

RESOLUTION NO. R-11-08-11-8D3

WHEREAS, the City of Round Rock ("City") has established an Economic Development Program to encourage Fisher Rosemount Systems, Inc. ("Fisher") to relocate its existing facility to the City of Round Rock at 1100 West Louis Henna Boulevard, and

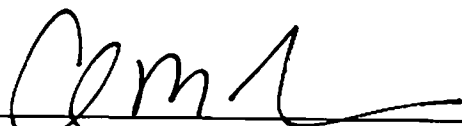
WHEREAS, to further promote economic development, the City wishes to enter into an Economic Development Program Agreement ("Agreement") with Fisher regarding Fisher's relocation of its process management facility to the City of Round Rock, Now Therefore

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,

That the Mayor is hereby authorized and directed to execute on behalf of the City, an Economic Development Program Agreement with Fisher Rosemount Systems, Inc., a copy of same being attached hereto as Exhibit "A" and incorporated herein for all purposes.


The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted

RESOLVED this 11th day of August, 2011.



ALAN MCGRAW, Mayor
City of Round Rock, Texas

ATTEST:



SARA L. WHITE, City Secretary

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

August This Economic Development Program Agreement ("Agreement") is entered into this ^{11th} ~~28th~~ day of ~~July~~, 2011, by and between the City of Round Rock, Texas, a Texas home rule municipal corporation ("City"), and Fisher Rosemount Systems, Inc. a Delaware corporation ("Fisher").

WHEREAS, the City has adopted Resolution No. ~~R-11-08-11-~~⁸⁰² attached as Exhibit A ("City Resolution"), establishing an economic development program and authorizing the Mayor to enter into this Agreement with Fisher in recognition of the positive economic benefits to the City through Fisher's purchase of two existing vacant buildings which together contain a total of two hundred seventy-eight thousand, eight hundred sixty (278,860) square feet and including an adjacent parking garage, located at 1100 West Louis Henna Boulevard, Round Rock, Texas (the "Facility"), and the relocation of its existing process management business to the Facility; and

WHEREAS, Fisher will transfer to the Facility its process management business, along with 750 employees initially with 125 additional employees over the next four years; and

WHEREAS, the purpose of this Agreement is to promote economic development as contemplated by Chapter 380 of the Texas Local Government Code whereby Fisher will expend significant sums to construct and install improvements to the Facility and purchase, occupy, and operate the Facility in conformance with the City's development approvals for the Facility; and

WHEREAS, the City agrees to provide performance based economic development grants to Fisher to defray a portion of the Facility's costs;

NOW, THEREFORE, in consideration of the mutual benefits and promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Fisher agree as follows:

1. **Authority.** The City's execution of this Agreement is authorized by Chapter 380 of the Texas Local Government Code, and the City Resolution, and constitutes a valid and binding obligation of the City in the event Fisher proceeds with the purchase and occupation of the Facility. The City acknowledges that Fisher is acting in reliance upon the City's performance of its obligations under this Agreement in making its decision to commit substantial resources and money to purchase, improve and occupy the Facility.
2. **Definitions.**
 - 2.1 "Economic Incentive Payment(s)" ("EIPs") means the amount paid by the City to Fisher under the Program.
 - 2.2 "Effective Date" is the date this Agreement is executed to be effective by the City and Fisher.
 - 2.3 "Facility" means two existing vacant office buildings contain approximately two hundred seventy-eight thousand, eight hundred sixty (278,860) square feet, and an adjacent parking garage, located at 1100 W. Louis Henna Boulevard, in the City.

- 2.4 **“Improvements”** means the finish out of and additions to the Facility, and personal property and equipment with a minimum cost of twenty-five million dollars (\$25,000,000).
- 2.5 **“Program”** means the economic development program established by the City pursuant to Chapter 380 of the Texas Local Government Code and under the City Resolution to promote local economic development and stimulate business and commercial activity within the City.
- 2.6 **“Recapture Liability”** means the total amount of all EIP’s that are paid as result of this Agreement that are subject to recapture by the City from Fisher in the event of a Fisher default.
3. **Term.** This Agreement shall become enforceable upon its Effective Date and shall terminate on December 31, 2019. In the event the City is unable to appropriate funds for a particular year pursuant to Section 5.1.3 of this Agreement, this Agreement shall be extended for another year(s).

4. **Rights and Obligations of Fisher.**

- 4.1 **Purchase of Facility.** Fisher has purchased the Facility. Fisher agrees to provide City with documentation showing that this obligation has been satisfied.
- 4.2 **Improvements.** Fisher agrees to construct and/or install the Improvements. Fisher agrees to provide City with documentation showing that this obligation has been satisfied. City shall have the right to audit Fisher’s records to verify that this obligation has been satisfied.
- 4.3 **Jobs.**
- 4.3.1 **Initial Jobs.** Fisher agrees to transfer to the Facility at least 750 full-time employees and/or contract workers no later than thirty (30) days after the City issues a Certificate of Occupancy for the Facility.
- 4.3.2 **Additional Jobs.** Fisher agrees that it will have the number of full-time employees and/or contract workers on the dates set forth below:

<u>Date</u>	<u>Number of full-time employees</u>
January 1, 2013	800
January 1, 2014	850
January 1, 2015	875
January 1, 2016	875
January 1, 2017	875
January 1, 2018	875
January 1, 2019	875

Fisher agrees to provide to the City annual employee reports within sixty (60) days following the end of each calendar year during the term of this Agreement. City shall have the right to audit Fisher's records to verify that this obligation has been satisfied.

4.4 Hotel/motel stays. For calendar year 2012, Fisher agrees to generate at least 7,000 hotel/motel nights in hotels and motels located in the City limits. Thereafter, Fisher agrees to generate at least 10,000 hotel/motel nights per calendar year in hotels and motels located in the City limits in 2013 and each subsequent calendar year through 2019. Fisher agrees to file with the City no later than February 1 of each year, beginning February 1, 2013, an affidavit with supporting documentation stating that this obligation has been satisfied for the previous calendar year. City shall have the right to audit Fisher's records to verify that this obligation has been satisfied.

4.5 Compliance with regulations. Fisher agrees that it shall comply with the City's development approval processes and shall purchase the Facility and construct and install the improvements and occupy and operate the Facility consistent with City ordinances, development regulations and requirements.

4.6 Continuous operation. Fisher agrees that it will continuously operate the Facility during the term of this Agreement, including any extensions.

5. **Rights and Obligations of the City.**

In consideration of Fisher's compliance with this Agreement, the City agrees as follows:

5.1 Economic Incentive Payments ("EIP's").

5.1.1 Initial Payment. City shall, subject to Fisher's satisfaction of its obligations set forth in Section 4 above and the other conditions set out herein, make an initial EIP to Fisher in the amount of two hundred fifty thousand (\$250,000) dollars. This initial EIP shall be made within thirty (30) days after the City has issued a Certificate of Occupancy for the Facility.

5.1.2 Subsequent Annual Payments. Thereafter, subject to Fisher's satisfaction of its obligations set forth in Section 4 above and the other conditions set out herein, and subject to Fisher not being in default of this Agreement, City shall pay a total of \$750,000.00 in seven annual EIP's on or before April 1 of each year as set forth below:

<u>Date of Payments</u>	<u>Amount of Payments</u>
April 1, 2013	\$107,140.00
April 1, 2014	\$107,140.00
April 1, 2015	\$107,140.00
April 1, 2016	\$107,140.00
April 1, 2017	\$107,140.00
April 1, 2018	\$107,140.00

April 1, 2019

TOTAL

\$107,160.00

\$750,000.00

5.1.3 EIP's Subject to Future Appropriations. This Agreement shall not be construed as a commitment, issue or obligation of any specific taxes or tax revenues for payment to Fisher. All EIP's by the City under this Agreement are subject to the City's appropriation of funds for such payments in the budget year for which they are made. The EIP's to be made to Fisher, if paid, shall be made solely from annual appropriations from the general funds of the City or from such other funds of the City as may be legally set aside for the implementation of Article III, Section 52a of the Texas Constitution or Chapter 380 of the Local Government Code or any other economic development or financing program authorized by statute or home rule powers of the City under applicable Texas law, subject to any applicable limitations or procedural requirements. In the event that the City does not appropriate funds in any fiscal year for EIP's due under this Agreement, such failure shall not be considered a default under Section 7.3, and the City shall not be liable to Fisher for such EIP's, however, the City shall extend this Agreement for another year(s). In addition, Fisher shall have the right but not the obligation to rescind this Agreement. To the extent there is a conflict between this paragraph and any other language or covenant in this Agreement, this paragraph shall control.

5.2 Permitting.

5.2.1 Waiver of Fees. The City agrees to waive all building permit fees associated with the Improvements.

5.2.2 Expedited Review. The City shall cooperate with Fisher to expeditiously process all City permit applications and City inspections.

6. **EIP Recapture.** In the event that Fisher is in default of this Agreement, the City may recapture and collect from Fisher the Recapture Liability after providing Fisher written notice and a minimum period of thirty (30) days to cure such default, and the default has not been cured within said time. In the event Fisher does not so cure, Fisher shall pay to the City the Recapture Liability within thirty (30) days after the City makes demand for same, subject to any and all lawful offsets, settlements, deduction, or credits to which Fisher may be entitled. The City shall have all remedies for the collection of the Recapture Liability as provided generally in the Tax Code for the collection of delinquent property taxes.

7. **Miscellaneous.**

7.1 Mutual Assistance. The City and Fisher will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement.

7.2 Representations and Warranties. The City represents and warrants to Fisher that the Program and this Agreement are within its authority, and that it is duly authorized and empowered to establish the Program and enter into this

Agreement, unless otherwise ordered by a court of competent jurisdiction. Fisher represents and warrants to the City that it has the requisite authority to enter into this Agreement.

- 7.3 **Default.** If either the City or Fisher should default in the performance of any obligations of this Agreement, the other party shall provide such defaulting party written notice of the default, and a minimum period of thirty (30) days to cure such default, prior to instituting an action for breach or pursuing any other remedy for default. If the City remains in default after notice and opportunity to cure, Fisher shall have the right to pursue any remedy at law or in equity for the City's breach. If Fisher remains in default after notice and opportunity to cure, City shall have the right to pursue any remedy at law or in equity for Fisher's breach, in addition to the right of EIP recapture set forth above.
- 7.4 **Attorney's Fees.** In the event any legal action or proceeding is commenced in a court of competent jurisdiction between the City and Fisher to enforce provisions of this Agreement and recover damages for breach, the prevailing party in such legal action shall be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action, to the extent allowed by law.
- 7.5 **Entire Agreement.** This Agreement contains the entire agreement between the parties. This Agreement may only be amended, altered or revoked by written instrument signed by the City and Fisher.
- 7.6 **Binding Effect.** This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns.
- 7.7 **Assignment.** Fisher may not assign all or part of its rights and obligations to a third party without the express written consent of the City provided, however, that this Agreement may be assigned by either party without the consent of the other to an affiliate or to any third party who succeeds to substantially all of its business or assets.
- 7.8 **Amendment.** This Agreement may be amended by the mutual written agreement of the parties.
- 7.9 **Termination.** In the event Fisher elects not to purchase the Facility as contemplated by this Agreement, Fisher shall notify the City in writing, and this Agreement and the obligations on the part of both parties shall be deemed terminated and of no further force or effect.
- 7.10 **Notice.** Any notice and or statement required and permitted to be delivered shall be deemed delivered by actual delivery, facsimile with receipt of confirmation, or by depositing the same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses:

If to City: City of Round Rock
221 E. Main Street
Round Rock, TX 78664
Attn: City Manager
Phone: (512) 218-5400
Fax: (512) 218-7097

With a required copy to:

Sheets & Crossfield
309 E. Main Street
Round Rock, TX 78664
Attn: Stephan L. Sheets
Phone: (512) 255-8877
Fax: (512) 255-8986

If to Fisher: Fisher Rosemount Systems, Inc.
8000 West Florissant Avenue
P.O. Box 4100
St. Louis, MO 63136-8506
Attn: Stephen L. Clarke
Phone: (314) 553-1953
Fax: (314) 553-1365

With required copies to:

Bryan Cave LLP
One Metropolitan Square
Suite 3600
St. Louis, MO 63102
Attn: James G. Buell, Esq.
Phone: (314) 259-2373
Fax: (314) 552-8373

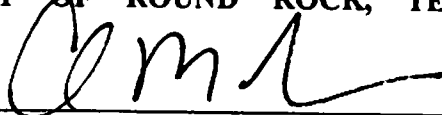
Either party may designate a different address at any time upon written notice to the other party.

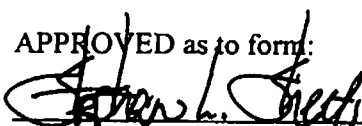
- 7.11 **Interpretation.** Each of the parties have been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, however its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any party.
- 7.12 **Applicable Law.** This Agreement is made, and shall be construed and interpreted, under the laws of the State of Texas and venue shall lie in Williamson County, Texas.

- 7.13 Severability. In the event any provisions of this Agreement are illegal, invalid or unenforceable under present or future laws, and in that event, it is the intention of the parties that the remainder of this Agreement shall not be affected. It is also the intention of the parties of this Agreement that in lieu of each clause and provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.
- 7.14 Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.
- 7.15 No Third Party Beneficiaries. This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.
- 7.16 Force Majeure. Except as otherwise provided herein, an equitable adjustment shall be made for delay or failure in performing if such delay or failure is caused, prevented, or restricted by conditions beyond that Party's reasonable control (a "force majeure event"). A force majeure event for the purposes of this Agreement shall include, but not be limited to, acts of God, fire; explosion, vandalism; storm or similar occurrences; orders or acts of military or civil authority; litigation; changes in law, rules, or regulations outside the control of the affected Party; national emergencies or insurrections; riots; acts of terrorism; or supplier failures, shortages or breach or delay. Except as otherwise expressly provided, herein, there shall be an equitable adjustment allowed for performance under this Agreement as the result of any event of force majeure.
- 7.17 No Joint Venture. It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The City, its past, present and future officers, elected officials, employees and agents of the City, do not assume any responsibilities or liabilities to any third party in connection with the development of the Facility or the design, construction or operation of any portion of the Facility.

EXECUTED to be effective as of the ^{17th} ~~30th~~ day of ^{August} ~~July~~, 2011 (the "Effective Date").

CITY OF ROUND ROCK, TEXAS,

By: 
 Alan McGraw, Mayor

APPROVED as to form:

 Stephan L. Sheets, City Attorney

FISHER ROSEMOUNT SYSTEMS, INC.

By:  _____

Its: CFO, VP Finance

Date: 13-July-11

EXHIBIT "A"

RESOLUTION NO. R-11-08-11-8D2

WHEREAS, Fisher Rosemount Systems, Inc. ("Fisher") is a leading process management company, and

WHEREAS, Fisher has expressed to the City of Round Rock ("City") its desire to relocate its existing facility to the City which will provide jobs and additional tax base to the City, and

WHEREAS, §380.001 Local Government Code provides that a municipality may establish an economic development program ("Program") to promote local economic development and to stimulate business and commercial activity in the municipality, and

WHEREAS, the City Council has determined that the Program described in Exhibit "A" will meet the goals set forth in said §380.001 and will be of mutual benefit to both parties, Now Therefore

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,

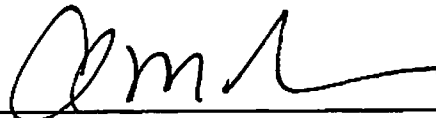
That the City offers to Fisher a §380.001 Program in exchange for Fisher relocating its process management facility to the City, and

BE IT FURTHER RESOLVED

That the offer of the Program shall be as generally outlined in Exhibit "A" attached hereto and incorporated herein for all purposes.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

RESOLVED this 11th day of August, 2011.



ALAN MCGRAW, Mayor
City of Round Rock, Texas

ATTEST:



SARA L. WHITE, City Secretary

EXHIBIT A

ECONOMIC DEVELOPMENT PROGRAM

The terms of the \$380,001 Economic Development Program to be offered to Fisher in exchange for Fisher's relocating its existing process management facility to the City of Round Rock are as generally outlined below:

1. Fisher's obligations:

1.1. Fisher will purchase and occupy the two Class A office buildings located at 1100 West Louis Henna Boulevard, Round Rock, Texas containing approximately 278,860 square feet of office space, with an accompanying parking garage known locally as Frontera Vista (the "Facility") on or before July 30, 2011.

1.2. Fisher intends to invest approximately \$25 million in Facility improvements and personal property.

1.3. Fisher intends to transfer 750 or more full-time equivalent employees, including contract workers, to the Facility no later than April 1, 2012.

1.4. Fisher intends to retain said 750 full-time equivalent employees and hire 125 full-time equivalent employees, including contract workers, over a three year period beginning January 1, 2012.

1.5. Fisher intends to generate at least 10,000 hotel/motel nights per year in the City.

2. City's obligations:

2.1. In consideration of Fisher performing as set forth above, the City intends to enter into one or more economic development incentive agreements containing the following provisions:

- (a) Waiver of City permit fees associated with the building finish out and other applicable new construction permit fees;
- (b) Expedited City approval of required permits;
- (c) A payment by City to Fisher of \$250,000 upon Fisher obtaining the certificate of occupancy from City for the Facility;
- (d) Equal annual program payments by City to Fisher over a seven year period totaling \$750,000; and

3. The terms and provisions of this Program will be set out in more detail in the Economic Development Program Agreement of even date herewith.