

**AMENDMENT NO. 3 TO THE  
ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT  
(AMAZON.COM SERVICES, INC.)**

This Amendment No. 3 to the Economic Development Incentives Agreement (this "Amendment") is entered into among the City of Schertz, Texas, a Texas home-rule municipality ("City" or "Schertz"), the City of Schertz Economic Development Corporation, a Texas non-profit industrial development corporation ("SEDC"), Guadalupe County, Texas, a political subdivision of the State of Texas ("County"), and Amazon.com Services, Inc., a Delaware limited liability company ("Developer", and collectively with Schertz, the SEDC, and the County, the "Parties", and each a "Party") and is dated as of the date signed by the last Party hereto to be effective as of \_\_\_\_\_, 2019 (the "Effective Date").

**RECITALS**

**WHEREAS**, the City and the SEDC adopted the Schertz Incentive Policy in May 2017 to guide and ensure consistency when providing incentives within the City to promote economic development; and

**WHEREAS**, Section 381.004(b) of the Texas Local Government Code authorizes the County to create a community and economic development program that stimulates business and commercial activity in the county, and authorizes the commissioner's court to authorize another entity to administer the program; and

**WHEREAS**, this Amendment amends that certain Economic Development Incentives Agreement (Amazon.com.kydc LLC) between the Parties dated November 6, 2012, as amended by that certain Amendment No. 1 to the Economic Development Incentives Agreement (Amazon.com.kydc LLC), and Amendment No. 2 to the Economic Development Incentives Agreement (Amazon.com.kydc LLC) (collectively, the "Agreement"); and

**WHEREAS**, according to a request dated December 21, 2018, the City, SEDC, and County authorized the assignment of the Agreement from Amazon.com.kydc LLC to Amazon.com Services, Inc.; and

**WHEREAS**, according to the 2018 Annual Report, the Developer reported a Taxable Property of One Hundred Twenty-Four Million, Six Hundred-Eight Thousand, Three Hundred Forty-Five and No/100 Dollars (\$124,608,345.00) which is below the minimum requirement of at least One Hundred Twenty-Five Million and No/100 Dollars (\$125,000,000.00), which absent this Amendment, would create a default under the Agreement (the "Taxable Property Shortfall"); and

**WHEREAS**, absent the Taxable Property Shortfall, the Developer would have been in compliance with the Agreement; and

**WHEREAS**, the Parties wish to amend the Agreement to modify its terms related to the satisfaction of the Taxable Property for the Calendar Year 2018 and address the Taxable Property Shortfall whereby the Developer will remain compliant to the Agreement but will not be eligible to receive

a 2018 City Property Tax Incentive or 2018 County Property Tax Incentive; and

WHEREAS, this Amendment does not extend or change the timeline specified in the Agreement for the City Incentives or County Incentives in the schedule; and

WHEREAS, Section 8.9 of the Agreement provides that the Agreement may be amended by a written agreement executed by the Parties.

NOW, THEREFORE, in consideration of the mutual covenants, benefits and agreements described and contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and further described herein, the Parties agree as follows:

### AMENDMENT

1. Addition of Section 5.3(h) – Taxable Property Safe Harbor. The following new Section 5.3(h) is hereby added to the Agreement:

“(h) Taxable Property Safe Harbor.

(i) The parties hereby agree that a taxable property safe harbor shall be received if the Developer fails to satisfy the minimum Taxable Property of at least One Hundred Twenty-Five Million and No/100 Dollars (\$125,000,000.00) but achieves a Taxable Property of at least One Hundred Million and No/100 (\$100,000,000.00) (the “Taxable Property Safe Harbor”). Under a Taxable Property Safe Harbor, the Developer will not be deemed to be in default or breach of the Agreement. Under a Taxable Property Safe Harbor, the Developer shall forfeit any City Incentive or County Incentive for that Calendar Year.

(ii) Example Scenario I. For example, if the Developer has a Taxable Property value of One Hundred Twenty Million and No/100 Dollars (\$120,000,000.00), the Developer would fail to receive the City Incentive or County Incentive for the given year but would remain compliant to the Agreement.

(iii) Example Scenario II. For example, if the Developer has a Taxable Property value of Ninety-five million and No/100 Dollars (\$95,000,000.00), the Developer would be in default of the Agreement and subject to Section 6.1 of the Agreement.”

2. Amendment of Section 2.3 – Term. The following shall replace Section 2.3 of the Agreement:

“Term. The term of this Agreement (the “Term”) shall begin on the Effective Date and shall terminate on the later of (a) September 30, 2028, or (b) the date that is one (1) year after any grant adjustment required in connection with Section 5.7(c) (the “Expiration Date”), unless sooner terminated as provided herein.”

3. Addition of Section 5.3(i)

“5.3(i) Operational Requirement. Notwithstanding anything to the contrary contained in the Agreement, and provided the Agreements remains in full force and effect as of January 1, 2024, then commencing January 1, 2024 and continuing to the Expiration Date, the Developer’s responsibility shall be limited to the Developer’s continuous lease or ownership operation of a fulfillment center in the Building (the “Operational Requirement Period”). The ownership and operation of a fulfillment center may include other functions and activities consistent with the Developer’s business purposes, including but not limited to an employee store, a product return center, and a sortation center (the “Required Use”). During the Operational Requirement Period, the operation of the Building in conformance with the Required Use shall not cease for more than thirty (30) continuous days except in connection with, and to the extent of an event of a Force Majeure, a casualty to the Building preventing the Developer from using the Building for the Required Use, or a temporary cessation of operations for business purposes related to and consistent with the Company’s use of the Building for the Required Use, such as a temporary cessation of operations to remodel or modernize the Building . The Developer shall not be responsible to maintain the Minimum Number of Jobs, Minimum Annual Payroll, or Minimum Investment Value of Taxable Property beyond December 31, 2023. Developer shall not sublease or vacate any significant portion of the building without written consent of the Parties, which shall not be reasonably denied.

4. Addition of 5.6 (m)

Throughout the Operational Requirement Period established in 5.3 (i), the Developer shall provide the City, the SEDC, and the County, no later than sixty (60) calendar days following the end of each Calendar Year, with a limited report consisting of a certification letter confirming that the facility is operational in a manner consistent with the requirement of 5.3(i). During the Operational Requirement Period, Developer shall not be required to provide any reports or other information regarding jobs, value of taxable property or taxable sales, including without limitation, the number of Full-Time Jobs, value of Taxable Property, Project Taxable Sales, and Project Sales Taxes. Such report may be submitted electronically to the person designated by each entity for receipt of said reports.

5. The following shall replace the first sentence of Section 6.1 of the Agreement:

“Subject to Section 8.12 and Section 5.3(h), this Agreement shall terminate upon the occurrence of any one or more of the following:”

6. The following shall be added to the beginning of the first sentence of each Section 5.1, Section 5.3, Section 5.4, Section 5.5, and Section 5.6 of the Agreement:

“Subject to Section 5.3(i) with respect to the Operational Requirement Period,”

7. Amendment of Section 8.5 – Notices. The following shall replace Section 8.5 of the Agreement:

“Notice. Any notice required or permitted to be delivered hereunder shall be deemed received (i) three (3) business days after deposit into the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below or (ii) on the day actually received if sent by courier, a recognized overnight delivery service, or otherwise hand delivered.

The Developer: Amazon.com Services, Inc.  
c/o Amazon.com, Inc.  
Attention: Director of Economic Development  
410 Terry Avenue North  
Seattle, Washington 98109-5210

With a copy to:  
Amazon.com Services, Inc.  
c/o Amazon.com, Inc.  
Attention: Real Estate Manager  
410 Terry Avenue North  
Seattle, Washington 98109-5210

And with a copy to:  
Amazon.com Services, Inc.  
c/o Amazon.com, Inc.  
Attention: Economic Development Compliance  
2121 7<sup>th</sup> Ave.  
Seattle, Washington 98121

And with a copy to:  
Amazon.com Services, Inc.  
c/o Amazon.com, Inc.  
Attention: General Counsel  
410 Terry Avenue North  
Seattle, Washington 98109-5210

The County: Guadalupe County, Texas  
Attention County Judge’s Office  
101 E Court Street  
Seguin, Texas 78155

Schertz: City of Schertz  
Attention: City Manager  
1400 Schertz Parkway  
Schertz, TX 78154

With a copy to:

Denton Navarro Rocha Bernal & Zech PC  
Attention: Charles E. Zech  
2517 North Main Avenue  
San Antonio, TX 78212

The SEDC:

City of Schertz Economic Development Corporation  
Attention: Exec. Dir. of Economic Development  
1400 Schertz Parkway  
Schertz, TX 78154

With a copy to:

Denton Navarro Rocha Bernal & Zech PC  
Attention: Charles E. Zech  
2517 North Main Avenue  
San Antonio, TX 78212

Any Party may designate a different address at any time upon written notice to the other Parties.

8. No Defaults. Developer represents and warrants to the City, the SEDC, and the County that to the best of the Developer's actual knowledge without additional investigation or inquiry, as of the Effective Date no default, nor any event which upon notice or lapse of time or both would constitute a default, has occurred, other than the Taxable Property Shortfall. The City, the SEDC, and the County each individually on its own behalf represent and warrant to Developer that to the best of their individual respective actual knowledge without additional investigation or inquiry, as of the Effective Date no default, nor any event which upon notice or lapse of time or both would constitute a default, has occurred, other than the Taxable Property Shortfall.

9. Waiver and Ratification of the Agreement. The City, the SEDC and the County each waive their right under the Agreement to declare Developer in default for the Taxable Property Shortfall for the Calendar Year 2018. Developer represents and warrants that the Agreement, as amended by this Amendment, is in full force and effect and ratifies the same. The City, the SEDC and the County each individually on its own behalf represents and warrants that the Agreement, as amended by this Amendment, is in full force and effect, and each individually on its own behalf ratifies the same.

10. No Claims by the Developer. Developer represents and warrants to the City, the SEDC, and the County that to the best of the Developer's actual knowledge without additional investigation or inquiry, as of the Effective Date the Developer does not have any claims against the City, the SEDC, or the County with respect to the Agreement or this Amendment.

11. Entire Agreement; Conflict. Except as amended by this and previous Amendment, the Agreement is and shall remain in full force and effect. This Amendment, together with the Agreement as amended by this Amendment: (a) is intended by the Parties as

a final, complete and exclusive expression of the terms of their agreement, and (b) supersedes all prior agreements and understandings between the Parties with respect to the subject matter hereof. If there is a conflict between the Agreement and this Amendment, the terms of the Amendment will prevail.

12. Counterparts and Facsimile Delivery. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original and all of which taken together shall be deemed to constitute one and the same document. The Parties may sign and deliver this Amendment by facsimile transmission, via electronic mail or other electronic method mutually acceptable to the Parties, including but not limited to DocuSign.

13. Capitalized Terms. All capitalized terms used in this Amendment and not defined in this Amendment have the meanings given to such terms in the Agreement.

14. Binding Agreement. The terms and conditions of this Amendment are binding upon the successors and permitted assigns of the Parties hereto.

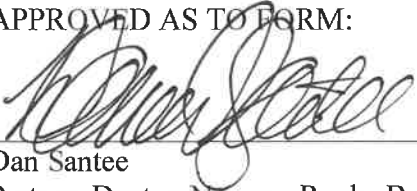
15. Legal Construction. In the event any one or more of the provisions contained in this Amendment shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the Parties to this Amendment that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Amendment which is legal, valid, and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable to the extent that it does not deprive the Parties of the benefit of the bargain and only to the extent permissible by law.

16. Governing Law. This Amendment shall be governed by the laws of the State of Texas, and venue for any action concerning this Amendment shall be exclusively in the State District Court of Guadalupe County, Texas. The Parties agree to submit to the jurisdiction of said court.

[SIGNATURE PAGE IMMEDIATELY FOLLOWING]

**SIGNATURE PAGE TO  
AMENDMENT NO. 3 TO THE  
ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT  
(AMAZON.COM SERVICES, INC.)**

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Dan Santee  
Partner, Denton Navarro Rocha Bernal & Zech, P.C.  
Legal Counsel to the City and the SEDC

10/8/2019  
\_\_\_\_\_  
Date

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Kyle Kinateder  
SEDC Executive Director

\_\_\_\_\_  
Date

**SIGNATURE PAGE TO  
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(AMAZON.COM SERVICES, INC.)**

In Witness Whereof, the Parties have executed this Amendment as to the date(s) set forth below to be effective as of the Effective Date.

The SEDC:

City of Schertz Economic Development Corporation  
a Texas non-profit industrial development corporation

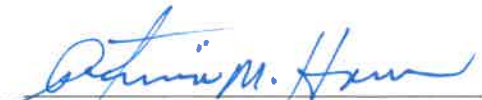
By:   
Paul Macaluso, President

10-8-19  
Date Signed

THE STATE OF TEXAS           §  
  §  
COUNTY OF GUADALUPE       §

This instrument was acknowledge before me on the 8 day of October, 2019, by Paul Macaluso, President of the City of Schertz Economic Development Corporation, on behalf of said non-profit industrial development corporation.



  
Notary Public, State of Texas  
Patricia M. Horan  
Notary's typed or printed name  
1/14/2022  
My commission expires

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(AMAZON.COM SERVICES, INC.)**

In Witness Whereof, the Parties have executed this Amendment as to the date(s) set forth below to be effective as of the Effective Date.

The County:

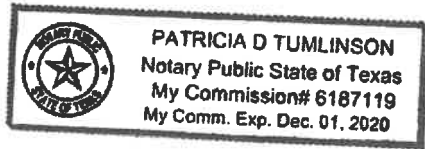
Guadalupe County, Texas  
a political subdivision of the State of Texas


By:   
Kyle Kutscher, County Judge

10-15-2019  
Date Signed

THE STATE OF TEXAS           §  
  §  
COUNTY OF GUADALUPE       §

This instrument was acknowledge before me on the 15 day of October, 2019, by Kyle Kutscher, the County Judge of Guadalupe County, Texas, a political subdivision of the State of Texas, on behalf of said County.



  
Notary Public, State of Texas

Patricia D. Tumlinson  
Notary's typed or printed name

12-01-2020  
My commission expires

