively as "Parties" herein.

RECITALS

This Agreement is made in reference to the following matters to which the Parties mutually agree and adopt as a statement of mutual understanding and intent.

A. Fisher Scientific, a company with its principal executive offices in Pittsburgh, Pennsylvania, sells products into the laboratory, research, safety and healthcare markets and other goods and services to its customers in California, as elsewhere;

B. Fisher Scientific is currently distributing products through a distribution center in Santa Clara, California; however, due to, among other factors, capacity constraints, lack of controlled temperature storage, and an aging infrastructure at its current distribution facilities in Santa Clara, California, Fisher Scientific is closing its current distribution facilities;

C. As preparation for the closure of its distribution center in Santa Clara, Fisher Scientific evaluated several locations for a new distribution center and determined that the City best suited its needs because of its geographical location and its labor force. Therefore, Fisher Scientific has signed a letter of intent to purchase a real property site with the intention of designing, constructing, and operating a new distribution center on it;

D. Fisher Scientific anticipates that the new distribution center will generate a minimum of one hundred million dollars in annual sales;

E. The City has evaluated the costs and benefits of entering into this Agreement with Fisher Scientific and has determined that it is in the City's interests because of the community benefits, including increased capital investment, job creation, and receipt of new net sales tax;

F. As of the effective date of the Agreement, Fisher Scientific will distribute its products from a substantially larger, controlled temperature storage capable, state-of-the-art facility in City;

G. The reorganization of distribution in California will result under California law in changes to the manner and place of payment of local sales and use taxes; and

H. Fisher Scientific has requested assistance from City in return for establishing, locating and operating a Distribution Center (as defined in this Agreement) in the City.

NOW, THEREFORE, City and Fisher Scientific enter into this Agreement to accomplish their respective and mutual purposes as set forth above.

1. DEFINITIONS.

Unless the context otherwise requires, the terms defined in this Section will have the meanings defined herein.

1.1 "City" will mean and refer to City of Tracy, a California municipal corporation.

1.2 "City Payment" means, as to a particular Fiscal Quarter during the Term, the obligation of City to pay to Fisher Scientific for such Fiscal Quarter a payment equaling fifty percent (50%) of the Local Sales Tax Revenues attributable to Taxable Sales for that Fiscal Quarter.

1.3 "Business Day" means a day which is not a Saturday, Sunday or legal holiday on which banking institutions in the State of California or City are closed.

1.4 "Calendar Quarter" means a three-month period ending March 31, June 30, September 30 or December 31.

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

1.6 "Contract Year" shall mean each consecutive twelve (12) month period during the Term commencing on the Effective Date.

1.7 "Data and Documentation" will have the meaning set forth in Section 2.7.

1.8 "Designated Sales Territory" means the geographical boundaries of the distribution area served by the Distribution Center which is located within the jurisdiction of City. Except as otherwise provided in this Agreement, Fisher Scientific will have the right in its business discretion to adjust or modify the Designated Sales Territory to correspond to its business needs and requirements.

1.9 "Dispute Notice" will have the meaning set forth in Section 22.1.

1.10 "Distribution Center" means the Fisher Scientific distribution center which will be located in the jurisdiction of City.

1.11 "Effective Date" will have the meaning set forth in Section 4.

1.12 "Enforced Delays" will have the meaning set forth in Section 19.

1.13 "Event of Default" will have the meaning set forth in Section 2.12.

1.14 "Fiscal Quarter" means the portion of a Calendar Quarter that is within the Term of this Agreement.

1.15 "Local Sales Tax Revenues" means that portion of the Sales Tax, if any, attributable to Taxable Sales, paid by Fisher Scientific and which is allocated and received by the City pursuant to the Sales Tax Law. Local Sales Tax Revenues will not include: (i) Penalty Assessments, (ii) any Sales Tax levied by, collected for or allocated to the State of California, the County of San Joaquin, or a district or any entity (including an allocation to a statewide or countywide pool) other than City, (iii) any administrative fee charged by the CDTFA, (iv) any Sales Tax subject to any sharing, rebate, offset or other charge imposed pursuant to any applicable provision of federal, state or local (except City's) law, rule or regulation, (v) any Sales Tax attributable to any transaction not consummated within the Term, (vi) any Sales Tax (or other funds measured by Sales Tax) required by the State of California to be paid over to another public entity (including the State) or set aside and/or pledged to a specific use other than for deposit into or payment from the City's general fund, or (vii) any Sale Tax paid in error or which is subject to correction, adjustment or offset pursuant to an amended return or otherwise where the effect of the error, adjustment or amendment is to change the amount of Sales Tax attributable to Taxable Sales and allocated to the City.

1.16 "Material" means any and all tangible personal property which is offered for sale or lease by Fisher Scientific and which is subject to the Sales Tax Law.

1.17 "Fisher Scientific" will include any affiliate or subsidiary of Fisher Scientific, any purchasing company established by and under the control or Fisher Scientific, and any permitted nominee, assignee or successor to Fisher Scientific's rights, powers and responsibilities.

1.18 "Penalty Assessments" means penalties, assessments, collection costs and other costs, fees or charges resulting from late or underpaid payments of Sales Tax and which are levied, assessed or otherwise collected from Fisher Scientific.

1.19 "Prohibited Financial Assistance" will mean any direct or indirect payment, subsidy, rebate or other similar or dissimilar monetary or non-monetary benefit, including, without implied limitation, payment of land subsidies, relocation expenses, financial incentives, public financings, property or sales tax relief or rebates, relief from public improvement obligations, payment for public improvements to or for the benefit of Fisher Scientific, and any action contrary to any applicable laws.

1.20 "Resolution Period" will have the meaning set forth in Section 22.3.

1.21 "Sales Tax" means all sales and use taxes levied under the authority of the Sales Tax Law attributable to Taxable Sales, excluding Sales Tax which is to be refunded to Fisher Scientific because of an overpayment of Sales Tax.

1.22 "Sales Tax Law" means (i) California Revenue and Taxation Code Section 6001 et seq., and any successor law thereto, including the Bradley-Burns Uniform Local Sales and Use Tax Law (Rev. Tax Code § 7200 et seq.), and any successor law thereto, (ii) any legislation

allowing other public agency with jurisdiction in the City to levy any form of Sales Tax on the operations of Fisher Scientific and/or the Distribution Center, and (iii) regulations of the CDTFA and other binding rulings and interpretations relating to (i) and (ii) hereof.

1.23 "Taxable Sales" means the commercially reasonable business practices and activities associated with Fisher Scientific's sale or lease of Material within the Designated Sales Territory and which are: (i) subject to the payment of Sales Tax pursuant to the Sales Tax Law and (ii) as to which the reported "point of sale" to the CDTFA is the City. "Taxable Sales" does not include sales or use taxes attributable to sales or leases made and reported for sales territories in California other than the Designated Sales Territory.

1.24 "Taxable Sales Threshold" for any Contract Year shall mean Taxable Sales in the amount of ten million dollars.

1.25 "Term" will mean the period commencing on the Effective Date, and ending 20 years after the Effective Date, unless otherwise extended in accordance with this Agreement.

2. LOCATION AND OPERATION; APPLICABILITY TO LOCAL SALES AND USE TAXES.

2.1 Location and Operation Covenant. Fisher Scientific hereby represents, warrants and covenants that it shall, on or before the commencement of the Term, establish a Distribution Center within the jurisdictional boundaries of the City and conduct its Taxable Sales operations for the Designated Sales Territory from the Distribution Center in accordance with this Agreement, the Sales Tax Law, and all other applicable provisions of local, state and federal law. Fisher Scientific shall use commercially reasonable, good faith efforts to market, promote and administer its Taxable Sales activities, with the objective of maximizing the amount of Local Sales Tax Revenues within the Designated Sales Territory.

2.2 Distribution Center Covenant Not Exclusive: Waiver and Release of Claims. City understands, acknowledges and agrees that Fisher Scientific has established and may establish other Distribution Centers ("Additional Offices") outside the City. With the exception of Prohibited Financial Assistance, nothing in this Agreement limits Fisher Scientific's right to conduct sales and other business and operations at or from the other locations. In consideration of the mutual promises, conditions and covenants of this Agreement, City hereby waives and releases any objections, claims or demands of any kind with respect to (i) the Additional Offices, (ii) the payment of taxes for sales conducted by or through the Additional Offices, (iii) the existence of or course of performance by Fisher Scientific under Tax Sharing Agreements that comply with all applicable laws, including without limitation Cal. Govt. Code. Section 53084.5, and are similar in concept to this Agreement entered into by Fisher Scientific with any of the cities in which such Additional Offices are located, or (iv) the allocation of taxable activity to those cities by Fisher Scientific in the course of its business and operations in California. City likewise covenants not to sue, and not to commence arbitration proceedings under this Agreement or to commence administrative proceedings of any nature before the CDFTA or otherwise, or to challenge such allocations or activities in any way to the extent of objections, claims or demands of any kind which are waived or released by this Section 2.2. The waivers

and releases provided in this Section 2.2 do not limit City's right to enforce this Agreement under Section 22 and any other provision of this Agreement related to the enforcement of rights created by this Agreement.

2.3 No Prohibited Financial Assistance. Notwithstanding anything in Section 2.2, Fisher Scientific covenants and agrees for the Term that Fisher Scientific will not directly or indirectly solicit, accept or enter into any agreement concerning any Prohibited Financial Assistance from any other public or private person or entity, to the extent such Prohibited Financial Assistance is given for the purpose of causing or would result in either Fisher Scientific's relocation from the City or an Event of Default by Fisher Scientific.

2.4 City as Point-of-Sale. Without limiting the generality of the foregoing, Fisher Scientific will obtain a retail sales tax permit from the CDTFA. Fisher Scientific agrees to conduct its business so that the place of sale for all Taxable Sales consummated at the Distribution Center during the Term will be to City pursuant to the Sales Tax Law. In all sales reports filed by Fisher Scientific with the CDTFA relating to Taxable Sales consummated at the Distribution Center, where such a designation is permitted or required under the Sales Tax Law, Fisher Scientific will specify the City as the place of sale.

2.5 Payment of City Payment. In consideration of the promises, covenants, terms and conditions of this Agreement, City will make the City Payment to Fisher Scientific as follows:

2.5.1 Consistent with the definition set forth in section 1.2 of this Agreement, City will pay Fisher Scientific, for each Fiscal Quarter during the Term, a payment equaling fifty percent (50%) of the Local Sales Tax Revenues received by the City and attributable to Fisher Scientific's Taxable Sales reported for that Fiscal Quarter.

2.5.2 Within thirty (30) days following the end of each Fiscal Quarter within the Term, Fisher Scientific will submit to City the Data and Documentation. Contingent upon City's receipt of the Local Sales Tax Revenues generated during the subject Fiscal Quarter, City will then determine the City Payment due to Fisher Scientific for such Fiscal Quarter. Subject to satisfaction or written waiver by the City of the conditions precedent set forth in Section 2.6, within thirty (30) days following the City's receipt from the CDTFA of the Local Sales Tax Revenues attributable to such Fiscal Quarter, City will pay to Fisher Scientific any City Payment due for such Fiscal Quarter. All City Payments will be sent to the address provided in Section 15. In no event will the City have any obligation to make payments under this Agreement from any income other than the Local Sales Tax Revenues.

2.6 Conditions Precedent to City Payments. City's obligations under Section 2.5 hereof are contingent on a Contract Year basis upon Fisher Scientific meeting the Taxable Sales Threshold in the Contract Year. For clarity, upon Fisher Scientific meeting the Taxable Sales Threshold in any Contract Year, the City Payment shall be calculated from dollar-one of the Local Sales Tax Revenues for that Contract Year. In addition, City's obligations under Section 2.5 hereof are contingent on a Fiscal Quarter-to-Fiscal Quarter basis upon the satisfaction of the following conditions precedent in each Fiscal Quarter:

2.6.1 Fisher Scientific having, for the entirety of such Fiscal Quarter, completely fulfilled its material obligations under this Agreement; and

2.6.2 The City's receipt of the Local Sales Tax Revenues attributable to the Fiscal Quarter and the City's receipt and reasonable approval of the Data and Documentation, certified as complete and accurate by an authorized Fisher Scientific officer; and

2.6.3 Should any one or more of the foregoing conditions precedent not be satisfied for each Fiscal Quarter, then City will have no obligation to make any City Payment to Fisher Scientific for such Fiscal Quarter.

2.7 Data and Documentation. For the purposes of this Agreement, the term "Data and Documentation" means any and all statements and any other documents evidencing the amount of Taxable Sales generated within the applicable Fiscal Quarter, including: copies of all schedules and reports filed by Fisher Scientific with CDTFA during that Fiscal Quarter, including, without implied limitation, those relating to Taxable Sales and Sales Tax paid by Fisher Scientific relating to Taxable Sales during such Fiscal Quarter.

2.8 No Other Compensation. Both City and Fisher Scientific expressly acknowledge and agree that Fisher Scientific will receive no compensation under this Agreement other than the City Payment. Fisher Scientific will not be entitled to any reimbursement or other compensation from City for any costs incurred by Fisher Scientific in performing or preparing to perform its obligations under this Agreement.

2.9 Recapture of City Payments. If, at any time during or after the Term of this Agreement, CDTFA or any court determines that all or any portion of the Local Sales Tax Revenues received by the City were improperly allocated and/or paid to the City, and if CDTFA or any court requires redistribution, repayment or offsets against any future Sales Tax payments, or otherwise recaptures from the City any such Local Sales Tax Revenues finally determined by CDTFA or the court to have been improperly allocated or paid, then Fisher Scientific will, within thirty days after written demand from the City, repay all City Payments (or applicable portions thereof) theretofore paid to Fisher Scientific which are attributable to such repaid, offset, or recaptured Local Sales Tax Revenues. If Fisher Scientific fails to make such repayment within thirty days after the City's written demand, then such obligation will accrue interest from the date of the City's original written demand at the then-maximum legal rate imposed by the California Code of Civil Procedure on prejudgment monetary obligations, compounded monthly, until paid. Nothing in this section 2.9 will require repayment by Fisher Scientific of any City Payments made or received with respect to Local Sales Tax Revenues for any periods other than those periods for which the CDTFA or the court has required redistribution, repayment, offset, or recapture by or against City.

2.10 Authorization to Release Information. Fisher Scientific, on behalf of itself and any affiliate, and to the extent such consent is required by any applicable legal provision, consents to the City's review and use of the information contained in the Data and Documentation and as otherwise required by this Agreement to the extent necessary for the City to fulfill its obligations under this Agreement and any applicable laws.

2.11 CDTFA Determination; Reconciliation.

2.11.1 Each Party agrees that, for purposes of accounting and reconciliation of Taxable Sales, to rely upon the CDTFA's determination of Taxable Sales and the corresponding sales tax allocation. Either Party may rely on the CDTFA accounting or record keeping for a determination of the amount of Taxable Sales made or sales tax distributed. This provision in no way limits either Party's ability to challenge CDTFA discretionary decision making.

2.11.2 Each City Payment will be accompanied by a statement setting forth the calculations made to determine the amount of such disbursement and setting forth all disbursements made to date. Each Party will have the right to contest any of the calculations or information contained in said statement or the determined amount of payment upon written notice to the other Party within sixty (60) calendar days of the date of the statement or City Payment. If the challenging Party can show to the reasonable satisfaction of the other Party, within sixty (60) calendar days of receiving such notice, that the amount of a City Payment was incorrect, either City will disburse to Fisher Scientific the correct amount due, or Fisher Scientific will reimburse City for any amount received in excess of the correct amount due.

2.12 Default. Each of the following will constitute an "Event of Default":

2.12.1 Failure by either Party to comply with and observe any of the conditions, terms, or covenants set forth in this Agreement, if such failure remains uncured within thirty (30) days after written notice of such failure from the non-defaulting Party to the defaulting Party in the manner provided herein or, with respect to a default that cannot be cured within thirty (30) days, if the defaulting Party fails to commence such cure within such thirty (30) day period or thereafter fails to diligently and continuously proceed with such cure to completion.

2.12.2 Any representation or warranty contained in this Agreement or in any application, financial statement invoice, certificate, or report submitted pursuant to this Agreement proves to have been incorrect in any material respect when made.

3. **REPRESENTATIONS AND WARRANTIES.**

3.1 City's Representations and Warranties. City represents and warrants to Fisher Scientific that, to City's actual current knowledge:

3.1.1 City is a public agency and political subdivision of the State of California, exercising governmental functions and powers as granted or delegated by the Constitution and laws of the State of California;

3.1.2 City has taken all actions required by law to approve the execution of this Agreement;

3.1.3 City's entry into this Agreement and the performance of City's obligations under this Agreement do not violate any contract, agreement, or other legal obligation of City;

3.1.4 There are no pending lawsuits or other actions or proceedings which would prevent or impair the timely performance of City's obligations under this Agreement; and

3.1.5 City has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Agreement has been duly authorized and no other action by City is requisite to the valid and binding execution, delivery and performance of this Agreement, except as otherwise expressly set forth herein.

3.2 Material Consideration. The representations and warranties set forth above are of material consideration to Fisher Scientific and City acknowledges that Fisher Scientific is relying upon the representations set forth above in undertaking Fisher Scientific's obligations set forth in this Agreement.

3.3 Binding. All of the terms, covenants and conditions of this Agreement will be binding on and will inure to the benefit of City and its nominees, successors and assigns.

3.4 Fisher Scientific's Representations and Warranties. Fisher Scientific represents and warrants to City that, to Fisher Scientific's actual current knowledge:

3.4.1 Fisher Scientific is a duly formed limited liability company under the laws of Delaware, and is in good standing and qualified to do business under the laws of the State of California;

3.4.2 Fisher Scientific has taken all actions required by law to approve this Agreement;

3.4.3 Fisher Scientific's entry into this Agreement and the performance of Fisher Scientific's obligations under this Agreement do not violate any contract, agreement or other legal obligation of Fisher Scientific;

3.4.4 There are no pending lawsuits or other actions or proceedings which would prevent or impair the timely performance of Fisher Scientific's obligations under this Agreement; and

3.4.5 Fisher Scientific has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Agreement have been duly authorized and no other action by Fisher Scientific is requisite to the valid and binding execution, delivery and performance of this Agreement, except as otherwise expressly set forth herein.

3.5 Material Consideration. The representations and warranties set forth herein are material consideration to City and Fisher Scientific acknowledges that City is relying upon the representations set forth above in undertaking City's obligations set forth above.

3.6 Binding. All of the terms, covenants and conditions of this Agreement will be binding on and will inure to the benefit of Fisher Scientific and its permitted nominees, successors and assigns. Wherever the term "Fisher Scientific" is used herein or therein, such term will include any permitted nominee, assignee or successor of Fisher Scientific.

4. **EFFECTIVE DATE.**

This Agreement will become effective ("Effective Date") at the earliest when all of the following are true: (i) this Agreement has been approved by the City Council of City following all legally required notices and hearings; (ii) this Agreement has been executed by the appropriate authorities of City and Fisher Scientific; (iii) Fisher Scientific has terminated its physical presence within the territorial jurisdiction of Santa Clara County, California; and (iv) Fisher Scientific has commenced operations of its Distribution Center.

5. **PUBLIC BENEFITS.**

5.1 Community Participation. As additional consideration for the benefits conferred under this Agreement, Fisher Scientific further agrees to annually participate in supporting community benefit events and activities consistent with Fisher Scientific's policies. Fisher Scientific will provide a report summarizing its participation in community events to the City upon request.

5.2 Employment Outreach for Local Residents. A goal of the City in entering into this Agreement is to foster employment opportunities for Tracy residents. To that end, Fisher Scientific will use commercially reasonable efforts to recruit and hire local residents for any full and part time employment opportunities as determined by Fisher Scientific in its sole discretion. Fisher Scientific will conduct local on-site and/or off-site job recruitment and will notify the City of the location, dates and times for all on and off-site job recruitment efforts prior to the date Fisher Scientific begins accepting applications or commencing employee recruitment efforts. The City will be authorized to post and advertise the job recruitment information provided on the City's website, and other job recruitment sites within the region. Fisher Scientific will inform its purchasers and lessees of the provisions of these requirements. Offers of employment will be at Fisher Scientific's sole discretion and all employment will be at-will employment. Nothing in this paragraph will require Fisher Scientific to offer employment to individuals who are not otherwise qualified for such employment. Without limiting the generality of the foregoing, the provisions of this Section 5.2 are not intended, and will not be construed, to benefit or be enforceable by any person whatsoever other than City.

6. **TERMINATION.**

6.1 Event of Default. This Agreement may be terminated by a Party at its option in the event of the other Party's Event of Default. Such termination will not limit or otherwise modify the rights and remedies available to the non-defaulting Party. Termination will be effective thirty (30) days after a notice of termination is received.

6.2 City Termination. This Agreement may be terminated by the City at its option upon one (1) year's prior written notice to Fisher Scientific in the event that the Taxable Sales for any Contract Year during the Term of this Agreement do not meet or exceed the Taxable Sales Threshold.

6.3 Fisher Scientific Termination. Notwithstanding any other provision of this Agreement, subject to each Party's compliance with section 2.2 subclause (iii) of this Agreement, Fisher Scientific will have the right at its sole option to terminate this Agreement, relocate the Distribution Center to any other city or county in California or elsewhere; and to reallocate Taxable Sales accordingly and in conformance with applicable Sales Tax Law.

7. OPTION TO RENEW.

This Agreement and the Term hereof is subject to renewal for one additional 20-year term at the option of Fisher Scientific upon notice given to City not later than six months prior to the expiration of the original term.

8. AMENDMENT; MODIFICATION.

At any time, City and Fisher Scientific may determine that this Agreement should be amended for the mutual benefit of the Parties, or for any other reason. Any such amendment to this Agreement will only be by written agreement between City and Fisher Scientific. City and Fisher Scientific agree to consider reasonable requests for amendments to this Agreement which may be made by any of the Parties hereto, lending institutions, bond counselor financial consultants, although neither Party will be obligated to approve any such amendment. Any amendments to this Agreement must be in writing and signed by the appropriate authorities of both City and Fisher Scientific.

9. CALIFORNIA LAW.

This Agreement will be construed and governed in accordance with the procedural and substantive laws of the State of California, without regard to conflict of laws principles.

10. EXECUTION IN COUNTERPARTS.

This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original, and all of which will constitute but one (1) and the same instrument.

11. BUSINESS DAYS.

Any act or thing required to be done or exist on any date set forth herein which does not constitute a Business Day in any year will be deemed to be done or to exist on such date if such act or thing is done or exists on the next date which constitutes a Business Day.

12. TAX CONSEQUENCES.

Fisher Scientific will be responsible for federal, state and/or local income taxes resulting from its receipt of City Payments.

13. RIGHTS NOT GRANTED.

This Agreement is not, and will not be construed to be, a statutory development agreement under California Government Code Section 65864 et seq. or a disposition and development agreement under California Health and Safety Code Section 33000 et seq. This Agreement is not, and will not be construed to be, an approval of or an agreement to issue permits or a granting of any right or entitlement by City concerning any project, development, or construction by Fisher Scientific in the City. This Agreement does not, and will not be construed to, exempt Fisher Scientific in any way from the requirement to obtain permits and/or other discretionary or non-discretionary approvals as may be necessary for the development, maintenance and operation of any project, development or construction of Fisher Scientific within the City. This Agreement does not, and will not be construed to, exempt Fisher Scientific from the application and/or exercise of City's or City's power of eminent domain or its police power, including, but not limited to, the regulation of land uses and the taking of any actions necessary to protect the health, safety and welfare of its citizenry.

14. CONSENT.

Whenever consent or approval of any Party is required under this Agreement, that Party will not unreasonably withhold, delay, or condition such consent or approval unless a different standard is otherwise provided by a specific provision of this Agreement.

15. NOTICES AND DEMANDS.

All notices or other communications required or permitted between City and Fisher Scientific under this Agreement will be in writing, and may be (i) personally delivered, (ii) sent by United States registered or certified mail, postage prepaid, return receipt requested, (iii) sent via electronic means including facsimile or email, or (iv) sent by nationally recognized overnight courier service (e.g., Federal Express), and addressed to the Parties at the following addresses, subject to the right of either Party to designate a different address for itself by notice similarly given:

To City:

City Clerk's Office
333 Civic Center Plaza
Tracy, CA 95376

With a copy to:

City Attorney's Office

333 Civic Center Plaza
Tracy, CA 95376

To Fisher Scientific:

Fisher Scientific Company L.L.C.
Attn: Vice President Supply Chain
300 Industry Drive
Pittsburgh, PA 15275

With a copy to:

Fisher Scientific Company L.L.C.
Attn: Tax Department
300 Industry Drive
Pittsburgh, PA 15275

And a further copy to:

Fisher Scientific Company L.L.C.
Attn: Legal Department
300 Industry Drive
Pittsburgh, PA 15275

Any notice so given by registered or certified United States mail will be deemed to have been received on the second Business Day after the same is deposited in the United States mail. Any notice not so given by registered or certified mail, such as notices delivered by telecopier or courier service (e.g., Federal Express), will be deemed received upon actual receipt of the same by the Party to whom the notice is given.

16. NONLIABILITY OF PARTIES' OFFICIALS AND EMPLOYEES.

16.1 No officer, elected official, contractor, consultant attorney or employee of City will be personally liable to Fisher Scientific, any voluntary or involuntary successors or assignees of Fisher Scientific, or any lender or other party holding an interest in Fisher Scientific's property, in the event of any default or breach by City, or for any amount which may become due to Fisher Scientific or to its successors or assignees, or on any obligations arising under this Agreement.

16.2 No officer, official, contractor, consultant, attorney or employee of Fisher Scientific will be personally liable to City, any voluntary or involuntary successors or assignees of City in the event of any default or breach by Fisher Scientific, or for any amount which may become due to City or to its successors or assignees, or on any obligations arising under this Agreement.

17. CONFLICT OF INTERESTS.

No officer, elected official, contractor, consultant, attorney or employee of City will have any personal interest, direct or indirect, in this Agreement nor will any such officer, elected official, contractor, consultant, attorney or employee participate in any decision relating to this Agreement which unlawfully affects his/her personal interests or the interests of any corporation, partnership or association in which he/she is directly or indirectly interested.

18. ENTIRE AGREEMENT.

This Agreement contains all of the terms and conditions agreed upon by the Parties. No other understanding, oral or otherwise, in direct conflict with this Agreement will be deemed to exist or to bind any of the parties hereto. All prior written or oral offers, counteroffers, memoranda of understanding, proposals and the like are superseded by this Agreement.

19. EXTENSIONS AND DELAYS; NO EXCUSE DUE TO ECONOMIC CHANGES.

Time is of the essence in the performance of the obligations of City and Fisher Scientific under this Agreement. In addition to specific provisions of this Agreement, providing for extensions of time, times for performance hereunder will be extended where delays in performance are due to war, insurrection; any form of labor dispute; lockouts; riots; floods; earthquakes; fires; acts of God or of third parties; third party litigation or orders and judgments of courts of competent jurisdiction; acts of a public enemy; acts of governmental authorities; epidemics; quarantine restrictions; and freight embargoes (collectively, "Enforced Delays") provided, however, that the Party claiming the extension notify the other Party of the nature of the matter causing the default; and, provided further, that the extension of time will be only for the period of the Enforced Delays; and provided further, that the obligations of both Parties are equally suspended during the Enforced Delay. In no event will either Party be deemed in default of this Agreement because of an Enforced Delay event.

20. THIRD PARTY CHALLENGES.

The Parties will work in good faith with each other to beneficially resolve any third party demands, suits, proceedings, causes of action or claims of any kind arising under the Sales Tax Law or any other alleged ground or basis to the extent arising from this Agreement or the Parties' performance thereof, including, without limitation, the payment or reporting of City Payments by Fisher Scientific to the City ("Third Party Challenge").

21. ATTORNEYS' FEES.

In the event of the bringing of an arbitration, action or suit by a Party hereto against another Party hereunder by reason of any breach of any of the covenants or agreements or any intentional inaccuracies in any of the representations and warranties on the part of the other Party arising out of this Agreement or any other dispute between the Parties concerning this Agreement, each Party will be responsible for all of its own costs and expenses, including attorneys' fees and expert witness fees.

22. INFORMAL DISPUTE RESOLUTION.

22.1 The Parties will attempt in good faith to resolve any differences, controversy or claim arising out of or relating to this Agreement promptly by negotiations between senior officials of the Parties who have authority to settle the difference or controversy, in accordance with state law and Tracy Municipal Code. The disputing Party may give the other Party written notice that a dispute exists between them so that the provision of this Sections 22 will apply ("Dispute Notice").

22.2 Within twenty (20) days after receipt of a Dispute Notice, the receiving Party will submit to the disputing Party a written response. The Dispute Notice and response will 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 will represent that Party. The senior officials will 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. 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 will be deemed to have run so that the dispute may immediately be referred to arbitration in accordance with Section 22.3 below.

22.3 If the matter has not been resolved pursuant to Section 22.2 within ninety (90) days of the date of the Dispute Notice ("Resolution Period"), (which period may be extended by mutual agreement), or if any Party will not participate in such procedure, the Parties may elect to settle the dispute by non-binding arbitration in San Joaquin County, California, in accordance with the American Arbitration Association Rules. Each Party to such dispute will appoint an arbitrator, and such arbitrators will appoint an additional arbitrator. If, within thirty (30) days following the expiration of the Resolution Period, any Party has not appointed an arbitrator, the American Arbitration Association will, at the request of the other Party, appoint an arbitrator on that Party's behalf.

23. JURISDICTION AND VENUE.

Any legal action or proceeding concerning this Agreement will be filed and prosecuted in the appropriate State of California court in the County of San Joaquin, California. Both Parties irrevocably consent to the personal jurisdiction of that court.

24. INTERPRETATION.

City and Fisher Scientific acknowledge that this Agreement is the product of mutual arms-length negotiation and drafting and that both Parties have been represented by legal counsel in the negotiation and drafting of this Agreement. Accordingly, the rule of construction which provides that ambiguities in a document will be construed against the drafter of that document will have no application to the interpretation and enforcement of this Agreement. In any action or proceeding to interpret or enforce this Agreement, the finder of fact may refer to any extrinsic

evidence not in direct conflict with any specific provision of this Agreement to determine and give effect to the intention of the Parties with respect to any ambiguities in this Agreement.

25. NO WAIVER.

Failure to insist on any occasion upon strict compliance with any of the terms, covenants or conditions hereof will not be deemed a waiver by any Party of such term, covenant or condition, nor will any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment by any Party of such other right or power at any other time or times.

26. SUCCESSORS AND ASSIGNS.

The terms, covenants and conditions of this Agreement will be binding upon and inure to the benefit of the Parties hereto and their voluntary and involuntary successors and assigns.

27. NO THIRD PARTY BENEFICIARIES.

The performance of the respective obligations of City and Fisher Scientific under this Agreement are not intended to benefit any party other than City or Fisher Scientific, except as may be expressly provided otherwise herein. No person or entity not a signatory to this Agreement will have any rights or causes of action against any Party to this Agreement as a result of that Party's performance or non-performance under this Agreement, except as may be expressly provided otherwise herein.

28. WARRANTY AGAINST PAYMENT OF CONSIDERATION.

Fisher Scientific 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 28, will not include persons to whom fees are paid for professional services if rendered by attorneys, financial consultants, accountants, engineers, architects and the like when such fees are considered necessary by Fisher Scientific.

29. SEVERABILITY.

City and Fisher Scientific declare that the provisions of this Agreement are severable. If it is determined by a court of competent jurisdiction that any term, condition or provision hereof is void, voidable, or unenforceable for any reason whatsoever, then such term, condition or provision will be severed from this Agreement and the remainder of the Agreement enforced in accordance with its terms.

30. FURTHER ACTS.

City and Fisher Scientific each agree to take such additional acts and execute such other documents as may be reasonable and necessary in the performance of their obligations hereunder. The foregoing will not, however, be deemed to require City to exercise its discretion

in any particular fashion or to provide to Fisher Scientific any remedy or claim for damages against City based on the lawful exercise of City's discretion.

31. NO ASSIGNMENT, TRANSFER, PLEDGE OR HYPOTHECATION.

Fisher Scientific may not assign, transfer, encumber or hypothecate its rights or obligations under this Agreement without the express written consent of City, which may be withheld in City's sole and absolute discretion. Any unpermitted assignment, transfer, pledge, encumbrance, or hypothecation, or any attempt to do so, will not confer any rights upon the purported assignee or transferee and will constitute Fisher Scientific's immediate and incurable material default of this Agreement, and City may, without providing Fisher Scientific notice or opportunity to cure, exercise those remedies available to City pursuant to Section 6.1.

32. RELATIONSHIP OF PARTIES.

The Parties will not be deemed in a relationship of partners or joint ventures by virtue of this Agreement, nor will either Party be an agent, representative, trustee or fiduciary of the other. Neither Party will have any authority to bind the other to any agreement.

33. NON-DEDICATION OF PROPERTY.

The execution of this Agreement by Fisher Scientific does not result in the dedication of any Fisher Scientific property for public use.

34. INDEMNIFICATION FOR POTENTIAL CLAIMS

Fisher Scientific will defend (with counsel approved by City), fully indemnify, and hold harmless City, any agency or instrumentality thereof, and its/their respective agents, officers, officials, attorneys, consultants, employees, and volunteers (each, a "**City Party**") from and against any and all administrative and/or legal claims, actions, or proceedings arising out this Agreement (a) made by a city or other taxing authority, provided such actions include at least one (1) claim under California Government Code Section 53084.5, or (b) made by any other claimant to the extent, and only to the extent, that such claims, actions or proceedings arise under California Government Code Section 53084.5 ("**Covered Claims**"). Fisher Scientific's indemnity obligations will not be limited by any coverage exclusions or other provisions in any policy of insurance.

City will promptly notify Fisher Scientific of any Covered Claims, will cooperate fully in the defense thereof, and will have the right to pre-approve any material decision involved in defending any Covered Claims, including settlement, which approval shall not unreasonably be withheld or delayed. If Fisher Scientific does not promptly defend any such Covered Claims, City may (but is not obligated to) defend and/or settle such Covered Claims in the time and manner that City, in its sole discretion, determines appropriate. Fisher Scientific will bear any and all losses, damages, injuries, liabilities, costs, and expenses (including fees, costs, and expenses for attorneys, consultants, expert witnesses, court costs, litigation and alternative dispute resolution) arising out of or related to any Covered Claims, whether incurred or payable

by Fisher Scientific, City, or awarded to any third party, and Fisher Scientific will pay to City, within ten days after City's written demand therefor, any such costs incurred or payable by City.

The provisions of this Section 34 will survive expiration or termination of this Agreement.

35. COMPLIANCE WITH APPLICABLE LAW

Each Party shall comply with all applicable laws, regulations and final court orders.

The individual(s) executing this Agreement is or are authorized to execute this Agreement on behalf of the respective Party.

WHEREFORE the Parties have entered into this Agreement as of the date of approval by the City Council of City as attested to by its authorized officer below.

CITY OF TRACY

AS APPROVED _____

Attested and agreed:

Approved as to Form:

[Name and Title]

[Name and Title]

FISHER SCIENTIFIC COMPANY L.L.C.

By: _____