

RESOLUTION NO. R-13-11-14-H1

WHEREAS, Insys Therapeutics, Inc. has expressed an interest in expanding its pharmaceutical manufacturing facility (the "Facility"); and

WHEREAS, Insys Therapeutics, Inc. is currently located at 801 Paloma Drive and is expected to lease space in a building located at 2700 Oakmont Drive ("Property") within the City as described in Exhibit "A"; and

WHEREAS, the City Council anticipates creating a Reinvestment Zone on the Property pursuant to Chapter 312, Texas Tax Code; and

WHEREAS, in anticipation of the lease of the Property by Insys Therapeutics, Inc. and the creation of the Reinvestment Zone, the City Manager has negotiated a proposed Property Tax Abatement Agreement ("Agreement") with Insys Therapeutics, Inc.; and

WHEREAS, subject to the lease of the Property by Insys Therapeutics, Inc. and subject to the creation of the Reinvestment Zone on the Property, the Council wishes to authorize the Mayor to execute the Agreement, Now Therefore

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

That conditioned on and subject to (1) the lease of the Property by Insys Therapeutics, Inc. and (2) the creation of a Reinvestment Zone on the Property, the Mayor is hereby authorized to execute on behalf of the City a Property Tax Abatement Agreement, a copy of which is attached hereto as Exhibit "B" and incorporated herein.

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 14th day of November, 2013.



ALAN MCGRAW, Mayor
City of Round Rock, Texas

ATTEST:



SARA L. WHITE, City Clerk

PROPERTY TAX ABATEMENT AGREEMENT

This Property Tax Abatement Agreement (this "*Agreement*") is entered into by and between the City of Round Rock, Texas (the "*City*"), a Texas home rule municipal corporation, and Insys Therapeutics, Inc., a Texas corporation ("*Insys*").

RECITALS

WHEREAS, Insys has or will lease space in a building (the "*Facility*") located on a tract of land (the "*Property*"), as described on the attached **Exhibit A**, and desires to purchase equipment for pharmaceutical manufacturing, as described in **Exhibit B** (the "*Equipment*"); and

WHEREAS, by entering into this Agreement, Insys confirms its intent to make certain improvements to the Facility and to purchase the Equipment and to retain and add full-time jobs, thereby resulting in new economic development in City; and

WHEREAS, on the 14th day of November, 2013, the City Council, of the City of Round Rock, Texas, adopted Ordinance No. G-~~13~~ 11 - 14 - 61 establishing Reinvestment Zone No. 26 (the "*Reinvestment Zone*") City of Round Rock, Texas for commercial/industrial tax abatement, hereinafter referred to as "Ordinance No. G-13-11 - 14 - 61", as authorized by the Texas Property Redevelopment and Tax Abatement Act, Chapter 312, Tax Code, V.A.T.S. as amended (the "*Tax Abatement Act*") ; and

WHEREAS, the Facility and Equipment are or will be located on the Property within the Reinvestment Zone; and

WHEREAS, the City has adopted Ordinance No. G-12-11-08-G3, which Ordinance adopted appropriate guidelines and criteria governing reinvestment zones and tax abatement agreements to be entered into by the City as contemplated by the Tax Abatement Act; and

WHEREAS, the City has determined that the contemplated use of the Facility and the Equipment and the retention and creation of jobs, as well as the terms of this Agreement are consistent with encouraging development in the Reinvestment Zone in accordance with the purposes for its creation and are in compliance with Ordinance No. G-12-11-08-G3 and the guidelines and criteria adopted by the City and all applicable laws; and

WHEREAS, the improvements to the Facility and the purchase of the Equipment constitute a major investment within the Reinvestment Zone that will substantially increase the appraised value of the property within the Reinvestment Zone, and will contribute to the retention of primary and secondary employment within the City; and

WHEREAS, the City finds that there will be no substantial adverse effects on the provision of governmental services or on its tax base and that the planned use of the Facility will not constitute a hazard to public safety, health, or welfare, NOW THEREFORE, the parties hereto do mutually agree as follows:

1. **Authorization.** This Agreement is authorized by the Tax Abatement Act, and by Resolution of the City Council of the City of Round Rock, Texas dated November 14, 2013.

2. **Definitions.** As used in this Agreement, the following terms shall have the meanings set forth below:

(a) **"Abatement"** means the full or partial exemption from ad valorem taxes of the Eligible Property in the Reinvestment Zone as more particularly set forth in **Section 4**.

(b) **"Abatement Period"** means the period of time beginning with the Effective Date of Abatement and continuing until December 31, 2019.

(c) **"Abatement Value"** means the assessed value of the Eligible Property as determined annually by the WCAD on behalf of the City less the amount of the Base Year Value.

(d) **"Affiliate of Insys"** means all companies under common control with, controlled by, or controlling Insys. For purposes of this definition, "control" means 51% or more of the ownership determined by either value or vote.

(e) **"Base Year Value"** means the assessed value of the Eligible Property on January 1, 2014 (or on January 1 of the year of execution of this Agreement if determined to be otherwise required by applicable law), as such value is determined by the Williamson Central Appraisal District (the "WCAD") on behalf of the City.

(f) **"City Guidelines"** means the Tax Abatement Guidelines and Criteria for Granting Tax Abatement in Reinvestment Zones, as set forth in §38-22, Round Rock Code of Ordinances, 2010 Edition.

(g) **"Effective Date of Abatement"** means the period commencing January 1, 2015.

(h) **"Eligible Property"** means the Equipment.

(i) **"Equipment"** means the items listed in **Exhibit B**.

(j) **"Facility"** means the building, or portion thereof, leased by Insys located on the Property, which has the address of 2700 Oakmont Drive, Round Rock, Texas.

(k) **"Ineligible Property"** means the Property and any personal property that was located within the Facility at any time before the period covered by this Agreement.

(l) **"Property"** means the tract of real property owned by Fog Break, Ltd. located in the Reinvestment Zone and described in Exhibit "A".

(m) **"Recapture Liability"** means the amount of ad valorem taxes that were abated as result of this Agreement that are subject to recapture by the City from Insys in the event of an Insys default as described in **Section 9**.

(n) "Reinvestment Zone" means the reinvestment zone established on the 14th day of November, 2013, in Ordinance No. G-13- 11 - 14 - 61 establishing Reinvestment Zone No. 26.

(o) "Tax Code" means the Tax Code of the State of Texas

(p) "WCAD" means the Williamson Central Appraisal District of Williamson County, Texas.

3. **Subject Property.** During the Abatement Period, the Facility shall be used consistent with the general purpose of encouraging development or redevelopment within the Reinvestment Zone. The Property is not located in an improvement project financed by tax increment bonds and does not include any property that is owned or leased by a member of the City Council or by a member of the City Planning and Zoning Commission.

4. **Grant of Abatement.** Subject to the terms and conditions contained herein, and subject to the rights of the holders of any outstanding bonds of the City, the City hereby grants the Abatement on the Abatement Value of the Eligible Property located within the Facility as follows:

| | | |
|-----|---------------|------|
| (a) | Year 1 (2015) | 100% |
| (b) | Year 2 (2016) | 75% |
| (c) | Year 3 (2017) | 50% |
| (d) | Year 4 (2018) | 50% |
| (e) | Year 5 (2019) | 50% |

As provided in Section 11., Insys agrees that regardless of anything contained herein to the contrary, during the Abatement Period, the value of the Equipment located thereon shall be no less than \$7,300,000.00.

5. **Term of Abatement.** Insys shall receive the Abatement commencing on the Effective Date of the Abatement and continuing for Abatement Period.

6. **Taxable Property.** During the Abatement Period, taxes shall be payable on the Eligible Property and the Ineligible Property located within the Reinvestment Zone as follows:

(a) The value of the Ineligible Property as defined herein shall be fully taxable; and

(b) The Base Year Value of the Eligible Property as determined by the WCAD shall be fully taxable.

7. **Insys's Development Covenants.** In consideration of the City's agreement to enter into this Agreement, Insys represents that it intends to make certain improvements to the

Facility and to purchase and install the Equipment for the purpose of operating its pharmaceutical manufacturing facility in the City and Insys acknowledges that the City's obligations hereunder are conditioned upon Insys's continued operation of said pharmaceutical manufacturing facility throughout the term of this Agreement. In the event Insys fails to install the Equipment by December 31, 2014 (subject to delays caused by events of Force Majeure), the City may terminate this Agreement by giving Insys written notice of such termination.

As additional consideration, Insys agrees and covenants to provide and/or retain at least the number of full-time jobs within the Facility according to the following schedule:

(a)

| <u>Date</u> | <u>Retain</u> | <u>New</u> | <u>Total</u> |
|----------------------|---------------|------------|--------------|
| On December 31, 2013 | 11 | 0 | 11 |
| On December 31, 2014 | 11 | 5 | 16 |
| On December 31, 2015 | 16 | 5 | 21 |
| On December 31, 2016 | 21 | 10 | 31 |
| On December 31, 2017 | 31 | 10 | 41 |
| On December 31, 2018 | 41 | 0 | 41 |
| On December 31, 2019 | 41 | 0 | 41 |

The foregoing full-time jobs will have an average annual salary of at least \$50,000, plus industry standard benefits. On or before February 1 of each calendar year during the Abatement Period, Insys agrees to provide to the City an affidavit certifying its compliance with the foregoing job requirements in the form attached hereto as **Exhibit C**. 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.

8. **Default.** In the event that Insys (a) allows its ad valorem taxes to the City to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest; (b) fails to comply with its job retention and creation obligations; or (c) violates any of the material terms and conditions of this Agreement, Insys shall be considered in default. In the event that Insys defaults under this Agreement, the City shall give Insys written notice specifying such default. If Insys has not cured the default within thirty (30) days after its receipt of such written notice, the City may pursue any of its remedies for the collection of delinquent property taxes as provided generally in the Tax Code.

9. **Abatement Recapture.** In the event the City terminates this Agreement as a result of Insys's default, the City may recapture and collect from Insys the Recapture Liability. Insys shall pay to the City the Recapture Liability within thirty (30) days after the date of termination, subject to any and all lawful offsets, settlements, deduction, or credits to which Insys may be entitled. Notwithstanding anything herein to the contrary, such Recapture Liability shall not exceed an amount equal to all taxes which were abated pursuant to this Agreement from the Effective Date of Abatement to the date of termination (together with interest thereon to be charged at the statutory rate for delinquent taxes as determined by Section 33.01 of the Property Tax Code of the State of Texas, but without the addition of a penalty). 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.

10. **Certification and Inspections.** No later than April 15 of each year of the Abatement Period, Insys must certify in writing to the City that Insys is in compliance with each applicable term of this Agreement and the City Guidelines and, if not in compliance, the steps Insys intends to take to be in compliance or a statement from Insys explaining in reasonable detail why compliance cannot be achieved. Insys agrees that the WCAD and the City, their agents and employees, shall, upon reasonable notice, have reasonable right of access to the Facility in order to ensure that the installation of the Equipment in the Facility is in accordance with this Agreement and all applicable state and local laws and regulations or valid waiver thereof. All inspections will be made with one or more representatives of Insys and in accordance with Insys's security and safety requirements. At the time of annual certification, upon the City's written request, Insys shall also provide a calculation of the aggregate amount of economic benefit Insys has previously received pursuant to this Agreement and the Development Agreement. In order to efficiently administer the Abatement, Insys agrees also to provide annually, no later than April 15, a full asset listing of personal property located on the Property and in the Facility to the WCAD and such other information as may be reasonably necessary for the Abatement and assessment of the assets for tax purposes, including any information required by the City Guidelines.

Each year the City will endeavor to send Insys a reminder of its obligation under this **Section 10**. However, the failure of the City to do shall not relieve Insys of its obligations hereunder.

11. **Rendition of the Equipment.** During the Abatement Period, Insys shall, in accordance with the deadlines set forth by law, timely submit to the WCAD, a personal property rendition. The personal property rendition shall include the year of acquisition, cost and description of the Equipment, as described in **Exhibit B**.

Insys shall submit the foregoing personal property rendition forms to the WCAD, in the minimum amount necessary so that the taxable value of the Equipment prior to applying the abatement provided for herein, shall be no less than \$7,300,000; provided however, that such minimum amount shall not be construed as determining the fair market value of the Equipment upon the expiration of this Agreement.

12. **Annual Tax Application.** It shall be the responsibility of Insys, pursuant to V.T.C.A., Tax Code, § 11.43, to file an annual exemption application form with the WCAD. The Chief Appraiser of the WCAD shall annually determine and record both the abated taxable value and the full taxable value of the Eligible Property in the appraisal records. The full taxable value figure listed in the appraisal record shall be used to compute the amount of abated taxes that are required to be recaptured and paid in the event this Agreement is terminated in a manner that results in recapture pursuant to **Section 9**. Each year Insys shall furnish the Chief Appraiser with such information outlined in V.T.C.A., Tax Code, Chapter 22, as may be necessary for the administration of the abatement specified herein. Insys shall be entitled to appeal any determination of the Chief Appraiser in accordance with the provisions of the Texas Tax Code.

13. **Assignment.** Insys may assign this Agreement to a new owner of the Equipment with the written consent of the City Council of the City, which consent shall not be unreasonably withheld, conditioned or delayed. An assignment to an Affiliate of Insys shall not require such written consent. Any assignment shall be in writing, and shall provide that the assignee shall irrevocably and unconditionally assume all the duties and obligations of the assignor upon the same terms and conditions as set out in this Agreement.

14. **Notice.** All notices and other communications hereunder shall be in writing (whether or not a writing is expressly required hereby), and shall be deemed to have been given and become effective (a) if given by either party or its counsel via an express mail service or via courier or via receipted facsimile transmission (but only if duplicate notice is also given via express mail service or via courier or via certified mail), then if and when delivered to and received (or refused) by the respective parties at the below addresses (or at such other address as a party may hereafter designate for itself by notice to the other party as required hereby), or (b) if sent via certified mail by either party or its counsel, then on the third business day following the date on which such communication is deposited in the United States mails, by first class certified mail, return receipt requested, postage prepaid, and addressed to the respective parties at the below addresses (or at such other address as a party may hereafter designate for itself by notice to the other party as required hereby). Any notice provided for under the terms of this Agreement by either party to the other shall be in writing and may be effected by registered or certified mail, return receipt requested.

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

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@scrrlaw.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@insystrx.com

15. **Applicable Law.** This Agreement is made and shall be construed and interpreted under the laws of the State of Texas and shall be performable in Williamson County, Texas.

16. **No Liability.** It is understood and agreed between the parties that Insys, in performing its obligations hereunder, is acting independently, and the City assumes no responsibility or liability to third parties in connection therewith. It is further understood and agreed among the parties that the City, in performing its obligations hereunder, is acting independently, and Insys assumes no responsibility or liability to third parties in connection therewith.

17. **Estoppel Certificate.** Any party hereto may request an estoppel certificate from another party hereto so long as the certificate is requested in connection with a bona fide business purpose. Each party agrees to promptly execute and deliver any estoppel certificate requested pursuant to this Section 17. The certificate, which will upon request be addressed to Insys, or a lessee, purchaser or assignee of Insys, shall include, but not necessarily be limited to, statements (qualified to the best knowledge of the party providing the estoppel) that this Agreement is in full force and effect without default (or if a default exists, the nature of such default and any curative action which should be undertaken to cure same), the remaining term of this Agreement, and such other matters reasonably requested by the party(ies) to receive the certificate.

18. **Legal Construction.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be considered as if such invalid, illegal or unenforceable provision had never been contained in this Agreement.

19. **Force Majeure.** Whenever a period of time is prescribed for the taking of an action by Insys, the period of time for the performance of such action shall be extended by the number of days that the performance is actually delayed due to strikes, acts of God, shortages of labor or materials, war, terrorist attacks (including bio-chemical attacks), civil disturbances and other causes beyond the reasonable control of Insys. However, events of Force Majeure shall not extend any period of time for the payment of sums payable by Insys.

20. **Entire Agreement.** This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in this Agreement, and except as otherwise provided herein cannot be modified, amended, altered or revoked without written agreement of the parties hereto.

21. **Recordation of Agreement.** A certified copy of this Agreement or a memorandum summarizing this Agreement, in recordable form may be recorded in the Deed of Records of Williamson County, Texas.

22. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

23. **Authority.** The individuals executing this Agreement on behalf of the respective parties hereto represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or

entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

24. **Multiple Counterparts.** This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

25. **Time of Essence.** Time is of the essence in this Agreement.

26. **Joint Drafting.** The parties agree this Agreement has been drafted jointly by the parties and their legal representatives.

27. **Exhibits.** All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the latest date as reflected by the signatures below (the "*Effective Date*").

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

By: _____

Alan McGraw, Mayor

Date: _____

11.14.13

Attest:

Sara White, City Clerk

APPROVED AS TO FORM:

Stephan L. Sheets, City Attorney

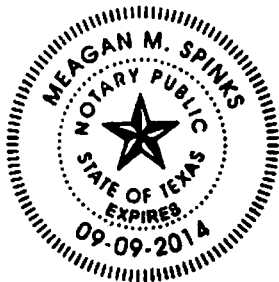
INSYS THERAPEUTICS, INC
a Texas corporation

By: *Bryan Waltrip*
Bryan Waltrip _____, (printed name)
Director of Operations, _____ (title)
Date: November 11, 2013

Acknowledgment

State of Texas
County of Williamson

This instrument was acknowledged before me on this the 14th day of November, 2013
by Alan McGraw, as Mayor of the City of Round Rock, Texas.



Meagan M. Spinks
Notary Public, State of Texas

Acknowledgment

State of Texas
County of Williamson

This instrument was acknowledged before me on this the 11 day of 2013,
2013 by Bryan Waltrip, Director of Operations of Insys Therapeutics, Inc.



Michelle Marie Freischmidt
Notary Public, State of Texas

EXHIBIT A

Lot 1, Block B, Sec. 5, Oakmont Centre, according to the plat recorded in Cabinet ___Slide ___
of the plat records of Williamson County, Texas, containing 5.293 acres.

EXHIBIT B

| Description of Equipment | Model or Serial No. |
|------------------------------------|----------------------------|
| 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 |

| | | |
|------------------|-------|----------------------|
| _____ | _____ | \$ _____ |
| _____ | _____ | \$ _____ |
| _____ | _____ | \$ _____ |
| TOTAL JOBS _____ | | AVG. SALARY \$ _____ |

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 _____, 201__.

Notary Public, State of Texas