IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION

| | | |
|---|---|---|
| UNITED STATES OF AMERICA, | ) | |
| | ) | Criminal No. 1:08-cr-26-DLH |
| Plaintiff, | ) | |
| | ) | **DEFERRED PROSECUTION** |
| -v- | ) | **AGREEMENT** |
| | ) | |
| FISHER SAND & GRAVEL CO., | ) | |
| | ) | |
| Defendant. | ) | |

The United States Department of Justice, Tax Division, and the United States Attorney's Office for the District of North Dakota (the "Government") and the defendant Fisher Sand & Gravel Co. ("FSG") and its subsidiaries, General Steel and Supply Company, Fisher Sand & Gravel – New Mexico, Inc., and Smyth Asphalt Mines, Inc. (collectively "FSG and Subsidiaries"), by their General Counsel and undersigned attorneys, pursuant to the authority granted by their Board of Directors in the form of a Board Resolution, attached hereto as Exhibit A, hereby enter into this Deferred Prosecution Agreement (the "Agreement").

## RELATED PARTIES

1. As used in this Agreement, "FSG" includes any and all divisions and affiliates of Fisher Sand & Gravel Co., Inc. that report income and expenses on FSG and Subsidiaries' consolidated Forms 1120, U.S. Corporate Income Tax Returns, including but not limited to, Arizona Drilling & Blasting, Fisher Grading and Excavation, Fisher Ready Mix, Southwest Asphalt, and Southwest Asphalt Paving. FSG and Subsidiaries represent, as set forth in the

attached Board Resolution, that undersigned General Counsel is authorized to execute this Agreement on behalf of FSG and Subsidiaries as defined above.

## THE CRIMINAL INDICTMENT

2. On December 11, 2008, a Superseding Indictment returned by a federal grand jury was filed in the United States District Court for the District of North Dakota, Southeastern Division, charging FSG with one count of conspiracy to defraud the United States by impeding, impairing, obstructing, and defeating the lawful government functions of the Internal Revenue Service of the Department of the Treasury of the United States of America ("IRS"), in the ascertainment, computation, assessment, and collection of federal corporate and individual income taxes with respect to tax years 2001, 2002, 2003 and 2004, in violation of 18 U.S.C. § 371.

3. The Superseding Indictment alleges that FSG, Micheal Fisher, Amiel Schaff, Clyde Frank, and others known and unknown to the grand jury conspired to defraud the United States by (a) causing the personal expenses of Micheal Fisher and other Fisher family members to be paid by and through defendant FSG; (b) falsifying entries on the books and records of FSG to conceal these payments; (c) concealing these payments from FSG's outside accountants; (d) filing and causing to be filed materially false Forms 1120, U.S. Corporate Income Tax Returns for FSG and Subsidiaries for tax years 2001, 2002, 2003 and 2004; and (e) filing and causing to be filed materially false Forms 1040, U.S. Individual Income Tax Returns, for Micheal Fisher for tax years 2001, 2002, 2003 and 2004. Jury trial is currently scheduled for June 1, 2009.

## ACCEPTANCE OF RESPONSIBILITY FOR VIOLATION OF LAW

4. FSG admits and accepts that, with respect to tax years 2001, 2002, 2003, and 2004, as set forth in the Statement of Facts, attached hereto as Exhibit B:

a. FSG, acting through its principal officers, directors, and its accounting employees caused the personal expenses of Micheal Fisher and other Fisher family members to be paid for by FSG;

b. FSG's officers and accounting department personnel concealed the nature of these expenses by causing these expenses to be accounted for in the books and records of FSG as business expenses;

c. FSG's officers and accounting department personnel knew that expenses accounted for as business expenses in the books and records of FSG were personal expenses rather than business expenses;

d. FSG's officers and accounting personnel provided false and inaccurate books and records and made false statements to FSG's outside accountants during FSG's annual audits and during the process of having FSG's corporate income tax returns prepared;

e. FSG, acting through its officers and accounting personnel, willfully filed false corporate tax returns for tax years 2001 through 2004 on which the personal expenses of Micheal Fisher and other Fisher family members were deducted as business expenses;

f. the improper deductions caused FSG's income to be materially understated; and

g. FSG's officers and accounting personnel knowingly and intentionally concealed Micheal Fisher's and other Fisher family members' receipt of income in the form of corporate distributions from the United States by failing to report these payments to the Internal Revenue Service or Micheal Fisher and other Fisher family members.

5. FSG admits, accepts, and acknowledges that it is responsible for the acts and omissions of its officers, directors, employees, and agents, as set forth in the Statement of Facts.

6. FSG represents to the Government that the Statement of Facts has been reviewed by the Board of Directors and any officer, employee or agent deemed necessary by FSG to confirm the facts set forth therein. FSG, through its undersigned authorized representative represents that the Statement of Facts contains truthful and accurate statements based upon FSG's and undersigned counsel's review of the discovery material provided to FSG by the Government and FSG's internal investigation.

7. Pursuant to this Agreement, FSG agrees that it shall pay to the United States a total of $ 1,168,141.00 (the "Total Settlement Amount"). The Total Settlement Amount includes (i) $668,141.00 which includes restitution for unpaid corporate income taxes, a fraud penalty pursuant to 26 U.S.C. § 6663, and interest computed to April 15, 2009 (the "Interest Calculation Date") arising from the conduct set forth in the Statement of Facts with respect tax years 2001 through 2004 (collectively, the "IRS Fraud Amount"), all of which shall be payable to the

Internal Revenue Service; and (ii) a monetary penalty of $500,000, which shall be payable to the United States Department of Justice (the "Fine Amount").

8. FSG agrees that it is liable for the fraud penalty under 26 U.S.C. § 6663 with respect to the amount of restitution paid pursuant to this Agreement. FSG and Subsidiaries agree that they will sign any IRS forms deemed necessary by the IRS to enable the IRS to make an immediate assessment of the IRS Fraud Amount which includes the fraud penalty under 26 U.S.C. § 6663. Further, should the payment of the IRS Fraud Amount be received after the Interest Calculation Date, FSG agrees to pay to the IRS any additional interest with respect to the IRS Fraud Amount, which shall be calculated as of the date the IRS receives the full payment of the IRS Fraud Amount.

9. FSG shall make full payment of the Total Settlement Amount no later than two (2) calendar days after the Court approves this Agreement.

10. FSG and Subsidiaries agree not to file any claim for refund for any part of the IRS Fraud Amount paid pursuant to this Agreement. FSG and Subsidiaries further agree not to challenge or dispute any part of the IRS Fraud Amount in any subsequent judicial or administrative proceeding.

11. FSG acknowledges that the payment of the Total Settlement Amount is a final payment and shall not be refunded: (a) if the Government moves to dismiss the Superseding Indictment pursuant to this Agreement; or (b) should the Government later determine that FSG or any related entity bound by this Agreement has breached this Agreement and bring a prosecution against FSG or any other such related entity. Further, nothing in this Agreement

shall be deemed an agreement by the United States that the Fine Amount is the maximum criminal fine that may be imposed in the event of any such prosecution and the Government shall not be precluded in any such prosecution from arguing that the Court should impose a higher fine. The Government agrees, however, that in the event of a breach of this Agreement and a subsequent prosecution against FSG or any related entity bound by this Agreement, it will recommend to the Court that the Fine Amount paid by FSG pursuant to this Agreement be credited toward any fine ordered by the Court as part of any judgment.

12. Except as specifically set forth in paragraph 7 with respect to the IRS Fraud Amount, nothing in this Agreement shall limit the IRS in its lawful examination, determination, assessment, or collection of any taxes, penalties or interest due from the defendant for the time periods covered by this Agreement or any other time period. FSG and Subsidiaries agree that this Agreement will not satisfy, settle, or compromise FSG and Subsidiaries' obligation to pay the balance of any remaining civil liabilities, including tax, additional tax, additions to tax, interest, and penalties, owed to the IRS for the time periods covered by this agreement or any other time period.

13. The Government acknowledges that as part of its cooperation with the IRS, FSG and Subsidiaries has expressed a desire to enter into a closing agreement with the IRS pursuant to 26 U.S.C. § 7121 contemporaneously with the filing of this Agreement, which will resolve the civil examination of FSG and Subsidiaries with respect to tax years 2001, 2002, 2003 and 2004. In addition to civil tax adjustments, the closing agreement will include the IRS Fraud Amount.

The parties understand that any payments made to the IRS pursuant to this Agreement will be credited to the amount due under the closing agreement.

14. FSG agrees that no portion of the Total Settlement Amount that it has agreed to pay to the United States pursuant to the terms of this Agreement is deductible on any Federal or State tax or information return.

15. FSG and Subsidiaries agree that they will not make any claim for insurance coverage to any insurance carrier under any insurance policy for any portion of the Total Settlement Amount paid pursuant to this Agreement.

## COOPERATION

16. FSG and Subsidiaries acknowledge and understand that their cooperation with the criminal investigation and prosecution of the above-captioned case that has been provided as of the date of this Agreement, and its pledge of continuing cooperation, are important and material factors underlying the Government's decision to enter into this Agreement. Therefore, FSG and Subsidiaries agree to continue to cooperate fully and actively with the Government and the IRS regarding any matter relating to the Government's investigation and prosecution about which FSG and Subsidiaries have knowledge or information.

17. FSG and Subsidiaries agree that their continuing cooperation with the Government's investigation and prosecution shall include, but not be limited to, the following:

a. Completely and truthfully disclosing all information in their possession to the Government about which the Government may inquire in connection with its investigation and prosecution as it relates to the unlawful payment of personal expenses by FSG and Subsidiaries, and the deduction of such personal expenses on their consolidated corporate income tax returns;

b. Assembling, organizing, and providing, in a responsive and expedited fashion, and, upon request, all documents, records, information, and other evidence in FSG and Subsidiaries' possession, custody, or control as may be requested by the Government or the Internal Revenue Service related to FSG's conduct set forth in the Statement of Facts or related to the results of its internal investigation;

c. Providing testimony or information, including testimony and information necessary to identify or establish the original location, authenticity, or other basis for admission into evidence of documents or physical evidence in any criminal or other proceeding as requested by the Government, including information and testimony concerning the Government's investigation and prosecution of the above-captioned case, including but not limited to the conduct set forth in the Statement of Facts. With respect to any issue relevant to the Government's investigation and prosecution, FSG and Subsidiaries shall use its best efforts to make available for interviews or testimony, any present or former directors, officers, employees, agents and consultants, with the exception of any former director, officer, employee, or agent who is a charged defendant in any criminal case at the time of the Government's request for such interview or testimony. Cooperation under this paragraph will include, but not be limited to, identification of witnesses who may have information regarding the subject matter of the investigation and prosecution.

d. Upon request of the Government, with respect to any issue relevant to its investigation and prosecution, FSG and Subsidiaries shall designate knowledgeable employees, agents, or attorneys to provide to the Government the information and materials required by this paragraph.

e. Nothing in this Agreement shall require FSG and Subsidiaries to waive any of the protections of the attorney-client privilege, attorney work-product doctrine or any other applicable privilege.

f. With respect to any information, testimony, documents, records, or physical evidence provided by FSG and Subsidiaries, whether prior to or after the date of this Agreement, FSG and Subsidiaries consent to any and all disclosures of such materials to the Internal Revenue Service as the Government, in its sole discretion, deems appropriate. With respect to any such materials that constitute "matters occurring before a grand jury" within the meaning of Rule 6(e) of the Federal Rules of Criminal Procedure, FSG and Subsidiaries further consent to (i) any order sought by the Government permitting such disclosures; and (ii) the Government's ex parte or in camera application for such order.

g. As part of FSG and Subsidiaries continuing cooperation, and to effectuate the remedial measures set forth below in paragraphs 18 through 21, FSG agrees to cooperate with the IRS with respect to the ascertainment, computation, and payment of FSG and Subsidiaries' corporate income tax for tax years 2005, 2006, 2007, 2008 and 2009. The Government acknowledges that FSG and Subsidiaries recently engaged its outside accounting firm to conduct an internal audit of FSG books and rccords in order to detect and report to the Government and the IRS improper personal expenses that were paid by FSG and Subsidiaries and deducted on FSG and Subsidiaries' corporate income tax returns during tax years 2001, 2002, 2003, 2004, 2005, 2006, and 2007. The Government acknowledges that as part of its cooperation, FSG and Subsidiaries have provided the results of that internal investigation to the Government. FSG consents to the disclosure of the results of its internal investigation to the Internal Revenue Service. FSG and Subsidiaries' cooperation shall include continuing to voluntarily identify to the IRS such improperly paid and deducted personal expenses, and assembling, organizing, and providing, in a responsive and expedited fashion, and, upon request, any documents, records, or information in FSG and Subsidiaries' possession, custody, or control as may be requested by the Internal Revenue Service to effectuate the purposes of this paragraph.

h. FSG and Subsidiaries agree to execute any forms deemed necessary by the IRS in order to ascertain and compute the corporate federal income tax, penalties, and interest of FSG and Subsidiaries for tax years 2005, 2006, 2007, 2008, and 2009, including but not limited to, Forms 872-I, Consent to Extend the Time to Assess Tax As Well As Tax Attributable to Items of a Partnership, as requested by the IRS.

i. FSG and Subsidiaries agree that their obligations to cooperate will continue after the dismissal of the Superseding Indictment, as requested by the Government, and FSG and Subsidiaries will continue to fulfill the cooperation obligations set forth in this Agreement in connection with any investigation, criminal prosecution or civil proceeding brought by the Government or by or against the IRS or the United States relating to or arising out of the conduct set forth in the Superseding Indictment and the Statement of Facts. FSG and Subsidiaries' obligation to cooperate is not intended to apply in the event that a prosecution by the Government against FSG or any related entity bound by this Agreement is pursued and not deferred.

## COMPLIANCE AND REMEDIAL MEASURES

18. The Government acknowledges that FSG and Subsidiaries have drafted a Code of Business Ethics and Conduct, attached hereto as Exhibit C. Among other things, the Code of Business Ethics and Conduct prohibits the payment of personal expenses by FSG for any employee and prohibits false, misleading, or artificial entries on the books and records of FSG, and is designed to, among other things, monitor, detect, and prevent the payment of personal expenses and the deduction of such personal expenses on FSG's federal income tax returns. FSG and Subsidiaries agree to designate a specific individual as a Compliance Officer who shall be vested with operational responsibility in order to implement the provisions of the Code of Business Ethics and Conduct. The Compliance Officer shall be designated within thirty (30) days of the date this Agreement is executed and, upon such designation, FSG and Subsidiaries shall provide the name of the Compliance Officer to the Government and the IRS.

19. The Compliance Officer shall report quarterly to high level personnel and to FSG and Subsidiaries' Board of Directors on the effectiveness of the compliance and ethics program. Additionally, during the term of this Agreement, the Compliance Officer shall report quarterly to the Government on the implementation and effectiveness of the compliance and ethics program.

To carry out such responsibility, the Compliance Officer shall be given adequate resources, appropriate authority, and direct access to high level personnel and FSG and Subsidiaries' Board of Directors. For purposes of this Agreement, the term "high level personnel" means Fisher Industries' General Counsel, individuals who have substantial control over the accounting function of FSG and Subsidiaries, or individuals who have a substantial role in the making of policy for FSG and Subsidiaries.

20. The Compliance Officer shall take reasonable step to ensure the Code of Business Ethics and Conduct is followed, including but not limited to (1) monitoring and auditing to detect any criminal conduct related to any aspect of the accounting function of FSG and Subsidiaries, including but not limited to the criminal conduct set forth in the Superseding Indictment and Statement of Facts; (2) evaluating periodically the effectiveness of the compliance and ethics program; and (3) publicizing a system, which may include mechanisms that allow for anonymity or confidentiality, whereby any officer, employee, agent, contractor, subcontractor, supplier, vendor, or any employee or agent of any such contractor, sub-contractor, supplier, or vendor, may report to FSG and Subsidiaries potential or actual criminal conduct without fear of retaliation.

21. FSG and Subsidiaries shall use reasonable efforts not to include within the substantial authority personnel of FSG and Subsidiaries any individual whom FSG and Subsidiaries knows, or should know through the exercise of due diligence, has engaged in illegal activities or other conduct inconsistent with an effective compliance and ethics program. In this Agreement, the term "substantial authority personnel" means all high level personnel and any

other individuals who, within the scope of their authority, exercise a substantial measure of discretion in acting on behalf of FSG and Subsidiaries.

## DEFERRAL OF PROSECUTION

22. In consideration of FSG and Subsidiaries' entry into this Agreement and its commitment to: (a) accept and acknowledge responsibility for its criminal conduct; (b) cooperate with the Government and the IRS; (c) make payments specified in this Agreement; (d) comply with United States federal criminal laws, including federal tax laws and regulations; (e) adopt and implement remedial measures to address the conduct set forth in the Superseding Indictment and Statement of Facts, and (f) otherwise comply with all of the terms of this Agreement, the Government shall recommend to the Court that prosecution of FSG on the Superseding Indictment be deferred from the date this Agreement is filed in the United States District Court for the District of North Dakota through December 31, 2011 (the "Deferral Period"). FSG shall expressly waive all rights to a speedy trial pursuant to the Sixth Amendment to the United States Constitution, Title 18, United States Code, Section 3161, Federal Rule of Criminal Procedure 48(b), and any applicable rule in the Local Rules of the United States District Court for the District of North Dakota for the period during which this Agreement is in effect.

23. The Government agrees that if FSG and Subsidiaries are in compliance with all of their obligations under this Agreement, the Government shall: (a) within 30 days of the expiration of the Deferral Period, seek dismissal with prejudice of the Superseding Indictment as to FSG, and (b) during the term of this Agreement and thereafter, refrain from pursuing any additional charges against or investigation of FSG or any of its past, present, or future

subsidiaries or affiliates arising out of, in connection with, or otherwise relating to (i) the conduct set forth in the Superseding Indictment; (ii) the conduct set forth in the Statement of Facts, and (iii) the improper payment and deduction of personal expenses on federal income tax returns for tax years 2005, 2006, and 2007 which have been voluntarily disclosed to the Government or the IRS prior to the date of this Agreement or during the Deferral Period. This paragraph does not provide any protection against prosecution for any conduct occurring after the date of this Agreement, whether or not such conduct is disclosed to the Government or the IRS pursuant to the terms of this Agreement.

24. This Agreement does not provide any protection against prosecution for any crimes except as specifically set forth in paragraph 23 above and does not apply to any individual or entity other than FSG and Subsidiaries, as defined in this Agreement. FSG and Subsidiaries and the Government understand that the Agreement to defer prosecution against FSG must be approved by the Court, in accordance with 18 U.S.C. § 3161(h)(2). Should the Court decline to approve the Agreement to defer prosecution for any reason, both the Government and FSG and Subsidiaries are released from any obligation imposed upon them by this Agreement, and this Agreement shall be null and void.

## BREACH OF AGREEMENT

25. FSG and Subsidiaries understand that should the Government, in its sole discretion, determine that FSG or any other party to this Agreement has, after the date of the execution of this Agreement: (a) given false, incomplete, or misleading information to the Government or the IRS; (b) violated any United States federal criminal law; or (c) otherwise

committed a material violation of this Agreement, FSG or any related entity bound by this Agreement shall, in the Government's sole discretion, thereafter be subject to prosecution for any federal criminal violations of which the Government has knowledge, including but not limited to a prosecution based on the Superseding Indictment and the conduct described therein. Any information provided by or on behalf of FSG and Subsidiaries to the Government, whether prior to or after the date of this Agreement, may be used by the Government for any purpose in connection with any such prosecution.

26. FSG and Subsidiaries acknowledge that the Government has made no representations, assurances, or promises concerning what sentence may be imposed by the Court if FSG or any related entity bound by this Agreement breach this Agreement and this matter proceeds to judgment. FSG and Subsidiaries further acknowledge that any such sentence is solely within the discretion of the Court and that nothing in this Agreement binds or restricts the Court in the exercise of its discretion.

27. FSG and Subsidiaries agree that any prosecutions that are not time-barred by the applicable statute of limitations as of the date of this Agreement may be commenced against FSG or any related entity bound by this Agreement within the applicable statute of limitations period. In addition, FSG and Subsidiaries agree to toll, and exclude from any calculation of time, the running of any federal criminal statute of limitations for the duration of this Agreement. By this Agreement, FSG and Subsidiaries expressly intend to and hereby do waive their rights in the foregoing respects, including any right to make claims premised on the statute of limitations, as well as any constitutional, statutory, or other claim concerning pre- or post-indictment delay.

These waivers are knowing, voluntary, and in express reliance on the advice of FSG and Subsidiaries' undersigned counsel.

28. It is further agreed that in the event that the Government, in its sole discretion, determines that FSG or any subsidiary or related entity bound by this Agreement has committed a material violation of this Agreement, including FSG and Subsidiaries' failure to meet its obligations under this Agreement:

a. all statements set forth in the Statement of Facts or made to the Government or the IRS by any employee or agent of FSG or any related entity bound by this Agreement either prior to or after the date of this Agreement; and

b. any testimony given by FSG and Subsidiaries or by any employee or agent of FSG or any related entity bound by this Agreement before a grand jury, or any court,

whether before or after the date of this Agreement, or any leads from such statements or testimony, shall be admissible in evidence in any and all criminal proceedings hereinafter brought or re-instituted by the Government against FSG or any related entity bound by this Agreement. FSG and Subsidiaries shall not assert any claim under the United States Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that statements made by or on behalf of FSG and Subsidiaries, or by any employee or agent of FSG and Subsidiaries, either before or after the date of this Agreement, or any leads derived therefrom, should be suppressed or otherwise excluded from evidence. It is the intent of this Agreement to waive any and all rights in the foregoing respects. The decision whether conduct or statements of any individual will be imputed to FSG and Subsidiaries for the purpose of determining whether FSG and Subsidiaries has violated any provision of this Agreement shall be in the sole discretion of the Government.

29. FSG acknowledges and agrees that in light of the pending Superseding Indictment and scheduled jury trial of FSG and its co-defendants, any breach of this Agreement, and subsequent re-initiation prosecution of FSG with respect to the Superseding Indictment, which occur after a trial of any co-defendant on the Superseding Indictment, will result in a substantial, additional, and duplicative expenditure of government and judicial resources. In consideration of the Government entering into this Agreement, FSG shall, contemporaneously with the filing of this Agreement with the Court, file a written waiver of jury trial in the record of the above-captioned case, to which the Government will consent, and request that the Court approve such waiver pursuant to Rule 23(a) of the Federal Rules of Criminal Procedure in conjunction with the Court's approval of this Agreement. FSG represents that its decision to waive jury trial with respect to any future trial occasioned by its breach of this Agreement is voluntary, knowing, and intelligent and made upon the express advice of counsel after an adequate opportunity to consult with counsel as to the consequences of the waiver. The parties agree that FSG's obligation under this paragraph shall be void and severable from all other provisions of this Agreement if the Court does not approve the written waiver of jury trial. In the event the Court does not approve this Agreement, the Government will not object to any motion filed on behalf of FSG seeking to withdraw the waiver of jury trial. FSG further agrees that if the Government re-institutes

prosecution as a result of FSG's breach of this Agreement, the re-institution of prosecution against FSG will not be grounds to withdraw the waiver of jury trial.

30. FSG and Subsidiaries agree that they shall not, through their present or future attorneys, officers, directors, agents or employees, make any statement, in litigation or otherwise, contradicting the Statement of Facts, the information provided to the Government from its internal investigation, or FSG's representations set forth in this Agreement. Any contradictory statement by FSG and Subsidiaries shall constitute a breach of this Agreement and FSG or any related entity bound by this Agreement shall thereafter be subject to prosecution as specified in paragraph 25 above. The decision as to whether any contradictory statement will be imputed to FSG or any related entity bound by this Agreement for the purpose of determining whether there has been a breach of this Agreement shall be at the sole discretion of the Government. Upon the Government reaching a determination that a contradictory statement has been made by FSG or any related entity bound by this Agreement, the Government shall promptly notify FSG and Subsidiaries in writing of the contradictory statement, and FSG and Subsidiaries may avoid a breach of this Agreement by repudiating the statement both to the recipient of the statement and to the Government within 72 hours after receipt of notice by the Government. FSG and Subsidiaries consent to the public release by the Government, in its sole discretion, of any repudiation. This paragraph is not intended to apply to any statement made by any former, current or future attorney, agent or employee of FSG and Subsidiaries in the course of any criminal, regulatory, administrative, or civil case initiated against such individual, unless such individual is speaking on behalf of FSG or any related entity bound by this Agreement.

31. The Government agrees that nothing in this Agreement shall in any way prevent FSG and Subsidiaries from taking good faith positions in litigation involving private parties, including asserting defenses and affirmative defenses.

## THE GOVERNMENT'S DISCRETION

32. Should the Government determine that FSG or any related entity subject to this Agreement has committed a material violation of this Agreement, the Government shall provide prompt written notice to FSG and Subsidiaries of the alleged material violation and provide FSG and Subsidiaries with a three-week period from the date of receipt of notice in which to make a presentation to the Government, including upon request by FSG and Subsidiaries, the Assistant Attorney General in charge of the Tax Division of the Department of Justice, to demonstrate that no material violation has occurred, or, to the extent applicable, that the material violation should not result in the Government proceeding with prosecution against FSG or any related entity bound by this Agreement.

33. FSG and Subsidiaries understands and agrees that the exercise of the Government's discretion under any provision of this Agreement is not subject to further review in any court or other tribunal outside of the United States Department of Justice.

## LIMITS OF THIS AGREEMENT

34. It is understood that this Agreement is binding on FSG and Subsidiaries, the United States Department of Justice, Tax Division, and the United States Attorney's Office for the District of North Dakota, but specifically does not bind any other United States Attorney's Office, any Federal agencies, any state or local law enforcement authorities, any licensing

authorities, or any regulatory authorities. However, if requested by FSG and Subsidiaries or its attorneys, the Government will bring to the attention of any agencies or authorities, this Agreement, the cooperation of FSG and Subsidiaries, their compliance with its obligations under this Agreement, and any remedial steps specified in or implemented pursuant to this Agreement.

## PUBLIC FILING AND MISCELLANEOUS PROVISIONS

35. FSG and Subsidiaries and the Government agree that this Agreement, including the Statement of Facts and the other attachments hereto, shall be filed publicly in the record of the above-captioned case in the United States District Court for the District of North Dakota.

36. This Agreement sets forth all the terms of the Agreement between FSG and Subsidiaries. No modifications or additions to this Agreement shall be valid unless they are in writing and signed by the Government, counsel for FSG and Subsidiaries, and a duly authorized representative of FSG and Subsidiaries.

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37. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same document.

AGREED:

DREW H. WRIGLEY
United States Attorney
District of North Dakota

Dated:____________ By: ____________________
Clare R. Hochhalter
Assistant United States Attorney

JOHN A. DICICCO
Acting Assistant Attorney General
United States Department of Justice
Tax Division

Dated:____________ By: ____________________
Christopher S. Strauss
Michael J. Watling
Trial Attorneys

FISHER SAND & GRAVEL CO. AND SUBSIDIARIES

Dated: 4/29/09 By: ____________________
Timothy A. Priebe
General Counsel, Fisher Industries Fisher Sand & Gravel Co.; General Steel and Supply Company; Fisher Sand & Gravel - New Mexico, Inc.; and Smyth Asphalt Mines, Inc.

Dated: 5/4/09 ____________________
Scott L. Fredericksen
Attorney for Defendant

Dated: 4-30-09 ____________________
Thomas A. Dickson
Attorney for Defendant

37. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same document.

AGREED:

DREW H. WRIGLEY
United States Attorney
District of North Dakota

Dated: 4/30/09 By: ______________________
Clare R. Hochhalter
Assistant United States Attorney

JOHN A. DICICCO
Acting Assistant Attorney General
United States Department of Justice
Tax Division

Dated: 4/30/09 By: ______________________
Christopher S. Strauss
Michael J. Watling
Trial Attorneys

FISHER SAND & GRAVEL CO. AND SUBSIDIARIES

Dated:____________ By: ______________________
Timothy A. Priebe
General Counsel, Fisher Industries; Fisher Sand & Gravel Co.; General Steel and Supply Company; Fisher Sand & Gravel – New Mexico, Inc.; and Smyth Asphalt Mines, Inc.

Dated:____________ ______________________
Scott L. Fredericksen
Attorney for Defendant

Dated:____________ ______________________
Thomas A. Dickson
Attorney for Defendant

EXHBIT A

**RESOLUTION OF THE BOARD OF DIRECTORS OF FISHER SAND & GRAVEL CO.**

At a duly held telephonic meeting held on April 28, 2009, the Board of Directors of Fisher Sand & Gravel Co. (the "Company") resolved as follows:

**WHEREAS**, the Company has been engaged in discussions with the United States Department of Justice, Tax Division, Criminal Enforcement Section (the "Department") regarding certain issues arising out of, in connection with, or otherwise relating to the conduct of certain of its former officers regarding the reimbursement of certain personal expenses of Fisher family members and Company shareholders, and the treatment of those expenses on the Company's books, records and consolidated tax returns;

**WHEREAS**, in order to resolve such discussions, it is proposed that the Company, and its divisions and affiliates, including but not limited to, Arizona Drilling & Blasting, Fisher Grading and Excavation, Fisher Ready Mix, Southwest Asphalt, and Southwest Asphalt Paving, enter into a deferred prosecution agreement with the Department; and

**WHEREAS**, the Company's General Counsel and its outside counsel have advised the Board of Directors of the Company's rights, possible defenses, and the consequences of entering into such agreement with the Department;

This Board hereby **RESOLVES** that:

1. The Company agrees to accept a monetary settlement with the Department in the amount of $1,168,141.00, to be paid to the Internal Revenue Service and the Department, in connection with the execution of the agreement described in paragraph 2 below and to execute the ongoing obligations described therein;

2. The General Counsel and the Company's outside counsel are hereby authorized on behalf of the Company to execute the deferred prosecution agreement substantially in such form as reviewed by this Board of Directors at this meeting with such changes as the General Counsel may approve;

3. The Board hereby authorizes, empowers and directs the General Counsel of the Company, or his delegates, to take any and all actions as may be necessary or appropriate, and to approve and execute the forms, terms or provisions of any agreement or other documents as may be necessary or appropriate to carry out and effectuate the purpose and intent of the foregoing resolutions;

4. All of the actions of the General Counsel of the Company, which actions would have been authorized by the foregoing resolutions except that such actions were taken prior to the adoption of such resolutions, are hereby severally ratified, confirmed, approved and adopted as actions on behalf of the Company.

**IN WITNESS WHEREOF**, the Board of Directors of the Company has executed this Resolution effective as of the day and year first above written.

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Timothy A. Priebe
Company Secretary

# EXHIBIT B

## STATEMENT OF FACTS

1. Fisher Sand & Gravel Co. ("FSG") is a North Dakota corporation with its principal place of business located at 3020 Energy Drive, Dickinson, North Dakota. FSG is a subchapter-C corporation for tax purposes, and engages primarily in mining and the sale of aggregate such as sand, gravel and crushed rock, and the manufacture, sale and repair of aggregate and mining equipment systems. Since 2003, FSG has expanded its business activities to include grading, excavation and asphalt paving. General Steel and Supply Company ("GSS") is a wholly-owned subsidiary of FSG that engages in the manufacture, sale, and repair of aggregate mining and equipment systems. From 2002 through 2004, Smyth Asphalt Mines, Inc. was a wholly-owned subsidiary of FSG.

2. For tax years 2001 through 2004, FSG and GSS, and beginning in tax year 2002, Smyth Asphalt Mines, Inc. (a wholly-owned subsidiary) reported income and expenses on a consolidated U.S. Corporation Income Tax Return, Form 1120. Those returns were prepared by an outside accounting firm engaged by FSG, with assistance from FSG accounting department personnel, among others.

3. FSG makes the following statements and admissions:

   a. During the time period covering tax years 2001 through 2004, FSG, acting through its Vice President Micheal Fisher, CFO Amiel Schaff and Controller Clyde Frank, knowingly and intentionally caused certain personal expenses of Micheal Fisher and other Fisher family members to be paid for by the company.

   b. During the time period covering tax years 2001 through 2004, Micheal Fisher, Schaff and Frank concealed the nature of these expenses in various forms, and knowingly and intentionally caused these expenses to be accounted for in the company's books and records as business expenses.

   c. During the time period covering tax years 2001 through 2004, Micheal Fisher routinely submitted personal expenses for payment by FSG. These expenses were approved for payment by Micheal Fisher or by CFO Schaff. Some payments approved were clearly personal in nature, while the personal nature of other payments was hidden via falsified invoices or other similar devices.

   d. Micheal Fisher submitted invoices for personal expenses and directed FSG accounting personnel to pay those expenses and assign those expenses to various job numbers associated with FSG's business. In order to prevent improperly charged personal expenses from being charged to client or other legitimate job accounts, CFO Schaff and Controller Frank reclassified and segregated the expenses to non-client or "miscellaneous" job numbers and other general ledger accounts. Among these was a family of job numbers ending in "255". Based on prior interaction with Micheal Fisher and other Fisher family members, personal expenses of Micheal Fisher and other Fisher family members were routinely placed by Schaff and Frank in the "255" job code, and other job or general ledger accounts associated with business expenses when Schaff and Frank were aware that these expenses were personal in nature. Other FSG accounting personnel were regularly instructed by Micheal Fisher, Schaff and Frank to place personal expenses into business expense job numbers, including the "255 job number, and other general ledger accounts.

e. Micheal Fisher, CFO Schaff and Controller Frank knew and understood that these expenses, submitted to the FSG accounting department and accounted for in the company's books and records as business expenses, were personal in nature.

f. FSG had previously been put on notice about charges to the company for shareholder and Fisher family expenses. FSG's prior external auditors had notified the company of the issue of personal expenses of Fisher family members being paid by the company. Between 1988 and 1991, the external auditors noted that significant personal expenses of the then-owners of FSG were paid for by the Company and reflected as business expenses.

g. The personal expenses at issue should have been treated as income to the shareholders and Fisher family members that received the benefits, but no payroll or other tax documentation was ever issued reflecting the payments as such. Further, given the treatment of these personal expenses on the company's books, during the time period at issue these payments should have been treated as distributions by FSG to the shareholders.

h. FSG officers and accounting department personnel, including CFO Schaff and Controller Frank, recorded these personal expenses as business expenses on the company general ledger. The general ledger account balances containing these personal expenses were provided to FSG's outside auditors during the process of preparing FSG's corporate consolidated tax returns for tax years 2001, 2002, 2003, and 2004. FSG did not disclose to FSG's outside auditors that the account balances contained personal expenses. These general ledger account balances provided the basis for calculating the company's business expense deductions for tax years 2001 through 2004.

i. FSG willfully filed false corporate tax returns and amended returns for the tax years 2001 through 2004 on which the personal expenses, as described above, were deducted as business expenses. In total, the amount of personal expenses improperly deducted during the period 2001 through 2004 was in excess of $1,000,000. Those improper deductions caused FSG's income to be materially understated for purposes of its corporate tax liability.

4. Some of the improperly accounted-for and deducted personal expenses include the following items.

**Micheal Fisher Home Construction Expenses**

a. During the time period covering tax years 2003 through 2004, Micheal Fisher caused FSG to pay certain expenses related to the construction and furnishing of his home, and construction of a home recreation building outside of Dickinson, North Dakota. Micheal Fisher, Schaff and Frank caused these personal expenses to be accounted for and deducted as business expenses. These expenses included, for example, an April 4, 2003 check issued by FSG in the amount of $11,933.00 which was supported by an invoice describing the project as "PERSONAL HOME." This amount was recorded under Job 03255 and was treated as a business expense, when in fact it was known that this expense was a personal expense of Micheal Fisher. As another example, on April 25, 2003, Micheal Fisher caused FSG to issue two checks for $10,000 and $12,200, both supported by a single invoice for work consisting of "forming and pouring the basement walls and exterior house walls for the Micheal Fisher residence as per plans." These expenses were also recorded under Job 03255

**Tiger Discount Station Renovation Expenses**

**b.** During tax years 2001 through 2004, certain expenses related to construction and renovation work performed at the Tiger Discount Station ("Tiger"), a property owned by Micheal Fisher's entity named Badlands Properties, LLC, were knowingly, intentionally, and improperly submitted to and paid by FSG, and recorded on the company's books as business expenses. For example, on August 10, 2001, FSG issued a check in the amount of $32,882.58 to a Dickinson, North Dakota furniture and carpeting company. The supporting invoice, billed directly to Tiger, indicated that the amount was related to carpeting, tile and other floor work for Tiger. Micheal Fisher approved the invoice for payment, and Controller Frank directed that the amount be recorded under Job 01191, a job number related to depreciation for Smyth Mines, a Texas mining operation owned by FSG. Tiger and Badlands Properties, LLC were business entities unrelated to Smyth Mines and FSG. Throughout tax year 2001, expenses related to Tiger were repeatedly and improperly placed in the Smyth Mines depreciation job number and accounted for as FSG business expenses

**Personal Property Rentals**

c. During tax years 2002 and 2003, FSG paid money to a property management company for the benefit of a Fisher family member, including a check in the amount of $1,763.40. On or about January 31, 2003, FSG recorded this payment in the company's books and records as a business expense although this property used by Fisher family members for personal purposes.

**Fisher Family Member Personal Travel**

d. During the time period covering tax years 2001 through 2004, Micheal Fisher and Fisher family members family caused certain personal travel expenses of Fisher family members to be paid for by FSG and deducted as business expenses. For example, for tax year 2002, FSG paid for and deducted $6,484 related to a personal trip to Africa taken by certain Fisher family members.

**Fisher Family Member Utility Bills**

e. During the time period covering tax years 2001 through 2004, certain utility bills of Fisher family members were consistently paid for by the company and deducted on FSG's corporate income tax return as business expenses.

**Fisher Family Member Medical Expenses**

f. During the time period covering tax years 2001 through 2004, the medical expenses of certain Fisher family members who were not employed by FSG were paid for by FSG and deducted on FSG's corporate income tax returns as business expenses.

**Fisher Family Member Credit Card Expenses**

g. During the time period covering tax years 2001 through 2004 FSG provided corporate credit cards to certain employees, shareholders, and Fisher family members. There was no official policy regarding the use of these cards, although the understanding was that they were to be used for company expenses. During this time, certain credit card payments of Michael Fisher and Fisher family members were paid by FSG and treated as business expenses when in fact it was known that the expenses were personal expenses, and were knowingly and intentionally misrecorded on the company's books. These personal expenses included non-business airfare and hotel expenses, as well as miscellaneous expenses from electronics, tool, furniture, and other retailers.

# EXHIBIT C

**RESOLUTION OF THE BOARD OF DIRECTORS OF**
**FISHER SAND & GRAVEL CO., INC.**

At a duly held meeting held on April 28, 2009, the Board of Directors of Fisher Sand & Gravel Co., Inc. (the "Company") resolved as follows:

**WHEREAS**, the Company has been engaged in discussions with the United States Department of Justice, Tax Division, Criminal Enforcement Section (the "Department") regarding certain issues arising out of, in connection with, or otherwise relating to the conduct of certain of its former officers regarding the reimbursement of certain personal expenses of Fisher family members and Company shareholders, and the treatment of those expenses on the Company's books, records and consolidated tax returns;

**WHEREAS**, in order to resolve such discussions, the Company and its divisions and affiliates, including but not limited to, Arizona Drilling & Blasting, Fisher Grading and Excavation, Fisher Ready Mix, Southwest Asphalt, and Southwest Asphalt Paving, has entered into a deferred prosecution agreement ("DPA") with the Department;

**WHEREAS**, the Company wishes to improve its internal controls, business ethics compliance program, and training to prevent future improper conduct;

**WHEREAS**, the DPA requires the Company to implement certain compliance measures including a Code of Business Ethics and Conduct ("Code"), which, among other things, prohibits the payment of personal expenses for any employee;

**WHEREAS**, the Board has reviewed the Code prepared by outside counsel and appended as Exhibit C to the DPA.

**WHEREAS**, the DPA further requires the designation of a Compliance Officer within 30 days of the executed DPA.

This Board hereby **RESOLVES** that:

1. The Board hereby approves the Code and, accordingly, the Board hereby authorizes, empowers and directs senior management and/or the General Counsel of the Company, or his delegates, to take any and all actions as may be necessary to implement the Code and to take all actions necessary or appropriate to carry out and effectuate the purpose and intent of these resolutions;

2. As part of the Code implementation, the Board directs senior management to distribute the Code to all Company employees, officers, and directors and to obtain a certification that each employee has read and understands the Code.

3. The Board directs senior management and/or the General Counsel of the Company to designate a Compliance Officer within 30 days of the execution of the DPA;

4. The Board directs senior management and/or the General Counsel of the Company to provide the Compliance Officer with adequate resources, appropriate authority, and direct access to high level personnel to fulfill its duties and obligations under the DPA;

5. The Board directs the designated Compliance Officer to perform all necessary functions to enforce the Code including, but not limited to, 1) monitor and audit to detect any criminal conduct, 2) periodically evaluate the effectiveness of the compliance program, and 3) publicize the reporting system, including the anonymous reporting mechanism.

**IN WITNESS WHEREOF**, the Board of Directors of the Company has executed this Resolution effective as of the day and year first above written.

Timothy A. Priebe
Company Secretary



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# FISHER SAND & GRAVEL COMPANY

# CODE OF BUSINESS ETHICS AND CONDUCT

January 2009

## MESSAGE FROM THE CHIEF EXECUTIVE OFFICER

Dear Fellow Employee,

Fisher Sand & Gravel is committed to providing the highest quality products and services to our customers while always observing the highest legal and ethical business standards. Every Fisher employee and member of the Board of Directors is required to uphold these standards. Accordingly, Fisher has adopted this Code of Business Ethics and Conduct ("Code"). This Code is provided for your use in dealing with customers, suppliers, business partners, and fellow employees.

The Code provides guidance for addressing situations that you might face in your business dealings, but does not cover every possible situation and does not address every rule that you must observe. You must also comply with other applicable laws, regulations, rules, and Fisher policies that are not addressed in the Code.

Every Fisher employee is required to read the Code and acknowledge its contents. If you have any questions about the Code, applicable laws and regulations, or whether certain activities or conduct may violate the Code, you are encouraged to contact your supervisor, a management member, or Fisher's Compliance Officer.

I hope that you will find this Code of Business Ethics and Conduct useful in performing your duties. I, together with Fisher's entire management team, am fully committed to working with you to preserve and protect Fisher's business integrity. Thank you in advance for your commitment and cooperation.

Sincerely,

Tom Fisher
Chief Executive Officer

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# FISHER SAND & GRAVEL COMPANY

# CODE OF BUSINESS ETHICS AND CONDUCT

## INTRODUCTION

Fisher Sand & Gravel ("Fisher") is committed to the highest legal and ethical standards of conduct in its business relationships. Our success depends on how we treat others: employees, customers, suppliers, competitors, the government, and our communities. This Code of Business Ethics and Conduct ("Code") implements Fisher's Core Values of integrity, commitment, industry, excellence, and respect. These Core Values dictate how we behave individually and as a team in all aspects of Fisher's business, and affect how those with whom we do business perceive us:

**Integrity.** We recognize that being honest, ethical, straightforward, trustworthy, and candid in our business dealings is the key to a successful company, satisfied customers, and a happy workforce.

**Commitment.** We are committed to the success of Fisher, to one another, and to our customers. We are committed to performing to the best of our ability and being accountable for our actions.

**Industry.** We prize hard work, initiative, and teamwork, and we strive always to provide the highest level of satisfaction to our customers.

**Excellence.** We hold ourselves to an exceptionally high standard of performance, and we deliver quality results to our customers.

**Respect.** We know it is essential that we treat everyone at every level of our business dealings with respect and dignity.

The Code applies to all directors, officers, employees, consultants, agents, and representatives (collectively "employees") of Fisher and its subsidiaries. All Fisher employees are required to (i) conduct Fisher business in compliance with applicable laws, rules, regulations, and Fisher policies and procedures, which includes keeping current with their knowledge and understanding of the Code; (ii) seek help when the proper conduct is unclear; (iii) help create a workplace environment conducive to complying with the Code; (iv) be alert to situations that could result in a violation of the Code; and (v) report suspected Code violations and other unethical or illegal activity to the Company's Compliance Officer. Your compliance with the Code is required even if a supervisor directs you do something contrary to the Code.

Failure to comply with any provision of this Code is a serious matter and may result in disciplinary action, up to and including termination of employment, as well as civil or criminal charges. Anyone who condones misconduct, fails to report misconduct, fails take reasonable measures to prevent, detect, and address misconduct, or seeks to retaliate against those who in good faith report potential misconduct is also subject to discipline.

Some Fisher policies are set forth in documents other than this Code, particularly, Fisher's Employee Handbook ("Handbook"). This Code assumes your knowledge of, and compliance with, the requirements set forth in the Handbook, particularly those relating to equal employment opportunities, workplace safety, accident prevention, violence prevention, harassment, and drugs and alcohol. For the most part, those requirements are not repeated in this Code. Also, you may have signed other documents when you were first employed by Fisher, and your knowledge of, and compliance with, any requirements set forth in those documents is assumed as well.

Each Fisher employee will receive a copy of the Code and, as a condition of employment, must provide the Company's Compliance Officer with a written certification that the employee has received and read the Code, and will comply with it. The required acknowledgement is the final page of this Code.

## DUTY TO REPORT VIOLATIONS OF THE CODE

If you know of or suspect unethical or unlawful behavior in violation of this Code, you must report it to a supervisor, Human Resources, the Compliance Officer, or the General Counsel. Any report of alleged misconduct should provide enough information to permit Fisher to investigate the matter thoroughly. If you wish, you may report anonymously through the Company's toll-free hot line number. Your report will be kept confidential to the extent permitted by law and by the Company's need to investigate the matter reported.

Reports of suspected violations of the Code will be investigated, and all employees must cooperate fully and completely with that investigation. Any employee who interferes, obstructs, or fails to cooperate with such an investigation is subject to discipline, up to and including termination of employment.

For reports of suspected Code violations that are made in good faith, retaliation (e.g., termination of employment, demotion, suspension, harassment, or discrimination, etc.) against any person making such a report is strictly prohibited. Anyone who engages in such retaliation is subject to discipline, up to and including termination of employment. If you believe that you are a victim of retaliation, you are encouraged to report it promptly to the Company's Compliance Officer or the General Counsel.

## CONSEQUENCES OF VIOLATIONS

If, after investigation, the reported unethical or illegal conduct is proven, the employee or employees involved will be subject to discipline, which could include (i) reprimand, (ii) suspension, (iii) loss of compensation, seniority or advancement opportunities, (iv) demotion, or (v) termination of employment. Also, the individuals involved might face criminal charges and penalties, including fines and imprisonment, and they may have to bear their own legal expenses.

Liability for violations of laws and regulations is, however, not limited to the individual wrongdoers. The illegal conduct of Fisher's employees can expose the Company to criminal charges, financial penalties, and suspension and debarment from participation in state and federal business.

## COMPLIANCE WITH THE LAW

In dealings with all customers, suppliers, subcontractors, consultants, and competitors, Fisher's employees are the first line of defense in avoiding illegal and unethical activity, or the appearance thereof. All Fisher employees must comply with applicable federal, state and local laws and regulations. Some examples are:

**Antitrust.** Competition is the cornerstone of the Nation's economy. The purpose of the Antitrust laws is to foster and preserve competition. These laws prohibit agreements and actions in restraint of trade, including agreements between or among competitors to (i) fix or control prices or terms of sale; (ii) divide or allocate markets; (iii) rig bids; (iv) refuse to deal with others absent a legitimate business reason; or (v) engage in other types of anti-competitive activity. You must avoid discussing these matters with employees of any competitor or potential competitor of the Company, and you must inform the Company's Compliance Officer if any person initiates such discussions with you. These laws may also prohibit (i) "tying arrangements" (requiring a customer to buy a product or service that it does not necessarily want in order to buy one that it does want), and (ii) attempts to monopolize a market by using strategies designed to destroy a competitor or to foreclose competition.

**Fair Competition.** Competing fairly means that Fisher will not take advantage of any business situation by (i) misrepresenting the quality, features, or availability of Fisher's products or services or those of its competitors; (ii) manipulation; (iii) misuse of confidential or privileged information; (iv) concealment; or (v) engaging in any other unfair or deceptive act or practice.

**Other Laws.** Other important laws include, but are not limited to, those penalizing bribery, embezzlement, false claims, false statements, falsification or destruction of records, kickbacks, perjury, receiving stolen property, tax fraud, theft, mail fraud, wire fraud, and any other offense indicating a lack of integrity or honesty.

It is unethical, illegal, and strictly forbidden to violate any of these laws.

If you have any questions about these laws or any other laws or regulations, you should seek the advice of the General Counsel.

## DOING BUSINESS WITH THE GOVERNMENT

**Overview.** Most of Fisher's business consists of contracts in which agencies of the federal, state, and local governments are involved. Fisher's policy is to conduct business in full compliance with the applicable laws and regulations described in this Code and also with the procedures, laws, regulations and ethical standards of the government agencies with which we do business. You should consult with the General Counsel as needed to assure Fisher's compliance with them. At a minimum, you must:

- Know and follow the rules of the agencies involved in your work.
- Conform strictly to all of the contract's requirements.
- Accurately charge labor, material and other costs.
- Be truthful, accurate, current and complete in all representations and certifications.

**Procurement Integrity Act.** This federal law, applicable to federal procurements, prohibits (i) offering or discussing, directly or indirectly, future employment or business opportunities with a federal government procurement official; (ii) offering or giving, directly or indirectly, any money, gratuity, or other thing of value to a federal government official; (iii) soliciting or obtaining, directly or indirectly, any proprietary or source selection information from any federal government officer or employee; or (iv) disclosing any proprietary or source selection information that has been properly received, other than as authorized by a federal government contracting officer. As there may be similar laws in the states where Fisher does business, you should consult with the General Counsel to assure Fisher's compliance with them.

**Bribery and Kickbacks.** The giving or receiving (or offering, soliciting or attempting) bribes, kickbacks or any other illegal or improper payments, transfers or receipts is strictly prohibited. No employee shall offer, give, solicit or receive any money or anything else of value to government personnel, foreign government officials, prime contractors or subcontractors (either directly or through third parties) for the purpose of (i) obtaining, retaining or directing business; or (ii) bestowing or receiving any kind of favored treatment.

Incentive fees, commissions based on sales or volume, and other similar arrangements to employees or outside consultants must receive prior review by the General Counsel. It is unethical, illegal and strictly forbidden to offer, render, or accept bribes, kickbacks, payoffs, or other unusual or improper payments to obtain or keep business. It is also a crime even to attempt such behavior. Violations subject both the wrongdoer and the Company criminal penalties.

**Suspension and Debarment.** As noted elsewhere in this Code, violations of the law can have serious consequences not only for the employee wrongdoer, but also for the Company because, in some cases, the criminal misconduct of an employee can be attributed to the Company. Much of Fisher's work is performed under contracts with state governments that have received grants from the U.S. government. As a result, if convicted of a crime due to an employee's misconduct, the Company would face suspension and debarment by both the federal government and by the governments of the states in which Fisher does business or might seek to do business. The seriousness of such an outcome for the Company is apparent because, as a general rule, the period of debarment can be as long as three years, and Fisher would not be permitted to bid on new state or federal work during that time.

## HONEST AND ACCURATE RECORDING OF FINANCIAL AND OTHER DATA

Fisher requires honest, accurate, and objective recording of financial and other information in order to make responsible business decisions, and provide an accurate account of the Company's performance. Fisher's financial books and records must conform to generally accepted accounting principles and all applicable laws and regulations. No false, misleading or artificial entries may be made in the books and records of the Company. Failure to keep accurate and complete records is contrary to Fisher's policy and may violate the law. There is never a justification for falsifying records or misrepresenting facts. Such conduct may constitute fraud and can result in civil and criminal liability for you and for Fisher. Every employee must:

- Ensure that transactions are properly authorized, and accurately and completely recorded.
- Cooperate with internal and external auditors and provide them with accurate information.
- Assure that expense reports are promptly and accurately completed, and documented with appropriate receipts.
- Accurately record time worked in accordance with Company policies and procedures; mischarging of costs to inappropriate contracts or charge numbers is strictly prohibited.
- Never deliberately make false or misleading entries in a report, record, expense claim, or invoice to a customer.
- Never charge any personal expenses to the Company. If there is any doubt about whether or not an expense is personal, you must contact the Compliance Officer for guidance.

All employees responsible for preparing or reviewing any report or certificate, whether it is used internally or externally, must ensure, to the extent possible that (i) the Company has complied with all applicable contract provisions, and (ii) invoices reflect only agreed-upon contract prices and that appropriate refunds or credits have been provided in any instance where excess payments have been received.

## CONFLICTS OF INTEREST

All employees must be free of any outside influence or interest that might conflict with their obligations to the Company.

A conflict of interest would exist, for example, in a situation where an employee who is responsible for purchasing goods or services, or for selecting a supplier or subcontractor, has an interest in, or does personal business with, the supplier or subcontractor. Other examples of conflicts of interest include hiring or recommending a supplier owned by a family member; accepting a gift or a favor from a supplier or subcontractor that personally benefits a Fisher employee or family member; performing services or serving as a consultant to a Fisher competitor; using the Company's name, influence, assets, funds, materials, or facilities, or the services of other Fisher employees to support another business; and taking for oneself personally a business opportunity discovered through the employee's work for Fisher.

Bear in mind that even the appearance of a conflict of interest can be very damaging to the Company. For this reason, if you think you have or might have an actual or potential conflict of interest, you must immediately give written notice to your supervisor, Human Resources, the Compliance Officer, or the General Counsel explaining the nature of the conflict and the reason you believe a conflict might exist. Many conflicts of interest can be resolved acceptably if they are disclosed to the Company beforehand. For example, a manager might be excluded from making a purchasing decision, or managing a contract, where there is a conflict or appearance of a conflict.

## GIFTS, ENTERTAINMENT AND BUSINESS COURTESIES

The exchange of gifts and entertainment can build goodwill in business relationships, but some gifts and entertainment can create improper influence or the appearance of improper influence. Some could an even be seen as bribes.

Fisher conducts its business with customers and suppliers on the basis of service, quality, performance and price without giving or accepting anything of value that could improperly influence or appear to improperly influence the outcome of a business transaction. Fisher's business decisions must not be, or appear to be, improperly influenced by gifts.

**Giving Gifts.** As a general rule, no employee may offer, promise to offer, provide, or promise to provide any gift, entertainment, or other favor of value (e.g., discounts, loans, favorable terms, services, use of company vehicles, etc.) to our customers or suppliers.

Nevertheless, except for restrictions that apply when dealing with government customers, employees may occasionally pay for reasonable meals, refreshment, entertainment, etc., for customers and suppliers, provided that they have not been solicited by the recipient and are not intended to or likely to affect the recipient's business dealings with Fisher. If it seems appropriate to provide a more substantial gift to a commercial customer or supplier, you must obtain the approval of the Compliance Officer, who will document (i) the identities of the giver and the recipient, (ii) the date of Company approval, (iii) a description of the gift, (v) the estimated value of the gift, and (v) the business reason for the gift.

Notwithstanding the above, Fisher employees may never provide or pay for any meal, refreshment, entertainment, or more expensive gifts such as travel, lodging, etc., to any U.S. government employee. The states and local governments in which Fisher does business may also have restrictions on business courtesies. So, you must check with the Compliance Officer or the General Counsel to determine what restrictions may apply.

**Accepting Gifts.** As a general rule, Fisher employees who are involved in the purchase of supplies or services for the Company should not accept gifts from suppliers (other than items of nominal value, such as promotional items, and the like) without the approval of the

Compliance Officer. Fisher employees who are not involved in the purchase of supplies or services may accept meals, refreshment, entertainment, etc., if these business courtesies are unsolicited by the employee, infrequently provided, reasonable in amount, and directly connected to business discussions. These employees may not accept a gift that has a value in excess of $100.00 without the approval of the Compliance Officer.

## PROCUREMENT OF SUPPLIES AND SERVICES

Supplies and services must be purchased only from qualified, competent and reliable sources. To the maximum extent practicable, such purchases should be made on a competitive basis and in accordance with sound business practices. Objectivity, impartiality, and fairness are required in the selection of every supplier for every order. Only designated employees are authorized to make purchases on behalf of the Company.

## QUALITY CONTROL

Fisher strives to provide work that meets our customer's needs and satisfies contractual requirements. All employees must design, manufacture, inspect, and test our products in strict accordance with all contract requirements, must document any authorized deviations, and must report accurate information to the customer. Even if the product arguably exceeds contract requirements, such a deviation from the requirements must be reported, documented and approved.

## COOPERATION WITH GOVERNMENT INVESTIGATIONS

Fisher's policy is to cooperate with government investigators, regulatory examiners, law enforcement officials, and non-governmental regulators with oversight of our business. Within guidelines provided by the General Counsel, all employees must cooperate with such authorities. Always be courteous to government investigators. If you are authorized to provide information to a government investigator, you must consult with the General Counsel before doing so and must make sure that the information you provide is truthful and accurate. If a government investigator should approach you directly – on the job, in public or at your home – seeking information from you, Fisher requests that you advise the investigator that you prefer to consult with company counsel first. Other rules of thumb are:

- Make sure that records and information relevant to the investigation are maintained.
- Never mislead or obstruct a government investigation.
- Never conceal, alter or destroy documents relevant to an investigation.
- Never hinder another employee from providing accurate information.
- Never retaliate against anyone who cooperates with a government investigation.

## COPYRIGHTED WORKS

Fisher's policy is to honor the copyrights of others. This means that you may not copy any copyrighted work without the permission of the copyright owner or its authorized agent, e.g., the Copyright Clearance Center. This includes articles from newspapers, trade journals, magazines, and other publications. Similarly, virtually all purchased computer software is copyrighted. Under copyright law, such software may not be copied except to make an archival copy or as an essential step in its utilization. You are responsible for using licensed computer software only as permitted by its license.

## PROTECTING COMPANY ASSETS AND CONFIDENTIAL INFORMATION

**Use of Company Assets.** While at work employees are expected to be fully engaged in their work and not spending time attending to personal business or activities. You must not use any Company equipment or facilities for your personal activities, except in emergencies or without proper authorization by a supervisor. You are also individually responsible for ensuring that Fisher property that you use or come into contact with as part of your work is not damaged, misused or wasted. To ensure the protection and proper use of Fisher's assets, each employee must:

- Exercise reasonable care to prevent theft, damage or misuse of Fisher property.
- Promptly report the actual or suspected theft, damage or misuse of Fisher property to a supervisor.
- Safeguard all electronic programs, proprietary data, communications and written materials from inadvertent access by others.
- Use all software only in accordance with applicable license agreements.

**Computer and Data Security.** All information, data, messages, attachments and other information created, communicated or stored using Fisher's information and technology resources are the property of Fisher. Fisher reserves the right, for any purpose, without notice and in its sole discretion, to access, inspect, review, store, delete, copy and/or monitor any information, data, messages, attachments or other information communicated or stored through the use of its information and technology resources, including business or personal e-mails or other electronic messages. In addition, Fisher reserves the right, for any purpose, without notice and in its sole discretion, to disclose any such information to law enforcement or other third parties, or to otherwise give access to such information. Fisher employees must:

- Never access a Fisher system using another person's credentials without permission or authorization.
- Never try to access information that you are not authorized to access.
- Never add or modify computer hardware or software.

- Be careful about including sensitive information in e-mail as the information can be retrieved even after you delete an e-mail.

**Nondisclosure of Information.** Company technology is valuable property. All employees are obligated to guard against unauthorized disclosure of Fisher's technology. The same strict rules of nondisclosure apply not only to Company-owned technology, but also to confidential data furnished to Fisher by customers and suppliers.

**Document Retention and Destruction.** All employees must fully comply with the Company's document retention and destruction policies. It is a criminal offense to destroy documents that are subject to a subpoena or other legal process. Once a legal proceeding has begun, or when one is threatened or appears reasonably likely, the Company must preserve relevant documents even before they are requested. Any employee who fails to comply with this policy, as well as applicable laws, is subject to discipline, including termination of employment.

## INSIDE INFORMATION

You should not trade in the securities of other companies based on material, nonpublic information about those companies that you have learned of as a part of your job with Fisher or otherwise. For example, if you learn from a non-public source that another company is being considered for a major contract or joint venture, you may not use this information to trade in that company's securities. You should keep any such information about Fisher or other companies secret and use it only for Company purposes. Material inside information can include anything that could have actual significance in an investor's decision, such as (i) acquisition plans, (ii) dividends, (iii) earnings, (iv) new contracts, products, or discoveries, (v) major regulatory, court, or legislative events, and (vi) major management changes or other business plans.

## POLITICAL ACTIVITIES

All Fisher employees are entitled to engage in whatever lawful political activities they choose, including volunteer work and making contributions to candidates of their choice. But these activities are undertaken by employees as individuals – on their own time and at their own expense – and not as representatives of, or on behalf of, Fisher. Employees are prohibited from making individual political contributions in the name of the Company, and this prohibition extends to direct and indirect contributions, including cash, goods, loans, property, services, and the use of Company facilities. To the extent allowed by applicable law, the Company may make political contributions in its own name from time to time as may be authorized by the Company's management.

## EDUCATION AND TRAINING

Fisher is committed to educating and training its employees regarding the requirements of this Code so they can perform their tasks ethically and legally in accordance with Fisher's Core Values. This education and training will assure that the employees (i) understand the laws and regulations affecting their duties; (ii) understand the requirements of this Code and comply with them; (iii) will be alert to potential violations of laws, regulations, or this Code; and (iv) will recognize their duty to report any conduct or activity that appears to be unethical or illegal. After each training program, employees will be required to pass a written test on the content of the Code. Training will be scheduled annually, both to reinforce the employees' understanding of the Code's requirements and to address any changes in the Code resulting from new laws or regulations.

Current employees will be trained at the next scheduled training session. New employees will be trained as soon as practicable after association. Anyone who misses a training session will be required, within 60 days of the missed session, to read the course syllabus and pass a written test on the contents of the Code.

Managers, supervisors, officers, and directors may receive additional training as deemed appropriate.

## CODE OF BUSINESS ETHICS AND CONDUCT CERTIFICATION

I certify that I have received and read Fisher's Code of Business Ethics and Conduct ("Code"), and agree to comply with it. I understand that, if I violate the Code, I will be subject to disciplinary action, up to and including termination of employment. I also understand that I have a duty to report any violations, and good faith suspicions of violations, of the Code to the Company's Compliance Officer. Finally, I understand that the Code may be amended, modified or revoked at any time.

________________________________ ____________

(signature) (date)

________________________________

(print name)

Please return the signed original of this Certification to the Company's Compliance Officer.