

CHAPTER 380 ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

As of July 21, 2015 (the “Effective Date”) this Chapter 380 Economic Development Incentive Agreement (the “Agreement”) is entered into between the City of San Marcos, Texas (the “City”), a Texas municipal corporation, and Amazon.com.kydc LLC, a limited liability company organized in the State of Delaware (“Amazon”) and duly authorized to conduct business in the State of Texas (the “State”). The City and Amazon may also be referred to collectively as the “Parties” or individually as a “Party.” Capitalized terms not otherwise defined have the meaning given them in Article II.

ARTICLE I RECITALS

Section 1.01. Amazon is an electronics products and internet retail sales company with distribution and fulfillment centers in locations in the United States and other countries.

Section 1.02. Amazon has informed the City that financial and other development incentives from the City would induce Amazon to build (or cause to be built) and operate an approximately 855,000 square-foot fulfillment center with a capital investment of approximately \$60,000,000 (which may include an investment of the developer of the fulfillment center) in building improvements, and approximately \$131,000,000 in personal property, furniture, fixtures, equipment and inventory at the Project in the City, and in which Amazon will provide at least 350 Jobs.

Section 1.03. By locating these business activities in the City, Amazon and its Affiliates will create new jobs, generate sales and use tax revenues, and add improvements to real property and personal property and inventory subject to ad valorem tax assessment.

Section 1.04. The City is authorized under Chapter 380 of the Texas Local Government Code to offer certain economic development incentives for public purposes, including the promotion of local economic development and the stimulation of business and commercial activity within the City.

Section 1.05. The City has determined that providing economic development incentives to Amazon to locate the Project in the City will promote local economic development and stimulate business and commercial activity within the City.

Section 1.06. For the reasons stated in these Recitals and in consideration of the mutual benefits to and promises of the Parties set forth below, the Parties are entering into this Agreement and agree to the terms and conditions set forth in this Agreement.

ARTICLE II DEFINITIONS

Section 2.01. “*Affiliate*” means any entity that directly or indirectly controls, is controlled by, or is under common control with, Amazon.com Inc. or Amazon.

Section 2.02. “*Business*” means the operation by Amazon or its Affiliate of a fulfillment center from within the Real Property Improvements, as part of Amazon’s North American fulfillment network through which Amazon, among other things, fulfills customer orders for internet retail sales and electronic products, together with all related activities on the Land.

Section 2.03. “*Chapter 380 Payments*” means, collectively, the City’s payments to Amazon in the form of annual rebates equal to 40 percent of Real Property Taxes, 85 percent of Personal Property Taxes and 15 to 85 percent of Sales Tax Revenues attributable to the calendar year immediately preceding the year in which a Chapter 380 Payment is requested in accordance under Article IV.

Section 2.04. “*Job*” means a permanent employment position with Amazon or any of its Affiliates:

- a. that provides full-time employment; and
- b. that requires the physical presence of the employee on the Land or within the City for a majority of hours worked in order to carry out the employee’s essential job functions, e.g., the employee’s position may require travel, but the Land or within the City is the home base at which the employee performs the majority of his or her work.

Section 2.05. “*Land*” means the real property within the city limits of the City upon which the Project shall be executed, a map, plat or survey of which is attached as Exhibit “A” and made a part hereof for all purposes.

Section 2.06. “*Personal Property*” means all, materials, supplies, equipment, inventory or other personal property attributable to the Business on the Land that is subject to ad valorem taxes.

Section 2.07. “*Personal Property Taxes*” are the City’s share of the ad valorem taxes received by the City from the Hays County Tax Assessor-Collector on the value of all Personal Property.

Section 2.08. “*Project*” means the addition of Real Property Improvements and Personal Property, the operation of the Business and the creation of new Jobs, by Amazon and its Affiliates or, in the case of Real Property Improvements, by a developer for lease to Amazon or one of its Affiliates.

Section 2.09. “*Real Property Improvements*” means an approximately 855,000 square-foot building that includes warehouse space and distribution space for the operation of the Business constructed on the Land, but which does not include the Land or any Personal Property,

built in substantial accordance with the specifications shown in Exhibit “B,” attached hereto and made a part hereof.

Section 2.10. “*Real Property Taxes*” are the City’s share of the ad valorem taxes received by the City from the Hays County Tax Assessor-Collector on the value of all Real Property Improvements.

Section 2.11. “*Sales Tax Revenues*” means the amount of sales and use tax revenues attributable to the Project collected by the Texas Comptroller of Public Accounts (or any similar or successor tax collection entity or agency of the State) and that:

- a. are paid to and actually received by the City; and
- b. are either:
 - (i) from sales and use taxes that Amazon and others generate as a result of retail sales of goods and services attributable to the Business if such retail sales result in sales and use tax revenues paid to and actually received by the City; or
 - (ii) from sales and use taxes generated from Amazon’s and its Affiliates’ payments to vendors or directly to the Texas Comptroller of Public Accounts on purchases attributable to the Project and sales and use taxes paid by any person in connection with the construction, equipping or maintenance of the Project if retail sales under subsection (b)(i) do not result in sales and use tax revenues paid to and actually received by City.

Section 2.12. The “*Term*” of this Agreement shall commence on the Effective Date and continue until December 31, 2036, unless sooner terminated by either Party in accordance with the terms of this Agreement. However, the Term of this Agreement shall extend beyond

December 31, 2036 for the limited purpose of completing the last Chapter 380 Payment due to Amazon under Article IV of this Agreement and any subsequent payments owed to Amazon due to incorrect calculations or the recovery of previously withheld Chapter 380 Payments. Amazon has the right to terminate this Agreement for any reason by delivering notice to the City at least five business days prior to the desired termination date.

ARTICLE III EXECUTION OF THE PROJECT

Section 3.01. Job Creation. On or before December 31, 2017, Amazon and its Affiliates shall employ at least 350 persons in Jobs and maintain such level of employment during the Term.

a. Non-Discrimination. Amazon agrees to ensure (and to cause its Affiliates to ensure) that there will be no unlawful discrimination in employment on the basis of race, creed, color, national origin, sex or disability or violations of any other applicable anti-discrimination laws in connection with the Business.

Section 3.02. Addition of Real Property Improvements. Amazon shall cause construction of the Real Property Improvements to be commenced on or before December 31, 2015 and to be completed on or before December 31, 2016. Completion of the Real Property Improvements shall be evidenced by a certificate of occupancy issued by the City in accordance with applicable ordinances.

Section 3.03. Operation of Business. Amazon and its Affiliates shall begin operation of the Business on or before January 1, 2017, and shall continuously operate, maintain and manage the Business for the duration of the Term.

Section 3.04. Compliance with Laws. In performing its obligations under this Article, Amazon and its Affiliates shall comply with all applicable laws, regulations and ordinances with respect to the Project and this Agreement.

**ARTICLE IV
CHAPTER 380 PAYMENTS FROM THE CITY**

Section 4.01. Chapter 380 Payments. Subject to the requirements and limitations of this Article, other terms and conditions of this Agreement and Amazon’s compliance with its obligations under this Agreement, up to 20 Chapter 380 Payments (not including any subsequent request in connection with a Chapter 380 Payment to secure previously withheld Chapter 380 Payments or incorrectly calculated Chapter 380 Payments) may be requested by Amazon and paid by the City.

Section 4.02. Process for Payment. Beginning in the year 2018, and once each year thereafter, until and including the year 2037, Amazon may request a Chapter 380 Payment by written application submitted to the City Manager of the City. The City shall not be required to make a Chapter 380 Payment for any applicable calendar year until:

- a.** Amazon submits to the City a compliance certificate in substantially the form attached as Exhibit “C” (the “Compliance Certificate”) together with all information required under the Compliance Certificate necessary to verify Amazon’s material compliance with its obligations under this Agreement for the preceding year;
- b.** the City has received Personal Property Taxes or Real Property Taxes for the preceding year from the Hays County Tax Assessor-Collector;
- c.** the City has received Sales Tax Revenues for the preceding year from the Texas Comptroller of Public Accounts; and

d. funds are appropriated by the San Marcos City Council for the specific purpose of making a Chapter 380 Payment under this Agreement as part of the City's ordinary budget and appropriations approval process or through any subsequent appropriation.

Provided the foregoing conditions have been satisfied and Amazon is, otherwise, in compliance with this Agreement, the City shall pay to Amazon any Chapter 380 Payments due within 30 days after the last to occur of the events in subsections (a) through (d).

Section 4.03. Payment Period for Ad Valorem Tax Portion of Chapter 380 Payments. Chapter 380 Payments made by the City between and including the years 2018 through 2027 shall include rebates associated with Personal Property Taxes and Real Property Taxes attributable to the previous tax years. Except as provided below, no rebates associated with Personal Property Taxes and Real Property taxes shall be included in any Chapter 380 Payments made in 2028 through the end of the Term.

a. Extension of Payment Period for Ad Valorem Portion of Chapter 380 Payments. If Amazon and its Affiliates create and maintain at least 1,000 Jobs for a continuous period of at least five years preceding and until December 31, 2027, then Amazon shall be entitled to up to five additional annual Chapter 380 Payments that include rebates associated with Personal Property Taxes and Real Property Taxes. If, however, the total number of persons employed in Jobs falls below 1,000 as of December 31 of each of the years 2028 through 2032, Amazon's eligibility to continue receiving Chapter 380 Payments that include rebates associated with Personal Property Taxes and Real Property Taxes for such year shall automatically cease. For the avoidance of doubt, (i) this subparagraph does not apply to Sales Tax Rebates, and (ii) the City ad valorem

tax rebate is not capped; thus, any investments in Real Property Improvements or Personal Property that exceed the estimates set forth in this Agreement and increase taxable value will generate City ad valorem tax rebates.

b. A summary of the eligibility for Chapter 380 Payments is described in “Exhibit D.”

Section 4.04. Parameters for Sales Tax Revenue Portion of Chapter 380 Payments.

The Sales Tax Revenue portion of each Chapter 380 Payment shall be paid on taxable sales and uses in accordance with the following schedule:

Annual Taxable Sales and Uses	Percentage of Rebate on Sales Tax Revenues Generated from such Sales and Uses
\$100,000 - \$10,000,000	15%
\$10,000,001 - \$50,000,000	25%
\$50,000,001 - \$100,000,000	50%
\$100,000,001 - \$200,000,000	75%
\$200,000,001 - \$300,000,000	80%
\$300,000,001 - \$750,000,000	85%
Above \$750,000,000	No further rebate

The foregoing rebate percentages shall be applied incrementally. For example, if annual taxable sales and uses for a particular year total \$12,000,000, then the City would rebate 15 percent of the Sales Tax Revenues attributable to the first \$10,000,000 and 25 percent of the Sales Tax Revenues attributable to the next \$2,000,000.

**ARTICLE V
ADDITIONAL INCENTIVES FROM THE CITY**

Section 5.01. Enterprise Zone. If requested by Amazon, the City Manager of the City shall place an item on an agenda for a regularly scheduled meeting of the San Marcos City Council for consideration and possible action to:

a. designate all or any portion of the Land as an “enterprise zone” as defined in Section 2303.003 of the Texas Government Code; and

b. nominate Amazon and the Project for designation as an enterprise project in accordance with Chapter 2303 of the Texas Government Code, and take any actions in connection with such nomination, including the holding of any required public hearings and the enactment of any ordinances and resolutions.

Amazon acknowledges that the City cannot and does not represent that Amazon’s requests above will be approved by the City Council.

Section 5.02. Road Dedication and Construction Waivers. Execution of the Project will require the dedication of land for public right-of-way and construction of two public streets and related public improvements pursuant to Chapter 7, Articles 1 and 4 of the City’s Land Development Code (“LDC”).

a. **Dedication for Street on Northern Boundary.** First, a public street bordering the northern boundary of the Land running perpendicular to IH-35 as illustrated in Exhibit “B,” attached hereto and made a part hereof, is proposed to be constructed. The real property for this public-right-of way shall be dedicated by the owner of the Land at the time of platting of the Land.

b. **Dedication for Street that Divides the Land.** Second, a public street is proposed to be constructed through the Land along a path running parallel to Leah Avenue and intersecting the first proposed public street, also as illustrated in Exhibit “B.” Dedication of the real property for this public-right-of way shall be deferred to a date after platting of the Land. A 160 foot wide reserve tract for this public-right-of-way dedication shall be included on the subdivision plat for the Land, together with a plat note

indicating that the owner of the Land shall dedicate such right-of-way upon request of the City consistent with this paragraph.

c. Waiver of Construction Obligation. Pursuant to the City's authority under Section 1.4.4.1 of the LDC, the City hereby waives the requirement under Chapter 7, Articles 1 and 4 of the LDC for Amazon, the owner of the Land or any developer that constructs the Real Property Improvements to construct, cause the construction of, or pay for any public street improvements, including related sidewalks and curbing, for the two streets identified in subsection (a) and (b). Except as specifically stated in this section 5.02, the City grants no other waivers of requirements under the LDC.

ARTICLE VI REPRESENTATIONS AND WARRANTIES OF AMAZON

As of the Effective Date, Amazon represents and warrants to the City, as follows:

Section 6.01. Organization. Amazon is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and authorized to conduct business in the State. The activities that Amazon and its Affiliates propose to carry on at the Land may lawfully be conducted by Amazon and its Affiliates.

Section 6.02. Authority. The execution, delivery and performance by Amazon of this Agreement are within Amazon's powers and have been duly authorized.

Section 6.03. Valid and Binding Obligation. This Agreement is the legal, valid and binding obligation of Amazon, enforceable against Amazon in accordance with its terms except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.

Section 6.04. No Defaults. To the actual knowledge of the individual signing this Agreement, the persons authorizing this Agreement, and the Amazon representatives that negotiated this Agreement, Amazon is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which Amazon is a party or by which Amazon or any of its property is bound that would have any material adverse effect on Amazon's ability to perform under this Agreement.

**ARTICLE VII
PERSONAL LIABILITY OF PUBLIC OFFICIALS
AND LIMITATIONS ON CITY OBLIGATIONS**

Section 7.01. Personal Liability of Public Officials. No employee or elected official of the City shall be personally responsible for any liability arising under or growing out of this Agreement.

Section 7.02. Limitations on City Obligations. The Chapter 380 Payments made and any other financial obligation of the City hereunder shall be paid solely from lawfully available funds that have been budgeted and appropriated each year during the Term by the City as provided in this Agreement. Under no circumstances shall the City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Consequently, notwithstanding any other provision of this Agreement, the City shall have no obligation or liability to pay any Chapter 380 Payments unless the City budgets and appropriates funds to make such payments during the City's fiscal year in which such payments are due. If the City fails to appropriate funds to make any Chapter 380 Payment(s), it shall immediately notify Amazon of such non-appropriation and Amazon may, at its sole option, terminate this Agreement, effective upon written notice to City.

Section 7.03. No Recourse. Except for the right to terminate as provided in Section 7.02, Amazon shall have no recourse against the City for the City's failure to budget and appropriate funds during any fiscal year to meet the purposes and satisfy its obligations under this Agreement.

ARTICLE VIII INFORMATION

Section 8.01. Information. Subject to this Article VIII, Amazon shall, at such times and in such form as the City may reasonably request from Amazon, provide information concerning the performance of Amazon's obligations under this Agreement.

Section 8.02. Annual Certification Related to Compliance with Agreement. Beginning in the year 2018 and continuing each year thereafter during the Term, Amazon shall submit to the City Manager of the City a duly executed and completed Compliance Certificate on or before March 1 or such other later date agreed to by the City Manager, signed by an authorized officer or employee of Amazon, together with supporting documentation necessary to verify Amazon's compliance with this Agreement. After receiving the Compliance Certificate from Amazon, the City shall have 30 calendar days to notify Amazon in writing of any questions related to the Compliance Certificate and the Project that the City may have concerning any of the information provided by Amazon, and Amazon shall diligently work in good faith to respond to such questions to the City's reasonable satisfaction.

Section 8.03. Review of Amazon's Records. To the extent that the City has questions about the data supplied by Amazon in any report, application, filing or other document provided under this Agreement, the Parties will engage in good faith efforts to resolve such questions and, upon the City's reasonable request, Amazon will furnish or make available for inspection during normal business hours of Amazon back-up documentation reasonably sufficient to verify the

accuracy and completeness of report, application, filing or other document, and to demonstrate the manner in which such items or their contents were calculated or prepared. If, notwithstanding the good faith efforts of the Parties to resolve any questions concerning such items, the Parties are unable to resolve such issues, during the Term and for six (6) months thereafter, the City's independent third-party certified public accountant (any such independent third-party accountant to be retained on a non-contingency fee basis), may examine and audit such books and records of Amazon as are reasonably sufficient to verify the accuracy of such items. Any such audit must: (i) not be disruptive to Amazon's business and must take place at a mutually agreed time during Amazon's normal business hours; (ii) not occur more than once during any 12 consecutive month period, unless special circumstances arise that cause the City to reasonably determine that another audit is immediately necessary; (iii) take place on at least thirty (30) days' prior written notice; (iv) be completed within thirty (30) days from commencement; and (vi) be conducted by the City, and its authorized representatives, alone and not in conjunction or cooperation with any other party. The City may not schedule an audit to take place in the fourth calendar quarter of any year. The City agrees that certain information obtained by the City in connection with any such audit may be subject to the security, nondisclosure and nonuse obligations under Sections 8.04 and 8.05. In the event the City's examination reveals a payment deficiency or discrepancy, the Parties will cooperate in good faith to address and resolve such deficiency or discrepancy. The City will be solely responsible for all costs of any audit it conducts, unless the audit reveals fraud, misrepresentation or negligence in the reporting of information by Amazon or its Affiliates, the absence of which would have prevented the necessity for an audit. Information, documents and materials that do not constitute public information under The Public Information Act (Chapter 552 of the Texas Local

Government Code) or are exempt from disclosure under The Public Information Act obtained by the City's auditor in connection with any such audit shall be treated as confidential information of Amazon, and the City agrees to maintain the confidentiality of such information to the maximum extent permitted by applicable law. Information, documents and materials provided by Amazon that constitute public information under The Public Information Act shall be treated as described in Section 8.04 of this Agreement. Notwithstanding the foregoing or any other provision of this Agreement, Amazon shall not be required to disclose, permit the inspection of or examination of, or discuss, any document, information or other matter that is not necessary to verify Amazon's compliance with this Agreement and (a) constitutes trade secrets or proprietary information, (b) in respect of which disclosure is prohibited by law or any binding agreement or (c) is subject to attorney-client or similar privilege, employee privacy or constitutes attorney work product.

Section 8.04. Public Records; Confidentiality. Amazon acknowledges and agrees that this Agreement and the Amazon's annual Compliance Certificates are public records subject to disclosure (after redaction of information exempt from disclosure as described below) under The Public Information Act. The Parties acknowledge and agree that The Public Information Act exempts from disclosure certain types of records, materials and information, including without limitation: records confidential by law, either constitutional, statutory or by judicial decision (Section 552.101 of the Texas Government Code); social security numbers (Section 552.117(a)(2) of the Texas Government Code); trade secrets and economic development project information (Sections 552,110 and 552.131 of the Texas Government Code); and proprietary commercial information (Section 552.110 of the Texas Government Code). The City will endeavor to use adequate safeguards, no less than those safeguards described in Section 8.05, to

maintain the security and confidentiality of all materials, communications, data and information related to this Agreement or supplied by Amazon in connection with this Agreement that may be subject to such exemptions from disclosure. Amazon acknowledges that this Agreement constitutes public information and the materials, communications, data and information related to this Agreement may also constitute public information subject to disclosure under The Public Information Act and agrees that the City may disclose this Agreement, the annual Compliance Certificates and the portions of materials, communications, data and information related to this Agreement as required by law, provided that the City will make reasonable efforts to (a) give Amazon prior written notice of a request for public information (other than a request for copies of this Agreement or annual Compliance Certificates, which Amazon agrees may be released without notice to Amazon) in a reasonably practicable time period to allow Amazon to seek a protective order or other appropriate remedy, (b) disclose only such information as is required under the applicable law, (c) cooperate with Amazon in responding to any such records request (but there shall be no obligation for the City to independently request or join in any request for a ruling from the Attorney General or to pursue any remedies sought by Amazon with regard to asserted proprietary commercial or financial information or trade secrets). In particular, the City, without waiving its right to appeal an opinion or ruling under applicable procedures, hereby agrees to comply with any opinion or ruling of the Texas Attorney General or court order recommending or requiring redaction or withholding of information in response to a request for public information.

Section 8.05. Information Security. The City agrees to use adequate physical and technical measures comparable to those of other similarly-sized cities in Texas to maintain the security of all electronic and tangible records relating to this Agreement including at a minimum:

a working network firewall to protect data accessible via the Internet; up-to-date security patches; and up-to-date anti-virus software. The City will endeavor to promptly notify Amazon in the event the City experiences a security breach that could have impacted any electronic or tangible records relating to this Agreement. The City acknowledges and agrees that Amazon must comply with its information security policies in performing its obligations under this Agreement and that to the extent Amazon is required to deliver sensitive employment related information (such as social security numbers, compensation information, employee names, employee addresses, job titles and hours worked) in connection with this Agreement, Amazon may deliver such information in password protected and encrypted files.

ARTICLE IX DEFAULT, TERMINATION AND REMEDIES

Section 9.01. Noncompliance with Jobs Obligations; Withholding Payments. If, during any year of the Term of this Agreement, Amazon is not in compliance with its obligation to create and retain Jobs, no Chapter 380 Payment shall be due for that year and Amazon shall have no recourse or claim for recovery of the amount of the Chapter 380 Payment that would have otherwise been due for that year.

Section 9.02. Termination for Misrepresentation. Notwithstanding any provision for notice of non-compliance and any opportunity to cure, the City may terminate this Agreement immediately by providing written notice to Amazon if Amazon, its officers or signatories to this Agreement intentionally misrepresented or misrepresent any material fact or information: (a) upon which the City relied in entering into this Agreement; (b) upon which the City relies in making a Chapter 380 Payment; or (c) as an inducement for the City to make a Chapter 380 Payment.

Section 9.03. Notice of Default. At any time during the Term of this Agreement that Amazon is not in compliance with its obligations under this Agreement, other than its obligations to create and retain Jobs, the City may send Amazon notice of such non-compliance. If such non-compliance is not cured within 120 days after Amazon's receipt of such notice or, if non-compliance is not reasonably susceptible to cure within 120 days, a cure is not begun within such 120-day period and thereafter continuously and diligently pursued to completion (in either event, a "**Cure**"), then the City may, at its option, terminate this Agreement or withhold Chapter 380 Payments otherwise due for the calendar year or years in which the non-compliance occurred and continues. If the City elects to withhold Chapter 380 Payments rather than to terminate the Agreement, then, upon a Cure by Amazon, Amazon will be eligible to receive Chapter 380 Payments in future years (provided it is otherwise in compliance and subject to other limitations of this Agreement) for the remainder of the Term. A Chapter 380 Payment withheld by the City as a result of Amazon's failure to Cure under this Section is deemed forfeited by Amazon and the City has no obligation to make retroactive payment even after Amazon comes back into compliance. The Term shall not be extended as a result of any cure period under this Section.

Section 9.04. Remedies. Except to the extent that this Agreement or applicable law require otherwise, the remedies set forth in this Section are the sole and exclusive remedies available upon a violation, default, Breach or Material Breach (each as defined below) of this Agreement.

a. Effect of Breach. A Party will be deemed to be in "Breach" of this Agreement only if: (i) it fails to substantially comply with any material provision of this Agreement; and (ii) it does not cure such failure within a reasonable period of time following delivery to it of notice by the other Party describing such failure in reasonable

detail, which period will not be less than 120 days. The City agrees and acknowledges that the Amazon's representations, warranties, covenants, agreements and performance obligations under this Agreement are limited to and apply exclusively to the operations of Amazon at the site of the Project and any determination as to whether Amazon is in violation, default, Breach or Material Breach of this Agreement will be limited to Amazon's operations on the Land. In the event of a Breach for which this Agreement does not provide a specific remedy, the other Party may pursue any legal or equitable remedies they may have under this Agreement or applicable law; provided, however, that the City agrees that, in the event of a Breach by Amazon, it will not be entitled to and may not seek or pursue the following remedies (i) termination of this Agreement; (ii) termination of the Chapter 380 Payments; (iii) reduction of the term of this Agreement or the Chapter 380 Payments; (iv) reduction of the amount of Chapter 380 Payments; or (v) recapture of any Chapter 380 Payments realized by Amazon. The remedies set forth in this Section 9.04(a) are the sole and exclusive remedies of the City for a Breach by Amazon of its obligations under this Agreement (other than those provided below for Material Breaches).

b. Effect of Material Breach. If Amazon Breaches its obligations under this Agreement to create and retain Jobs and to make or cause to be made the Real Property Improvements (after any the notice and cure period have lapsed, a "Material Breach"), the City has the right to: terminate this Agreement in full; terminate the Chapter 380 Payments; modify the term and/or amount of the Chapter 380 Payments; provided, however, that (A) in determining the size of any reduction of the Chapter 380 Payments, the City may consider the effect on Amazon's operations of changes in market or

economic conditions; and (B) no reduction may negatively affect or reduce the Chapter 380 Payments for any period prior to the date of such Material Breach. The remedies set forth in this Section 9.04(b) are the sole and exclusive remedies of the City for a Material Breach by Amazon of its obligations under this Agreement.

c. Effect of Force Majeure Event. A Party will not be deemed to be in Breach, Material Breach, default or otherwise in violation of any term of this Agreement to the extent such Party's action, inaction or omission is the result of Force Majeure Event. Amazon and the City agree to use commercially reasonable efforts to promptly resolve any Force Majeure Event that adversely and materially impacts their performance under this Agreement. A force majeure event pauses a Party's performance obligation for the duration of the event but does not excuse it. "Force Majeure Event" means any event or occurrence that is not within the control of such Party or its Affiliates and prevents a Party from performing its obligations under this Agreement, including without limitation, any act of God; act of a public enemy; war; riot; sabotage; blockage; embargo; failure or inability to secure materials, supplies or labor through ordinary sources by reason of shortages or priority; labor strike, lockout or other labor or industrial disturbance (whether or not on the part of agents or employees of either Party); civil disturbance; terrorist act; power outage; fire, flood, windstorm, hurricane, earthquake or other casualty; any law, order, regulation or other action of any governing authority; any action, inaction, order, ruling moratorium, regulation, statute, condition or other decision of any governmental agency having jurisdiction over the Party, over the Project or over a Party's operations.

d. Overpayments. Notwithstanding the limitations on remedies in this

Article, it is understood and agreed that, because the Chapter 380 Payments are from public funds, any verified overpayments to Amazon may be recovered by the City through available remedies at law or in equity, or by reducing future Chapter 380 Payments by the amount of an overpayment.

Section 9.05. Limitation of Liability. Notwithstanding anything to the contrary in this Agreement, neither Amazon nor any of its Affiliates shall be liable for: (a) any indirect, reliance, exemplary, incidental, speculative, punitive, special, consequential or similar damages that may arise in connection with this Agreement, (b) any lost or foregone tax revenues, or (c) any damages, liabilities, fees, costs, expenses, penalties, diminishments in value, losses or payments (including any lost or foregone tax revenues) that exceed, in the aggregate, the lesser of (i) the financial benefit realized by Amazon under this Agreement and (ii) \$10,000,000.

Section 9.06. Indemnification. **The City shall not be obligated to pay any indebtedness or obligations of Amazon. Except to the extent of the City's proportional responsibility arising because the City is negligent or engaged in misconduct or criminal activity, Amazon hereby agrees to indemnify and defend the City, its elected officials and employees from liabilities arising from third-party claims caused by or resulting from Amazon's Breach of this Agreement. The City agrees that Amazon has the right to take over and manage the defense of any claim for which the City seeks indemnification. Amazon agrees to pay any judgments that result from Amazon's Breach that may be obtained against the City. Notwithstanding any other provision in this Agreement, Amazon will not be required to indemnify the City for any settlements reached with respect to a third party claim unless Amazon has provided its prior written consent for such**

settlement. Amazon's indemnification obligations under this Section 9.06 are subject to the limitation of liability and any maximum liability amount set forth in Section 9.05.

Section 9.07. Offset. The City may deduct from any Chapter 380 Payments, as an offset, any delinquent and unpaid fees, sums of money or other fees, charges or taxes assessed and owed to or for the benefit of the City by Amazon; provided that before offsetting any amounts the City must provide Amazon with (a) advance notice of such offset, (b) 60 days to take action to remedy the situation giving rise to the offset, and (c) reasonable opportunity, at its own expense, to contest such offset.

ARTICLE X MISCELLANEOUS

Section 10.01. Entire Agreement. This Agreement, including any exhibits hereto, contains the entire agreement between the parties with respect to the transactions contemplated herein.

Section 10.02. Amendments. This Agreement may only be amended, altered, or terminated by written instrument signed by all parties.

Section 10.03. Assignment. Neither Party may assign this Agreement without the prior written consent of the other Party, except that Amazon may assign this Agreement in whole or in part to an Affiliate or in connection with any merger, reorganization, sale of all or substantially all of its assets or any similar transaction; provided that Amazon provides the City with written notice promptly after any such assignment. The Agreement will be binding upon, inure to the benefit of, and be enforceable by the Parties and their respective successors and assigns.

Section 10.04. Waiver. No term or condition of this Agreement shall be deemed to have been waived, nor shall there be any estoppel to enforce any provision of this Agreement, except by written instrument of the Party charged with such waiver or estoppel.

Section 10.05. Notices. Notices under this Agreement are sufficient if given by nationally recognized overnight courier service, certified mail (return receipt requested), facsimile with electronic confirmation, or personal delivery to the other Party at the address below. If no address is listed for a Party, notice to such Party will be effective if given to the last known address. Notice is effective: (a) when delivered personally, (b) three business days after sending by certified mail, (c) on the business day after sending by a nationally recognized courier service, or (d) on the business day after sending by facsimile with electronic confirmation to the sender. Each Party may update its contact information by notice to the other. Routine business and technical correspondence must be in English, and may be in electronic form. The contact information for each Party is as follows:

Amazon: Amazon.com.kydc LLC
Attn: Director of Economic Development
410 Terry Avenue North
Seattle, Washington 98109
Fax: (206) 266-7010
Email: economicdevelopment@amazon.com

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

City: City of San Marcos, Texas
c/o City Manager
630 E. Hopkins
San Marcos, Texas 78666
Telephone: (512) 393-8100

Section 10.06. Applicable Law and Venue. This Agreement is made, and shall be construed and interpreted under the laws of the State. Venue for any legal proceedings shall lie

in State courts located in Hays County, Texas. Venue for any matters in federal court will be in the United States District Court for the Western District of Texas, Austin Division.

Section 10.07. Severability. In the event any provision of this Agreement is illegal, invalid, or unenforceability under the applicable present or future laws, then, and in that event, it is the intention of the Parties that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceability and is a similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

Section 10.08. Third Parties. The City and Amazon intend that this Agreement shall not benefit or create any right or cause of action in or on behalf of any third-party beneficiary, or any individual or entity other than the City and Amazon or permitted assignees of the City and Amazon, except that the indemnification and hold harmless obligations by Amazon provided for in this Agreement shall inure to the benefit of the indemnitees named therein.

Section 10.09. No Joint Venture. Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the Parties, and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either Party as an agent of the other for any purpose whatsoever. Except as otherwise specifically provided herein, neither Party shall in any way assume any of the liability of the other for acts of the other or obligations of the other.

Section 10.10. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which constitute one instrument.

EXECUTED in duplicate originals to be effective as of the Effective Date.

CITY OF SAN MARCOS, TEXAS:

By: _____
Jared Miller, City Manager

AMAZON.COM.KYDC LLC:

By: _____

Name: _____

Title: _____

EXHIBIT "A"
Description of the Land

EXHIBIT "B"
Site Plan

EXHIBIT “C”
Form of Compliance Certificate

**CHAPTER 380 ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT
ANNUAL COMPLIANCE CERTIFICATE AND REQUEST FOR CHAPTER 380 PAYMENT**

From: Amazon.com.kydc, LLC (“Amazon”) To: City of San Marcos (“City”)
Attn: City Manager
630 East Hopkins Street
San Marcos, TX 78666

Report Date:

Reporting Period: _____ to _____ (the “Reporting Period”)

The undersigned, on behalf of Amazon, hereby requests a Chapter 380 Payment pursuant to the terms of the Chapter 380 Economic Development Incentive Agreement dated as of July 21, 2015, between the City and Amazon (the “Chapter 380 Agreement”) (capitalized terms not otherwise defined in this Certificate have the meaning given to them in the Chapter 380 Agreement) for the Reporting Period and in support provides the following information:

- **Real Property Improvements Ad Valorem Tax Assessed Value:** \$ _____
- **Real Property Taxes Paid:** \$ _____
- **Personal Property Ad Valorem Tax Assessed Value:** \$ _____
- **Personal Property Taxes Paid:** \$ _____
- **Sales Taxes Revenues* for the Reporting Period** \$ _____

The amounts inserted above reflect the final calculations following the process described in this paragraph below. *The City will file such forms and applications with the Texas Comptroller of Public Accounts for purposes of receiving Confidential Sales and Use Tax Information Reports necessary to calculate Sales Tax Revenues each year. The City will provide Amazon with all copies of all monthly or other periodic reports it receives from the Comptroller, *subject to any confidentiality requirements under applicable laws*. To the extent complete information necessary to calculate Sales Tax Revenues is unavailable to the City and if Amazon is requesting a Chapter 380 Payment for Sales Tax Revenues, Amazon shall cooperate with the City to provide such information to which Amazon has access and the Parties will reconcile all data available in order to determine the amount of Sales Tax Revenues generated for the reporting period. The City Manager may designate one or more persons to act or receive information on the City’s behalf under this paragraph.

Real Property Tax Portion of Chapter 380 Payment = ____% X Real Property Taxes	Amount
Personal Property Tax Portion of Chapter 380 Payment = ____% X Personal Property Taxes	Amount
Sales Tax Portion of Chapter 380 Payment = ____% X Sales Tax Revenues	Amount
Total Chapter 380 Payment	Total

- **Total Jobs at beginning of Reporting Period:** _____
- **Total Jobs at end of Reporting Period:** _____

- Please list any final judicial determinations or admissions that Amazon or one of its Affiliates unlawfully discriminated in violation of Section 3.01(a) of the Chapter 380 Agreement : [attach separate sheet]

The City Manager may agree to an amendment to this form from time to time, provided such amended form shall be substantially similar in reporting the information necessary to confirm compliance with the Chapter 380 Agreement and to calculate the Chapter 380 Payments.

Upon request of the City Manager, Amazon shall permit and cause its Affiliates to permit the City to conduct an audit and inspection of Amazon's records in accordance with the terms of the Chapter 380 Agreement..

I, _____[Insert name and title], certify that the foregoing information is true and correct and that Amazon has materially complied with all terms and conditions of the Chapter 380 Agreement.

[Name and Title]

Date

EXHIBIT “D”
Summary of Chapter 380 Payments

Year	Amazon Performance Required	380 Payment for Prior Year Performance	Includes Sales Tax Rebate	Includes Ad Valorem Tax Rebate
2015	Start Improvements	N/A	N/A	N/A
2016	Complete Improvements	None	N/A	N/A
2017	Improvements on Tax Roll , Jobs and Operate Business	None	N/A	N/A
2018	Improvements on Tax Roll , Jobs and Operate Business	Yes	Yes	Yes
2019	Improvements on Tax Roll , Jobs and Operate Business	Yes	Yes	Yes
2020	Improvements on Tax Roll , Jobs and Operate Business	Yes	Yes	Yes
2021	Improvements on Tax Roll , Jobs and Operate Business	Yes	Yes	Yes
2022	Improvements on Tax Roll , Jobs and Operate Business	Yes	Yes	Yes
2023	Improvements on Tax Roll , Jobs and Operate Business	Yes	Yes	Yes
2024	Improvements on Tax Roll , Jobs and Operate Business	Yes	Yes	Yes
2025	Improvements on Tax Roll , Jobs and Operate Business	Yes	Yes	Yes
2026	Improvements on Tax Roll , Jobs and Operate Business	Yes	Yes	Yes
2027	Improvements on Tax Roll , Jobs and Operate Business	Yes	Yes	Yes
2028	Improvements on Tax Roll , Jobs and Operate Business	Yes	Yes	No-Unless 1,000 Jobs in 2023-2027
2029	Improvements on Tax Roll , Jobs and Operate Business	Yes	Yes	No-Unless 1,000 Jobs in 2023-2028
2030	Improvements on Tax Roll , Jobs and Operate Business	Yes	Yes	No-Unless 1,000 Jobs in 2023-2029
2031	Improvements on Tax Roll , Jobs and Operate Business	Yes	Yes	No-Unless 1,000 Jobs in 2023-2030
2032	Improvements on Tax Roll , Jobs and Operate Business	Yes	Yes	No-Unless 1,000 Jobs in 2023-2031
2033	Improvements on Tax Roll , Jobs and Operate Business	Yes	Yes	No
2034	Improvements on Tax Roll , Jobs and Operate Business	Yes	Yes	No
2035	Improvements on Tax Roll , Jobs and Operate Business	Yes	Yes	No
2036	Improvements on Tax Roll , Jobs and Operate Business	Yes	Yes	No
2037	None	Yes	Yes	No