



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY					
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory					
Council Meeting Date:		06/24/13			
Department:		Economic Development			
Department Head		Sally Bane			
Agenda Coordinator (include phone #): Linda Thomason x8301					
CAPTION					
A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an agreement by and between the City of Plano, Texas, ReachLocal, Inc., and EPC-IBP 16, LLC providing for real and business personal property tax abatement; and authorizing its execution by the City Manager or his authorized designee; and providing an effective date.					
FINANCIAL SUMMARY					
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	2014-15 or 2015-16	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0	0
Encumbered/Expended Amount	0	0	0	0	0
This Item	0	0	0	0	0
BALANCE	0	0	0	0	0
FUND(s): N/A					
COMMENTS: This item has no fiscal impact. Strategic Plan Goal: Providing economic development incentives relates to the City's goal of Strong Local Economy.					
SUMMARY OF ITEM					
This relates to a ReachLocal, Inc., a Delaware corporation, request for tax abatement on Reinvestment Zone 135 and the creation of the zone on West Plano Parkway.					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Resolution					
Tax Abatement Agreement					

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an agreement by and between the City of Plano, Texas, ReachLocal, Inc., and EPC-IBP 16, LLC providing for real and business personal property tax abatement; and authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, the City Council has been presented a proposed Tax Abatement Agreement by and between the City of Plano, Texas, a home-rule municipal corporation of Collin and Denton Counties, Texas, ReachLocal, Inc., a Delaware corporation and EPC-IBP 16, LLC, a Texas limited liability company, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

WHEREAS, upon full review and consideration of the Agreement and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or his authorized designee shall be authorized to execute it on behalf of the City of Plano.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS:

Section I. The terms and conditions of the Agreement having been reviewed by the City Council of the City of Plano, Texas and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager or his authorized designee is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

Section III. This Resolution shall become effective from and after its passage.

DULY PASSED AND APPROVED the 24th day of June, 2013.

Harry LaRosiliere, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

hereinafter referred to as the “Personalty”. The Personalty is to have an assessed taxable value as determined by the Collin County Central Appraisal District of not less than One Million, Eight Hundred Thousand Dollars (\$1,800,000) on the Real Property by December 31, 2015 unless an extension as a result of an Event of Force Majeure has been approved by the City in writing, and is or will be owned by Tenant.

3. Tenant shall maintain the taxing situs of the Personalty on the Real Property and may not relocate the taxing situs of the Personalty to other Reinvestment Zones in the City.

IMPROVEMENTS

4. (a) The Tenant agrees to add the Personalty required under Section 2 by December 31, 2015, unless an extension as a result of an Event of Force Majeure is approved by the City in writing. If the Tenant adds the Personalty required under Section 2 on or before December 31, 2014, the abatement for the Personalty will begin in the January 2015 tax year pursuant to Section 11(a) herein. Alternatively, if the Tenant adds the Personalty required under Section 2 after December 31, 2014 and on or before December 31, 2015, the abatement for the Personalty will begin in the January 2016 tax year pursuant to Section 11(a) herein. In no event shall the tax abatement for the Personalty start in a separate year from the tax abatement for the Real Property pursuant to Section 4(b) and Section 11(a) below. It shall be an event of default for the initial Personalty improvement to be added to the Real Property in a separate year from the year the Tenant’s Certificate of Occupancy is issued for the building at the Real Property. The term “Event of Force Majeure” means any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns, shortages or unavailability of materials or labor, or work stoppages any of which event(s) directly impact the Owner at the Real Property. The term shall not include a downturn in the economy.

(b) By December 31, 2015, the Owner or Tenant shall make or cause to be made improvements to the Real Property consisting of a new building and improvements that are at least 100,000 gross square feet of office space with an assessed taxable value of not less than Twelve Million Dollars (\$12,000,000) for **new improvements added** to the Real Property between the dates of January 1, 2013 through the date a Tenant’s Certificate of Occupancy is issued for the Real Property improvements but in no event later than December 31, 2015, as determined by the Collin County Central Appraisal District. The Real Property abatement for the new improvements shall begin in January 2015 if the Tenant’s Certificate of Occupancy is issued for the Real Property improvements on or before December 31, 2014. Alternatively, the Real Property abatement for the new improvements shall begin in January 2016 if the Tenant’s Certificate of Occupancy for the Real Property improvements is issued in the 2015 calendar year. The Real Property tax abatement shall be pursuant to Section 11(a) herein unless an extension as a result of an Event of Force Majeure has been approved by the City in writing.

(c) Upon the occurrence of an Event of Force Majeure, the affected party shall notify the City in writing not less than sixty (60) days of the commencement of the Event of Force

Majeure with supporting documentation, the anticipated duration and the actions that the party will take to alleviate the Event of Force Majeure. The City Manager shall consider such request and may grant an extension of time to complete the obligations; such extension shall not be unreasonably withheld. If the Event of Force Majeure results in a delay of meeting the required improvement value, the party requesting the extension agrees that in the following year the minimum required taxable value of the improvements and/or Personalty shall be met.

DEFAULT

5. Any of the following events shall be deemed a breach of this Agreement resulting in default:

(a) Tenant allows its personal property taxes or Owner allows its Real Property improvement taxes owed the City to become delinquent and fails to either:

(i) Timely and properly follow the legal procedures for protest and/or contest of any such ad valorem taxes; or

(ii) Cure such delinquency within thirty (30) days of receipt of notice of such delinquency; or

(b) Owner or Tenant fails to construct the Real Property improvements required in Section 4(b); or

(c) (i) In the first year of the abatement period for the Personalty, the assessed taxable value is less than the minimum amount set forth in Section 2; or

(ii) At any time during the Agreement, the Personalty is removed from the Real Property and not replaced and the result is the taxable appraised value of the Personalty is below the minimum amount set forth in Section 2; or

(d) At any time during the Agreement, the assessed taxable value of the Real Property improvements is less than the minimum amount set forth in Section 4(b) as a result of the Owner's protest; or

(e) Tenant or Owner or Owner's duly authorized representative fails to provide the annual certification as required in Section 9; or

(f) Tenant or Owner fails to comply with the Assignment provision in Section 10; or

(g) Tenant or Owner has been convicted of a violation under 8 U.S.C. Section 1324a(f) regarding the unlawful employment of aliens at the Real Property.

6. In the event that the Tenant or Owner defaults under Section 5(b) of this Agreement, the City shall give all parties written notice of such default and if the default is not cured or a waiver obtained thereof within thirty (30) days of said written notice, this Agreement shall be automatically terminated as to all parties except any damages as specified below shall survive the termination of this Agreement. In the event of a default under Section(s) 5(a), (c), (d), (e) (f) and/or (g) above, the City shall give the defaulting party written notice of such default, which notice shall specifically reference this Agreement, and if the default is not cured or a waiver obtained thereof within thirty (30) days of said written notice, this Agreement shall be automatically terminated as to the defaulting party except any damages as specified below shall survive the termination of this Agreement. Notice shall be in writing as provided below. The City Manager is authorized on behalf of the City to send notice of default and to terminate the Agreement for any default that is not cured.

7. Upon the occurrence of an event of default under Section(s) 5(a), (b) and/or (g) above and that remains uncured, all taxes, including previously abated taxes which would have been paid to the City by the defaulting party without the benefit of this Agreement, shall become due and owing to the City from the defaulting party, together with interest charged from the date of this Agreement at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty other than that mandated by V.T.C.A., § 33.01 or 33.07 and Texas Government Code Chapter 2264.

Upon the occurrence of an event of default under Section(s) 5(c), (d), (e) and/or (f) above and that remains uncured, at the City's sole option, it may require all or a portion of all previously abated taxes which would have been paid to the City by the defaulting party without the benefit of this Agreement to become due and owing to the City from the defaulting party, together with interest charged from the date of this Agreement at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty other than that mandated by V.T.C.A., § 33.01 or 33.07. City shall exercise such option within ninety (90) days of notice of default.

EFFECT OF TERMINATION/SURVIVAL OF OBLIGATIONS

8. The rights, responsibilities and liabilities of the parties under this Agreement shall be extinguished upon the applicable effective date of termination of this Agreement, except for any obligations or default(s) that existed prior to such termination or as otherwise provided herein and those liabilities and obligations shall survive the termination of this Agreement, including the refund provision, maintenance of records, and access thereto.

ANNUAL CERTIFICATION

9. Beginning November 1, 2015 if the tax abatement begins in the January 2015 tax year or beginning November 1, 2016 if the tax abatement begins in the January 2016 tax year, and on or before the 1st day of November of each calendar year thereafter during the Term (as defined below) of this Agreement, the Tenant and Owner, or their successors or assigns, must each provide annual certification (substantially in the form attached as **EXHIBIT "B"** hereto) to the City certifying compliance with each applicable term of the Agreement. Owner hereby grants to Tenant a power of attorney for the term of this Agreement for the limited purpose of making its annual certification on behalf of Owner and Tenant agrees to perform such duty.

ASSIGNMENT

10. If either Tenant or Owner wishes to assign its rights and duties under this Agreement, it must comply with the following provisions. A failure to comply is an event of default and all remedies may apply including but not limited to a suspension of the abatement for the year(s) for which non-compliance occurred.

(a) City Consent Required. Except as permitted by Section 10(b) below, this Agreement may not be assigned without the express written consent of the City. The assignment agreement must be furnished in a form acceptable to the City and be provided at least sixty (60) days prior to the effective assignment date for the City Council review and approval.

(b) Exceptions to City Consent. Tenant or Owner may assign this Agreement without obtaining the City's consent:

- (i) To a wholly owned affiliate of Tenant or Owner; or
- (ii) Any person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, all or more than ninety percent (90%) of the assets of the Tenant or Owner; or
- (iii) Upon the sale of the Real Property by Owner.

(c) Prior to the effective date of the assignment or sale under (a) or (b) above, the assigning party agrees to have the assignee or successor execute an agreement with the City to be bound to all the terms and conditions of this Agreement, without exception, and the assignee or successor shall be responsible for any default(s) of the assignee or seller that occurred prior to or after the effective date of the assignment.

ABATEMENT PROVISIONS

11. Subject to the terms and conditions of this Agreement, and subject to the rights of holders of any outstanding bonds of the City, a portion of ad valorem personal property taxes and

real property improvement taxes belonging to Tenant and Owner located on the Real Property otherwise owed to the City shall be abated as follows:

(a) (i) The tax abatement as to Real Property improvements, as provided for herein, shall be for a period of ten (10) tax years, from January 1, 2015 through December 31, 2024 if the Tenant's Certificate of Occupancy for the Real Property improvements is issued on or before December 31, 2014, or, alternatively, from January 1, 2016 through December 31, 2025 if the Tenant's Certificate of Occupancy for the Real Property improvements is issued after December 31, 2014 and on or before December 31, 2015.

(ii) The tax abatement as to Personalty, as provided for herein, shall be for a period of ten (10) tax years, from January 1, 2015 through December 31, 2024 if the Tenant's Certificate of Occupancy for the Real Property improvements is issued on or before December 31, 2014, or, alternatively, from January 1, 2016 through December 31, 2025 if the Tenant's Certificate of Occupancy for the Real Property improvements is issued after December 31, 2014 and on or before December 31, 2015.

(b) In accordance with all applicable federal, state, and local laws and regulations, the abatement shall be based on amounts equal to fifty percent (50%) of the taxable value of the Personalty and Real Property improvements for the tax years set forth above.

(c) The Tenant or Owner shall have the right to protest and/or contest any assessment of the Personalty or Real Property improvements where such assessment is above the minimum amount required to be maintained under Sections 2 and 4 of this Agreement. The abatement shall be applied to the amount of taxes finally determined to be due as a result of any such protest and/or contest. Notwithstanding the above, it shall be a breach of this Agreement if assessed values fall below those required in Sections 2 and 4 as a result of a Tenant or Owner filed protest and/or contest, or the removal of Personalty from the Real Property which is not replaced with Personalty which meets the assessed value requirement.

NOTICE

12. Notices required to be given to any party to this Agreement shall be given personally or by registered or certified mail, return receipt requested, postage prepaid, addressed to the party at its address as set forth below, and, if given by mail, shall be deemed delivered as of the date deposited in the United States mail:

For City by notice to:

City of Plano
Attention: Mr. Bruce D. Glasscock
City Manager
P.O. Box 860358
Plano, Texas 75086-0358

With copy to:

City of Plano
Attention: Ms. Diane C. Wetherbee
City Attorney
P.O. Box 860358
Plano, Texas 75086-0358

For Tenant by notice to:

ReachLocal, Inc.
Attention: Mr. Adam F. Wergeles
General Counsel
21700 Oxnard Street, Suite 1600
Woodland Hills, CA 91367

With copy before relocation to:

ReachLocal, Inc.
Attention: Mr. Glynn Patin
Director, Sales Operations
6400 International Parkway, Suite 1501
Plano, Texas 75093

With copy after relocation to:

ReachLocal, Inc.
Attention: Mr. Glynn Patin
Director, Sales Operations
Real Property Address TBD
Plano, Texas 75093

For Owner by notice to:

Billingsley Property Services, Inc.
Attention: Office Asset Manager
1722 Routh Street, Suite 1313
Dallas, TX 75201

With a copy to:

Williams Anderson & Ryan LLP
Attention: Mr. Jeffrey B. Williams
901 Main Street, Suite 6215
Dallas, Texas 75202

Any party may change the address to which notices are to be sent by giving the other parties written notice in the manner provided in this paragraph.

MISCELLANEOUS PROVISIONS

13. During the term of the Agreement, the Tenant and Owner further agree that the City, its agents and employees, shall have reasonable right (with no less than five (5) business days prior written notice to Owner) to access the Real Property during regular business hours to inspect the Personalty and Real Property improvements in order to insure that the location of the Personalty and Real Property improvements are in accordance with this Agreement and all applicable federal, state, and local laws and regulations.

14. It is understood and agreed between the parties that the Tenant and Owner, in performing their respective obligations hereunder, are acting independently, and the City assumes no responsibilities or liabilities in connection therewith to third parties and Tenant and Owner agree to indemnify and hold harmless City from any and all claims, suits, and causes of actions, including attorneys' fees, of any nature whatsoever arising out of their respective defaults of their obligations hereunder.

15. Based upon the certification provided by Owner and Tenant, the City represents that the Real Property is not owned by any member of the City Council of the City of Plano or by a member of the Planning and Zoning Commission.

16. This Agreement was authorized by Resolution of the City Council at its Council meeting on the 24th day of June, 2013, authorizing the City Manager to execute the Agreement on behalf of the City.

17. This Agreement was entered into by Tenant and Owner pursuant to their duly authorized representatives.

18. This instrument shall constitute a valid and binding agreement between the City, the Tenant and the Owner when executed in accordance herewith.

19. If any term or provision of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement (or the application of such term or provision, to persons or circumstances other than those in respect of which it is invalid or unenforceable) except those terms or provisions, which are made subject to or conditioned upon such invalid or unenforceable term or provision, shall not be affected thereby, and each other term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

20. This Agreement is performable in Collin County, Texas and venue for any dispute arising out of this Agreement shall be in Collin County, Texas.

This Agreement shall be effective upon the last date on which all parties have executed this Agreement.

ATTEST:

CITY OF PLANO, TEXAS, a home-rule
municipal corporation

Diane Zucco, CITY SECRETARY

Bruce D. Glasscock, CITY MANAGER
Date: _____

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ATTEST:

REACHLOCAL, INC., a Delaware
corporation

Title: _____

By: _____
Name: _____
Title: _____
Date: _____

ATTEST:

EPC-IBP 16, LLC, a Texas limited liability
company

Title: _____

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT "A"
LEGAL DESCRIPTION

BEING a tract of land situated in the M. Taylor Survey, Abstract No. 897, City of Plano, Collin County, Texas, the subject tract being a portion of a tract of land conveyed to Crow-Billingsley #17, Ltd. according to the deed recorded in Volume 1771, Page 658 of the Deed Records, Collin County, Texas (DRCCT), a portion of a tract of land conveyed to Crow-Billingsley #17, Ltd. according to the deed recorded in Volume 1461, Page 554 DRCCT, and a portion of a tract of land conveyed to The Residences of Austin Ranch No. 1, according to the deed recorded in Document No. 20130205000162920 DRCCT, the subject tract being more particularly described as follows;

BEGINNING at a 1/2" iron rod found on the north line of West Plano Parkway (a 110 foot right-of-way) for the most southerly southeast corner of said Crow-Billingsley #17 tract, and being the southwest corner of Lot 1, Block A, CMS Addition, an addition recorded in Cabinet M, Page 637, Plat Records, Collin County, Texas (PRCCT);

THENCE along the north and east line of West Plano Parkway, the following:

N 64°43'06" W, 118.18 feet;

Around a tangent curve to the right having a central angle of 31°31'49", a radius of 1145.00 feet, a chord of N 48°57'11" W - 622.18 feet, an arc length of 630.10 feet;

Around a non-tangent curve to the right having a central angle of 11°05'57", a radius of 1127.63 feet, a chord of N 27°38'14" W - 218.10 feet, an arc length of 218.44 feet;

And around a non-tangent curve to the right having a central angle of 15°50'55", a radius of 1138.39 feet, a chord of N 14°18'28" W – 313.88 feet, an arc length of 314.89 feet;

THENCE N 89°06'41" E, 1127.92 feet departing said right-of-way, to the west line of a tract conveyed to Sewell Village Cadillac, recorded in Volume 5837, Page 709 DRCCT;

THENCE S 00°34'19" E, 311.14 feet along the west line thereof, and along the west line of a tract conveyed to UH Storage, LP, recorded in Volume 5669, Page 4336 DRCCT, to the southwest corner thereof, and being on the north line of Lot 2, Block A, CMS Addition, an addition recorded in Cabinet M, Page 374 PRCCT;

THENCE S 89°25'41" W, 384.05 feet along the north line of Lots 2 and 1, CMS Addition, to a 1/2" iron rod found;

THENCE S 00°41'35" E, 658.99 feet along the west line of said Lot 1, CMS Addition, to the PLACE OF BEGINNING with the subject tract containing 619,998 square feet or 14.233 acres of land.

**EXHIBIT “B”
CERTIFICATION FORM**

[DATE]

City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358

RE: Certification Form – Reinvestment Zone No. 135
Tax Abatement Agreement (the “Agreement”) between ReachLocal, Inc. (“Tenant”);
EPC-IBP 16, LLC, a Texas limited liability company (“Owner”); and the City of Plano.

This letter certifies that Tenant and Owner are in compliance with each applicable term as set forth in the Agreement. The term of the tax abatement pursuant to the Agreement is as checked below:

___ January 1, 2015 through December 31, 2024; or

___ January 1, 2016 through December 31, 2025.

This form is due on or before November 1 of each year that the tax abatement pursuant to this Agreement is in force. Tenant makes this certification on behalf of Owner pursuant to its power of attorney in Section 9 of the Agreement.

ReachLocal, Inc., a Delaware corporation, as
Tenant and on behalf of EPC-IBP 16, LLC,
a Texas limited liability company, as Owner

By: _____

Name: _____

Title: _____