

ADDENDUM "2019-1"
to the
AGREEMENT BETWEEN THE SEABROOK ECONOMIC DEVELOPMENT CORPORATION, THE CITY OF SEABROOK, TEXAS, AND KIWO INC.

This Addendum "2019-1", ("Addendum") is made this ____ day of _____, 2019, and is incorporated into and will be deemed to amend the **Economic Development Agreement** (the "**Agreement**") between **KIWO Inc.**, ("KIWO"), the Seabrook Economic Development Corporation ("SEDC"), and the City of Seabrook, ("City"), for economic development incentives to facilitate site improvements of KIWO's manufacturing facilities located at 1929 Marvin Circle, Seabrook, Texas 77586, (as more particularly described in Exhibit "A" and incorporated by reference), due to recent TxDot condemnation for improvements to Highway 146 and its effects to KIWO's manufacturing site location. The site improvements and related conditions for incentives by the EDC (the "Project Facilities") are specifically conditioned upon Developer's/Owner's required performance terms, as more fully described in the Agreement. The purpose of this Addendum 2019-1 is to provide an **extension** for the time of performance for Developer's/Owner's performance of the conditions specified in Sections I and II; specifically, the relocation of KIWO's emulsion manufacturing operations to the City of Seabrook by December 1, 2019, as currently contained in Section I (b) in the Agreement.

The purpose of this Addendum 2019-1 is to grant a 12-month **extension** from **December 1, 2019**, as currently contained in the Agreement, under Section I. "Inducement by SEDC", paragraph (b), to **December 1, 2020**, to allow for the relocation of KIWO's emulsion manufacturing operations to the City of Seabrook. The City of Seabrook, ("City"), the Seabrook Economic Development Corporation ("SEDC") and KIWO Inc., ("KIWO"), accordingly agree to the following:

The Agreement currently provides, on page 4, under Section I. "Inducement by SEDC", paragraph (b), that SEDC will provide, in the form of a reimbursement to KIWO, an economic incentive grant ("**Grant**"), for the Project Facilities/Project, a total amount not to exceed **\$84,209.40** as provided hereafter in accordance with the Project Application/Site Plan and as further conditioned hereafter:

*"(b) Relocation of KIWO's emulsion manufacturing operations to the City of Seabrook by **December 1, 2019** as represented in the Application; and"*

The Agreement under Section I. "Inducement by SEDC", paragraph (b), is hereby amended by this Addendum 2019-1 to now read as follows:

*“(b) Relocation of KIWO’s emulsion manufacturing operations to the City of Seabrook by **December 1, 2020** as represented in the Application as revised by Addendum 2019-1; and....”*

Additionally, the Agreement, Section II. “Performance by Developer” shall be amended by adding a new paragraph E. entitled “Extensions for Performance” as follows:

“Developer/Owner shall provide for the timely completion and performance of the Project as delineated in Application and this Agreement/Site Plan, and any amendments thereto. Developer/Owner understands and agrees that the dates for performance as contained in the Agreement shall not be further extended except by amendment of this Agreement, predicated upon a filed written application of Developer/Owner, prior to the date of the specific required performance date(s), demonstrating good cause shown for the requested extension, as finally determined by EDC and City Council. The failure of Developer/Owner to completely perform by the date(s) provided in the Agreement or any amendments thereto shall constitute a material breach and default of this Agreement, requiring Developer/Owner to refund all payments received from EDC pursuant to this Agreement and/or any fees waived by this Agreement, which shall be immediately due and payable.”

Except as amended herein, all other provisions of the Agreement shall remain in full force and effect. In case of conflict with this Addendum 2019-1, or the Agreement, this Addendum 2019-1 shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum “2019-1” in multiple copies, each of equal dignity, on this ___ day of _____, 2019.

[Execution Pages Follow]



CITY OF SEABROOK, TEXAS

Thomas G. Kolupski, Mayor

DATE: _____, 2019

ATTEST:

Robin Hicks, TRMC
City Secretary

SEABROOK ECONOMIC DEVELOPMENT CORPORATION

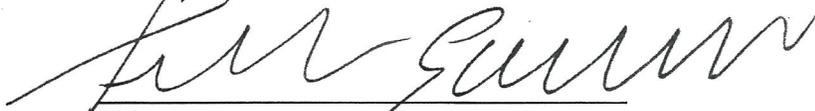
BY: Paul Dunphey,
Board President

DATE: 12/12/19, 2019

ATTEST:

Ernie Davis
Ernie Davis,
Board Secretary

KIWO, Inc.

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BY:

Executive V.P.

Title/Authorized Representative

DATE: 12/4, 2019

ECONOMIC DEVELOPMENT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT ("Agreement") is made and entered into as of February 25th, 2019, by and between the **Seabrook Economic Development Corporation**, situated in Harris County, Texas ("EDC"), and **KIWO, Inc.**, a Delaware corporation, with its principal place of business, registered office and registered agent, R. David Eisenbeiss at 1929 Marvin Circle, Seabrook, Texas 77586, ("**Owner**" or "**Developer**" or "**KIWO**"). SEDC and Owner are sometimes collectively referred to herein as the "Parties."

WITNESSETH:

WHEREAS, Developer/Owner has filed an Application representing it is in the business of manufacturing screen making supplies serving customers throughout North and Central America from its Seabrook location for the past 30 years; currently has 33 employees, is expanding its facility with the intent of relocating all of its sales force in the City of Seabrook, doubling its manufacturing, including an increase of workforce by 50%; and has filed with the SEDC a request for economic incentives in an application and supporting documentation, (*see*, KIWO Request for Reimbursement of Costs related to installation of new sediment tank, contractor proposal, Incentive Application and related updates and documents tendered by KIWO, Exhibits A-1 through A-3), hereinafter collectively referenced as the "Application", which is incorporated by reference; proposes to make such site improvements due to TxDot condemnation for improvements to Highway 146 affecting its site; related actions affecting Developer/Owner leased premises, with the need for removal of its existing sediment tank in City right of way and the replacement/relocation of a new sediment tank on KIWO premises as more specifically described in the Application, including the November 8, 2018 presentation to the EDC/updated proposal, (included in the attached Application (Exhibit A-1) and Lease attached hereto as Exhibit "A-2", all incorporated by reference in the Application and sometimes referred to herein as the "**Project Facilities**", attached hereto as Exhibit "A-3"; and

WHEREAS, Developer/Owner proposes to reconstruct new site improvements for the Project Facilities, by removal of the existing 400 gallon sediment tank in the public easement for relocation of a new 2000 gallon sediment tank on/under Developer/Owner main parking lot to an

existing approximate 25,000 square foot building site at the subject location, with 33 current employees, with up to a total of 50 future employees, and has requested estimated incentives from SEDC for reimbursement of sedimentation tank relocation and associated fees in an amount not to exceed **\$93,566** (“**Incentive Requests**”) as referenced in its Application and November 8, 2018 minutes of the EDC. Developer/Owner has submitted its plans, (as depicted in the attached Exhibit A-3 which includes plans for the new Tank, its relocation and removal of existing tank from public right of way, and Scope of Work collectively referenced hereafter as the final “Site Plan”, a true and correct copy of which is attached hereto and incorporated within the exhibits included in Exhibit “A”, and has represented that after completion of construction/improvements depicted in the Site Plan the business structure and related improvements, when completed, should generate an estimated \$16,000,000-\$20,000,000 annual gross sales. The Site Plan, Application, the filed supporting documents, minutes and the related representations of Developer/Owner are collectively referenced herein as the “**Project**” and incorporated by reference; and

WHEREAS, Developer/Owner has applied to the SEDC for a business incentive grant to help defray a portion of the costs of construction for the Project referred to above, a copy of which Application, specifically including the final Site Plan (all such documents collectively referred to herein as the "Application") which are attached hereto and made a part hereof collectively as Exhibit “A”, and are incorporated by reference. The representations contained in the Application, as well as Owners representations before the SEDC are being specifically relied upon by the SEDC as true and correct in considering Developer’s/Owner’s Application for the Project; and

WHEREAS, at the October 11, 2018 and the additional SEDC meeting on November 8, 2018, Developer/Owner, through its authorized representative discussed its applications and correspondence submitted to the SEDC and requested SEDC to fund the Incentive Request based upon its representations, which the SEDC is relying upon for evaluation; and

WHEREAS, pursuant to the Texas Local Government Code, Chapters 501 and 505 together with related authority, Economic Development Corporations of municipalities are authorized to establish programs to promote the creation or retention of jobs and/or that promote or develop new or expanded business enterprises in the municipality and in accordance with such enabling laws; and

WHEREAS, in accordance with such enabling laws, SEDC has adopted an “Economic



Development Incentive Program” (“**Program**”), as provided for in SEDC Resolution 2018-01,” and related incentives as provided by law; and

WHEREAS, SEDC hereby finds and determines that Developer's/Owner's proposed Project, together with the proposed Project Facilities, as set forth in the Application/Incentive Requests, presentation before SEDC on October 11, 2018 and November 8, 2018, Site Plan, and related documentation, meets the minimum eligibility requirements for an economic incentive grants pursuant to the Program, and legal requirements, subject to the terms and conditions contained in this Agreement; and

WHEREAS, SEDC hereby finds and determines that the Project, as depicted by Developer/Owner in the filed Application, updates, related correspondence, and presentation as referenced by the minutes of the SEDC, encourages the creation or retention of jobs and/or promotes or develops new or expanded business enterprises in the municipality and can be reasonably anticipated to act as a catalyst for further economic development, in the City of Seabrook, (the “**City**”); and

WHEREAS, SEDC, in strict reliance upon Developer's/Owner's representations, desires to provide an economic development incentive grant under the Program, as provided hereafter, to induce Developer/Owner to proceed with the implementation of the represented Project; now therefore,

FOR AND IN CONSIDERATION of the mutual promises, covenants, and agreements herein, the Parties agree as follows:

I. Inducement by SEDC. Conditioned upon: the findings of the above preamble being true and correct; Developer's/Owners' representations as being true and correct; Owners compliance with the guidelines of the Program, City Code of Ordinances, statutes/related law, and this Agreement; approval of this Project and Agreement by the Seabrook City Council; and completion of the Project/Project Facilities in accordance with the final approved **Site Plan**, as determined solely by SEDC; SEDC will provide, in the form of a reimbursement to KIWO, an economic incentive grant ("**Grant**"), for the Project Facilities/Project, a total amount not to exceed **\$84,209.40** as provided hereafter in accordance with the Project Application/Site Plan and as further conditioned hereafter:

(a) Reimbursement of 90% of the costs expended for removal of the existing 400 gallon

sediment tank in the public easement and relocation/installation of a new 2000 gallon sediment tank on Developer/Owner main parking lot in an amount not to exceed **\$84,209.40**, Grant, on or before **December 31, 2021**, which shall be payable by SEDC within 30 days after KIWO submitting satisfactory evidence to SEDC of subject approved payment(s) for completion of the Project Facilities, including removal of its existing tank in the public easement and final approval by City and EDC consistent with the improvements represented in the Application; and

(b) Relocation of KIWO's emulsion manufacturing operations to the City of Seabrook by December 1, 2019 as represented in the Application; and

(c) Continuation of KIWO business as represented in the Application for 4 years, with 18 new full time employee positions which shall be added at the end of 4 years of the date of the final approval of this Agreement, as determined by EDC.

(d) KIWO's existing lease shall be extended from December 31, 2020 to December 31, 2023.

II. Performance by Developer/Owner.

A. Improvements to Project Facilities. Developer/Owner shall provide for the timely completion of the Project as delineated in its Application and this Agreement/Site Plan, and shall timely submit all documentation as requested by the City of Seabrook/SEDC in relation to the Project and components as provided herein. Removal of the existing 400 gallon sediment tank in the public easement and relocation/installation of a new 2000 gallon sediment tank on Developer/Owner main parking lot shall be substantially complete on or before **December 31, 2021**. The failure to remove the existing sediment tank and replace with a new 2000 gallon sediment tank, and related improvements as provided herein for the Project shall constitute a fundamental breach of contract and default, requiring Developer/Owner to refund all payments received from SEDC pursuant to this Agreement.

B. Employment. Developer/Owner, pursuant to the Application and its representations shall, collectively employ not less than 33 employees at the time of execution of this Agreement and an additional 18 new full time employees positions at the end of 4 years of the date of the final approval of this Agreement.

C. KIWO Lease. Developer/Owner KIWO shall provide the City, prior to expiration of the Lease referenced in Exhibit A-2, a renewal of the subject Lease with a renewal

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term to expire no earlier than December 31, 2023.

D. Funding. Grant funds provided hereunder by SEDC shall be contingent on compliance with the provisions of Sections I and II herein.

III. Recapture for Default. This Agreement may be terminated if Developer/Owner refuses, fails or neglects to substantially comply with any of the terms of this Agreement or, if any representation made by Owner is false or misleading in any material aspect. Termination of this Agreement may be effected if any such default is not cured within thirty (30) days after written notice by the City to Owner.

(b) If during the term of this Agreement, Developer/Owner, should discontinue the Project Facilities and/or Project, as described herein, then the City shall have the right to recapture all waived permits, inspections fees, and related incentives/Grant as referenced herein.

(c) In the event of termination, a bill for the total amounts due will be sent to Owner, and Owner hereby agrees to pay the total amounts due within forty-five (45) days after receipt of the bill. Statutory penalties, interest and attorney’s fees will accrue if Owner fails to timely pay the bill. Nothing in this Agreement shall preclude Owner from disputing the bill.

IV. Jurisdiction. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas. Venue for any action arising out of this Agreement shall be exclusively in Harris County, Texas.

V. Notices. Any notice hereunder shall be given in writing to the party for whom it is intended, in person or by certified mail, at the following addresses or such future addresses as may be designated in writing:

If to Developer/Owner:

KIWO, Inc.
R. David Eisenbeiss, Registered Agent
1929 Marvin Circle
Seabrook, Texas 77586

If to SEDC:

City Manager/SEDC Director
City of Seabrook
1700 First St.
Seabrook, Texas 77586

Notice shall be deemed received upon actual receipt or upon refusal of receipt.

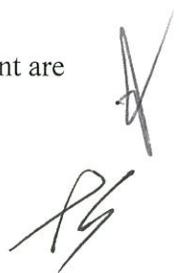
VI. Assignment and Succession. This Agreement shall be binding upon and inure to the benefit of the heirs, successors, affiliates, administrators, executors, and assigns of the respective parties. All rights hereunder may be assigned by Developer/Owner without restriction to any wholly owned subsidiary or affiliate of Developer/Owner or other entity controlled by Developer/Owner or by a subsidiary or affiliate of Developer/Owner, provided that notice of each assignment shall be given in writing to SEDC, but no other assignment shall be effective without the SEDC's written approval and consent. Provided further, no assignment hereunder shall be effective without the written acknowledgment and acceptance by the assignee of the duties and obligations of Developer/Owner set forth in this Agreement. Such approval shall not be unreasonably withheld.

VII. Time of Essence. Time is of the essence of this Agreement. However, in the event the date specified or computed under this Agreement for the performance of an obligation by any party, or for the occurrence of any event provided herein, shall be a Saturday, Sunday or "legal holiday" (defined for purposes hereof as any holiday observed by the City), then the date of such performance or occurrence shall automatically be extended to the next calendar day that is not a Saturday, Sunday or legal holiday.

VIII. Modification/Entire Agreement Expressed. No modification of this Agreement shall be valid or binding unless such modification is in writing, duly dated, and signed by the Parties. This Agreement constitutes the entire agreement between the parties. No party shall be bound by any term, conditions, statement, or representations, oral or written, not herein contained.

IX. Severability. If any term or provision of this Agreement is held to be illegal, invalid, or unenforceable, the legality, validity, or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby; and in lieu of such illegal, invalid, or unenforceable term or provision, there shall be added automatically to this Agreement, a legal, valid, or enforceable term or provision, as similar as possible to the term or provision declared illegal, invalid, or unenforceable.

X. Paragraph Headings. The paragraph headings contained in this Agreement are

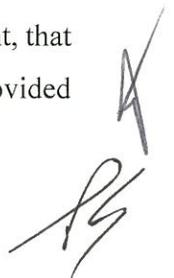


for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraph contained herein.

XI. Operations. It is expressly agreed that nothing contained in this Agreement shall be construed to contain a covenant, either express or implied, to either commence the operation of a business or thereafter continuously operate a business in the Project Facilities. The SEDC and Developer/Owner acknowledge and agree that Developer/Owner may, at its sole discretion and at any time cease the operation of its business in the Project Facilities, and SEDC hereby waives any legal action for damages or for equitable relief which might be available because of such cessation of business activity by Developer/Owner *except for the recapture of Grant funds as specifically set forth in this Agreement.* Provided, however, if Developer/Owner fails to construct the improvements to the Project Facilities, and employ/maintain the additional new employment requirements as set forth herein, Developer/Owner agrees to reimburse SEDC for all costs expended by SEDC or for which it is legally obligated to expend, as a result of its performance of this Agreement. Nothing contained in this Agreement shall be construed as creating a partnership, joint venture, or other entity between SEDC and Developer/Owner, with regard to the Project, and SEDC shall have no right hereunder to control the operation of Developer/Owner or the Project. Provided, however, nothing contained herein shall be construed as waiving or limiting the power and authority of SEDC or the City of Seabrook to exercise its police powers, or exempt Developer/Owner from complying with lawfully adopted rules, regulations, ordinances, or laws of the State of Texas or SEDC.

XII. Agreement Product of Negotiation. The Parties agree that this Agreement is the product of negotiation, that each Party has been represented by counsel of their own choosing, that each has freely entered into this Agreement after consulting with their counsel, and that this Agreement contains the terms and conditions requested and required by each. This Agreement shall be construed as having been drafted by all Parties and no term or provision shall be construed either in favor of or against a party on the basis that a party did or did not author this Agreement.

XIII. Limit Of Appropriation. Prior to the execution of this Agreement, Developer/Owner has been advised by the SEDC and Developer/Owner clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the SEDC shall have available as a condition for payment, only those sums as expressly provided

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for under this Agreement for this fiscal year to discharge any and all liabilities which may be incurred by the SEDC. The total compensation that Developer/Owner may become entitled to hereunder and the total sum that the SEDC shall become liable to pay to Owner/Developer hereunder shall not under any conditions, circumstances, or interpretations hereof exceed the amounts as provided for in this Agreement.

The Parties specifically acknowledge that the funds allocated for payment to Developer/Owner by SEDC are derived from sales tax revenues, and that SEDC has only estimated the anticipated tax revenues to be collected during the term of this Agreement in its budget for Fiscal Year 2018-19, and that no estimates have been made of tax revenues for future fiscal years. Developer/Owner further understands, acknowledges, and agrees that if the tax revenues actually collected in any fiscal year are estimated to be or are actually less than the estimated tax revenues anticipated to be collected during the term of this Agreement, SEDC shall be under no obligation to reimburse Developer/Owner for the amount set forth in Section I. Developer/Owner further acknowledges that this Agreement could be anticipated to extend into future fiscal years, and funds may not be available or budgeted in future fiscal years, and that any anticipation of extension may not be enforceable under the Constitution and laws of the State of Texas.

XIV. Employment of Undocumented Workers. Developer/Owner acknowledges prior notice provided by SEDC/City, that all Agreements related to the construction of the Project shall contain notifications required by Texas Govt. Code Section 2264, such as the following: During the term of this Agreement, the Developer/Owner agrees not to knowingly employ any undocumented workers as defined in Tex. Govt. Code Sec. 2264.001. If convicted of a violation under 8 U.S.C. § 1324a(f), the Developer/Owner shall repay the amount of the Grants/incentives and any other funds received by the Developer/Owner from the City as of the date of such violation not later than 120 days after the date the Developer/Owner is notified by the City of a violation of this section, plus interest from the date the Grant/incentive was paid to the Developer/Owner, at the rate periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by the City) as its prime or base commercial

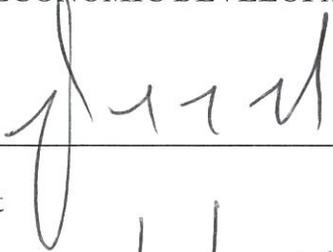
lending rate. The payment of interest shall be as if it had been accruing from the date the Grants/incentives were paid to the Developer/Owner until the date the Grants/incentives are repaid to the City.

IN WITNESS WHEREOF, and as authorized respectively by the SEDC, City Council of Seabrook and KIWO, Inc., a Delaware corporation, Developer/Owner, by and through their respective authorized agents, the parties have executed this Agreement effective the day and year first written above.

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SEABROOK ECONOMIC DEVELOPMENT CORPORATION



Paul Dunphey
Board President

DATE: 3/7/2019, 2019

ATTEST:



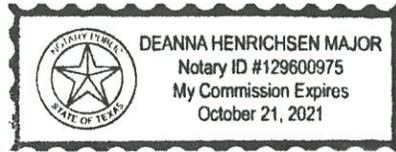
Ernie Davis
Board Secretary

KIWO Inc.



BY: Executive V.P.
Title/Authorized Representative

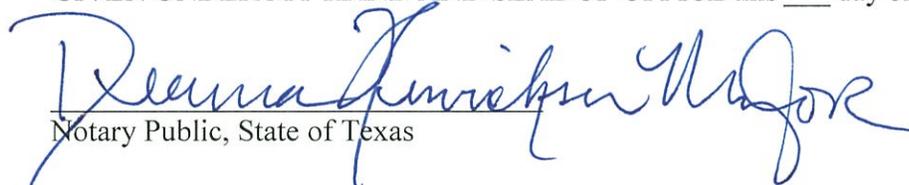
DATE: February, 25th, 2019



STATE OF TEXAS §
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COUNTY OF HARRIS §

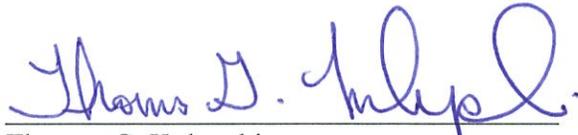
BEFORE ME, the undersigned authority, a Notary Public, on this day personally appeared Pedro Guerrero, Executive V.P. of KIWO Inc., a Delaware limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same as authorized by the company for the purposes and consideration therein expressed, on behalf of said company and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 25th day of February, 2019.



Notary Public, State of Texas

CITY OF SEABROOK, TEXAS



Thomas G. Kolupski
Mayor

DATE: April 2, 2019

ATTEST:



Robin Hicks, TRMC
City Secretary

