

## LOCATION AGREEMENT

This Location Agreement ("Agreement") is entered into by and between the City of Tracy ("City"), a California municipal corporation, and Medline Industries, Inc., an Illinois corporation ("Medline"). City and Medline 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. Medline, a corporation with its principal executive offices in Mundelein, Illinois, sells medical supplies and other goods and services to its customers in California, as elsewhere;

B. Medline has in the past sold and distributed products in California through a sales subsidiary headquartered in Ontario, California, but intends as of the effective date of this Agreement to sell to California customers through Medline's own sales and distribution system;

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

D. Medline has requested assistance from City in return for establishing, locating and operating a Sales Office (as defined in this Agreement) in the City.

E. City, in consideration of the obligations and covenants of Medline hereunder, desires to provide City Payments (as defined) to Medline as an incentive for establishing, locating and operating a Sales Office in the City. City has determined that the establishment of a Sales Office in connection with Medline's local warehouse distribution facility will attract additional businesses and investment in the community due to the increased services and economic activity which the establishment of the Sales Office will bring.

NOW, THEREFORE, City and Medline 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 shall have the meanings defined herein.

1.1 "City" shall 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 Medline 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 "Data and Documentation" shall have the meaning set forth in Section 2.7.

1.5 "Designated Sales Territory" means the geographical boundaries of the sales, service and distribution area served by the warehouse, shipping point and Sales Office which are located within the jurisdiction of City. Except as otherwise provided in this Agreement, Medline shall have the right in its business discretion to adjust or modify the Designated Sales Territory to correspond to its business needs and requirements.

1.6 "Dispute Notice" shall have the meaning set forth in Section 22.1.

1.7 "Effective Date" shall have the meaning set forth in Section 4.

1.8 "Enforced Delays" shall have the meaning set forth in Section 19.

1.9 "Event of Default" shall have the meaning set forth in Section 2.14.

1.10 "Fiscal Quarter" means a period of three (3) consecutive calendar months during the Term, commencing with the Effective Date.

1.11 "Local Sales Tax Revenues" means that portion of the Sales Tax, if any, attributable to Taxable Sales, paid by Medline and which is allocated and received by the City pursuant to the Sales Tax Law. Local Sales Tax Revenues shall 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 SBE, (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.

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

1.13 "Medline" shall include any affiliate or subsidiary of Medline, any purchasing company established by and under the control or Medline, and any permitted nominee, assignee or successor to Medline's rights, powers and responsibilities.

1.14 "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 Medline.

1.15 "Prohibited Financial Assistance" shall 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, and payment for public improvements to or for the benefit of Medline.

1.16 "Resolution Period" shall have the meaning set forth in Section 22.3.

1.17 "Sales Office" means the Medline sales and distribution center which shall be located in the jurisdiction of City.

1.18 "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 Medline because of an overpayment of Sales Tax.

1.19 "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 Medline and/or the Sales Office, and (iii) regulations of the SBE and other binding rulings and interpretations relating to (i) and (ii) hereof.

1.20 "SBE" means the California State Board of Equalization and any successor agency.

1.21 "Taxable Sales" means the commercially reasonable business practices and activities associated with Medline'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 SBE is the City based on the location of the Sales Office in 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.

1.22 "Term" shall mean the period commencing on the Effective Date, and ending on December 31, 2036, 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. Medline hereby represents, warrants and covenants that it shall, on or before the commencement of the Term, establish a Sales Office within the jurisdictional boundaries of the City and shall thereafter, for the full Term, conduct its Taxable Sales operations for the Designated Sales Territory from the Sales Office in accordance with this Agreement, the Sales Tax Law, and all other applicable provisions of local, state and federal law. Medline 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 Sales Office Covenant Not Exclusive; Waiver and Release of Claims. City understands, acknowledges and agrees that Medline has established or will establish other Sales Offices ("Additional Offices"), in addition to the Sales Office referred to in Section 2.1, above, for Designated Sales Territories associated with those Additional Offices. Nothing in this Agreement limits Medline'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 Medline under Location Agreements similar in concept to this Agreement entered into or to be entered into by Medline with any of the cities in which such Additional Offices are located, or (iv) in reference to the allocation of taxable activity to those cities or either of them by Medline 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 SBE 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. Medline covenants and agrees for the Term that Medline 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 Medline's relocation from the City or an Event of Default by Medline.

2.4 City as Point-of-Sale. Without limiting the generality of the foregoing, Medline shall obtain, and will maintain throughout the entire Term a retail sales tax permit from the SBE. Medline agrees to conduct its business so that the place of sale for all Taxable Sales consummated at the Sales Office during the Term will be to City pursuant to the Sales Tax Law. In all sales reports filed by Medline with the SBE relating to Taxable Sales consummated at the Sales Office, where such a designation is permitted or required under the Sales Tax Law, Medline shall 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 shall make the City Payment to Medline as follows:

2.5.1 Consistent with the definition set forth in section 1.2 of this Agreement, City shall pay Medline, 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 Medline's Taxable Sales for that Fiscal Quarter; provided, however, that the earliest Fiscal Quarter for which such City Payments shall be due and payable shall be the Fiscal Quarter commencing one year after the Effective Date.

2.5.2 Within thirty (30) days following the end of each Fiscal Quarter within the Term, Medline shall 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 Medline 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 SBE of the Local Sales Tax Revenues attributable to such Fiscal Quarter, City shall pay to Medline any City Payment due for such Fiscal Quarter. All City Payments shall be sent to the address provided in Section 13. In no event shall 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 Fiscal Quarter-to-Fiscal Quarter basis and, for each Fiscal Quarter within the Term, City's obligations to make any payments to Medline hereunder are expressly contingent upon the satisfaction of the following conditions precedent in each Fiscal Quarter:

2.6.1 Medline 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 Medline officer.

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

2.7 Data and Documentation. For the purposes of this Agreement, the term "Data and Documentation" means any and all bills, invoices, schedules, vouchers, statements, receipts, cancelled checks, 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 Medline with SBE during that Fiscal Quarter, including, without implied limitation, those relating to Taxable Sales occurring at the Sales Office and Sales Tax paid by Medline relating to Taxable Sales occurring at the Sales Office during such Fiscal Quarter.

2.8 Adequate Consideration. Each City Payment due and payable hereunder shall constitute the total payment to Medline for the Fiscal Quarter to which it relates, and shall be paid by City for and in consideration of the location and operation of Medline in the City during such Fiscal Quarter. The Parties hereto have determined and agreed that the City Payment due and payable during each Fiscal Quarter represents fair consideration to Medline for its covenants and obligations hereunder.

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

2.10 No Carry Forward or Back. City and Medline acknowledge and agree that the calculation and determination of all financial components of the Parties' rights and obligations under this Agreement shall be computed on a Fiscal Quarter-to-Fiscal Quarter basis. Except as otherwise expressly provided by this Agreement, Sales Tax revenues arising in one Fiscal Quarter may not be carried forward or back to any prior or future Fiscal Quarter, it being the express agreement and understanding of the Parties that for each Fiscal Quarter the financial obligations of the Parties and satisfaction of the conditions precedent to such obligations shall be determined and made independently of any other Fiscal Quarter.

2.11 Recapture of City Payments. If, at any time during or after the Term of this Agreement, SBE 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 SBE requires redistribution, repayment or offsets against future Sales Tax payments, or otherwise recaptures from the City any such Local Sales Tax Revenues finally determined by SBE to have been improperly allocated or paid, then Medline shall, within thirty (30) days after written demand from the City, repay all City Payments (or applicable portions thereof) theretofore paid to Medline which are attributable to such repaid, offset or recaptured Local Sales Tax Revenues. If Medline fails to make such repayment within thirty (30) days after the City's written demand, then such obligation shall 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 2.11 shall require repayment by Medline of any City Payments made or received with respect to Local Sales Tax Revenues for any periods other than those periods for which the SBE has required redistribution, repayment, offset or recapture by or against City.

2.12 Authorization to Release Information. Medline, 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.

2.13 Audit and Reconciliation.

2.13.1 *Audit of Books and Records.* Either Party shall, upon no less than seventy-two (72) hours prior written request from the other Party, make the entirety of its books and records relating to the calculation and determination of that Party's rights and obligations under this Agreement available at no cost to the requesting Party and/or its designees (including its accountants and/or attorneys) and shall direct its accountants and other consultants and contractors in possession of its books and records to do likewise; provided, however, that nothing herein shall be deemed to abridge or constitute a waiver of any Party's evidentiary rights and privileges arising pursuant to any provision of law, including, without implied limitation, the California Evidence Code, California Government Code (including the Public Records Act), the Code of Civil Procedure, federal statutes and state or federal judicial decisions. Furthermore, all such non-privileged books and records may be made available and introduced as evidence in any arbitration proceeding brought pursuant to the provisions of Section 19.3 hereof or as otherwise ordered by any court of competent jurisdiction. Each Party shall bear the costs of its own auditors, experts and other consultants it may engage to complete its investigation of the other Party's books and records.

2.13.2 *Reconciliation.* Each City Payment shall 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 shall 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 shall disburse to Medline the correct amount due, or Medline shall reimburse City for any amount received in excess of the correct amount due.

2.14 Default. Each of the following shall constitute an "Event of Default":

2.14.1 Failure by a 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. However, if a different period, notice requirement, or remedy is specified under any other section of this Agreement, then the specific provision shall control.

2.14.2 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 Medline 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 City's entry into this Agreement and the performance of City's obligations under this Agreement do not constitute a violation of any state or federal statute or judicial decision to which City is subject;

3.1.5 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;

3.1.6 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; and

3.1.7 The individual(s) executing this Agreement is or are authorized to execute this Agreement on behalf of City.

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

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

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

3.4.1 Medline is a duly formed Illinois corporation, and is in good standing and qualified to do business under the laws of the State of California;

3.4.2 The individuals executing this Agreement are authorized to execute this Agreement on behalf of Medline;

3.4.3 Medline has taken all actions required by law to approve this Agreement;

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

3.4.5 Medline's entry into this Agreement and the performance of Medline's obligations under this Agreement do not constitute a violation of any state or federal statute or judicial decision to which Medline is subject;

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

3.4.7 Medline 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 Medline is requisite to the valid and binding execution, delivery and performance of this Agreement, except as otherwise expressly set forth herein.

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

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

**4. EFFECTIVE DATE.**

4.1 This Agreement will become effective ("Effective Date") on the earliest date on which both 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 Medline; provided, however, that if both of the foregoing conditions precedent have not occurred by December 31, 2015, this Agreement shall not become effective and any prior signatures or approvals of the Parties shall be deemed void and of no force or effect.

4.2 Pursuant to section 2.5.1 of this Agreement, the first Fiscal Quarter for which City Payments shall be required shall be the quarter commencing January 1, 2017.

**5. PUBLIC BENEFITS.**

5.1 Community Participation. As additional consideration for the benefits conferred under this Agreement, Medline further agrees to annually participate in supporting community benefit events and activities by donating to such events consistent with Medline's policies. Medline will provide a report summarizing its contributions to 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, Medline shall use commercially reasonable efforts to recruit and hire local residents for any full and part time employment opportunities as determined by Medline in its sole discretion. Medline shall conduct local on-site and/or off-site job recruitment and shall notify the City of the location, dates and times for all on and off-site job recruitment efforts prior to the date Medline begins accepting applications or commencing employee recruitment efforts. The City shall be authorized to post and advertise the job recruitment information provided on the City's website, and other job recruitment sites within the region. Medline will inform its purchasers and lessees of the provisions of these requirements. Offers of employment shall be at Medline's sole discretion and all employment shall be at-will employment. Nothing in this paragraph shall require Medline 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 5.3 are not intended, and shall not be construed, to benefit or be enforceable by any person whatsoever other than City.



**6. TERMINATION.**

In addition to all other rights and remedies granted to the Parties under this Agreement or available to them in equity or at law, any Party may terminate this Agreement and all of its executory obligations hereunder without cost or liability upon any of the following:

6.1 This Agreement may be terminated by a Party at its option in the event of the other Party's Event of Default or the discovery of such an Event of Default. Such termination shall not limit or otherwise modify the rights and remedies available to the non-defaulting Party.

6.2 In addition to its right to terminate upon the other Party's Event of Default, either Party shall have the right to terminate this Agreement and all of both Parties' executory obligations hereunder without cause or without cost or liability to either Party upon one (1) years' prior written notice to the other Party of the terminating Party's election to terminate this Agreement. Such notice of termination shall be given, if ever, as of the first day of a Fiscal Quarter such that the termination shall be effective as of the last day of the fourth Fiscal Quarter following the notice of termination. Although the Parties shall be excused from any further obligation under this Agreement which accrues following the effective date of termination, the City shall, subject to satisfaction of all conditions and requirements of this Agreement, make any City Payments due for any Fiscal Quarter which concludes prior to the effective date of such termination and Medline shall pay on demand any offset or repayment obligation arising under this Agreement, even if arising after the effective date of termination. The foregoing obligations shall survive the termination of this Agreement.

6.3 This Agreement may be terminated not less than 90 days' prior to written notice by either party if the SBE issues a final decision reallocating Local Sales Tax Revenues or any material portion thereof pursuant to 18 Cal. Code of Regulations Section 1807 from the City to any other jurisdiction, provided, however, that no right of termination under this Section 6.3 shall arise if the basis for reallocation found by the SBE does not have prospective operation or is not curable by the parties acting in good faith.

6.4 Notwithstanding any other provision of this Agreement, in the event of a notice of termination by City to Medline, Medline shall have the right at its sole option to relocate the Sales Office to any other city or county in California or elsewhere from and after the date of the notice; 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 Medline's option by 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 Medline may determine that this Agreement should be amended for the mutual benefit of the Parties, or for any other reason, including an amendment to induce Medline to maintain its operations in the City when this Agreement could otherwise be terminated. Any such amendment to this Agreement shall only be by written agreement between City and Medline. City and Medline 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 shall 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 Medline.

9. **CALIFORNIA LAW.**

This Agreement shall 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 shall be deemed an original, and all of which shall 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 shall 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.**

Medline shall 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 shall 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 shall 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 Medline in the City. This Agreement does not, and shall not be construed to, exempt Medline 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 Medline within the City. This Agreement does not, and shall not be construed to, exempt Medline 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 shall 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 Medline under this Agreement shall 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 by telecopier, 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:

With a copy to:

To Medline:

Medline Industries, Inc.  
One Medline Place  
Mundelein, IL 60060  
Attn: Ale Liberman

With a copy to:

Medline Industries, Inc.  
One Medline Place  
Mundelein, IL 60060  
Attn: Eric Gerstein

Any notice so given by registered or certified United States mail shall 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), shall 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 shall be personally liable to Medline, any voluntary or involuntary successors or assignees of Medline, or any lender or other party holding an interest in Medline's property, in the event of any default or breach by City, or for any amount which may become due to Medline 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 Medline shall be personally liable to City, any voluntary or involuntary successors or assignees of City in the event of any default or breach by Medline, 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 shall have any personal interest, direct or indirect, in this Agreement nor shall 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 shall 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 Medline under this Agreement. In addition to specific provisions of this Agreement, providing for extensions of time, times for performance hereunder shall 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 shall 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 shall 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 Medline to the City ("Third Party Challenge"). The Parties shall each bear their own costs, expert fees, attorneys' fees, and other fees incurred in connection with any 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 then, in that event, the prevailing Party in such action or dispute, whether by final judgment or arbitration award, shall be entitled to have and recover of and from the other Party all costs and expenses of suit or claim, including reasonable attorneys' fees and expert witness fees. Any judgment, order or award entered in any final judgment or award shall contain a specific provision providing for the recovery of all costs and expenses of suit or claim, including actual attorneys' fees and expert witness fees (collectively, "Costs") incurred in enforcing, perfecting, and executing such judgment or award. Costs shall include, without implied limitation, attorneys' and experts' fees, costs and expenses incurred in the following: (i) post judgment motions and appeals, (ii) contempt

proceedings, (iii) garnishment, levy and debtor and third party examination; (iv) discovery; and (v) bankruptcy litigation.

## **22. INFORMAL DISPUTE RESOLUTION.**

22.1 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 senior officials of the Parties who have authority to settle the difference or controversy. The disputing Party may give the other Party written notice that a dispute exists between them so that the provision of this Sections 19 shall apply ("Dispute Notice").

22.2 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 senior officials 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. 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 arbitration in accordance with Section 4.20.2 below.

22.3 If the matter has not been resolved pursuant to Section 4.20.1 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 dispute shall be exclusively and finally settled by arbitration in San Joaquin County, California, in accordance with the American Arbitration Association Rules. Each Party to such dispute shall appoint an arbitrator, and such arbitrators shall 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 shall, at the request of the other Party, appoint an arbitrator on that Party's behalf. The judgment upon any award rendered by arbitration shall be final and binding upon the disputing Parties and may be entered by any court having the jurisdiction thereof. The arbitration shall be in lieu of any other remedy and the award shall be final, binding and enforceable upon the disputing Parties. The arbitrators shall have the right to award costs as provided for in Section 4.19.

## **23. JURISDICTION AND VENUE.**

Any legal action or proceeding concerning this Agreement shall 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 Medline 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 shall be construed against the drafter of that document shall 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 shall not be deemed a waiver by any Party of such term, covenant or condition, nor shall 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 shall 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 Medline under this Agreement are not intended to benefit any party other than City or Medline, except as may be expressly provided otherwise herein. No person or entity not a signatory to this Agreement shall 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.**

Medline warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration or obtaining this Agreement. Third parties, for the purposes of this Section 4.27, shall 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 Medline.

**29. SEVERABILITY.**

City and Medline 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 shall be severed from this Agreement and the remainder of the Agreement enforced in accordance with its terms.

**30. FURTHER ACTS.**

City and Medline 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 shall not, however, be deemed to require City to exercise its discretion in any particular fashion or to provide to Medline any remedy or claim for damages against City based on the lawful exercise of City's discretion.

**31. NO ASSIGNMENT, TRANSFER, PLEDGE OR HYPOTHECATION.**

Medline 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, shall not confer any rights upon the purported assignee or transferee and shall constitute Medline's

immediate and incurable material default of this Agreement, and City may, without providing Medline notice or opportunity to cure, exercise those remedies available to City pursuant to Section 4.5 or 4.6.

**32. RELATIONSHIP OF PARTIES.**

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

**33. NON-DEDICATION OF PROPERTY.**

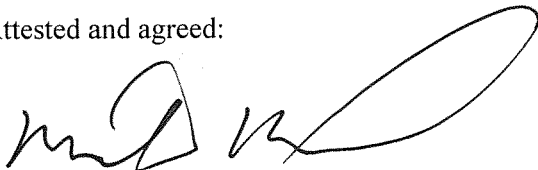
The execution of this Agreement by Medline does not result in the dedication of any Medline property for public use.

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 December 31, 2015

Attested and agreed:



[Name and title] Michael Maciel, Mayor

MEDLINE INDUSTRIES, INC.



By: Kristofer Howard, CFO

Approved as to Form:

