

ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE
CITY OF COLLEGE STATION AND FUJIFILM DIOSYNTH BIOTECHNOLOGIES
TEXAS, LLC

This Economic Development Agreement (this "Agreement") is entered into as of the ____ day of _____, 2021 (the "Effective Date") by and between the CITY OF COLLEGE STATION, TEXAS, a home-rule municipal corporation organized under the laws of Texas (hereinafter referred to as "CITY"), and FUJIFILM DIOSYNTH BIOTECHNOLOGIES TEXAS, LLC, a Texas limited liability company (hereinafter referred to as "COMPANY").

WHEREAS, COMPANY's predecessor, Kalon Biotherapeutics, L.L.C. entered into an Economic Development Agreement with the CITY on or about July 1, 2014; and

WHEREAS, COMPANY now desires to expand its presence by constructing an expanded facility on property located within the City of College Station, Texas and more particularly described in Exhibit "A" which is attached hereto for all purposes (the "Property"); and,

WHEREAS, the new facility to be constructed on the Property will consist of an approximately 138,000 sq. ft. expansion of the existing commercial manufacturing facility located at 3939 Biomedical Way for additional biomanufacturing capabilities for vaccines and gene therapies with an increase of approximately 150 FTEs as further described and defined herein as the Improvements; and,

WHEREAS, the Improvements will result in new economic development in the City, including the increase of new jobs and ad valorem tax values within the City; and,

WHEREAS, the Improvements will have a direct and positive economic benefit to CITY; and,

WHEREAS, Chapter 380 of the Texas Local Government Code provides that Texas municipalities may create programs to promote local economic development; and,

WHEREAS, CITY wishes to provide incentives to COMPANY to assist in the economic development of the CITY; and,

WHEREAS, CITY hereby finds that this Agreement embodies an eligible "program" and clearly promotes economic development in the City and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code and further, is in the best interests of the CITY;

NOW, THEREFORE, for and in consideration of TEN DOLLARS AND NO/100 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CITY

and COMPANY (each a "Party," collectively, the "Parties") represent and agree as follows:

Article I
General Provisions

All of the above recitals are hereby found to be true and are hereby approved and copied into the body of this Agreement as if copied in their entirety.

Article II
Definitions

In addition to the definitions set forth in the recitals above, wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

"Affiliate" means any person or entity which directly or indirectly controls, is controlled by or is under common control with COMPANY, during the term of such control. A person or entity will be deemed to be "controlled" by any other person or entity if such other person or entity (a) possesses, directly or indirectly, power to direct or cause the direction of the management of such person or entity whether by contract or otherwise; (b) has direct or indirect ownership of at least fifty percent (50%) of the voting power of all outstanding shares entitled to vote at a general election of directors of the person or entity; or (c) has direct or indirect ownership of at least fifty percent (50%) of the equity interests in the entity.

"Base Year Taxable Value" shall mean the Taxable Value for the Property as of January 1 of the year in which this Agreement goes into effect.

"Cities Joint Development Agreement" shall mean that one interlocal cooperation and joint development agreement entered into between the City of College Station, Texas and the City of Bryan, Texas, on or about December 15, 2011 relating to development activity within the Biocorridor.

"COMPANY" shall mean FUJUFILM DIOSYNTH BIOTECHNOLOGIES TEXAS, LLC, a Texas limited liability company qualified to do business in the State of Texas.

"Completion of Construction" shall mean: (i) substantial completion of the Improvements; and (ii) a final certificate of occupancy has been issued for all of the Improvements.

"Effective Date" shall mean the date upon which this Agreement is duly approved by the parties hereto.

"First year of Incentive Payment(s)" shall mean the first calendar year immediately following the date of Completion of Construction.

“FTE” shall mean any person who is an employee of COMPANY or an Affiliate (excluding temporary or seasonal employees) who is on the payroll in a budgeted position and has an officially scheduled work week of thirty-five (35) hours or more, works at the Property for COMPANY subject to COMPANY’s then-existing work from home policies provided such work from home is being conducted within Brazos County, Texas, and who according to such person’s employer’s policy is entitled to full benefits as a full-time employee.

"Force Majeure" shall mean any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, adverse weather, government or de facto governmental action (unless caused by acts or omissions of such Party), fires, explosions or floods, strikes, slowdowns or work stoppages.

"Gross Payroll" shall mean the sum of the payroll numbers that COMPANY and any applicable Affiliate reports to the Texas Workforce Commission quarterly for FTEs for the four preceding consecutive calendar quarters ending on or prior to a date of measurement under this Agreement.

"Improvements" shall mean the approximately 138,000 square foot expansion to the existing commercial manufacturing facility to be constructed on the Property and other ancillary facilities such as reasonably required parking and landscaping along with new personal property for a combined total personal property and real property investment of approximately of three hundred million dollars (\$300,000,000) at time of completion by January 1, 2025, subject to extension for Force Majeure.

“Incentive Payment” shall mean the payment(s) granted by CITY to COMPANY upon meeting certain performance criteria set forth in this Agreement.

"Property" means the real property comprised of approximately 12.45 acres more or less and as described in Exhibit "A", not including any improvements constructed on such real property.

"Premises" shall mean collectively, the Property and Improvements following construction thereof, but excluding the Tangible Personal Property.

“Shared Revenue” shall mean fifty percent (50%) of the operation and maintenance tax rate that the CITY assesses and collects as further set out in the Cities Joint Development Agreement.

"Tangible Personal Property" shall mean tangible personal property, equipment and fixtures, excluding inventory and supplies, owned or leased by COMPANY or any Affiliate that is added to the Improvements subsequent to the execution of this Agreement.

"Taxable Value" means the appraised value as certified by the Brazos Central Appraisal District as of January 1st of a given year.

Article III COMPANY Obligations

3.1 General Obligation. COMPANY covenants and agrees that it will construct the Improvements and operate and maintain its business on the Premises as set forth in this Agreement, and for the time period and manner as set forth herein.

The City will determine whether the minimum expenditure on improvements to the Property meeting the definition of Improvements herein is met by asking COMPANY to provide adequate proof of same along with a sworn statement by an officer of COMPANY ensuring its accuracy. Samples of adequate proof include affidavits of all bills paid, receipts, letters of completion from regulatory authorities, occupancy permits and other forms of proof. Amounts which may be considered as an investment on improvements include funds used to acquire, construct, upgrade, and maintain physical assets such as property, plants, buildings, technology, furniture, fixtures or equipment. Amounts for engineer's/architect's designs of facilities, surveying, master plans, plats, fees for registrations/applications, permits, project planning and management expenses, accounting fees, legal fees, and financing fees (including bank charges/fees, interest, and loan servicing costs) shall not be considered as an investment.

3.2 Timely Construction of Improvements and Occupancy.

a. Commencement of Construction. Construction of the Improvements on the Property must commence (which shall mean any earth moving activities) no later than January 1, 2023 (the "Start Date"), subject to extension for Force Majeure, and COMPANY shall notify the CITY of such Start Date.

b. Completion of Construction and Occupancy. There shall be Completion of Construction of the Improvements, including issuance of all necessary occupancy permits from CITY, and COMPANY shall be fully operational by no later than January 1, 2025, subject to extension for Force Majeure.

3.3 Ongoing Occupancy. The COMPANY or an Affiliate of COMPANY must, subject to Force Majeure) continuously occupy and use the Improvements to leverage the existing commercial infrastructure to expand existing biomanufacturing capabilities for vaccines, gene therapies, and/or biopharmaceuticals commencing upon Completion of Construction and for each year for which there is an Incentive Payment.

3.4 Jobs. COMPANY currently employs approximately 600 FTEs. By the end of the third year following the date of Completion of Construction of the Improvements, COMPANY agrees that it will have created a minimum of 150 new FTEs with an average annual salary of eighty thousand dollars (\$80,000) per job, for a minimum total of 750 FTEs which COMPANY agrees to have and maintain on the Premises for a total of ten years from the date of Completion of Construction of the Improvements throughout the term of this Agreement.

3.5 COMPANY failure to meet its obligations.

a. Failure to meet construction deadlines and initial occupancy. If COMPANY does not

timely meet all of the deadlines for Commencement of Construction and Completion of Construction, as well as complying with all reporting and inspection requirements set forth below, COMPANY shall not be entitled to the First Year of Incentive Payment, or if the First Year of Incentive Payment has been made by CITY to COMPANY, COMPANY shall reimburse CITY said amount as well as for any and all reasonable attorney's fees and costs incurred by CITY as a result of any action required to obtain the reimbursement of such First Year of Incentive Payment(s). Such reimbursement shall be due and payable 120 days after COMPANY receives written notice from CITY of its failure to meet its obligations herein.

b. Failure to meet one or more ongoing obligations. Except as may be expressly provided for otherwise in this Agreement, COMPANY herein waives payment of any Incentive Payments for any year in which it fails to continuously have, operate and maintain all of the following: the Improvements in accordance with this Agreement, the requisite number of FTEs, the requisite average annual salary of such FTEs, and operating and staying operational substantially in the manner represented herein. Further, COMPANY shall reimburse CITY any Incentive Payments made in contravention of the terms of this Agreement. Finally, COMPANY waives payment of any Incentive Payments for any year in which it fails to comply with reporting and inspection requirements as set forth below. The foregoing waiver by COMPANY shall be the sole and exclusive remedy hereunder for any defaults by COMPANY stated in this subsection (b).

3.6 Reporting and Inspections.

(1) While this Agreement is in effect, annually within 60 days following the anniversary date of the Effective Date of this Agreement, the COMPANY will provide the following to CITY:

a. Certification that it has complied with the terms of this Agreement, as applicable, including the provision of sufficient written information, records, and documents, to support its certification of compliance; and

b. A report showing the timely number of jobs created and maintained as required by this Agreement for every year this requirement and Agreement is in effect. Such report shall be certified by a Certified Public Accountant at COMPANY's expense, and signed by a legally authorized executive of the COMPANY; and

c. Texas Workforce Commission quarterly reports further demonstrating that COMPANY met the employment and job creation targets for the preceding year when required; and

d. Upon CITY's request, any and all additional information reasonably necessary for the City to determine if the COMPANY has complied with its obligations pursuant to this Agreement; and

e. Upon CITY's request at least three (3) business days prior written notice, such reasonable access to the Property and its Improvements during regular business hours to inspect same to verify that COMPANY is complying with the terms of this Agreement.

3.7 Compliance with applicable law. The Property and the Improvements constructed thereon at all times shall be constructed, operated and used in the manner (i) that is consistent with CITY's Code of Ordinances, as amended, including its Uniform Development Code; and (ii) that is in accordance with all applicable state and local laws, codes, and regulations.

3.8 Ownership. COMPANY agrees to have it or one of its Affiliates continuously, subject to Force Majeure, occupy and conduct operations on the Premises for a period of at least ten (10) years from the date of Completion of Construction in substantially the manner set forth in this Agreement. Notwithstanding anything in this Agreement to the contrary, COMPANY may sell, assign or otherwise transfer the Premises to a third party to develop and/or to act as landlord of COMPANY. In such event CITY consent shall not be required provided COMPANY continues to occupy and operate the Premises within the time and in the manner as set forth in this Agreement.

3.9 Disclosure Requirements. When applicable, COMPANY agrees to comply with all applicable disclosure requirements, including those under Sections 2252.908 and 403.0246 of the Texas Government Code when entering into a contract that requires approval of the governing body of CITY unless falling within certain exceptions; and Chapter 176 and Section 380.004 of the Texas Local Government Code for vendor disclosure requirements for certain business relationships with local government officers or their family members and for information regarding economic development agreements.

Article IV
CITY's Obligations

4.1 Incentive Payment. Upon COMPANY meeting its obligations as set forth under this Agreement CITY shall make the following Incentive Payments to it:

a. Subject to the terms and conditions of this Agreement, provided that the Improvements total approximately \$300 million at time of the date of Completion of Construction, CITY hereby grants an annual Incentive Payment to COMPANY in an amount equal to a percentage of ad valorem taxes assessed, paid and not contested by the COMPANY relating only to the Improvements on the Property as follows:

<u>Year</u>	<u>Annual Incentive Payment based on ad valorem</u>	
First Year of Incentive Payments	90% of debt service	90% of Shared Revenue
Year 2	80% of debt service	80% of Shared Revenue
Year 3	70% of debt service	70% of Shared Revenue

Year 4	70% of debt service	70% of Shared Revenue
Year 5	50% of debt service	50% of Shared Revenue
Year 6	50% of debt service	50% of Shared Revenue
Year 7	30% of debt service	30% of Shared Revenue
Year 8	30% of debt service	30% of Shared Revenue
Year 9	20% of debt service	20% of Shared Revenue
Year 10	10% of debt service	10% of Shared Revenue

b. The total amount of Incentive Payments will in no event exceed a total of four million, eight hundred eighty-one thousand, nine hundred three dollars (\$4,881,903), at which time CITY's obligation to grant Incentive Payments to COMPANY ends.

c. CITY will remit the annual Incentive Payment to COMPANY no later than sixty (60) days from when COMPANY properly submits to CITY all of its reporting requirements beginning with the First Year of Incentive Payment provided COMPANY meets all the requirements annually entitling it to the corresponding Incentive Payment.

d. During the period of the Incentive Payments herein authorized, COMPANY shall be subject to all taxation, including but not limited to, sales tax and ad valorem taxation; provided this Agreement does not prohibit COMPANY from claiming any exemptions from tax provided by applicable law.

4.2 Right to offset. CITY may, at its option, offset any amounts overdue and payable under this Agreement, including Incentive Payment payments, against any debt (including taxes) lawfully due to CITY from COMPANY, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise, and regardless of whether or not the debt due CITY has been reduced to judgment by a court; provided, however (i) CITY shall provide COMPANY notice within thirty (30) days of determining that any debt is believed lawfully due to CITY from COMPANY; (ii) COMPANY shall have an opportunity to resolve or pay such debt to CITY within thirty (30) days after receipt of notice before any offset to amounts payable under this Agreement may occur; and (iii) COMPANY retains all rights to timely and properly contest whether or in what amount any debt is owed to CITY, and CITY may not offset any asserted amount of debt owed by COMPANY against amounts due and owing under this Agreement during any period during which COMPANY is timely and properly contesting whether such amount of debt is due and owing.

Article V
Conditions Precedent

5.1 This Agreement is conditioned upon the City of Bryan approving this Agreement as required under the Joint Agreement.

Article VI
Term

6.1 Term. The term of this Agreement shall begin on the Effective Date and shall continue until the end of the 12th full calendar year following Completion of Construction (currently estimated to be December 31, 2036) unless terminated sooner pursuant to the terms of this Agreement.

6.2 This paragraph is required by Chapter 2264, Tex. Gov. Code and governs over any conflicting provisions of this Agreement. COMPANY agrees not to knowingly employ any undocumented workers, and if convicted of a violation under 8 U.S.C. Section 1324a (f) COMPANY shall repay the Incentive Payments to it from CITY as well as any other funds received by COMPANY from CITY as of the date of such violation within thirty (30) days after the date COMPANY is notified by CITY of such violation, plus interest at the rate equal to the 90 day Treasury Bill plus ½% (.005) per annum, from the date of violation until paid. COMPANY is not liable for a violation of this Section by a COMPANY Affiliate, or franchisees of COMPANY or by a person or entity with whom COMPANY contracts.

Article VII
Default

7.1 If COMPANY defaults in any term or condition of this Agreement, then, subject to Section 7.2 below, CITY shall not be obligated to provide Incentive Payments for that year in which the default occurred. However if COMPANY fails to maintain the required 150 FTEs or required average annual salary at the end of the third year following the date of Completion of Construction of the Improvements or any subsequent year thereafter relating to the Improvements and operations therein, CITY shall, in its reasonable determination, make an Incentive Payment to COMPANY of 25%, 50%, or 75% of the total proposed Incentive Payment based on the percentage of actual FTEs to what's required rounding to the nearest matched percentage recited above.

7.2 CITY shall give to COMPANY notice of any default. To the extent a default may be cured, COMPANY shall have the right, but not the obligation, to cure the default within thirty (30) days of receiving written notice from CITY. If the default cannot reasonably be cured within a thirty (30) day period, and COMPANY has diligently pursued such remedies as shall be reasonably necessary to cure such default, then CITY shall extend for a reasonable additional length of time

the period in which the default must be cured. If COMPANY fails to cure the default within the time provided as specified above or, as such time period may be extended, then CITY at its sole option shall have the right to terminate this Agreement with respect to COMPANY, by written notice to COMPANY subject to Force Majeure.

7.3 COMPANY's obligation to reimburse CITY payments made to COMPANY if COMPANY breaches this Agreement survives termination of this Agreement.

7.4 It is understood and agreed by the parties that, in the event of a default by CITY on any of its obligations under this Agreement, COMPANY's sole and exclusive remedy shall be limited to either i) the termination of this Agreement, or ii) a suit for specific performance.

Article VIII Miscellaneous

8.1 Notice. Any notice sent under this Agreement, shall be sent (i) by depositing such notice in the United States Mail, postage paid, certified, and addressed to the Party to be notified with return receipt requested; (ii) by depositing the notice with Federal Express or another nationally recognized courier service for next day delivery; or (iii) sent by electronic transmission confirmed by mailing written confirmation at substantially the same time as such electronic transmission, or (iv) personally delivered to the receiving party at the following addresses:

If intended for CITY, to:

Attn: City Manager
City of College Station, Texas
P.O. Box 9960
College Station, Texas 77842

With a copy to:

Attn: City Attorney
City of College Station, Texas
P.O. Box 9960
College Station, Texas 77842

If intended for COMPANY, to:

Attn: Controller and Chief Operating Officer
FUJIFILM Diosynth Biotechnologies Texas, LLC
100 Discovery Drive, Suite 200
College Station, Texas 77845

With a copy to:

FUJIFILM Holdings America Corporation
200 Summit Lake Drives,
Valhalla, NY 10595
Attn: Legal Department

8.2 Severability. In the event any section, subsection, paragraph, sentence, phrase or word herein is held invalid, illegal or unconstitutional, the balance of this Agreement shall stand, shall be enforceable, and shall be read as if the Parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word.

8.3 Governing Law. This Agreement shall be governed by the laws of the State of Texas without regard to any conflict of law rules. Exclusive venue for any action under this Agreement shall be the State District Court of Brazos County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

8.4 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an Original and constitute one and the same instrument.

8.5 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 the matters in this Agreement (provided however that in no event shall that certain agreement titled Economic Development Agreement between the City of College Station and Kalon Biotherapeutics, L.L.C. between the CITY and COMPANY as successor in interest to Developer as defined in said agreement entered into on or about June 26, 2014, as amended from time to time, be deemed to be superseded or otherwise affected by this Agreement), and except as otherwise provided herein cannot be modified without written agreement of the Parties to be attached to and made a part of this Agreement.

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

8.7 Assignment. This Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns. This Agreement may not be assigned by COMPANY (except to an Affiliate of the COMPANY which shall not require prior consent of CITY) without the prior written consent of the City Manager which consent shall not be unreasonably withheld, conditioned or delayed.

8.8 Amendment. No amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of CITY and COMPANY.

8.9 Venue and Jurisdiction. Performance and all matters related thereto shall be in Brazos County, Texas, United States of America.

8.10 Authority to Contract. Each Party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement. The Parties represent that the persons

executing this Agreement have authorization to sign on behalf of their respective entity.

8.11 No Debt. Under no circumstances shall the obligations of CITY hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision; provided, however, CITY agrees during the term of this Agreement to make a good faith effort to appropriate funds each year to pay amounts under this Agreement for the then ensuing fiscal year.

8.12 Waiver. Failure of any Party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of the Agreement, any part hereof, or the right of the Party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the Party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

8.13 Construction. The Parties acknowledge that each Party and its counsel have reviewed and revised this Contract and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

8.14 Force Majeure Events. Neither Party shall be considered to be in default in the performance of any material obligation under this Agreement when a failure of performance shall be due to an event of Force Majeure but only to the degree impacted by such Force Majeure event, and any specific references in this Agreement to Force Majeure shall not be implied to otherwise limit application of the foregoing. Neither Party shall be relieved of its obligation to perform due to Force Majeure if such failure is due to causes arising out of its own acts or omissions or due to removable or remediable causes which it fails to remove or remedy within a reasonable time period.

Exhibits:

Exhibit "A" Legal description of the Property

SIGNATURES ON THE FOLLOWING PAGE

FUJIFILM DIOSYNTH
BIOTECHNOLOGIES TEXAS, LLC

CITY OF COLLEGE STATION

By: _____
Printed Name: _____
Title: _____
Date: _____

By: _____
Mayor
Date: _____

ATTEST:

City Secretary
Date: _____

APPROVED:

City Manager
Date: _____

City Attorney
Date: _____

Assistant City Manager/CFO
Date: _____

EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY

An approximately 12.45 acres of land located on Biomedical Way on Lot 2, Block 1 of Traditions Phase 23 filed in volume 11293 page 184 of the Official Deed Records of Brazos County, Texas.