

## **ECONOMIC DEVELOPMENT PROGRAM AGREEMENT**

This Economic Development Program Agreement ("Agreement") is entered into this 16th day of August, 2011, by and between **Williamson County, Texas** ("County"), and **Fisher Rosemount Systems, Inc.** a Delaware corporation ("Fisher").

**WHEREAS**, by this action, the County establishes an economic development program and authorizing the County Judge to enter into this Agreement with Fisher in recognition of the positive economic benefits to the County 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 381 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 County's development approvals for the Facility; and

**WHEREAS**, the County 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 County and Fisher agree as follows:

**Authority.** The County's execution of this Agreement is authorized by Chapter 381 of the Texas Local Government Code, and constitutes a valid and binding obligation of the County in the event Fisher proceeds with the purchase and occupation of the Facility. The County acknowledges that Fisher is acting in reliance upon the County'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.

### **Definitions.**

- 2.1 **"Economic Incentive Payment(s)" ("EIPs")** means the amount paid by the County to Fisher under the Program.
- 2.2 **"Effective Date"** is the date this Agreement is executed to be effective by the County 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 County.
- 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 County pursuant to Chapter 381 of the Texas Local Government Code and under the County Resolution to promote local economic development and stimulate business and commercial activity within the County.
- 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 County 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 County 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 County 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 County with documentation showing that this obligation has been satisfied. County 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 County 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><br><u>employees</u> | <u>Number</u> <u>of</u> <u>full-time</u> |
|---------------------------------|------------------------------------------|
| January 1, 2013                 | 800                                      |
| January 1, 2014                 | 850                                      |

January 1, 2015	875
January 1, 2016	900
January 1, 2017	900
January 1, 2018	900
January 1, 2019	900

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

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

4.5 Program verification. To assure compliance with the obligations set forth herein, Fisher shall submit annually a Business Personal Property Rendition Form to the Williamson County Appraisal District and the County Judge prior to the receipt of each EIP for the life of the Agreement. In addition to the rendition form, Fisher shall submit annually verification of the appraised value of the Facility prior to the receipt of each EIP for the life of the Agreement. The rendition form may be found at <http://www.wcad.org/Forms.php>.

## 5. **Rights and Obligations of the County.**

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

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

5.1.1 Annual Payments. County shall, subject to Fisher's satisfaction of its obligations set forth in Section 4 above and the other conditions set out herein, make seven equal payments to Fisher totaling \$500,000, as set forth below. In addition to the other obligations set forth herein, all EIP's are expressly subject to Fisher timely paying all ad valorem tax payments annually. In no event will any EIP exceed the total amount of ad valorem taxes paid to the County in the year of the EIP payment.

5.1.2 Payment Dates. The County shall pay a total of \$500,000.00 in seven annual EIP's on or before April 1 of each year as set forth below:

<u>Date of Payments</u> <u>Payments</u>	<u>Amount</u> <u>of</u>
April 1, 2013	\$ 71,428.00
April 1, 2014	\$ 71,428.00
April 1, 2015	\$ 71,428.00



April 1, 2016	\$ 71,428.00
April 1, 2017	\$ 71,428.00
April 1, 2018	\$ 71,428.00
April 1, 2019	\$ 71,428.00
TOTAL	\$500,000.00

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 County under this Agreement are subject to the County'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 County or from such other funds of the County as may be legally set aside for the implementation of Article III, Section 52a of the Texas Constitution or Chapter 381 of the Local Government Code or any other economic development or financing program authorized by statute or home rule powers of the County under applicable Texas law, subject to any applicable limitations or procedural requirements. In the event that the County 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 County shall not be liable to Fisher for such EIP's, however, the County 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 County 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 County the Recapture Liability within thirty (30) days after the County makes demand for same, subject to any and all lawful offsets, settlements, deduction, or credits to which Fisher may be entitled. The County 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 County 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 County 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 County that it has the requisite authority to enter into this Agreement.

- 7.3 Default. If either the County 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 County 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 County's breach. If Fisher remains in default after notice and opportunity to cure, County 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 County 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 County 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 County 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 County 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 County: Judge Dan A. Gattis  
710 Main Street  
Georgetown, Texas 78626

With a required copy to:

Hal Hawes  
Counsel to Commissioners Court  
710 Main Street  
Georgetown, Texas 78626

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 County, its past, present and future officers, elected officials, employees and agents of the County, 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 \_\_\_ day of \_\_\_ 2011 (the "Effective Date").

**WILLIAMSON COUNTY**

By: 

Dan A. Gattis, County Judge

8-19-2011

**FISHER ROSEMOUNT SYSTEMS,  
INC.**

By:

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Its:

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Date:

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## **MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding (MOU) is made by and between Williamson County, Texas ("County") and Fisher- Rosemount Systems, Inc. ("Fisher").

### **RECITALS**

**WHEREAS**, Fisher is a process management company interested in locating in Williamson County; and

**WHEREAS**, Fisher is considering the acquisition of 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"); and

**WHEREAS**, Fisher is also considering investing approximately \$25 million in building finish-out and personal property; and

**WHEREAS**, Fisher is considering, if it acquires Frontera Vista, constructing approximately \$25 million of building finish-out; and

**WHEREAS**, Fisher intends to transfer 750 full-time equivalent employees, including contract workers, to Round Rock by April 1, 2012 and hire an additional 125 full-time equivalent employees, including contract workers, over a three year period, beginning January 1, 2012; and

**WHEREAS**, the County desires businesses such as Fisher to locate in Williamson County ; and

**WHEREAS**, the County is willing to consider granting certain incentives to Fisher if it locates in Williamson County; and

**WHEREAS**, the parties acknowledge that the terms and conditions listed herein are not legally binding against either party, but merely serve as a memorandum of the understanding of the parties;

**NOW THEREFORE**, the County and Fisher agree to work cooperatively and in good faith to draft and approve future agreements and to develop the Facility in the manner set forth herein.

### **ARTICLE I GENERAL SCOPE OF FACILITY**

- 1.01 The Facility consists of approximately two Class A office buildings of 278,000 square feet, with an accompanying parking garage.

**ARTICLE II  
FISHER INTENTIONS**

- 2.01 Fisher will acquire the Facilities on or before July 30, 2011.
- 2.02 Fisher intends to invest approximately \$25 million in facility improvements and personal property.
- 2.03 Fisher intends to transfer 750 full-time equivalent employees and hire 125 full-time equivalent employees, including contract workers, over a three year period, beginning January 1, 2012.

**ARTICLE III  
COUNTY INTENTIONS**

3.01 In consideration of Fisher performing as set forth in Article II above, the County will provide equal annual payments to Fisher over a seven year term totaling \$500,000.

**ARTICLE IV  
LEGAL EFFECT OF MOU**

This MOU is intended to provide an outline of the current understanding of the parties hereto, and is not intended to legally bind the parties to the terms and conditions stated herein. The parties, however, agree that the terms and conditions stated herein are reasonable and provide an outline for future actions by the parties.

Executed and effective this \_\_\_\_ day of \_\_\_\_\_, 2011.

**WILLIAMSON COUNTY, TEXAS**

By:  8-19-2011  
Judge Dan A. Gattis

**FISHER-ROSEMOUNT SYSTEMS, INC.**

By:  \_\_\_\_\_  
Jim Nyquist, President

## **MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding (MOU) is made by and between the City of Round Rock, Texas (the "City") and Fisher-Rosemount Systems, Inc. ("Fisher").

### **RECITALS**

**WHEREAS**, Fisher is a process management company interested in locating in the City; and

**WHEREAS**, Fisher is considering the acquisition of 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"); and

**WHEREAS**, Fisher is also considering investing approximately \$25 million in building finish-out and personal property; and

**WHEREAS**, Fisher intends to transfer 750 full-time equivalent employees, including contract workers, to Round Rock by April 1, 2012 and hire an additional 125 full-time equivalent employees, including contract workers, over a three year period, beginning January 1, 2012; and

**WHEREAS**, the City desires businesses such as Fisher to locate in the City ; and

**WHEREAS**, the City is willing to consider granting certain incentives to Fisher if it locates in the City; and

**WHEREAS**, the parties acknowledge that the terms and conditions listed herein are not legally binding against either party, but merely serve as a memorandum of the understanding of the parties;

**NOW THEREFORE**, the City and Fisher agree to work cooperatively and in good faith to draft and approve future agreements and to develop the Facility in the manner set forth herein.

### **ARTICLE I GENERAL SCOPE OF FACILITY**

- 1.01 The Facility consists of two Class A office buildings containing approximately 278,860 square feet of office space, with an accompanying parking garage.

### **ARTICLE II FISHER INTENTIONS**

- 2.01 Fisher intends to acquire the Facility on or before July 30, 2011.
- 2.02 Fisher intends to invest approximately \$25 million in Facility improvements and personal property.



- 2.03 Fisher intends to transfer 750 or more full-time equivalent employees, including contract workers, to the Facility no later than April 1, 2012.
- 2.04 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.
- 2.05 Fisher intends to generate at least 10,000 hotel/motel nights per year in the City.

### **ARTICLE III CITY INTENTIONS**

3.01 In consideration of Fisher performing as set forth in Article II 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
- (e) In consideration of new sales and use taxes sourced to the City from sales generated by Fisher, the City agrees to explore the potential for future sales and use tax revenue sharing opportunities.

### **ARTICLE IV LEGAL EFFECT OF MOU**

This MOU is intended to provide an outline of the current understanding of the parties hereto, and is not intended to legally bind the parties to the terms and conditions stated herein. The parties, however, agree that the terms and conditions stated herein are reasonable and provide an outline for future actions by the parties.

Executed and effective this \_\_\_\_ day of June, 2011.

#### **CITY OF ROUND ROCK, TEXAS**

By: \_\_\_\_\_

Alan McGraw, Mayor

#### **FISHER-ROSEMOUNT SYSTEMS, INC.**

By: \_\_\_\_\_

Jim Nyquist, President