

January 22, 2018
Executive Session #2
Town Hall, 1 Avenue A, Turners Falls
7:59 PM

Present: Selectpersons: Chris Boutwell, Michael Nelson, Richard Kuklewicz, Chair; Town Administrator Steven Ellis, Executive Assistant Wendy Bogusz

RE: Executive Session under G.L. c. 30A, §21 (a)(6) to consider the purchase, exchange, lease, or value of real property with Ja'Duke Center for the Performing Arts, Consideration of Economic Development Incentive Program Agreement

Documents and Exhibits: Tax Increment Financing Agreement by and among the Town of Montague and Ja'Duke

Ellis discussed the agreement with Ja'Duke Center of the performing Arts:

- Includes all basic terms and conditions that were agreed upon in a previous Executive Session
- Approximately eight jobs
- 18% average TIF over ten years
- 18,000 square feet of educational space
- Overall project cost is now a little bit over \$2 million
- 500-seat theater
- Change of wording of "Theater Director" to possibly include "or similar administrative position"
- The first year of the TIF will be FY19, which means that they need to have it build by the end of 2019

Ellis reviewed the process:

STEP 1: The Board agrees to this

STEP 2: Town Meeting and the Fire District will sign a shared agreement

STEP 3: Bring to Town Meeting, then to the State

Ellis mentioned that we will be selling two acres to them, which will put those two acres on the tax roles.

Nelson makes the motion to accept the agreement between Ja'Duke Center for the Performing Arts and the Town. Boutwell seconded, unanimously approved. Nelson - Aye, Boutwell - Aye, Kuklewicz - Aye

The members of the Board decided to hold on signatures until after the Fire District signs it. Once that is done, the agreement becomes public information. Town Meeting members will be sent the draft agreement.

Nelson makes the motion to adjourn Executive Session. Boutwell seconded, unanimously approved. Nelson - Aye, Boutwell - Aye, Kuklewicz - Aye
Regular Session reconvened at 8:12 PM.

Kuklewicz stated that they had nothing to report in public session other than they had a discussion around the TIF agreement.

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Approved:

Boutwell Kuklewicz Nelson

Release to the Public:

Yes Not Yet 4/2/18 Date

Date Released to the Public: 4/3/18

**TAX INCREMENT FINANCING AGREEMENT
BY AND AMONG THE TOWN OF MONTAGUE
AND JA'DUKE**

This AGREEMENT is made this ____ day of _____, 2017 by and among the Town of Montague, a municipal corporation duly organized under the laws of the Commonwealth of Massachusetts, having a principal place of business at One Avenue A, Turners Falls, MA 01376, acting through its Board of Selectmen (hereafter referred to as the "Town"), the Turners Falls Fire District, a municipal corporation duly organized under the laws of the Commonwealth of Massachusetts, having a principal place of business at 226 Millers Falls Road, Turners Falls, MA 01376, acting through its Prudential Committee (hereafter referred to as the "District"), and Ja'Duke, a Massachusetts corporation with a principal place of business at 110 Industrial Blvd, Turners Falls, Ma 01376 (hereinafter referred to as "Ja'Duke"). Unless the context requires otherwise, terms defined in Massachusetts General Laws, Chapter 23A, section 3A shall have the same meaning when used herein.

PRELIMINARY STATEMENT

WHEREAS, Ja'Duke owns commercial property located at 110 Industrial Blvd, Turners Falls, MA with a legal description as set forth in Exhibit A (the "Site"); and

WHEREAS, Ja'Duke owns and operates a performing arts center at the Site; and

WHEREAS, the Site is currently occupied by an 8,500 square foot educational facility (the "Existing Facility") which includes four (4) preschool classrooms/performing arts studios, professional set design workshop, 100-seat black box theater, and an additional 4,500 square feet of storage space on the second level of existing facility, and employs eleven (11) full-time employees; and

WHEREAS, Ja'Duke intends to expand the Existing Facility through the purchase of two acres of adjacent land within the Town and the construction of a new 2018,000 square foot educational facility (the "New Facility") which will include 2 additional rooms housing up to 4 preschool classrooms and /performing arts studios, a 500 seat theater with lobby, and additional parking (the "Project"); and

WHEREAS, construction of the Project will result in an investment by Ja'Duke of approximately \$2,035,000 in new construction and will create approximately nine (9) new permanent full-time positions and approximately seven (7) new permanent part-time positions; and

WHEREAS, the Project will attract up to 40 preschool students/families per day, 50 additional performing arts students per year, and 100,000 patrons of the arts purchasing performance tickets over a ten-year period, and 100as well as educators and professionals attending workshops per each year; and

WHEREAS, the Site is located within the boundaries of the Greater Franklin County Economic Target Area (hereafter "ETA"), as that term is used in Massachusetts General Laws, Chapter 23A, Section 3D, and designated by the Economic Assistance Coordinating Council (hereafter "EACC") pursuant to M.G.L. c.23A, section 3B; and

WHEREAS, the Site is located within the Montague Airport Industrial Park Economic Opportunity Area (hereafter "EOA") as that term is used in Massachusetts General Laws, Chapter 23A, Section 3E, said area being designated as such by the EACC, pursuant to 402 CMR 2.08; and

WHEREAS, the current assessed valuation of the Site for the fiscal year ending June 30, 2018 is \$458,300, resulting in \$11,151.54 in annual property taxes for the Town and \$1,926.91 in annual property taxes for the District; and

WHEREAS, Ja'Duke is seeking a Tax Incremental Financing ("TIF") Agreement from the Town in accordance with Massachusetts Economic Development Incentive Program ("EDIP"), and Massachusetts General Laws, Chapter 23A, Section 3E and Chapter 40, Section 59 and regulations issued pursuant thereto; and

WHEREAS, the Town is willing to enter into a TIF Agreement in order to support increased economic development, retain existing employment, gain new employment, provide jobs for residents of the ETA and the Town, expand commercial, educational, and retail activity in the Town and to develop a healthy economy and stronger tax base; and

WHEREAS, the Project will further the economic development goals the Economic Development Plan, approved by the Montague Town Meeting on May 3, 2014, and the economic development goals and the criteria established for the ETA and the EOA; and

NOW, THEREFORE, in consideration of mutual promises contained herein and other good valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do mutually agree as follows:

1. The Town, as authorized by vote of its Board of Selectmen on [REDACTED], and the District, as authorized by vote of its Prudential Committee on June 6, 2017, hereby enter into this TIF Agreement with Ja'Duke with respect to the Site and the Project. This agreement shall not be binding without approval of Montague Town Meeting, Turners Falls Fire District, District Meeting, and the EACC.
2. Upon approval of the Board of Selectmen and the Prudential Committee of an Order Authorizing Application for EOA Designation and Authorizing Execution and Delivery of the TIF Agreement, Ja'Duke will assist and cooperate with the Town and the District in supplying all information, data, forms, proposals and/or certifications executed by authorized individuals, as required pursuant to the regulations at 402 CMR 2.00, and

Comment [SE1]: date of approval of original framework for agreement

necessary for the Town's and District's application to the EACC, and for the designation of 1375 North Main Street as an EOA for a period of ten (10) years.

3. This TIF Agreement by and between the parties will take effect on July 1, 2018 following EACC's approval. The Town and the District shall submit a complete EOA application and all documents necessary for EACC consideration and approval of the Agreement and other relevant actions.
4. The Town and the District grant the TIF Exemption (the "Exemption") to Ja'Duke (or its Nominee) in accordance with M.G.L. c. 23A, §3E; M.G.L. c.40, §59; and M.G.L. c. 59, §5, clause 51. The Exemption shall be for a period of ten (10) years (the "Exemption Period") commencing with Fiscal Year 2019 (which begins July 1, 2018) and ending with Fiscal Year 2028 (which ends June 30, 2028) and shall provide an Exemption from taxation, as described in the Exemption Schedule included in Section 7 herein, for the increased value of the Existing Facilities resulting from the Project, as determined by the Town of Montague Board of Assessors. Project improvements made by Ja'Duke and subject to the Exemption Schedule contained herein shall receive the exemption percentage specified for the TIF Year in which the Project improvements are completed. The exemption shall only apply to real estate taxes and not any applicable personal property taxes.
5. The agreed base valuation of \$458,300.00 for FY 2018 is established as the assessed value of the Existing Facility. The Tax Increment Financing Exemption formula for the Project will be calculated as prescribed by Massachusetts General Laws and regulated by the Department of Revenue, and shall only apply to the incremental difference in the above assessed real property tax valuation of the Site, and its assessed valuation for each of the next ten (10) fiscal years. The Exemption shall not apply to any additional incremental values added to the Site by expansion or renovation (other than as part of the Project) within the time period set forth in this agreement.
6. The Base Valuation is adjusted annually by an adjustment factor which reflects increases or decreases in commercial and industrial property values within the Town, as defined in Massachusetts General Laws. Any increase in the assessed value of the Site over the Base Valuation, or "increment", attributable to the renovations and/or improvements made in connection with the Project is that amount eligible for exemption from taxation (the "Tax Increment Financing Exemption").
7. The Exemption Schedule applicable to the Project is as follows:

FISCAL YEAR	TIF YEAR	EXEMPTION
FY19	1	40%
FY20	2	30%
FY21	3	30%
FY22	4	20%

FY23	5	20%
FY24	6	20%
FY25	7	5%
FY26	8	5%
FY27	9	5%
FY28	10	5%

8. Upon receipt of the aforementioned approval by the EACC, the Town and the District grant the Exemption in consideration of the commitment and performance of the following by Ja'Duke:
- a. Compliance with the requirements of M.G.L. C. 23A, as amended and its attendant regulations at 402 CMR 2.00.
 - b. Acknowledge that Ja'Duke is responsible for payment of all property taxes on the Site. Consequently, Ja'Duke will benefit from the Exemption defined in this TIF Agreement.
 - c. Invest no less than \$1,800,000 in improvements at the Site on or before June 30, 2019, including all costs, expensed or capitalized, incurred related to the Site, including but not limited to: demolition, renovation, and building improvements (including, without limitation, all electrical, mechanical, plumbing, HVAC, control and other building systems). The exemptions contained in the Agreement apply only to real estate taxes and do not apply to personal property of any nature.
 - d. Furnish the Town, the District, and the Commonwealth of Massachusetts with completed Annual Reporting information prior to any annual deadlines defined by the EACC to include but not be limited to the following:
 - 1) Full-time and Part-time employment levels at the Site at the beginning and end of each fiscal year.
 - 2) Total number of Full-time and Part-time Town of Montague residents employed at the facility at the beginning and end of each fiscal year.
 - 3) Ja'Duke's financial contribution to the Town, to include property taxes, motor vehicle excise taxes, water and sewer fees, betterment assessments, and other contributions for each fiscal year.
 - 4) A description of any new private investments made for the benefit of the community during the year.
 - e. Increase its minimum full time employment level by six (6) full time pre-school teachers by the end of the second year (FY20) of the TIF Agreement; increase its full time employment level by an additional two (2) pre-school teachers ~~and one full time theater director~~ by the end of the third year (FY21). and increase its full time employment level by one (1) full time Theater Director (or similar administrative position) by the end of the fifth year (FY23) of the TIF Agreement,

in addition to retaining its current level of eleven (11) full time employees for the duration of this TIF Agreement and as set forth under M.G.L. c. 23A and 402 CMR 2.00.

Comment [SE2]: will send me a list of current employment with position, FTE/PT/Hourly, and wage for inclusion as an addendum

- f. Use diligent efforts to utilize qualified Montague, as well as qualified Franklin County and Massachusetts region, based businesses wherever commercially reasonable to construct and maintain the redevelopment Project.
 - g. Agree to timely pay all real estate taxes owed on the Site over the Term of this TIF Agreement.
 - h. Agree to allow the Town and the District to Monitor and Enforce the TIF Agreement.
 - i. Consider utilizing properties located in the Town prior to acquiring, leasing or otherwise choosing additional locations to be used in conjunction with Ja'Duke operations.
9. If Ja'Duke fails to comply with the terms of this TIF Agreement, the Town, acting through its Board of Selectman, and the District, acting through its Prudential Committee may, acting jointly at their sole discretion, take action to request decertification by the Economic Development Advisory Committee ("EDAC"), after written notice to Ja'Duke, and a reasonable opportunity to cure any such non-compliance. If Ja'Duke fails promptly to cure such non-compliance and the redevelopment Project is therefore decertified, the Town and the District shall discontinue the Exemption benefits as set forth herein, commencing with the fiscal year in which such failure occurs. The parties acknowledge that the obligations, covenants, or agreements on the part of Ja'Duke are materials and important to the realization of economic benefits from the Project, but are solely conditions to the receipt of the tax exemptions provided herein.
10. If Ja'Duke materially reduces its business operations at the Site by reducing employment at the Site to less than 50% of that specified in the TIF Agreement and no other tenant leases the Site that provides an equivalent number of jobs, then the Town and the District may seek decertification as provided in Section 9 of this TIF Agreement.
11. Notwithstanding anything to the contrary herein contained, Ja'Duke shall have the right to assign or transfer its interest in this TIF Agreement to: (a) an Affiliated Entity (as defined below), and (b) a Successor (as defined below), provided that prior to or simultaneously with the effective date of any assignment (taking into account any requirement of Ja'Duke for confidentiality at the time of such transfer), such Affiliated Entity or Successor, as the case may be, and Ja'Duke may execute and deliver to the Town and the District an assignment and assumption agreement in form or substance reasonably satisfactory to the Town and the District whereby such Affiliated Entity or Successor, as the case may be, shall agree to be independently bound by all applicable provision of this Agreement (an "Assumption Agreement"). For the purposes hereof, an

“Affiliated Entity” shall be defined as any United States legal entity, which is controlled by, is under common control with, or which controls Ja’Duke. For the purposes hereof, a “Successor” shall be defined as any entity into or with which Ja’Duke has merged, or with which Ja’Duke is consolidated, or which acquires all or substantially all of Ja’Duke’s stock or assets.

12. NOTICES. Notices to be delivered under this TIF Agreement shall be delivered to the addresses set forth below (which addresses may be changed by a notice to the other party given pursuant to the terms hereof) by courier, overnight delivery service, certified mail, facsimile or other electronic transmission (so long as a copy of any facsimile or other electronic transmission is also delivered pursuant one of the previously described methods):

If to the TOWN:

Mr. Steven F. Ellis
Town Administrator
Montague Town Hall
One Avenue A
Turners Falls, MA 01376

If to the District:

Prudential Committee
Turners Falls Fire District
226 Millers Falls Road
Turners Falls, MA 01376

If to Ja’Duke:

<< Please Insert >>

13. This TIF Agreement shall be binding upon all Parties, shall run with title to the property comprising the Site and bind successors in interest in that property, and be binding upon Ja’Duke and its successors and assigns, so long as the Project has not been decertified.
14. This TIF Agreement may be amended by a written instrument executed by Ja’Duke and the TOWN and the District.

IN WITNESS WHEREOF, each of the parties, intending to be legally bound, has executed this TIF Agreement as a sealed instrument by their duly authorized representatives under seal as of the day and year first written above.

Ja'Duke

By: _____
Name:
Title:

Town of Montague
Board of Selectmen:

Richard Kuklewicz

Christopher Boutwell

Michael Nelson

Turners Falls Fire District
Prudential Committee

David Zamojski, Chairman

Jay DiPucchio

John Greene