

New York State Urban Development Corporation  
d/b/a Empire State Development  
633 Third Avenue  
New York, New York 10017

New York City Economic Development Corporation  
110 William Street  
New York, New York 10038

The City of New York  
City Hall  
New York, New York 10007

November 12, 2018

Holly Sullivan  
Head of WW Economic Development  
Amazon.com Services, Inc.  
2121 7th Ave  
Seattle, WA 98121

Long Island City Development Project

Dear Ms. Sullivan:

This memorandum of understanding (the “MOU”) sets forth certain understandings and agreements among New York State Urban Development Corporation d/b/a Empire State Development (“ESD”); The City of New York (the “City”); New York City Economic Development Corporation (“NYCEDC”; together with the City and ESD, the “Public Parties”), and Amazon.com Services, Inc. (the “Company”), with respect to a project to create, in coordination with the Company’s development partners, a new corporate headquarters for Amazon.com, Inc. and its affiliates in New York City, including the design, development, construction, renovation and operation of what will initially be approximately 4,000,000 square feet of commercial space and the creation of 25,000 new jobs with an average wage of over \$150,000 annually within 10 years of the date hereof, with a planned expansion for a total of 6,000,000 to 8,000,000 square feet of commercial space that is expected to result in the creation of up to 40,000 new jobs within 15 years of the date hereof (the “Project”).

The Public Parties and the Company agree to work diligently together in good faith to undertake the actions described herein in order to implement the Project expeditiously and successfully.

1. Development Sites. The Project will be located in the Borough of Queens on some or all of the public and private sites depicted on Attachment A to this MOU, and/or potentially other nearby sites to be mutually determined by the Public Parties and the Company

(collectively, the “Development Sites”). The Project is anticipated to include a new corporate headquarters and other uses described in Section 11(b) below.

2. Design Guidelines. The Public Parties and the Company will agree on a set of design guidelines (the “Design Guidelines”) for the Project. These Design Guidelines shall be generally consistent with the LIC Waterfront Design Guidelines developed by the City’s Department of City Planning. The Design Guidelines shall be reflected in the Development Plan referenced in Section 3 below and will be incorporated into the transaction documents for the Project.

3. Development Plan. The Company will submit to the Public Parties, for their review and approval, a development and land use plan (the “Development Plan”) for the Project that is consistent with the Design Guidelines. The Development Plan will contain an overall project timeline mutually agreed upon by the Public Parties and the Company (the “Project Timeline”) setting forth the timeframe within which the development of each of the facets of the Project should occur, including commercially reasonable construction and occupancy milestones for the Company consistent with the time frames described in the first paragraph of this MOU, which shall include (i) construction commencement on a new mixed-use office building or buildings of at least 1,500,000 gross square feet on the Public Development Sites (as defined below) (the “Initial Construction Phase”) within twelve (12) months of final approval of a general project plan (the “GPP”) and the leasehold conveyance of the Public Development Sites (excluding the DOE Premises) by ESD to the Company or its development partners, subject to extension due to unavoidable delay; (ii) completion of construction of the Initial Construction Phase within 48 months of construction commencement, subject to extension due to unavoidable delays; and (iii) occupancy of substantially all of the commercial office space of the buildings completed within the Initial Construction Phase by the Company and its affiliates (i.e., any entity that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with the Company), no later than twelve (12) months after substantial completion of construction of the Initial Construction Phase. The Development Plan shall also incorporate certain key commitments described in Section 11(b) below, as well as the Department of Education building (the “DOE Premises”) and the other Development Sites currently owned by the City (collectively, the DOE Premises and such other Development Sites are hereinafter referred to as the “Public Development Sites”). The Public Development Sites may be reconfigured by agreement of the Public Parties and the Company.

4. Financial and Operating Plan. The Company will prepare and submit to the Public Parties a plan describing in general terms the financing and operating plan for the Project (the “Financing and Operating Plan”). This Financing and Operating Plan will include a projected budget for the Project as well as a statement of proposed sources and uses of funds that will be used to develop the Project.

5. Public Parties Commitments.

(a) Subject to the review and acceptance by the Public Parties of the Development Plan and Design Guidelines, and the Financing and Operating Plan, and in accordance with statutory requirements, including all necessary State and City approvals, the Public Parties will utilize diligent efforts to:

- (i) adopt a GPP that incorporates the Design Guidelines, the Development Plan (containing the Project Timeline), and the Financial and Operating Plan, make project findings and take such other actions and proceedings under the New York State Urban Development Corporation Act (the “UDC Act”) as may be necessary or convenient to establish the Project as one or more “projects” under the UDC Act;
- (ii) complete all necessary public review and approval processes, including State Environmental Quality Review (“SEQR”), and coordinate the activities of all City and State agencies involved in such reviews and approvals;
- (iii) secure passage of any necessary legislation to facilitate financing and implementation of the Project;
- (iv) relocate City agencies that currently occupy portions of the Public Development Sites in a manner that is in accordance with the Development Plan and Project Timeline (the cost and expense of these relocations shall be borne by (1) the Company and/or its development partners in the case of the relocation of NYCDOT to the site identified on Attachment A and the temporary relocation of DOE parking to new sites, and (2) the City, in the case of the DOE Premises, utilizing proceeds from the fair market rental of the DOE Premises, as described in Attachment B hereto);
- (v) undertake a community outreach process with the Company from the public announcement of the Project to the final approval of the GPP in order to engage all relevant stakeholders with respect to the Project;
- (vi) acquire and dispose of the Development Sites (or ground lease for ninety-nine (99) years, in the case of Public Development Sites, as the same may be reconfigured with the consent of the Public Parties) to the Company or its development partners, including any acquisition or disposition necessary to facilitate the PILOT transactions that are contemplated in Section 7 below; and
- (vii) fund public-serving infrastructure improvements in the adjacent neighborhood, as is customary through the capital budget appropriation process, in addition to those funded through the Infrastructure Fund described in Section 7(d) below.

(b) The Public Parties recognize that the Company needs access to the Development Sites and agree to assist in securing access to a helipad on the Development Sites, as part of the Development Plan and subject to FAA approval. If the Public Parties and the Company mutually agree that an onsite helipad is not feasible, the Public Parties will assist the Company in securing access to a helipad in an alternative location in reasonable proximity to the Development Sites. Any new construction would be at the Company’s sole expense, and, in order to minimize disruption to the surrounding communities, the Company agrees to: (i) limit flights and landings to corporate use by the Company; (ii) cooperate with the Public Parties in selecting the least disruptive feasible location on the Development Sites; (iii) restrict landings to no more than 120 per year; and

(iv) require that all flights be exclusively over water or the Development Sites, to the extent consistent with applicable laws, rules and regulations.

6. Project Implementation. Upon completion of the actions described in Section 5 above in accordance with the Project Timeline, the Public Parties and the Company shall take such actions as are required to implement the Project as generally described herein, subject to the review and approval by each party thereto of the form and content of the agreements in order to implement the Project.

7. Disposition of Development Sites.

(a) Public Development Sites. ESD will acquire from the City for nominal consideration the City's fee title to each of the Public Development Sites, subject to the City's right to reacquire fee title to each such site, subject in each case to the ground lease for such site, at any time on or after the fortieth (40<sup>th</sup>) anniversary of the first rent payment described below becoming due with respect to such site. ESD will net lease (for a term not to exceed 99 years) the Public Development Sites (other than the DOE Premises, which shall be leased on the terms set forth in Attachment B) to the Company, its development partner, or a joint venture comprised of the Company and its development partner, for a total agreed base rent payment, exclusive of PILOT, of \$850,000 per annum (such price being consistent with the competitively procured terms of NYCEDC's prior agreement with the Company's development partner and reflective of costs to be assumed by the Company that include but are not limited to City agency relocations as described in Section 5(a)(iv)(1) above and the Specific Infrastructure and Community Commitments described in Section 11(b) below), together with other terms, covenants and conditions that are customary for City transactions of this type, including with respect to lease and rent commencement, rent obligations, security deposit or other customary assurance reasonably acceptable to the Public Parties, assignment and transfers, completion and payment guarantees, and representations and warranties. The leases shall include an obligation to implement the requirements described in Section 11(b) below. The rent will commence on a date to be agreed upon by the parties and will escalate in accordance with an agreed upon schedule based on the Consumer Price Index. These lease payments will be subject to certain abatements if the City agencies do not relocate within the respective timeframes called for in the Project Timeline, provided that the Company has otherwise timely performed its obligations with respect to such relocations. ESD hereby agrees to assign all rent payments to NYCEDC as lease administrator for the City.

(b) DOE Premises. Certain terms regarding the lease of the DOE Premises by the Company are attached hereto as Attachment B.

(c) Private Development Sites. The Company shall convey, or shall cause the private Development Site owners to convey, fee title to each of the private Development Sites (the "Private Development Sites") to ESD for \$1.00, subject to ESD's obligation to convey fee title to each of such sites to the Company or its designee after the issuance of a temporary certificate of occupancy for improvements at each such site.

(d) PILOT; Infrastructure Fund.

(i) Each Development Site lease with ESD shall include a provision obligating the lessee to make payments in lieu of real property taxes (“PILOT”) throughout the term of the lease (which for each Private Development Site lease shall be limited to the period ending upon the reconveyance of such site to the Company or its designee as described in Section 7(c) above) in an amount equal to the real property taxes that would otherwise be due with respect to land and improvements if such property were not otherwise exempt from real property taxes, less the amount of any as-of-right real property tax abatements applicable to the property. The assessed value of any portion of the property that is occupied by public sector or other exempt uses shall be excluded in the calculation of PILOT.

(ii) Until the date of the City’s reacquisition of fee title to any Public Development Site, which shall occur at the City’s option on or after the 40<sup>th</sup> anniversary of the rent commencement date for each such site (such date to be agreed upon by the parties), ESD shall assign at least fifty percent (50%) of the PILOT received pursuant to the leases for the Public Development Sites into an account (the “Infrastructure Fund”) to be held by NYCEDC, with the balance to be assigned by ESD directly to the City for deposit to the City’s general fund. The Infrastructure Fund shall be used to pay for any infrastructure improvements (including but not limited to streets, sidewalks, utility relocations, environmental remediation, public open space, transportation, schools and signage) outside of the Development Sites (but within a to-be-determined geographical area within Long Island City) and for such additional uses to be determined by NYCEDC on a discretionary basis after giving consideration to the recommendations of an Advisory Board to be appointed by the Public Parties at such time that the Infrastructure Fund is sufficient to finance one or more capital projects.

8. As of Right Tax Incentives. The Company may apply for any as-of-right tax benefits that may be applicable to the Project. NYCEDC and ESD will assist the Company with respect to any such as-of-right tax benefits, as they would in the ordinary course.

9. Project Incentives. The State, through ESD, will offer a package of Project incentives to the Company including Excelsior tax credits and a capital grant. The details of that package and the commitments required of the Company in exchange for those incentives are articulated in the attached incentive proposal from ESD labeled Attachment C.

10. Workforce Development.

(a) The City (or NYCEDC), ESD and the Company agree to make an initial investment of \$5 million each (totaling \$15 million) beginning in calendar year 2020 to fund workforce development initiatives in connection with the Project. The Company will collaborate with the Public Parties over the next ten (10) years, to develop workforce development initiatives that will impact thousands of students and workers. These initiatives may include the following:

(i) New York City-based technology training programs targeting non-traditional demographics including NYCHA residents, combined with Company recruiting and interviewing efforts directed to students graduating from such programs and interested in employment by the Company. Programs may include: (1) accelerated technology training programs through third-party training providers with experience serving New Yorkers; (2) programs established under the NYC Tech Talent Pipeline, the City's Industry Partnership developing pathways for New Yorkers to tech careers; and/or (3) the provision of space on the Development Sites for workforce development programming that cultivates talent from all backgrounds, including graduates from accelerated technology training programs and local college students;

(ii) Internships and work-based learning opportunities for public high school students. These could include internships and career exploration activities (e.g., career days, mock interviews, site visits, and other work-based learning opportunities); and

(iii) Additional programming and training that are reflective of the Company's talent attraction and retention goals in New York City, including the implementation of programs with City and State colleges that build upon the Company's past efforts.

(b) In addition, the Company will hold or participate in events on a semi-annual basis at Queensbridge Houses such as job fairs and resume workshops in order to promote employment opportunities to NYCHA tenants for at least the initial three years of the project, starting in calendar year 2020. Thereafter, the parties will collaborate in good faith to determine additional measures to support NYCHA tenants.

11. Company Commitments. The Company will make the following commitments in connection with the Project:

(a) Development Costs. With the exception of any incentives and other benefits to be provided by the Public Parties as described above, each Development Site lessee will be solely responsible for all other costs in connection with the Project, including the costs of required environmental impact mitigation measures identified through SEQR that are either (i) located on the Development Sites, or (ii) are by their nature costs typically borne by a private developer and are in the direct vicinity of the Development Sites and are directly related or attributable to the Project (e.g., ingress/egress to the Development Sites).

(b) Specific Infrastructure and Community Commitments. The Company, in cooperation with the lessee/developer(s) of the Development Sites, will:

(i) be responsible for the financing, construction and maintenance of all necessary infrastructure improvements within the Development Sites, including but not limited to: (1) internal streets, sidewalks, utilities, and sewers, and for the cost of any improvements to sewer infrastructure that are required to directly serve the Development Sites; (2) shoreline and bulkhead reconstruction required for the

Development Sites; (3) a public waterfront esplanade and adjacent public open space; and (4) those amenities described in Section 11(b)(iii) below, and will maintain such infrastructure, in accordance with the Project transaction documents, Development Plan, Design Guidelines, and any additional requirements under the GPP, and/or as required by law. The Company, in cooperation with the lessee/developer(s) for each Development Site, shall also construct and relocate utilities within the Development Sites, all in accordance with the Development Plan;

(ii) collaborate with the Public Parties to facilitate the dedication of one site controlled and/or owned by the Company's development partner(s) or other parties for the use of an intermediate public school or primary public school within Long Island City; and

(iii) collaborate with the Public Parties and the Company's development partner(s) on required program uses to be located at the Development Sites in accordance with the Development Plan, which shall include the following program elements to be allocated by development phase in a manner acceptable to the Public Parties, and subject to the program delivery phasing requirements specified in the Development Plan: (1) approximately 10,000 zoning square feet ("zsf") of workforce development and training space and approximately 43,650 square feet of public open space, to be located at the Public Development Sites; (2) approximately 263,600 zsf of light manufacturing space, 25,000 zsf of community facility use/artist workspace, 10,000 zsf of art and tech accelerator space, 22,500 zsf of prebuilt incubator space, and 80,000 zsf of step-out space, to be located either at the Development Sites or at other Long Island City sites reasonably approved by the City; and (3) approximately 106,000 square feet of public open space to be located at the Private Development Sites.

(c) Community Engagement. The Company will assist the Public Parties with community engagement and outreach and provide representatives to join briefings with elected officials and involved community boards, as well as public hearings and meetings concerning the Project.

12. M/WBE Commitments. The Public Parties and the Company are dedicated to furthering the participation of minority- and women-owned businesses and the hiring of minorities, women and local residents with respect to the Project, in accordance with applicable laws and the requirements set forth in Attachment C.

13. Project Coordination. The Public Parties each agree to designate a qualified person or persons with appropriate authority as its senior project coordinator(s). The senior project coordinators will work directly with the Company to endeavor to ensure that all administrative details relating to the Public Parties and the development of the Project are processed in the most efficient and expeditious fashion possible. The senior project coordinators may designate subject-matter specialist coordinators and additional coordinators as needed.

14. Support for Innovation. The Public Parties understand that an innovative economy that supports new technology development, environmental sustainability and forward-looking

products and services is of paramount importance to the Company and agree to continue their commitment to foster and develop this type of atmosphere within New York State, New York City and Long Island City, while balancing the needs of workers and the public.

15. Public Announcements. The Public Parties and the Company agree to reasonably cooperate with respect to any public announcement or public disclosure of any information of any type or nature given by one party to the other (or otherwise obtained) relating to the transactions described in this MOU. The first public announcement of the Project will be made by the Company alone, but coordinated between the Company and the Public Parties. Promptly following the Company's public announcement, the City and State will issue a joint press release with respect to the Project. Prior to such public announcement, the Company and the Public Parties shall not make any public announcements concerning the Project and the transactions described herein.

16. Project Timing. The Public Parties and the Company acknowledge and agree that the timely completion of Project milestones in accordance with the Project Timeline is essential to ensure the long-term success of the Project. Accordingly, each party agrees to use diligent efforts to accomplish its respective obligations in accordance with the Project Timeline to be agreed upon among the parties.

17. Further Assurances. The Public Parties agree to do all things and take all actions reasonably required after the date hereof to fulfill their obligations hereunder, including the obtaining, execution, and delivery of all necessary or desirable signatures, filings, consents, authorizations, and approvals as expeditiously as is possible.

18. Legal Requirements. It is understood and agreed that the actions and approvals contemplated herein are subject to all applicable legal requirements.

19. Governing Law; Venue. This MOU shall be governed by, and construed in accordance with, the laws of the State of New York (without giving effect to principles of conflicts of laws). The parties hereto agree that any and all claims asserted by or against any or all of the Public Parties arising under this MOU or related thereto shall be heard and determined either in the courts of the United States located in New York City or in the courts of the State of New York located in the City and County of New York.

20. MOU Obligations. The Company and the Public Parties agree that, except as set forth in Section 15 above, (a) neither the provisions of this MOU, nor any discussions had or to be had between the Company and the Public Parties in respect of the Project shall in any event form the basis for any action against, or claim of liability on the part of, any or all of the Company and the Public Parties; and (b) this MOU is non-binding and does not create or give rise to any legally enforceable rights or legally enforceable obligations or liabilities of any kind on the part of any party hereto. The terms of this Section 20 shall survive the expiration or earlier termination of this MOU.

21. Termination. This MOU is terminable at will by the Public Parties or the Company upon sixty (60) days' written notice.



22. Notices. Any notices, statements, certificates, requests, demands, or other communications required or permitted to be given to any party to this MOU will be in writing and delivered by overnight mail, addressed to the parties at their respective addresses set forth above or to such other addresses as such party may designate in the manner herein provided. Notice will be deemed received on the date of receipt.

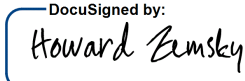
This MOU may be executed and delivered in counterparts by facsimile or other electronic means, each of which so executed and delivered counterpart is original, and such counterparts, together, shall constitute but one and the same instrument. Each of the parties hereto agrees to additionally execute, and deliver, original copies of this agreement circulated subsequent to its initial execution and delivery by facsimile or other electronic means.

Please execute this MOU below to indicate your acknowledgment of, and agreement to, the foregoing.

Signature Page Follows

Very truly yours,

NEW YORK STATE URBAN DEVELOPMENT  
CORPORATION d/b/a EMPIRE STATE  
DEVELOPMENT

By:   
DocuSigned by:  
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Howard A. Zemsky  
President and Chief Executive Officer

THE CITY OF NEW YORK


By:   
DocuSigned by:  
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Alicia Glen  
Deputy Mayor for Housing and Economic  
Development

NEW YORK CITY ECONOMIC  
DEVELOPMENT CORPORATION

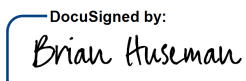
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James Patchett  
President and Chief Executive Officer

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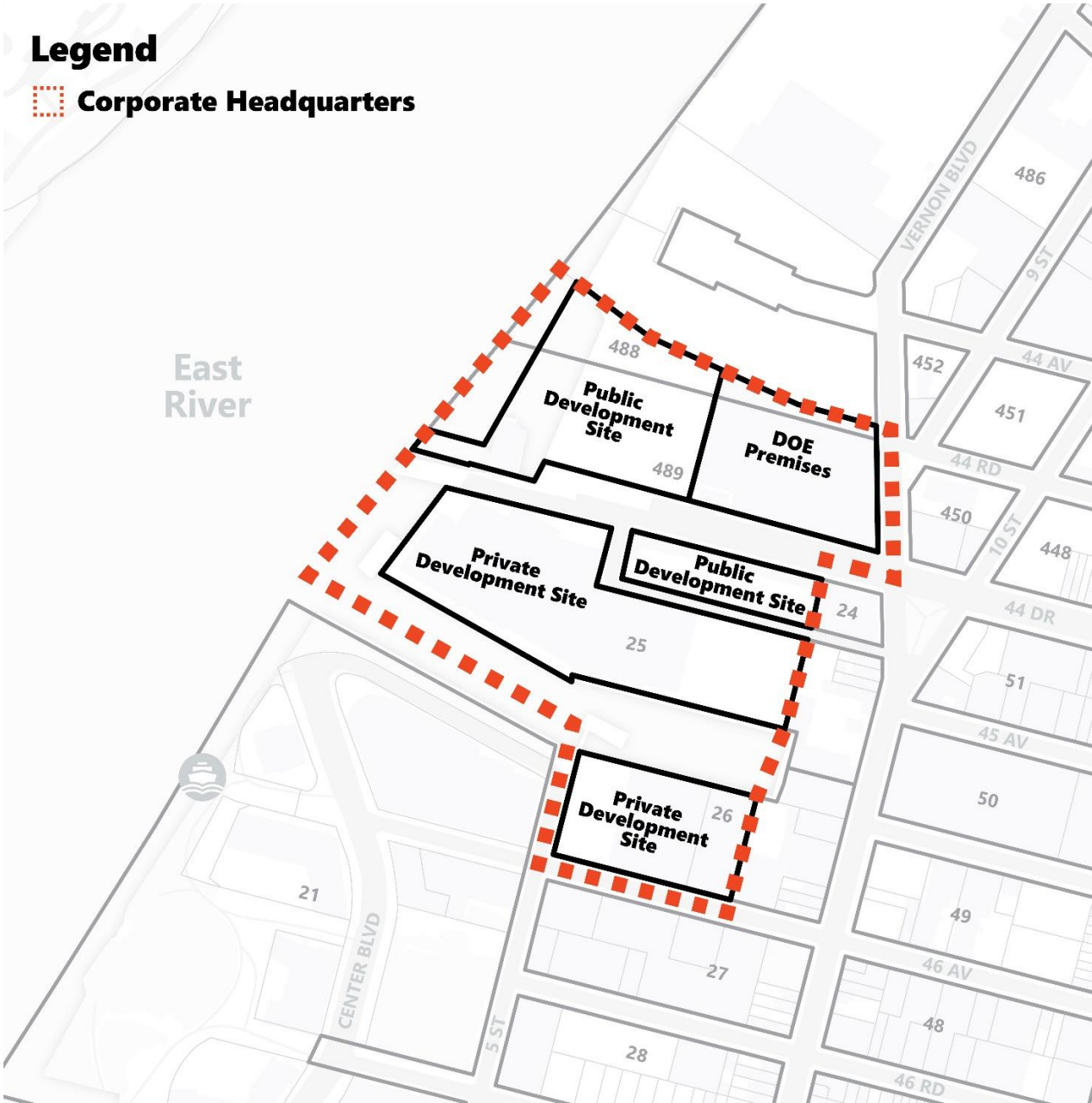
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Director of the Budget

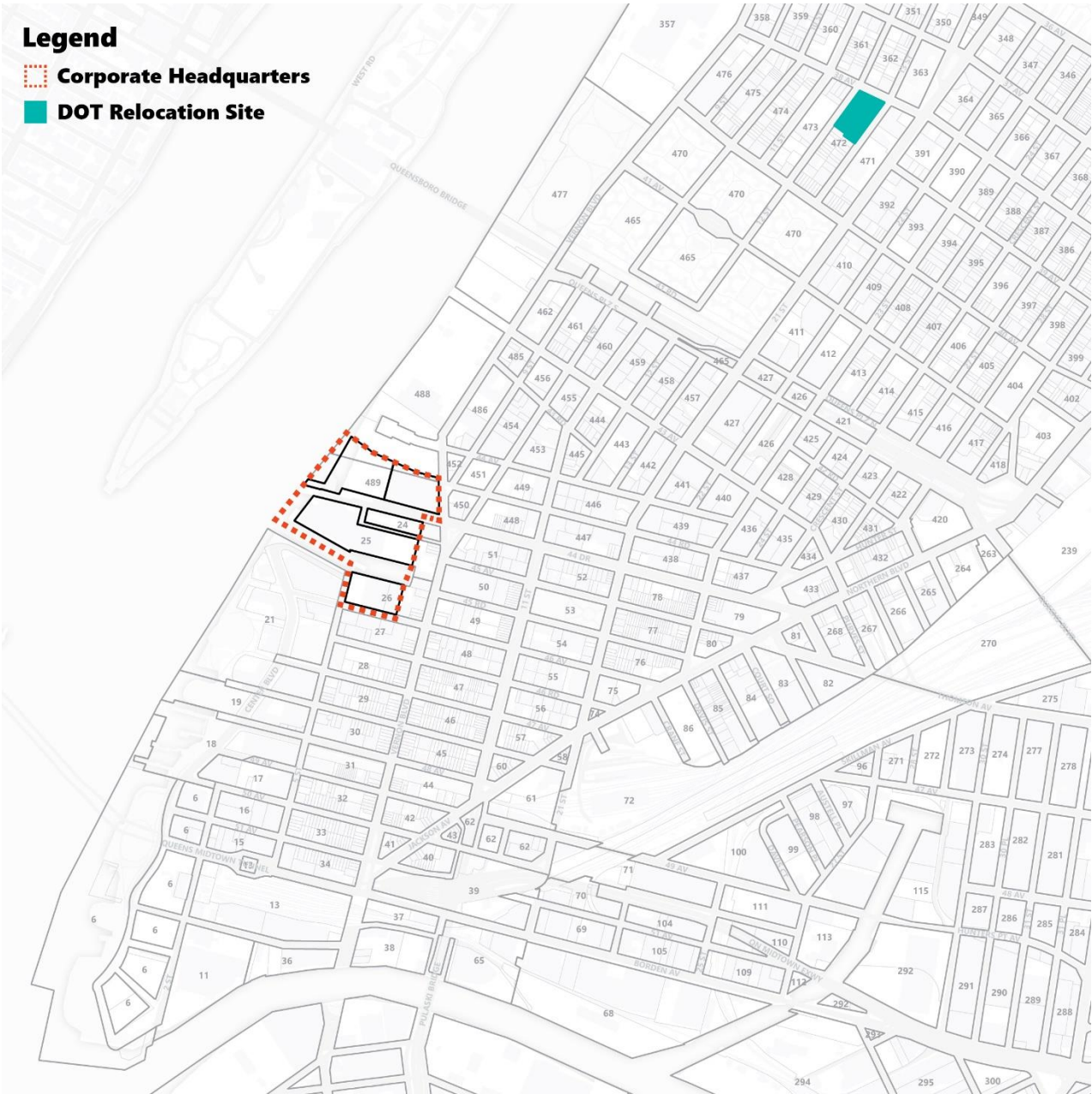
AMAZON.COM SERVICES, INC.

By:   
DocuSigned by:  
43771361E6CD46C...  
Name: Brian Huseman  
Title: Authorized Representative

Attachment A  
Development Sites Map



Attachment A – Development Sites Map –Page 2



## Attachment B

### DOE Premises Lease Transaction Terms

- 1) Due Diligence Period. By no later than March 11, 2019 (the period from the date of the MOU to such date, the “Due Diligence Period”), the Company shall perform any necessary due diligence with the permission of the City and inform the Public Parties if it intends to enter into a 99-year net lease (the “Lease”) for an approximately 672,000 square foot building located at 44-36 Vernon Boulevard in Long Island City, Tax Block 489, lot 1 and Tax Block 488, lot 11 (the “DOE Premises”).
- 2) City Covenant. During the Due Diligence Period, the City agrees that it will not lease the DOE Premises to any third party unless the Company notifies the Public Parties that it does not intend to lease such premises. If during the Due Diligence Period, the Company notifies the Public Parties that it intends to lease the DOE Premises (the “Lease Notice”), the City agrees that it will not lease the DOE Premises to any third party as long as the Company and the Public Parties are diligently seeking to obtain approvals for the Project.
- 3) Lease Implementation. After the Company delivers the Lease Notice, the Public Parties shall use diligent efforts to negotiate the terms and conditions of the Lease transaction with the intention that ESD, the City and the Company will execute and deliver a binding Agreement (the “Agreement”) for the DOE Premises within a mutually agreeable timeframe (not exceeding one hundred and twenty (120) days) after the final adoption by ESD of the GPP. The Agreement will include a substantially final form of the Lease (on terms customarily provided by the City) to be executed and delivered by ESD and the Company upon satisfaction of all conditions precedent to such execution, which shall include, but are not limited to, the following:
  - a) the City’s relocation of all tenants at the DOE Premises by January 1, 2022 (provided that such period shall be extended by the total number of days elapsed from the date of approval of the GPP to the date of execution of the Agreement, such extension not to exceed one hundred and twenty (120) days in the aggregate); and
  - b) the acquisition of fee title to the DOE Premises by ESD (which the City agrees to facilitate in accordance with the terms of the disposition of the Public Development Sites as set forth in the MOU).
- 4) Rent. The initial annual base rent (the “Base Rent”) shall equal the fair market rental value as determined by an Appraisal (as defined below). Based upon an analysis of comparable recent building sales prices in the vicinity of the DOE Premises, the parties hereby stipulate that such amount does not exceed, and therefore the Base Rent shall not exceed, the value of \$500 per built gross square foot multiplied by 6.25%. The Base Rent will commence upon delivery of vacant possession of the DOE Premises to the Company and shall be increased in each subsequent Lease year by the product of the Base Rent for the immediately preceding lease and the lesser of (a) the 12-month cumulative increase in the Consumer Price Index for All Urban Consumers in New York – Northern New Jersey-Long Island area or a successor index for the immediately preceding Lease year, and (b) three percent (3%).

- 5) Appraisal. No later than 90 days prior to the proposed closing date of the Lease, NYCEDC shall obtain and share with the Company an independent appraisal (the “Appraisal”) of the fair market rental value of the DOE Premises as built and taking into account sales of, and income generated at, comparable commercial use properties exclusively for the period prior to the date of the MOU and any capital investments made by the City in coordination with the Company after the date of the MOU.
- 6) PILOT. For each tax year or portion thereof during the term of the Lease, the Company, as tenant, shall pay PILOT in accordance with Section 7(d) of the MOU.
- 7) Compliance with Law. The Lease will require the Company to comply with all applicable Federal, State, and Local laws.
- 8) MOU. The terms set forth in this Attachment B are deemed to be a part of the MOU, subject to all of the terms and conditions set forth therein.

Attachment C



November 12, 2018

Holly Sullivan  
Head of WW Economic Development  
Amazon.com Services, Inc.  
2121 7th Ave  
Seattle, WA 98121

Dear Ms. Sullivan:

On behalf of New York State and Empire State Development, please let me express our enthusiasm for working with you and Amazon.com Services, Inc. to establish a headquarters in New York State.


Based on our discussions, Amazon.com Services, Inc. will establish a headquarters in Long Island City of 4,000,000 to 8,000,000 square feet, create 25,000 jobs with a potential expansion of up to 40,000 jobs and invest as much as \$3,686,400,000 over 15 years.

In recognition of the scale and projected economic impact of this project, New York State is offering Amazon.com Services, Inc. incentives structured on a post-performance basis that are valued at up to \$1,705,000,000, if the company creates as many as 40,000 jobs.

Please review the attached Incentive Proposal to see how New York State and Empire State Development are prepared to assist Amazon.com Services, Inc. with its project located in the New York City Region of New York State. If you choose to accept our offer, please acknowledge your decision by endorsing the last page of the attached proposal and returning one copy to me and one copy to Edwin Lee, Senior Vice President of Empire State Development's Loans and Grants Department, by Monday, December 31, 2018.

Jeff Janiszewski, Senior Vice President of Strategic Business Development, can be reached at (518) 292-5200 for any questions at your convenience. We look forward to working with you on this extraordinary project.

Very truly yours,

DocuSigned by:  
  
66F2D82A1882465...  
Howard Zemsky, President & CEO

cc: Greg Mailman  
Edwin Lee  
Jeff Janiszewski

Attachment: ESD Incentive Proposal

Empire State Development  
633 Third Avenue, New York, NY 10017  
(212) 803-3100 | [www.esd.ny.gov](http://www.esd.ny.gov)



## INCENTIVE PROPOSAL

### Amazon.com Services, Inc.

November 12, 2018

This **Incentive Proposal** outlines the general terms and conditions of the incentive package being offered by Empire State Development (“ESD”)\* to Amazon.com Services, Inc. to assist with its job creation and retention project in Long Island City, Queens County. This offer is subject to the availability of funds, completion of any applicable (1) non-discrimination and contractor diversity, (2) environmental and historic and (3) smart growth review requirements, approval by the ESD Directors, applicable statutes, and compliance with program requirements.

\* The New York State Department of Economic Development and the New York State Urban Development Corporation, d/b/a Empire State Development, are collectively referred to as ESD.

#### **I. GENERAL INFORMATION**

- a) **Recipient Name:** Amazon.com Services, Inc. (the “Recipient”). For purposes of this Incentive Proposal, all references to “Recipient” shall include Amazon.com Services, Inc., its affiliates, successors and assigns. The word “affiliates” means and includes any entity that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with Amazon.com Services, Inc.
- b) **Contact Information:** Holly Sullivan  
Head of WW Economic Development  
2121 7th Ave  
Seattle, WA 98121  
Phone : (240) 535-6768  
E-mail: hollyss@amazon.com
- c) **Project Location(s):** Long Island City, NY 11101
- New York State Empire Zone:** N/A
- d) **Type of Business:** Back office-headquarters
- e) **Number of Full-time, Permanent Employees at all NYS Locations as of Today’s Date:** 4,747
- f) **Number of Full-time, Permanent Employees at Project Location(s) as of Today’s Date:** 0
- g) **Number of Part-time or Seasonal Employees, or Full-time Contract Employees at Project Location(s) as of Today’s Date:** 0

**II. PROJECT SPECIFICS**

- a) **Project Description:** Establish an additional headquarters operation for the Recipient housed in a major corporate campus in the Long Island City area of Queens County.
- b) **Estimated Schedule:** Begin: January 2019  
Complete: December 2033  
Estimated ESD Directors' Approval: November 2019
- c) **Recipient Employment Commitment:** Grant Funds: Recipient will employ 25,000 (with the potential of up to 40,000) new Full-time Permanent Employees at the Project Location by January 1, 2034. New positions may not be filled by transferring employees from other New York State locations.
- Excelsior Jobs Program: Recipient will employ 25,000 Net New Full-time Permanent Employees at the Project Location by June 30, 2028. New positions may not be filled by transferring employees from other New York State locations.
- d) **Time Period Required for Employment to be maintained at Project Location(s):** Grant Funds: Through January 1, 2037  
Excelsior Jobs Program: Through January 1, 2029

**New York State Job Bank:** ESD encourages the Recipient to post, to the maximum extent feasible, job openings associated with this project through the New York State Job Bank, where New Yorkers can view the region in which they live, see which industries are growing and find out what jobs are available in various economic sectors. Job listing options include:

- Self-posting – No cost service allows businesses to manage their job orders throughout the recruitment process. <http://newyork.us.jobs>
- Indexing – No cost service to allow jobs posted on your company website to upload daily to the New York State Job Bank. <http://us.jobs/indexingrequest.asp>

**Definition of Full-time Permanent Employee:** (i) a full-time, permanent, private-sector employee on the Recipient's payroll, who has worked at the Project Location for a minimum of 35 hours per week for not less than four consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended by Recipient to other employees with comparable rank and duties; or (ii) two part-time, permanent, private-sector employees on Recipient's payroll, who have worked at the Project Location for a combined minimum of 35 hours per week for not less than four consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended by Recipient to other employees with comparable rank and duties.

**Definition of Full-time Contract Employee:** a full-time private sector employee (or self-employed person) who is not on the Recipient's payroll but who works exclusively for the Recipient at the project location for a minimum of 35 hours per week for not less than four consecutive weeks, providing services that would

otherwise be provided by a Full-time Permanent Employee. The position held by a Full-time Contract Employee must be a year-round position.

**For the Excelsior Jobs Program:** a full-time permanent employee must be on the payroll for more than six months of a year in order to qualify for benefits. Jobs transferred from employment at another location of the Recipient in the State or with a related person or business located in the State are not net new jobs for purposes of the employment commitment.

### III. PROJECT BUDGET

You have informed us that the following costs will be incurred to complete this project. It is understood that these costs are estimates, based on the best information available to date. If these figures change, please inform your ESD contact as soon as possible.

**Total Estimated Cost:      \$3,686,400,000**

### IV. ESD INCENTIVES

#### Capital Grant

- a) **Amount:** \$505,000,000 (the "Grant")
- b) **Use of Funds:** Reimbursement for capital costs associated with office buildout valued at \$75 per square foot, but not exceeding \$480 million in total.
- Reimbursement for a portion of site preparation and infrastructure improvements valued at \$25 million.

- c) **Requirements:** The grant is intended to reimburse the Recipient for a portion of its investment in New York; therefore, Grant funds will be disbursed annually in arrears during the fifteen (15) year term listed below when the full investment milestone for each Project Year is achieved.

This section sets forth (i) how grant funds will be disbursed, (ii) when grant funds will be subject to recapture, and (iii) how the Recipient can recover grant funds that have been recaptured.

Project Year	Net New Jobs (Cumulative)	Investment	Disbursement
2019	700	\$64,512,000	\$33,400,000
2020	2,900	\$202,752,000	\$26,400,000
2021	5,900	\$276,480,000	\$36,000,000
2022	7,900	\$184,320,000	\$24,000,000
2023	11,900	\$368,640,000	\$48,000,000
2024	15,900	\$368,640,000	\$48,000,000

2025	17,900	\$184,320,000	\$24,000,000
2026	20,789	\$266,250,240	\$34,668,000
2027	23,150	\$217,589,760	\$28,332,000
2028	25,000	\$170,496,000	\$22,200,000
2029	26,500	\$138,240,000	\$18,000,000
2030	27,750	\$115,200,000	\$15,000,000
2031	31,750	\$368,640,000	\$48,000,000
2032	35,000	\$299,520,000	\$39,000,000
2033	40,000	\$460,800,000	\$60,000,000
2034	40,000	0	0
2035	40,000	0	0
2036	40,000	0	0

**(i) Disbursements of Grant Funds**

For each Project Year listed above, ESD will disburse the amount listed for that Project Year, in arrears, provided that the Recipient: (a) makes one hundred percent (100%) of the required investment for that Project Year, and (b) achieves eighty-five percent (85%) of the Net New Jobs (Cumulative) for that Project Year (cumulatively, the "Disbursement Criteria"). If Recipient fails to meet the Disbursement Criteria for any Project Year, ESD will withhold grant funds until such time as the Disbursement Criteria for that Project Year have been met.

**(ii) Recapture Terms and Process**

If in any Project Year the Recipient's number of Net New Jobs (Cumulative) is less than the Net New Jobs (Cumulative) component of the Disbursement Criteria (an "Employee Shortfall"), that was required for disbursement in either of the immediately preceding two (2) Project Years, ESD shall have the right to recapture the grant funds disbursed for either such or both prior two (2) Project Years.

**(iii) Recovery by Recipient of Recaptured Grant Funds**

Notwithstanding the foregoing, if in the fifth, tenth and fifteenth Project Year of the 15-year project (i.e., Project Year 2023, 2028 and 2033), Recipient reports that it has achieved one hundred percent (100%) of the Net New Jobs (Cumulative) requirement for such Project Year, then, in such event, ESD shall make the full grant disbursement for such Project Year plus the total amount of all disbursements that were withheld or recaptured during the prior four Project Years because of an Employment Shortfall during such prior 4-year period.

Additional Requirements:

All disbursements require compliance with program requirements including a Certificate of Occupancy or other documentation verifying project completion and

must be requested by no later than April 1, 2034. Expenditures incurred prior to written acceptance of this Incentive Proposal are not eligible project costs and cannot be reimbursed by grant funds.

The Grant is being offered in connection with the project as described in the Consolidated Funding Application (CFA) (or ESD application) and that funds will only be made available for projects that are undertaken as described in the CFA (or ESD application), except as expressly authorized by ESD.

**d) Financial Disclosure:**

Financial disclosure, consisting of three years of audited financials or three years of tax returns plus interim financials if the most recent financial report is older than six months, on Recipient and all corporate and personal guarantors acceptable to ESD must be provided prior to ESD Directors' approval.

**General Requirements**

▪ **Equity:**

The Recipient will be required to contribute a minimum of 10% of the total project cost in the form of equity contributed after the Recipient's written acceptance of ESD's Incentive Proposal. Equity is defined as cash injected into the project by the Recipient or by investors and should be auditable through Recipient financial statements or Recipient accounts, if so requested by ESD. Equity cannot be grants from ESD or other government source.

▪ **Fees:**

The Recipient will provide a \$250 Application Fee, due with the completed ESD Universal Application and a 1% commitment fee (\$5,050,000), due after ESD Directors' approval at the time a Grant Disbursement Agreement is executed. In addition, the Recipient will reimburse ESD for any reasonable direct expenses incurred in connection with this project, including costs related to attorney fees, appraisals, surveys, title insurance, credit searches, filing fees, and other appropriate requirements. Expenses will be deemed to be appropriate and reasonable based on ESD's past practices for major development projects.

▪ **Non-discrimination and Contractor Diversity:**

ESD's Non-discrimination & Contractor and Supplier Diversity policy will apply to this project. The Recipient shall be required to use "Good Faith Efforts," pursuant to 5 NYCRR §142.8, to achieve an overall Minority and Women-owned Business Enterprise ("MWBE") participation goal of 30% of the Grant. The overall MWBE participation goals shall consist of a Minority-owned Business Enterprise ("MBE") participation goal of 15% and a Women-owned Business Enterprise ("WBE") participation goal of 15% both related to the Grant and to solicit and utilize MWBEs for any contractual opportunities generated in connection with the project. MBE participation may not be substituted for WBE participation, or the reverse. A further explanation of the MWBE requirements is attached hereto.

The Recipient is encouraged to use "Good Faith Efforts," pursuant to 9 NYCRR §252.2(m), to utilize NYS-certified Service-Disabled-Veteran-owned Business Enterprises ("SDVOBs") in the execution of the Grant. ESD's current agency-wide goal is 6% of the total value of ESD's grant funding. Any utilization of SDVOBs would be in addition to goals established pursuant to Article 15-A of the Executive Law with respect to MWBEs. Should SDVOBs be utilized, a further explanation of the SDVOB reporting requirements is attached hereto.

- **Design and Construction Review:**

Upon acceptance of this Incentive Proposal and prior to moving forward with the project, ESD's Design and Construction ("D&C") staff will meet with the Recipient to discuss ESD's required review of design and construction documents, addendum, cost estimates and monitoring of the bid and contract award process.

- **Environmental, Historic and Smart Growth Review:**

Please note in particular the Environmental, Historic and Smart Growth Review requirements at the end of the attached document, which, if applicable, must be satisfied prior to ESD Directors' approval of funding. The ESD Planning & Environmental Review office may contact your office for further information regarding status of the environmental, historic and smart growth review for your project.

- **Environmental Sustainability:**

ESD encourages the environmentally sustainable practice of recycling construction and demolition debris rather than disposition in a landfill.

- **Insurance Requirements:**

**For Project Location in New York City, Long Island or Westchester:**

The Recipient shall maintain Commercial General Liability Insurance providing both bodily injury (including death) and property damage insurance in a limit not less than Two Million Dollars (\$2,000,000) per occurrence, Three Million Dollars (\$3,000,000) aggregate and Five Million Dollars (\$5,000,000) umbrella. In addition, if the grant contemplates the purchase, construction or renovation of any buildings or equipment, the Recipient shall keep the buildings at the Project Location and the building equipment insured against: (i) loss by fire, (ii) additional perils customarily covered under an all-risk policy and (iii) flood hazard, if the Project Location is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, provided, however, that Recipient shall not be required to obtain flood insurance through the National Flood Insurance Program so long as Recipient's flood insurance meets minimum coverage requirements of the National Flood Insurance Reform Act of 1994.

- **Modification:**

ESD reserves the right to review and reconsider project and property selections in the event of material changes in the project plans or circumstances.

**Reservation of rights concerning funding commitment:**

It is expected that the project will proceed in the time frame set forth by the Recipient. If the Recipient fails to pursue project approvals during 2019 or commence the project within one year of receiving all required approvals for the project to proceed, subject to unavoidable delays, ESD reserves the right to cancel its funding commitments to the project. Prior to canceling the funding, ESD will send not less than 30 days advance notice Recipient warning it of such cancellation risk, and if Recipient provides ESD with a reasonable plan to get the project back on track within thirty (30) days, ESD shall not be entitled to cancel the funding despite such delays.

- **Next Steps After Accepting this Incentive Proposal:**

Within approximately 30 days of your acceptance of this Incentive Proposal, your Project Manager will acknowledge receipt of the signed Incentive Proposal and will provide a guide to the ESD Approval and Disbursement Process and relevant contact information. Prior to ESD Directors' approval, ESD will require updated project information and Declarations and Certifications.

**Other ESD Assistance****Excelsior Jobs Program – Job Growth Track**

**a) Amount:** Up to \$1,200,000,000

**b) Requirements:** Recipient may qualify for refundable tax credits under the Excelsior Jobs Program, as indicated in the attached “Preliminary Schedule of Benefits”. The “Preliminary Schedule of Benefits” means the maximum aggregate amount of each component of the Excelsior tax credit that Recipient may claim in each of its years of eligibility, beginning in tax year 2019, provided it meets the established commitments indicated in the Schedule.

The components of the Excelsior Jobs Program Credits will be based on the actual wages of the net new jobs created and qualifying capital investments made for each year at the project location. Please note, the jobs and investment components of the Excelsior Jobs Program Credits indicated in the Schedule are based upon: (1) the creation of 25,000 net new jobs in NYS at the project location by June 30, 2028, pursuant to each year’s job commitment outlined on the Excelsior Preliminary Schedule of Benefits and sustained at that level through January 1, 2029, and (2) total qualifying capital investments of \$2,304,000,000.

If Recipient accepts this offer, it must complete an online consolidated funding application (CFA) before it can be officially admitted into the Excelsior Jobs Program. To access the CFA, and any related materials, please visit <http://nyworks.ny.gov>. Once completed, Recipient will be admitted into the Excelsior Jobs Program and issued a Certificate of Eligibility. Expenses (i.e. capital investments and wages for new jobs) incurred on or after the date Recipient accepts this offer may be included in the calculation of the Excelsior Jobs Program credit. Expenses incurred prior to the date Recipient accepts this offer are not eligible to be included in the calculation of the credit.

The Certificate of Eligibility does not by itself guarantee eligibility to claim the tax credit. To claim the tax credit, Recipient must submit evidence that it satisfies the applicable job, investment and other eligibility requirements (see 5 NYCRR §191.2 and §192.1), including, where applicable, any necessary environmental and/or historic review requirements. After reviewing the evidence and finding it sufficient, a Certificate of Tax Credit shall be issued indicating the appropriate amount of each component of the credit that Recipient may claim for tax year 2019 based on actual job creation or investments. In order to receive a Certificate of Tax Credit for subsequent tax years, Recipient must submit a performance report for each year demonstrating that Recipient continues to satisfy the eligibility criteria specified in 5 NYCRR §191.2. If Recipient meets the eligibility criteria, Recipient can receive tax credits based on the interim job or investment milestones indicated in this incentive proposal up to the limits established in the “Preliminary Schedule of Benefits”.

Please note that you may not claim both the investment tax credit component of the Excelsior Jobs Program and the “as of right” NYS Investment Tax and

Amazon.com Services, Inc.  
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Employment Incentive credits on the same qualified investments. You must choose to claim one or the other and you should consult your tax advisor for guidance on this important decision. Once the decision is made, it is irrevocable.

The Grant is being offered in connection with the project as described in the CFA (or ESD application) and that funds will only be made available for projects that are undertaken as described in the CFA (or ESD application), except as expressly authorized by ESD.

TOTAL – ALL INCENTIVES



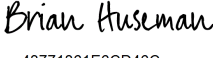
**\$1,705,000,000**

**Expiration of Proposed Offer:**

This proposal expires December 31, 2018 unless endorsed below and received by ESD prior to the expiration date.

**Expiration of Accepted Offer:**

ESD reserves the right to require Recipient to provide any additional information and/or documentation ESD deems reasonably necessary for the furtherance of the proposal.

APPROVED BY:	<div style="border: 1px solid black; border-radius: 50%; padding: 5px; display: inline-block;"> <small>DocuSigned by:</small>    <small>9585782BCB6A4C7</small> </div> <p>November 12, 2018</p> <p>Date: _____</p> <p>Brendan Healey, Vice President ESD Loans &amp; Grants 633 Third Avenue New York, NY 10017 Phone: (212) 803-3627</p>
ACCEPTED BY:	<div style="border: 1px solid black; border-radius: 50%; padding: 5px; display: inline-block;"> <small>DocuSigned by:</small>    <small>7BDE3003BD5344A</small> </div> <p>November 12, 2018</p> <p>Date: _____</p> <p>Greg Mailman, Senior Vice President Economic Incentives Albany, NY 12245 Phone: (518) 292-5743</p>
ACCEPTED BY:	<div style="border: 1px solid black; border-radius: 50%; padding: 5px; display: inline-block;"> <small>DocuSigned by:</small>    <small>43771301E0CD40C...</small> </div> <p>November 12, 2018</p> <p>Date: _____</p> <p>Amazon.com Services, Inc. Brian Huseman, Authorized Representative 410 Terry Ave. N Seattle, WA 98109 Phone: (206) 266-1000</p>

\* Please see the following Affirmation page, which must be completed, signed and notarized for this Incentive Proposal to be considered accepted.



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**AFFIRMATION**

STATE OF NEW YORK                     )  
   ) ss.:  
COUNTY OF                                 )

The Undersigned, being duly sworn, deposes and says as of the date hereof:

1. I, Brian Huseman, am an Authorized Representative of Amazon.com Services, Inc. (the "Recipient"), a corporation that is duly organized and validly existing under the laws of Delaware, and is authorized to do business and is in good standing in the State of New York.
2. I have read and know the contents of the Incentive Proposal prepared by the New York State Urban Development Corporation d/b/a Empire State Development ("ESD") dated the 12th day of November, 2018.
3. I am familiar with the information provided by Recipient or its third-party consultants as of the date hereof, and know it to be true and complete in all material respects. To the extent such information involves projections about future performance, these projections have been prepared in good faith, based upon reasonable assumptions.
4. Recipient did not make a decision to undertake the project described in the Incentive Proposal prior to the date of this Incentive Proposal.
5. Recipient hereby accepts the terms of the Incentive Proposal.
6. Receipt of the Incentive Proposal was a material factor in Recipient's decision to undertake the above-referenced project.
7. Recipient agrees to allow the Department of Taxation and Finance to share Recipient tax information with Empire State Development.
8. Recipient authorizes the Commissioner of Labor to disclose, to employees of both the New York State Department of Labor, the New York State Department of Economic Development, and the Urban Development Corporation, (dba Empire State Development), all records filed by the Recipient in making Unemployment Insurance (U.I.) reports and contributions required by State Labor and Tax Law, including, but not limited to, all information contained in or relating to the quarterly combined withholding, wage reporting and U.I. returns, the registration for U.I., the New Hire file, and all records of U.I. delinquencies. In addition, this authorization shall include all information contained in any survey reports requested by the Department of Labor on behalf of the U.S. Department of Labor, Bureau of Labor Statistics including, but not limited to, the Current Employment, Occupational Employment, multiple worksite, and annual refiling surveys. The use of information and records released pursuant to this authorization shall be limited to government purposes concerning the Recipient and assistance described in this incentive proposal to monitor compliance with worker protection laws and with the conditions and requirements associated with the financial assistance being requested; and the use of information and records released pursuant to this authorization shall be limited to government purposes concerning the certification of the Recipient for Excelsior Jobs Program benefits under Article 17 of the Economic Development Law, monitoring compliance with Excelsior Jobs Program requirements, including compliance with worker protection laws, and reviewing the performance of the Excelsior Jobs Program.
9. Recipient certifies, under penalty of perjury, that the Recipient is in substantial compliance with all applicable environmental, worker protection and local, state and federal tax laws.
10. Recipient agrees to allow the Department of Labor to contact Recipient's Human Resources department (or other relevant department) for the purpose of listing open jobs on the New York State Job Bank.
11. Paragraphs 3 and 9 of this Affirmation are made based on the actual knowledge of the signatory after reasonable inquiry and due diligence.

DocuSigned by:

*Brian Huseman*

November 12, 2018

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Signature

**ENVIRONMENTAL, HISTORIC AND SMART GROWTH REVIEW REQUIREMENTS**

Approval of funding by ESD, a public benefit corporation of the State of New York, requires compliance with environmental, historic and smart growth review requirements under New York State regulations. The information below provides a brief guide to the review processes. If you have any questions about the required documentation or how to proceed in these areas, please contact ESD's Planning & Environmental Review Office at (212) 803-3252 or 3253. **Physical work on an ESD-funded project may not be started prior to the completion of any necessary environmental, historic and/or smart growth review.**

**Environmental Review under State Environmental Quality Review Act (SEQRA)(6 NYCRR Part 617)**

- Projects or physical activities, such as construction or other activities that may affect the environment by changing the use, appearance or condition of a site or structure require review under SEQRA. Certain listed activities are not subject to any review because they involve actions with little, if any, environmental impact, referred to as "Type II" Actions. Conversely, SEQRA also includes a list of actions that are assumed to be more apt to result in impacts, referred to as "Type I" Actions, which are subject to formal review. If a proposed action is neither listed on the Type II or Type I lists, it is referred to as an "Unlisted Action" and is also subject to review under SEQRA.
- The applicant must demonstrate compliance with SEQRA if the project does not meet the definition of a Type II Action. If SEQRA review is required for the project, the review must be completed by a lead agency such as a municipal planning or zoning board, common council, county industrial development agency, or state regulatory or funding agencies.
- Please note that if the project consists of more than one phase, a SEQRA review must be completed for all known or reasonably foreseeable phases of the project, not only the phase that is the subject of ESD funding. An environmental review of only a portion of a project constitutes improper segmentation under SEQRA and is not accepted except in special circumstances.
- Required SEQRA documentation:

If the project has already been determined to have no significant effect on the environment, the following two documents must be provided:

1. Environmental Assessment Form (EAF) –Short EAF or Full EAF, as appropriate for the project. All parts must be fully completed and approved by the lead agency that reviewed the project; and
2. Negative Declaration

(Note: If the project was approved by a lead agency on or after October 7, 2013, the new EAFs must be used and a separate Negative Declaration form is not required.)

If a Positive Declaration was made for the project, indicating that the project may have a significant adverse impact on the environment, the following documents must be provided:

1. Draft and Final Environmental Impact Statement (DEIS and FEIS) – digital copy is preferable; and
2. Lead Agency Statement of Findings

- If your SEQRA review has not yet been completed, please provide in an addendum to this application information about the status of the review and designated lead agency for the review, and submit "Part 1" of a Short EAF or Full EAF as appropriate for your project. Subsequent EAF Parts are completed by the lead agency based upon the information you include in Part 1.

For further information about SEQRA, please visit the New York State Department of Environmental Conservation's web site at <http://www.dec.ny.gov>.

**Historic Review**

- Projects involving a building, structure, district, or site, including underground or underwater sites, listed on or eligible for listing on the State or National Register of Historic Places (S/NRHP) must be evaluated by the State Historic Preservation Office (SHPO) of the New York State Office of Parks, Recreation and Historic Preservation in accordance with Section 14.09 of the New York State Parks, Recreation and Historic Preservation Law.
- Buildings that are more than 50 years old and/or those that are historically, architecturally, or culturally significant, as well as project locations wholly or partially within an identified archeologically-sensitive area or a land area that typically contains archeological resources, may meet the eligibility criteria for S/NRHP listing.
- The applicant must demonstrate compliance with Section 14.09. In order to initiate the SHPO consultation process, the applicant must submit the project for review by SHPO through the Cultural Resources Information System (CRIS) found at <https://cris.parks.ny.gov/Default.aspx>. Upon completion of the SHPO consultation process, SHPO will determine whether or not the project will have an adverse impact on historical or cultural resources and will provide a letter of comment on the project.
- Required SHPO documentation:
  - Letter of No Adverse Impact determination or
  - Letter of Resolution – required if SHPO determines that the project will have an Adverse Impact on historic or cultural resources.

**Smart Growth**

The State Smart Growth Public Infrastructure Policy Act of 2010 requires that public infrastructure projects approved, undertaken, supported or financed by a State Infrastructure Agency, which includes ESD, to the extent practicable, are consistent with relevant Smart Growth Criteria specified in the law. Projects that involve ESD approval of funding for public infrastructure (e.g., publicly-supported roads, bridges, streetscapes, other transportation systems, drinking water, sewers, drainage systems, and utilities) will require the completion of a Smart Growth Impact Statement prior to approval of funding. (Note: Projects that only involve Excelsior Jobs Tax Credits do not require Smart Growth review.) ESD staff will advise you if a Smart Growth Impact Statement is required.

**PARTICIPATION REQUIREMENTS FOR NEW YORK STATE CERTIFIED MWBEs**

ESD is required to comply with and implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 (MWBE Regulations) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

Approval of funding by ESD, a public benefit corporation of the State of New York, is conditioned upon and subject to the following requirements:

- a) Recipient agrees to fully comply and cooperate with ESD in the implementation of New York State Executive Law Article 15-A. These requirements include contracting opportunities for *New York State certified* Minority-owned Business Enterprises (“MBEs”) and Women-owned Business Enterprises (“WBEs”), collectively MWBEs.
- b) For purposes of this project, ESD hereby establishes the following MWBE participation requirements:  
MBE Participation Requirement: 15%  
WBE Participation Requirement: 15%  
**Overall MWBE Participation Requirement: 30% of ESD grant funding**

- c) For purposes of providing meaningful participation by MWBEs on the project and achieving the project goals established herein, Recipient should reference the directory of New York State certified MWBEs found at the following internet address:

**<https://ny.newnycontracts.com>**

Additionally, Recipient may contact ESD’s Office of Contractor and Supplier Diversity (“OCSD”) to discuss additional methods of maximizing participation by MWBEs on the project.

- d) Recipient is required to submit a completed Non-Discrimination and Equal Employment Opportunity Policy Agreement (Form OCSD-1) prior to the first disbursement.
- e) For all incentives the Recipient and any contractors or sub-contractors are required to provide to OCSD (i) an MWBE Staffing Plan (Form OCSD-2) prior to the first disbursement, where ESD’s effective contribution is equal to or greater than \$250,000, and (ii) Workforce Utilization Reports (Form OCSD-3) on a quarterly basis, for construction contracts in excess of \$100,000, or quarterly basis, for services and commodities contracts in excess of \$25,000, until the final disbursement of project funds. If the first disbursement is also the final disbursement, the Recipient may submit only the final Workforce Utilization Report. Workforce Utilization Reports must be submitted to OCSD via email in, **excel format only**, to [OCSD@esd.ny.gov](mailto:OCSD@esd.ny.gov).

The Recipient shall also require each of its sub-contractors to submit a Workforce Utilization Report (Form OCSD-3) on a quarterly basis, for construction contracts in excess of \$100,000, or quarterly basis, for services and commodities contracts in excess of \$25,000, until the final disbursement of project funds. The Workforce Utilization Report must be sent by email in excel format only to ESD.

- f) Recipient is required to submit an MWBE Utilization Plan (Form OCSD-4) no later than ten (10) days after the execution of this Incentive Proposal.

- If additional time is required to prepare an acceptable and effective MWBE Utilization Plan, the Recipient may submit a written extension request to OCSD or the assigned OCSD Project Manager. The extension request must explain why additional time is needed and provide an estimated date of submission for the MWBE Utilization Plan.
  - Any modifications or changes to the MWBE Utilization Plan after the execution of this Incentive Proposal and during the performance of the project must be reported on a revised MWBE Utilization Plan and submitted to OCSD for approval.
- g) ESD will review the submitted MWBE Utilization Plan and advise the Recipient of acceptance or issue a Notice of Deficiency within twenty (20) days of receipt.
- h) If a notice of deficiency is issued, Recipient agrees that it shall respond to the Notice of Deficiency within seven (7) business days of receipt by submitting to OCSD a written remedy in response to the Notice of Deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the Recipient and direct the Recipient to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals (Form OCSD-5, Waiver Request). Failure to file the Waiver Request in a timely manner may result in a finding that Recipient has intentionally or willfully failed to comply with the requirements of New York State Executive Law Article 15-A and the MWBE provisions outlined herein.
- i) ESD may find that Recipient has willfully or intentionally failed to meet the MWBE project requirements under the following circumstances:
1. If a Recipient fails to submit an MWBE Utilization Plan;
  2. If a Recipient fails to submit a written remedy to a Notice of Deficiency;
  3. If a Recipient fails to submit a request for waiver; or
  4. If ESD determines that the Recipient has failed to document "Good Faith Efforts."
- j) Recipient shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the project. Requests for a partial or total waiver of established goal requirements made subsequent to the execution of the Incentive Proposal may be made at any time during the term of the project to ESD, but must be made no later than prior to the submission of a request for final payment on the project.
- k) Until such time as Recipient meets MBE and WBE participation requirements on the Project, Recipient is required to submit a quarterly MWBE Compliance & Payment Report, containing such information as required by Article 15-A of the New York State Executive Law and implementing regulations, to OCSD by the 10th day following each calendar quarter. After Project participation requirements are met, to the extent and for so long as required by New York State Executive Law (or New York State policy), Recipient shall submit an annual MWBE Compliance & Payment Report to OCSD on the 10th day following the end of each calendar year.

Periodic compliance and payment reports may be submitted electronically through the New York State Contract System, found at <https://ny.newnycontracts.com>. The New York State Contract System provides automated electronic alerts to the Recipient and any identified sub-contractors and sub-vendors and allows for the electronic reporting and confirmation of the relevant data by all tiers of identified subcontractors. Payment information and confirmation must be submitted by the 10<sup>th</sup> day

following the end of each year or quarter, as applicable. For additional information regarding this process, please contact OCSD.

Periodic compliance and payment reports may also be completed manually (Form OCSD-6, MWBE Compliance & Payment Report) and submitted to OCSD or the assigned OCSD Project Manager.

- l) “Good Faith Efforts” is the standard applied to the MWBE participation requirements in all applicable ESD incentives. Recipients shall adhere to this standard and ensure that proactive and ongoing efforts are made throughout the length of the project to include MWBE participation in all categories where MWBE participation potential exists. In order for OCSD to evaluate “Good Faith Efforts”, Recipients must maintain detailed records of its efforts to include MWBEs in the performance of the project.

For additional details regarding “Good Faith Efforts,” please review 5 NYCRR §142.8 (MWBE Rules and Regulations), available at:

[http://esd.ny.gov/MWBE/Data/OFFICIAL\\_COMPILATION\\_OF\\_MWBEREGS.pdf](http://esd.ny.gov/MWBE/Data/OFFICIAL_COMPILATION_OF_MWBEREGS.pdf)

- m) Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Recipient must document “Good Faith Efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the project. The Recipient acknowledges that if Recipient is found to have willfully and intentionally failed to comply with the MWBE participation goals and requirements set forth herein, such a finding may result in the recapture of grant proceeds. Such MWBE Recapture may be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Recipient achieved the MWBE project goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the project.
- n) Recipient’s demonstration of Good Faith Efforts shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, other applicable federal, state or local laws.

Any questions relating to the MWBE requirements stated herein may be directed to OCSD at [ocsd@esd.ny.gov](mailto:ocsd@esd.ny.gov). Recipient may also address any inquiries relating to the above MWBE requirements to the respective OCSD Project Manager. Forms OCSD-1 through OCSD-6 may be completed by hand, or fillable Word versions are available upon request. Documents relating to MWBE requirements outlined herein must be provided to OCSD in one of the following ways:

- 1. In an email to [ocsd@esd.ny.gov](mailto:ocsd@esd.ny.gov);
- 2. Through the New York State Contract System (<https://ny.newnycontracts.com>); or
- 3. By postal mail, addressed to:  
Empire State Development  
Office of Contactor & Supplier Diversity  
633 Third Avenue, 35th Floor  
New York, NY 10017

All communications to OCSD must clearly identify the ESD project number and provide pertinent details.

**PARTICIPATION REQUIREMENTS FOR NEW YORK STATE CERTIFIED SDVOBS**

It is the policy of ESD to comply with and implement the provisions of New York State Executive Law Article 17-B and 9 NYCRR Part 252 (SDVOB Regulations) for all State contracts, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

For purposes of this project, the Recipient is encouraged to solicit and utilize NYS certified Service Disabled Veteran-owned Businesses ("SDVOBs") for any contractual opportunities generated in connection with the project.

- a) For purposes of providing meaningful participation by SDVOBs on the project, Recipient should reference the directory of New York State certified SDVOBs found at the following internet address: **<https://online.ogs.ny.gov/SDVOB/search>**

Additionally, Recipient may contact ESD's Office of Contractor and Supplier Diversity ("OCSD") to discuss additional methods of maximizing participation by SDVOBs on the project.

- b) If NYS-certified SDVOB firms are utilized in the grant, Recipient is to provide a Utilization Plan to report on expected utilization (Form OCSD-4).

To the extent and for so long as required by New York State Executive Law (or New York State policy), Recipient is then required to submit a periodic SDVOB Compliance and Payment Report to OCSD by the 10th day following the end of each calendar year, for construction contracts in excess of \$100,000, or quarter, for services and commodities contracts in excess of \$25,000, over the term of the project documenting the progress made toward achievement of the project goals.

Periodic compliance and payment reports may be submitted electronically through the New York State Contract System, found at <https://ny.newnycontracts.com>. The Contract System provides automated electronic alerts to the Recipient and any identified sub-contractors and allows for the electronic reporting and confirmation of the relevant data by all tiers of identified subcontractors. For additional information regarding this process, please contact OCSD. Compliance and payment reports may also be completed manually (Form OCSD-6) and submitted to the assigned OCSD Project Manager.

"Good Faith Efforts" is the standard applied to the SDVOB participation requirement in all applicable ESD grant funding. As SDVOB utilization is encouraged, rather than required, for this project, Recipients are encouraged to adhere to this standard and ensure that proactive and ongoing efforts are made throughout the length of the project to include SDVOB participation in all categories where SDVOB participation potential exists. For additional details regarding Good Faith Efforts, please review section 252.2(m) of NYCRR 9 (SDVOB Rules and Regulations), found at: <https://ogs.ny.gov/Veterans/>

Any questions relating to the SDVOB requirements stated herein may be directed to ESD's Office of Contractor and Supplier Diversity at [OCSD@esd.ny.gov](mailto:OCSD@esd.ny.gov) or to the assigned OCSD Project Manager.

All communications to OCSD must clearly identify the ESD project number and provide pertinent details.