

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

This Economic Development Program Agreement ("Agreement") is entered into this ^{24th} day of ^{February} 2022, 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-- 2022-015, 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 agreement to upgrade and expand its existing building located at 1100 W. Louis Henna Blvd., Round Rock, Texas (the "Facility"); and

WHEREAS, Fisher anticipates that it will add 50 to 60 new employees as the result of this upgrade and expansion project; 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 renovate and install improvements in the Facility, and to 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 upgrading and expansion 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 upgrade and expand 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 the building located at 1100 W. Louis Henna Blvd. and Improvements to be constructed and installed on the Property.

- 2.4 **“Improvements”** means the upgrade and expansion of the Facility including real and personal property costing at least \$9,000,000.
- 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 **“Property”** means the real property located at 1100 W. Louis Henna Blvd., on which the Facility and Improvements are located.
- 2.7 **“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, 2023. 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 Property. Fisher has previously purchased the Property.
- 4.2 Improvements. Fisher agrees to complete and install the Improvements on or before December 31, 2023. Fisher agrees to spend at least \$9,000,000 on the Improvements. Fisher agrees to provide City with documentation showing that these obligations have been satisfied. City shall have the right to audit Fisher’s records to verify that this obligation has been satisfied.
- 4.3 Jobs. Fisher anticipates that it will add 50 to 60 new employees as a result of the construction of the Improvements. Fisher agrees to provide to the City annual employee reports on the form attached hereto as Exhibit B within ninety (90) 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 the employee report.
- 4.4 Compliance with regulations. Fisher agrees that it shall comply with the City’s development approval processes and shall construct and install the Improvements and occupy and operate the Facility consistent with City ordinances, development regulations and requirements.
- 4.5 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 Payment (“EIP”).

5.1.1 EIP 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 EIPs to Fisher in the amount of \$500,000. The initial EIP of \$250,000 shall be paid by the City to Fisher within thirty (30) days after the City has issued a Building Permit for the Improvements. The final EIP of \$250,000 shall be paid by the City to Fisher within thirty (30) days after the City has issued a Certificate of Occupancy for the Improvements and Fisher has submitted proof that it has complied with its requirements hereunder.

5.1.2 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.

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 complete the improvements at 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
citymanager@roundrocktexas.gov

With a required copy to:

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

If to Fisher: Fisher-Rosemount Systems, Inc.
1100 W. Louis Henna Blvd.
Round Rock, Texas 78664
Attn: Michael Burleson
Phone: (512) 832-3662
Email: michael.burleson@emerson.com

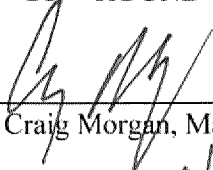
Either party may designate a different address at any time upon written notice to the other party.

- 7.11 Interpretation. Each of the parties has 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, pandemics or epidemics, 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.

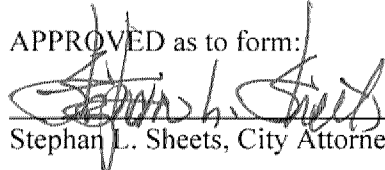
EXECUTED to be effective as of the 24th day of February, 2022 (the "Effective Date").

CITY OF ROUND ROCK, TEXAS,

By: 
 Craig Morgan, Mayor

Date: 2/24/22

APPROVED as to form:


 Stephan L. Sheets, City Attorney

FISHER-ROSEMOUNT SYSTEMS, INC.

By: M. D. E. Bu
_____, its _____

Date: 2-11-22

EXHIBIT

“A”

RESOLUTION NO. R-2022-075

WHEREAS, the City Council has determined that one of its priority goals is to encourage economic development within the City of Round Rock; and

WHEREAS, Fisher-Rosemount Systems, Inc. (“Fisher”) has expressed to the City of Round Rock (“City”) its desire to upgrade and expand its existing facility located at 1100 W. Louis Henna Boulevard which will continue to 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,

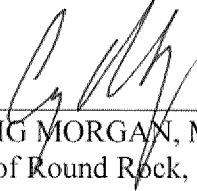
That the City offers to Fisher a §380.001 Program in exchange for Fisher upgrading and expanding its existing Facility in the City, and

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 24th day of February, 2022.



CRAIG MORGAN, Mayor
City of Round Rock, Texas

ATTEST:



MEAGAN SPINKS, City Clerk

EXHIBIT A

ECONOMIC DEVELOPMENT PROGRAM

The terms of the \$380,001 Economic Development Program to be offered to Fisher in exchange for Fisher's upgrading and expanding its existing Facility location in the City as generally outlined below:

1. Fisher's obligations:
 - 1.1. Fisher has previously purchased the property located at 1100 W. Louis Henna Blvd., in the City of Round Rock.
 - 1.2. Fisher agrees to complete the Improvements on or before December 31, 2023. Fisher agrees to spend at least \$9,000,000 on the Improvements. Fisher agrees to provide City with documentation showing that these obligations have been satisfied. City shall have the right to audit Fisher's records to verify that this obligation has been satisfied.
 - 1.3. Fisher anticipates that it will add 50 to 60 new employees in the Facility.
2. City's obligations:
 - 2.1. City agrees to make an initial program payment to Fisher of \$250,000 upon Fisher's obtaining a Building Permit for the Facility.
 - 2.2. City agrees to make a final program payment to Fisher of \$250,000 upon Fisher's obtaining a Certificate of Occupancy for the Facility.
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.

TOTAL JOBS _____

AS OF DECEMBER 31, 202__, FISHER-ROSEMOUNT SYSTEMS, INC. HAS MADE IMPROVEMENTS IN THE AMOUNT OF:

\$ _____

SIGNATURE

PRINTED NAME

TITLE

SUBSCRIBED AND SWORN TO BEFORE ME ON THIS THE ____ DAY OF _____, 202__.

NOTARY PUBLIC, STATE OF TEXAS