

City of Fall River Massachusetts
Office of the City Clerk

ALISON M. BOUCHARD
CITY CLERK

INÊS LEITE
ASSISTANT CITY CLERK

November 7, 2014

Dear Councilor:

A Special Meeting of the City Council has been scheduled for Thursday, November 13, 2014 at 5:30 P.M. in the Council Chamber, Government Center. The purpose of this meeting will be to act on the following:

- Communication from Mayor & TIF agreement between the City of Fall River and Amazon.com.dedc, LLC
- Financial orders

The President respectfully requests your attendance at this meeting.

Very truly yours,

Alison M. Bouchard
City Clerk



**City of Fall River
Massachusetts
Office of the Mayor**

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2014 NOV -7 P 12:06

CITY CLERK _____
FALL RIVER, MA

WILLIAM A. FLANAGAN
Mayor

November 7, 2014

Members of the Honorable Council
City of Fall River
One Government Center
Fall River, MA 02722

Council President and Members of the Honorable Council:

Attached for your consideration please find a copy of the Tax Increment Finance Agreement between the City of Fall River and Amazon.Com.DEDC, LLC. This is a vital economic development project for the City of Fall River. I would respectfully request your immediate action in this matter.

If there are any questions regarding this matter please do not hesitate to contact me or a member of my staff. Thank you in advance for your time and attention in this matter.

Sincerely,

William A. Flanagan
Mayor

WF/amos

TAX INCREMENT FINANCING AGREEMENT
BETWEEN
THE CITY OF FALL RIVER,
AND
AMAZON.COM.DEDC, LLC

This TAX INCREMENT FINANCING AGREEMENT (this “TIF Agreement” or this “Agreement”) is made by and between the City of Fall River (the “City”), and Amazon.com.dedc, LLC (the “Company”) as of [_____], 2014 (the “Effective Date”).

WHEREAS, the City is a Massachusetts municipal corporation acting through its City Council, having its principal office located at [_____], Fall River, Massachusetts; and

WHEREAS, the Company is a Delaware limited liability company, authorized to do business in Massachusetts; and

WHEREAS, the Owner is the fee owner of the parcel of land located partially within the Town of Freetown (the “Town”) and partially within the City, which parcel has a street address of [_____] Innovation Way, Fall River, Massachusetts 02722 (the “Property”), as further depicted as Lot __ on the Town of Freetown Assessors Map __ and Lot __ on the City of Fall River Assessors Map __; and

WHEREAS, the Company plans to designate a purchaser of the Property (the “Purchaser”) who will construct approximately 1,000,000 square feet of space at the Property, together with parking facilities and other improvements located thereon (hereinafter, the leased space is defined as the “Project Area”); and

WHEREAS, the Project Area is to be located within one or both of the Fall River and Freetown Economic Target Areas as that term is used in Massachusetts General Laws, Chapter 23A, Section 3D, and referred to below as the “ETA”; and

WHEREAS, the Company, beginning on or after the Effective Date of this Agreement, will create 1,000 new, permanent full-time employment opportunities open to qualified residents of Fall River and Freetown and the ETA by no later than June 30, 2019; and

WHEREAS, the Construction of the Project Area is estimated to result in capital investment of \$200,000,000, including expenditures on land, construction, infrastructure, equipment and other real and personal property (the “Project”); and

WHEREAS, the Project is or shall hereafter be designated a Certified Project as defined in Massachusetts General Laws Chapter 23A, Section 3A, and 402 C.M.R. 2.03; and

WHEREAS, the parties to the Agreement desire to enter into this TIF Agreement which shall

pertain solely to that portion of the Property, Project Area and Project located within the City, and which shall be in accordance with the Massachusetts Economic Development Incentive Program (the “EDIP”) and Chapter 23A of the Massachusetts General Laws; and

WHEREAS, the City strongly supports increased economic development to provide additional jobs for residents of Fall River and the ETA, to expand business within the City, and to develop a healthy economy and stronger tax base; and

WHEREAS, the Project and its related job creation will further the economic development goals and criteria established for the ETA and associated Economic Opportunity Area (“EOA”); and

WHEREAS, by letter dated [_____], 2014, the City Council approved this Agreement and secured approval for this Agreement at a City Council meeting on [_____];

NOW, THEREFORE, in consideration of the mutual promises of the parties contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and contingent upon receipt of authorization from the City Council and in accordance with applicable law, the parties hereby agree as follows:

A. THE CITY’S OBLIGATIONS

1. The City Council approved the provisions of this TIF Agreement on [_____], pursuant to the Resolution attached hereto as Exhibit A. The City hereby authorizes the Mayor to execute this TIF Agreement on the City’s behalf, and to monitor and enforce compliance by the Company and the Owner with the terms of this TIF Agreement. The Mayor is authorized to act for and on behalf of the City in proceedings relating to the approval of this Agreement by the Massachusetts Economic Assistance Coordinating Council (the “EACC”).
2. A TIF exemption (the “Exemption”) for the Project and Project Area is hereby granted to the Company by the City in accordance with Massachusetts General Laws Chapter 23A, Section 3E; Chapter 40, Section 59; and Chapter 59, Section 5, Clause Fifty-first. The Exemption shall be for a period of 15 years (the “Exemption Term”), commencing on July 1, 2017 (the beginning of fiscal year 2018) and ending on June 30, 2032 (the end of fiscal year 2032). Half of the Exemption is based on the Company’s commitment to meet the Job Target and half of the Exemption is based on the Company’s commitment to meet the Investment Target. Failure by the Company to meet those targets and the City’s remedies are addressed below in Section B(4). The Exemption shall pertain both to real and to personal property taxes, according to the following schedules:

REAL PROPERTY TAX
EXEMPTION SCHEDULE

REAL PROPERTY EXEMPTION	
Fiscal Year	Exemption Percentage
2018	100%
2019	100%
2020	100%
2021	100%
2022	75%
2023	75%
2024	75%
2025	50%
2026	50%
2027	50%
2028	50%
2029	25%
2030	25%
2031	25%
2032	25%

PERSONAL PROPERTY TAX
EXEMPTION SCHEDULE

PERSONAL PROPERTY EXEMPTION	
Fiscal Year	Exemption Percentage
2018	100%
2019	100%
2020	100%
2021	100%
2022	75%
2023	75%
2024	75%
2025	50%
2026	50%
2027	50%
2028	50%
2029	25%
2030	25%
2031	25%
2032	25%

3. The base valuation for the Exemption shall be the assessed valuation of that portion of the Project Area that lies within the municipal boundary of the City, however such boundary may change over time, in the Base Year. The “Base Year” means the fiscal year that includes the Effective Date. Consequently, the base valuation for the real property to the Project Area will be determined as of January 1, 2015. As provided In 760 C.M.R. 22.05(4)(d), see 402 C.M.R. 2.22, the Project shall become eligible for the Exemption on the July 1st following the date on which the EACC approves the TIF Plan, which is expected to be December 17, 2014. However, and in order to accommodate the planned construction and fit up the Project Area, the commencement date for the TIF Agreement shall be delayed until June 30, 2017. Therefore, the Exemption will commence on July 1, 2017, which is the beginning of fiscal year 2018. In the event EACC approves this Agreement later than expected, the Base Year, the Exemption Term, and the fiscal years identified in Section A(2) above shall be adjusted automatically (and the Agreement shall be amended accordingly) solely to the extent necessary to comply with the requirement that the Project become eligible for the Exemption on the July 1 following the date of such approval.
4. The base valuation shall be adjusted annually by an adjustment factor, which reflects increased or decreased commercial and industrial property values within the community, as provided in Chapter 40, Section 59 of the Massachusetts General Laws and in 760 C.M.R. 22.05(4)(b), see 402 C.M.R. 2.22. This adjusted base valuation will remain fully taxable (i.e., the Exemption shall not apply to or be calculated with respect to the adjusted base valuation and no portion of the adjusted base valuation shall be eligible for exemption from Chapter 59 property taxation) throughout the term of this TIF Agreement, only the increased value or “increment” created by improvements will be the amount eligible for exemption from taxation.
5. In accordance with Massachusetts General Laws Chapter 59, Section 5, Clause Fifty-First, the Company’s personal property exemption in each fiscal year during the Exemption Term shall be the Exemption Percentage for that year, as identified in Section A(2) above, multiplied by the depreciated value of the taxable personal property situated at that portion of the Property or Project Area located within the City.
6. No party to this Agreement may assign this Agreement without the prior written consent of the other parties, except that (a) the Company may assign this Agreement to an Affiliate or in connection with any merger, reorganization, sale of all or substantially all of our assets or any similar transaction; and (b) the Owner agrees to assign this Agreement to a purchaser of the Property designated by the Company in connection with such transfer. This Agreement will be binding upon, inure to the benefit of, and be enforceable by the parties and their respective successors and assigns. “Affiliate” means any entity that directly or indirectly controls, is controlled by, or is under common control with the Company.

B. THE COMPANY'S OBLIGATIONS AND THE OWNER'S OBLIGATIONS.

1. In consideration for the Exemption, the Company agrees:
 - a. [Reserved]
 - b. To encourage the Purchaser to use local contractors on the Project, where practicable;
 - c. To make or cause to be made, by no later than June 30, 2019 (the “Compliance Date”), capital improvements of approximately \$200,000,000 (the “Investment Target”), which includes any investment in real and personal property, including, by way of example only, land, buildings, building and construction materials, HVAC systems, equipment, furniture and infrastructure (“Capital Investment”);
 - d. [Reserved]
 - e. To create 1,000 permanent full-time employees (as “permanent full-time employee” is defined in 402 C.M.R. 2.03) by no later than June 30, 2019 (the “Job Target”); and
 - f. To use commercially reasonable efforts to cooperate with Bristol County Workforce Investment Board, the local Office of the Massachusetts Department of Employment and Training and other agencies, as appropriate, in seeking to fill open Company positions as they arise, and to operate a job outreach program whereby Fall River and Freetown residents are made aware of available employment opportunities.
2. The Company agrees to submit annual reports in the form attached as Exhibit B (each an “Annual Report”) on job creation, job retention and Capital Investment at the Property, Project Area and Project to the City and EACC each year beginning with Fiscal Year 2017. The Annual Report shall include the number of permanent (regular) full and part-time jobs created and the number of people hired from within the City, both annually and on a cumulative basis; the value of the Capital Investments subject to the Exemption made with respect to the Property, Project Area and Project, both annually and on a cumulative basis; and the amount of property taxes paid to the City, both annually and on a cumulative basis.
3. Except as otherwise provided in Section A(6) above, if at any time during the Exemption Term while this Agreement remains in the effect, the Company (or an Affiliate or successor to the business) ceases to operate at the Project Area, the City may demand, and the Company agrees to pay upon such demand, an amount equal to the real and personal property taxes abated under this Agreement during the fiscal year immediately preceding the fiscal year in which the Company ceased to operate at the Project Area.

4. Except to the extent that this Agreement or applicable law require otherwise, the remedies set forth in this Section are the sole and exclusive remedies available upon a violation, default or Breach of this Agreement. A party will be deemed to be in “Breach” of this Agreement only if: (i) it fails to substantially comply with any material provision of this Agreement; and (ii) it does not cure such failure within a reasonable period of time following delivery to it of notice by the other party describing such failure in reasonable detail, which period will not be less than 120 days. City agrees and acknowledges that the Company’s representations, warranties, covenants, agreements and performance obligations under this Agreement are limited to and apply exclusively to the operations of the Company at the Property and any determination as to whether the Company is in violation, default or Breach of this Agreement will be limited to the Company’s operations at that portion of the Property that is located within the City. City also agrees and acknowledges that any violation, default or Breach of a tax increment financing agreement for the Property, the Project Area, or the Project as between the Town, the Owner (or Purchaser), and the Company shall not, in and of itself, constitute a breach of this TIF Agreement, but rather the two agreements exist separate and apart from one another and the rights of the parties shall be determined solely by reference to the agreement to which they are party. In the event of a Breach for which this Agreement does not provide a specific remedy, the either party may pursue any legal or equitable remedies they may have under this Agreement or applicable law.

Job and Investment Targets

In the event that the Company fails to meet the Investment Target by a margin of more than 20% (i.e. the Company fails to reach at least 80% of the Investment Target) on the Compliance Date, as the City’s sole and exclusive remedy, the City may elect to amend this Agreement to reduce the percentage of the Exemption for each remaining year of the Agreement by up to one half. Likewise, in the event that the Company fails to meet the Job Target by more than 20% (i.e. the Company fails to reach at least 80% of the Job Target) on the Compliance Date, as the City’s sole and exclusive remedy, the City may elect to amend this Agreement to reduce the Exemption for each remaining year of the Agreement by up to one half. For the sake of clarity, half of the Exemption percentage for a given year is attributed to the Investment Target and half is attributed to the Job Target. The remedies of the City for the failure of the Company to satisfy the Investment Target and Job Target are additive. The City may also elect, at the City’s sole discretion, to extend the Compliance Date to allow the Company additional time to meet the Job Target and Investment Target, in which case its rights under this Section will pause until such later Compliance Date. The City acknowledges and agrees that so long as the Company reaches at least 80% of both the Job Target and Investment Target, the City shall not be entitled to any remedy under this Agreement. The amount of any such reduction to the Exemption percentages shall be calculated as follows:

Step 1. Take the Exemption % for the applicable year and divide by 2.

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Step 2. Divide the Company's Capital Investment as of the Compliance Date by the Investment Target.

Step 3. Multiply the fraction obtained in Step 2 above by the percentage obtained in Step 1, the result will be the Exemption % attributable to the Company's Capital Investment for the year in question.

Step 4. Take the original Exemption % for the applicable year (the same as the input used for Step 1) and divide by 2.

Step 5. Divide the number of full-time employment positions actually created by the Company as of the Compliance Date by the Job Target.

Step 6. Multiply the fraction obtained in Step 5 above by the percentage obtained in Step 4, the result will be the Exemption % attributable to the Company's job creation for the year in question.

Step 7. Add the percentages obtained in Step 3 and Step 6 to obtain the amended Exemption percentage for the year in question.

For example, if the Exemption % for year 2020 is 100% and the Company made Capital Investments of \$120M and created 400 full-time employment positions, each as of the Compliance Date, the calculations would be:

Step 1. Divide 100% by 2 = 50%

Step 2. Divide \$120M by \$200M = 0.6

Step 3. Multiply 0.6 (result from Step 2) by 50% (result from Step 1) = 30%

Step 4. Divide 100% by 2 = 50%

Step 5. Divide 400 by 1,000 = 0.4

Step 6. Multiply 0.4 (result from Step 5) by 50% (result from Step 4) = 20%

Step 7. Add 30% (result from Step 3) to 20% (result from Step 6) = 50%

In this example, the Exemption percentage for year 2020 would be amended down from 100% to 50% (and all other Exemption percentages remaining in the Exemption Term would also be reduced by 50%).

The remedies set forth in this Section are the sole and exclusive remedies of the City for a Breach by the Company of its obligations under this Agreement. All remedies are prospective and not retrospective and failure by the Company to satisfy either the Job Target or the Investment Target shall not constitute grounds to decertify the

Project, rescind the TIF Agreement, or recapture any Exemption realized by the Company prior to the Compliance Date and shall not affect the Exemption percentages for years ending prior to the Compliance Date.

5. The City acknowledges that so long as the Project Area is located in both the City and the City, the benefits of the Project inure to the residents of both the City and the City, and the Company is under no obligation to favor the residents of one over the other in filling openings. Nothing in this Agreement obligates the Company to employ a certain quota or percentage of residents of each of the City or the Town.
6. [Reserved]

C. OTHER CONSIDERATIONS.

1. Pursuant to 760 C.M.R, 22.05(8) (d), see 402 C.M.R. 2.22, this Agreement shall be binding upon the Company and its successors and assigns, and upon the Owner and its successors and assigns, so long as the Project's certification has not been revoked by EACC.
2. Except as otherwise specified herein, this Agreement is subject to Massachusetts General Laws Chapter 23A, Sections 3A through 3F inclusive; Chapter 40, Section 59; and Chapter 59, Section 5, Clause Fifty-First.
3. The Owner shall pass along to the Company all real and personal property tax savings resulting from this Agreement.
4. Should any part, term or provision of this Agreement be determined by any court of competent jurisdiction to be illegal or invalid, the validity of the remaining parts, terms, and provisions shall not be affected thereby and said illegal or invalid part, term of provision shall be deemed not to be a part of this Agreement.
5. [Reserved]
6. Notices under this Agreement are sufficient if given by nationally recognized overnight courier service, certified mail (return receipt requested), facsimile with electronic confirmation, or personal delivery to the other party at the address below. If no address is listed for a party, notice to such party will be effective if given to the last known address. Notice is effective: (a) when delivered personally, (b) 3 business days after sending by certified mail, (c) on the business day after sending by a nationally recognized courier service, or (d) on the business day after sending by facsimile with electronic confirmation to the sender. Each party may update its contact information by notice to the other. Routine business and technical correspondence must be in English, and may be in electronic form. All legal notices given under this Agreement must be written, in non-electronic form, and in English, and will be effective when received.

The contact information for each party is as follows:

City

City of Fall River
Attention: Mayor
[Street Address]
[City, State ZIP]
Fax: [Fax]
Email: [Email]

Owner

Fall River Redevelopment Authority
Attention: [_____]]
[Street Address]
[City, State ZIP]
Fax: [Fax]
Email: [Email]

Company

Attn: Chief Operating Officer, Tax
410 Terry Avenue North
Seattle, WA 98109
Fax: 206-266-7010

With a copy to:

Attn: General Counsel (Real Estate)
410 Terry Avenue North
Seattle, WA 98109
Fax: (206) 266-7010
Email: contracts-legal@amazon.com

7. Notwithstanding anything to the contrary in this Agreement, neither the Company nor any of its Affiliates shall be liable for: (a) any indirect, reliance, exemplary, incidental, speculative, punitive, special, consequential or similar damages that may arise in connection with this Agreement, (b) any lost or foregone tax revenues, or (c) any damages, liabilities, fees, costs, expenses, penalties, diminishments in value, losses or payments (including any lost or foregone tax revenues) that exceed, in the aggregate, the lesser of (i) the financial benefit realized by the Company under this Agreement and (ii) \$10,000,000.
8. This Agreement will remain in effect from the Effective Date until the end of the Exemption Term unless terminated earlier pursuant to its terms. The Company may terminate this Agreement without cause and without liability upon thirty (30) days

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written notice to the City, provided that upon termination the Company shall pay personal and real property taxes as they become due following termination as required by law.

9. If and to the extent that any party is prevented from performing its obligations hereunder by an event of force majeure, such party shall, except as may otherwise be required by law, be excused from performing hereunder and shall not be liable in damages or otherwise, for so long as the force majeure event shall continue, and the parties instead shall negotiate in good faith with respect to appropriate modifications to the terms hereof. For purposes of this Agreement, the term force majeure shall mean any supervening cause beyond the reasonable control of the affected party, including without limitation requirement of statute or regulation; actions of any court, explosion, actions of the elements, war, terrorism, riots, mob violence, actions of regulatory authority, or public authority having jurisdiction; acts of God, fire, earthquake, floods, inability to procure or a general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, actions of labor unions, condemnation, laws or orders of governmental or military authorities, denial of, refusal to grant or appeals of any permit, approval or action of any public or quasi-public authority, official, agency or subdivision and any litigation relating thereto, or any other cause similar to the foregoing, not within the control of such party obligated to perform such obligation.
10. This Agreement constitutes the entire Agreement between the parties and supersedes all other oral or written communications. Except as otherwise specified herein, this Agreement may be amended or modified only by a written instrument signed by a duly authorized agent of each party.
11. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts, without regard to conflicts of law. Any and all proceedings or actions relating to subject matter herein shall be brought and maintained in the courts of the Commonwealth, Bristol County, or of the federal district court sitting in the Commonwealth, which shall have exclusive jurisdiction thereof.
12. The parties represent that the persons executing this Agreement on their behalf are duly authorized to execute this Agreement.

[Signature Page Follows]

WITNESSETH, the execution and delivery of this Agreement by the Company, the Owner and the City as an instrument under seal as of the date last written below by the signatories hereto.

Owner:

Fall River Redevelopment Authority

By: _____

Name: _____

Title: _____

Date: _____

Company:

Amazon.com.dedc, LLC

By: _____

Name: _____

Title: _____

Date: _____

City:

Fall River, Massachusetts

By: _____

Name: _____

Title: _____

Date: _____

Exhibit A

City Resolution

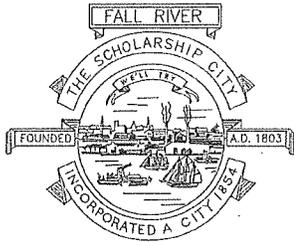
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Exhibit B

Form of Annual Report

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City of Fall River
Massachusetts
Office of the Mayor

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WILLIAM A. FLANAGAN
Mayor

CITY CLERK _____
FALL RIVER, MA

November 6, 2014

Honorable Members Fall River City Council
One Government Center
Fall River, Massachusetts 02722

RE: Financial Orders

Mr. President and Members of the Honorable Council:

The following financial orders are requested for adjustments to the FY 2015 Budget:

From	To	
Tax Levy	Fire Department, Salaries	\$ 140,000
Gen. Fund Stabilization Fund	Fire Department, Salaries	\$ 110,000
Gen. Fund Stabilization Fund	Elections Expenses	\$ 60,000
EMS Retained Earnings	EMS Capital Expenditures	\$ 52,165

Your approval of these orders is respectfully requested.

Mayor William A. Flanagan



City of Fall River
Massachusetts
Fire Department Headquarters
Office of the Fire Chief

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WILLIAM A. FLANAGAN

Mayor

CITY CLERK **ROBERT J. VIVEIROS**
FALL RIVER, MA *Fire Chief*

November 4, 2014

Mayor William A. Flanagan
One Government Center
Fall River, MA 02722

Dear Mayor Flanagan:

I am respectfully requesting to transfer \$52,164.50 from the EMS Retained Earnings account to the EMS Capital Expenditures account. This is to purchase Lucas Devices for each of the four medical rescues. Lucas Devices provide uninterrupted, effective cardiac compressions for the treatment of cardiac arrest under the current standard of care.

Sincerely,


Robert J. Viveiros
Fire Chief

Cc: City Council

ORDERED:

**That the sum of \$140,000 be, and the same is, hereby appropriated for the
FIRE DEPARTMENT, Salaries from the TAX LEVY**

ORDERED:

That the sum of \$110,000 be, and the same is, hereby appropriated for the FIRE DEPARTMENT, Salaries from the STABILIZATION FUND.

ORDERED:

That the sum of \$60,000 be, and the same is, hereby appropriated for the ELECTIONS DEPARTMENT, Expenses from the STABILIZATION FUND.

ORDERED:

That the sum of \$52,165 be, and the same is, hereby appropriated for the EMS, Capital Expenses from the EMS RETAINED EARNINGS (FY 14).

FY 15 Appropriation/Transfer Number Analysis #2

Line	Original/Revised	Appropriation	Amount Transferred	New Appropriation
Fire Department, Salaries (From Tax Levy)	\$	14,145,071	\$ 140,000	\$ 14,285,071
Fire Department, Salaries	\$	14,285,071	\$ 110,000	\$ 14,395,071
General Fund Stabilization Fund	\$	399,448	\$ (110,000)	\$ 289,448
Elections Expenses	\$	73,100	\$ 60,000	\$ 133,100
General Fund Stabilization Fund	\$	289,448	\$ (60,000)	\$ 229,448
EMS Capital Expenditures	\$	37,247	\$ 52,165	\$ 89,412
EMS Retained Earnings (FY 14)	\$	500,617	\$ (52,165)	\$ 448,452

I certify that there are sufficient funds available for these transfers.



Krishan Gupta, City Auditor
11/6/2014