

# EXHIBIT

## "A"

### ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

This Economic Development Program Agreement ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between the **City of Round Rock, Texas**, a Texas home rule municipal corporation ("City"), and **Insys Therapeutics, Inc.** ("Insys").

**WHEREAS**, the City has adopted Resolution No. \_\_\_\_\_, attached as Exhibit A ("City Resolution"), establishing an economic development program and authorizing the Mayor to enter into this Agreement with Insys in recognition of the positive economic benefits to the City through Insys's expansion of its pharmaceutical manufacturing facility in the City ("Facility"); and

**WHEREAS**, the Facility will be located at 2700 Oakmont Drive, Round Rock, Texas; and

**WHEREAS**, the Facility will include certain improvements ("Improvements") to the Facility and the purchase and installation of new equipment ("Equipment") with a total cost of at least \$10,500,000; and

**WHEREAS**, Insys will retain its current number of 12 full-time employees and will employ at least 30 additional full-time employees over the term of this Agreement; and

**WHEREAS**, the purpose of this Agreement is to promote economic development as contemplated by Chapter 380 of the Texas Local Government Code whereby Insys will expend significant sums make the Improvements to the Facility and to purchase and install the Equipment in the Facility and 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 Insys;

**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 Insys 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 Insys proceeds with the construction and operation of the Facility. The City acknowledges that Insys 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 lease, improve and occupy the Facility.
2. **Definitions.**
  - 2.1 **"Economic Incentive Payment(s)" ("EIPs")** means the amount paid by the City to Insys under the Program.

- 2.2 **“Effective Date”** is the date this Agreement is executed to be effective by the City and Insys.
- 2.3 **“Equipment”** means the equipment to be purchased and installed in the Facility as described in Exhibit “B”.
- 2.4 **“Facility”** means the pharmaceutical manufacturing facility to be located at 2700 Oakmont Drive, Round Rock, Texas.
- 2.5 **“Improvements”** mean all improvements and additions made to the Facility, including, but not limited to, the items listed in Exhibit “C”.
- 2.6 **“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.
- 2.7 **“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 Insys in the event of a Insys default.
3. **Term.** This Agreement shall become enforceable upon its Effective Date and shall terminate on December 31, 2018.
4. **Rights and Obligations of Insys.**
- 4.1 Purchase and Installation of Improvements and Equipment. Insys agrees to purchase and install the Improvements and the Equipment in the Facility on or before the 31st day of December, 2014 and to begin operating the Facility on or before the 1st day of January, 2015.
- 4.2 Cost of Improvements and Equipment. Insys agrees to spend at least \$10,500,000 on the purchase and installation of the Improvements and Equipment. Insys agrees to provide City with documentation showing that this obligation has been satisfied. City shall have the right to audit Insys’s records to verify that this obligation has been satisfied.
- 4.3 Jobs.
- 4.3.1 Job Retention and Creation. Insys agrees to retain its current 12 employees and to add new employees in accordance with the following schedule:

<u>Date</u>	<u>Retain</u>	<u>New</u>	<u>Total</u>
On December 31, 2013	12	0	12
On December 31, 2014	12	5	17
On December 31, 2015	17	5	22
On December 31, 2016	22	10	32

On December 31, 2017	32	10	42
On December 31, 2018	42	0	42
On December 31, 2019	42	0	42

- 4.3.2 Salaries and Benefits. Insys agrees that the full-time jobs will have an average annual salary of at least \$65,000 plus industry standard benefits.
- 4.3.3 Job Compliance Affidavit. On or before February 1 of each calendar year during the term of this Agreement, Insys agrees to provide to the City an affidavit certifying its compliance with the foregoing job requirements in the form attached hereto as Exhibit “D”. Upon request by the City, Insys agrees to provide the City with any and all necessary documentation to verify its compliance with the job retention and creation obligations.
- 4.4 Compliance with regulations. Insys agrees that it will comply with the City’s development approval processes and shall equip, occupy and operate the Facility consistent with City ordinances, development regulations and requirements.
- 4.6 Continuous operation. Insys agrees that it will continuously operate the Facility and employ at the number of full-time employees set out in section 4.3.1 during the term of this Agreement, including any extensions.

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

In consideration of Insys’s compliance with this Agreement, the City agrees as follows:

### 5.1 Economic Incentive Payments (“EIP’s”).

5.1.1 Initial EIP. City shall, subject to Insys’s satisfaction of its obligations set out in §§ 4.1 and 4.2, and other conditions set out herein, make an initial EIP to Insys in the amount of \$150,000. This initial EIP shall be made within thirty (30) days after Insys has provided the City with invoices or other acceptable documentation that this obligation has been satisfied.

5.1.2 Additional EIP. City shall, subject to Insys’s satisfaction of its obligation to retain and create jobs in accordance with the schedule set out in §4.3.1 pay an additional EIP of \$20,000 if the December 31, 2014 job requirement is satisfied. Thereafter, the City shall pay an additional \$10,000 per year if the job requirements for 2015, 2016, and 2017 are satisfied. The additional EIP’s shall be paid within 30 days after Insys’s has filed the job compliance affidavit required by §4.3.3.

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 Insys. 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 Insys, 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 Insys for such EIP's, however, the City shall extend this Agreement for another year(s). In addition, Insys 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 Facility.

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

**6. EIP Recapture.** In the event that Insys is in default of this Agreement, the City may recapture and collect from Insys the Recapture Liability after providing Insys 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 Insys does not so cure, Insys 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 Insys 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 Insys 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 Insys 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. Insys 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 Insys 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, Insys shall have the right to pursue any remedy at law or in equity for the City's

breach. If Insys remains in default after notice and opportunity to cure, City shall have the right to pursue any remedy at law or in equity for Insys'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 Insys 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 Insys.
- 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. Insys 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 Insys elects not to purchase the Facility as contemplated by this Agreement, Insys 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  
Email: [snorwood@roundrocktexas.gov](mailto:snorwood@roundrocktexas.gov)

With a required copy to:

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

If to Insys: Insys Therapeutics, Inc.  
811 Paloma Dr., Suite C  
Round Rock, Texas 78665  
Attn: Bryan Waltrip  
Phone: (512) 583-6975  
Email: [bwaltrip@insysrx.com](mailto:bwaltrip@insysrx.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, 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.

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 \_\_\_\_ day of \_\_\_\_\_, 2013 (the “Effective Date”).

THE CITY OF ROUND ROCK, TEXAS,  
a Texas Home Rule Municipality

By:

\_\_\_\_\_  
Alan McGraw, Mayor

Date: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Sara White, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Stephan L. Sheets, City Attorney

INSYS THERAPEUTICS, INC  
a Texas corporation

By: \_\_\_\_\_  
\_\_\_\_\_, (printed name)  
\_\_\_\_\_, (title)

Date: \_\_\_\_\_

**EXHIBIT "A" TO THE ECONOMIC DEVELOPMENT AGREEMENT**

**RESOLUTION NO. R-\_\_\_\_\_**

**WHEREAS**, Insys Therapeutics, Inc., ("Insys") has expressed to the City of Round Rock ("City") its desire to expand its operations in 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 Insys a §380.001 Program in exchange for Insys expanding its operations 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 \_\_\_\_ day of \_\_\_\_\_, 2013.

---

ALAN MCGRAW, Mayor  
City of Round Rock, Texas

ATTEST:

---

SARA L. WHITE, City Secretary



**EXHIBIT “A” TO THE RESOLUTION**  
**ECONOMIC DEVELOPMENT PROGRAM**

The terms of the \$380,001 Economic Development Program to be offered to Insys Therapeutic, Inc. (“Insys”) in exchange for Insys's expanding its operations in the City of Round Rock are as generally outlined below:

1. Insys’s obligations:
  - 1.1. Insys agrees to open a new, expanded facility (“Facility”) at 2700 Oakmont Drive, Round Rock, Texas for the purpose of pharmaceutical manufacturing.
  - 1.2. Insys agrees to invest at least \$10,500,000 in the purchase and installation of Facility improvements and new equipment.
  - 1.3. Insys agrees to retain its 12 current full-time employees and to add 30 new full-time employees over the next four years.
2. City’s obligations:
  - 2.1. City agrees to waive City permit fees associated with building permits.
  - 2.2. City agrees to expedite City approval of required permits.
  - 2.3. City agrees to make an initial Economic Incentive Payment of \$150,000 to Insys if it meets its obligation to spend at least \$10,500,000 for Facility improvements and new equipment for the Facility.
  - 2.4. City agrees to make additional Economic Incentive Payments to Insys’s upon its satisfaction of its obligation to retain and create jobs in accordance with the schedule set out in §4.3.1. The City will pay an additional EIP of \$20,000 if the December 31, 2014 job requirement is satisfied. Thereafter, the City will pay an additional \$10,000 per year if the job requirements for 2015, 2016, and 2017 are satisfied. The additional EIP’s shall be paid within 30 days after Insys’s has filed the job compliance affidavit required by §4.3.3.
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.

## **EXHIBIT “B” TO THE ECONOMIC DEVELOPMENT AGREEMENT**

<b>Description of Equipment</b>	<b>Model or Serial No.</b>
Purification Pumping Skid	Hipersep L
80 cm Purification Column	Prochrom LC800.700.VE70
Thin Filmed Evaporators	Custom
Automation	Custom
Storage Vessels	TBD
Control Valves and Instrumentation	Custom
Eluent Vessel	3010
Solvent Adjustment Instrumentation	TBD
Auto Temperature Adjustment	TBD
6 - Heidolph Rotary Evaporators	Rotovap L Man
Reactor Chiller	TBD
Reactor Boiler	TBD
Purification Line 1 Chiller	TBD
Purification Line 2 Chiller	TBD
Purification Boiler	TBD
Facility Vacuum System	TBD
Nitrogen Supply	TBD
Compressed Air System	TBD
Clean Rooms	TBD
Diesel Generator	TBD

## **EXHIBIT “C” TO THE ECONOMIC DEVELOPMENT AGREEMENT**

### **DESCRIPTION OF IMPROVEMENTS**

The Improvements will include but are not limited to the following: Replace all HVAC Systems

Process Piping

Information Systems

Security Systems (DEA motion, cameras, and controlled access

Furniture

DI Water System

DEA Vault (500 sq. ft.

Walk-in Cold Storage Units

**EXHIBIT “D” TO THE ECONOMIC DEVELOPMENT AGREEMENT**

# JOB COMPLIANCE AFFIDAVIT

Before me, the undersigned authority, on this day personally appeared \_\_\_\_\_(name)\_\_\_\_\_, known to me to be the person whose name is subscribed below and after having been duly sworn, on his/her oat stated as follows:

1. “My name is \_\_\_\_\_. I am over the age of 21 years and am capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.
2. “I am the \_\_\_\_\_ (title) \_\_\_\_\_ of Insys Therapeutics, Inc. and am duly authorized to make this affidavit.
3. “As of December 31, 201\_\_\_\_, Insys Therapeutics, Inc., had the following job positions and salaries:

[illegible]

_____	_____	\$ _____
_____	_____	\$ _____
<b>TOTAL JOBS</b>	_____	<b>AVG. SALARY</b> \$ _____

4. "In addition to the salary, all full time jobs included industry standard employee benefits.

Dated this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
(Printed name)

\_\_\_\_\_  
(Title)

SUBSCRIBED AND SWORN TO before me on this the \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Notary Public, State of Texas