



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		6/27/11		
Department:		Finance		
Department Head		Denise Tacke		
Agenda Coordinator (include phone #): <b>Katherine Crumbley x7479</b>				
<b>CAPTION</b>				
<p>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, Internap Network Services Corporation and Behringer Harvard 1221 Coit, LP, a Texas Limited Partnership; providing for a business personal property and real property improvement tax abatement; and authorizing its execution by the City Manager or his authorized designee; and providing an effective date.</p>				
<b>FINANCIAL SUMMARY</b>				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	0	0	0	<b>0</b>
Encumbered/Expended Amount	0	0	0	<b>0</b>
This Item	0	0	0	<b>0</b>
BALANCE	0	0	0	<b>0</b>
<b>FUND(S):</b>				
<p><b>COMMENTS:</b> The real property improvements to be maintained is \$10,000,000 and the business personal property improvements to be maintained is 5,000,000. Strategic Plan Goal: Providing Economic Development Incentives relates to the City's goal of Strong Local Economy.</p>				
<b>SUMMARY OF ITEM</b>				
<p>This is related to Internap Network Services Corporation, a Delaware corporation, request for tax abatement on Reinvestment Zone 123 and creation of the zone.</p>				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
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, Internap Network Services Corporation and Behringer Harvard 1221 Coit, LP, a Texas Limited Partnership; providing for a business personal property and real property improvement 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, Internap Network Services Corporation, **Behringer Harvard 1221 Coit, LP**, and 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** this the 27<sup>th</sup> day of June, 2011.

\_\_\_\_\_  
Phil Dyer, 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 Appraisal District of not less than Five Million Dollars (\$5,000,000.00) on the Real Property by December 31, 2011, 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 in other Reinvestment Zones in the City.

### **JOBS**

4. Tenant represents the proposed occupancy of the Real Property as shown in **EXHIBIT "B"** (the "Development") will result in the retention, creation or transfer of at least seven (7) full time jobs ("Job Equivalents") at the Development in Plano by the Commencement Date (as defined below in Section 5). "Job Equivalent" shall mean one or more employees located at the Development which individually or when combined work a total of 2080 hours on an annual basis (inclusive of holidays, vacation and sick leave) and where such employees are issued a W-2 form by Tenant.

### **IMPROVEMENTS**

5. (a) The Tenant shall lease not less than 128,000 gross square feet of space on the Real Property by the Commencement Date and add the Personalty required under Paragraph 2. The "Commencement Date" means the date of occupancy of the Real Property by the Tenant but in no event shall be later than December 31, 2011 unless an extension as a result of an Event of Force Majeure is approved by the City.

(b) By December 31, 2011, the Owner or Tenant shall make or cause to be made improvements to the Real Property consisting of critical power infrastructure, electrical and plumbing equipment, air conditioning ducts and chillers, electrical transformers, raised flooring, lights, ceiling, walls and other improvements with an assessed taxable value of Real Property Improvements of not less than Ten Million Dollars (\$10,000,000.00) as determined by the Collin County Central Appraisal District for the tax year beginning in 2012 unless an extension as a result of an Event of Force Majeure has been approved by the City.

(c) In the Event of a Force Majeure "Event" the affected party shall notify the City in writing not less than sixty days of the onset of the Event with supporting documentation, the anticipated duration and the actions that the party will take to alleviate the Event. 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 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.

(d) 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 or Tenant at the Real Property. The term shall not include a downturn in the economy.

## DEFAULT

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

(a) Tenant allows its personal property taxes located on the Real Property or Owner allows its real property improvement taxes owed the City to become delinquent and fails to either (1) timely and properly follow the legal procedures for protest and/or contest of any such ad valorem taxes, or (2) cure such delinquency within 30 days of receipt of notice of such delinquency; or

(b) (i) Tenant fails to occupy the Improvements on or before the Commencement Date; or

(ii) Owner or Tenant fails to construct the Improvements required in 5(b); or

(c) In the first year of the abatement period, the assessed taxable value of Personalty is less than the minimum amount set forth in paragraph 2 or the assessed taxable value falls below the minimum amount set as the result of the Tenant filing a protest or as a result of the removal of Personalty from the Real Property unless the party has been granted an extension for an Event of Force Majeure under 5 (c); or

(d) The assessed taxable value of the Real Property Improvements is less than the minimum amount set forth in paragraph 5(b) as a result of the Owner's protest; or

(e) Tenant fails to employ at least 75% of the required Job Equivalents as provided in paragraph 4 above, subject to Event of Force Majeure; or

(f) Tenant or Owner or Owner's duly authorized representative fails to provide annual certification as required in paragraph 9 below; 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.

7. In the event that the Tenant or Owner defaults under 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. 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.

8. Upon the occurrence of an event of default under Paragraphs 6(a), (b) and (g) above and that remains uncured, this Agreement shall terminate in its entirety as to all parties upon delivery of written notice by the City to the parties and all taxes, including previously abated taxes which would have been paid to the City without the benefit of this Agreement, shall become due and owing to the City, 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.

Upon the occurrence of an event of default under Paragraphs 6(c) or (d) (e) or (f) above and that remains uncured, this Agreement shall terminate in its entirety to all parties upon delivery of written notice by the City to the parties. 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 without the benefit of this Agreement to become due and owing to the City, 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 days of notice of default.

#### **EFFECT OF TERMINATION/SURVIVAL OF OBLIGATIONS**

9. 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**

10. Beginning November 1, 2012 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 "C"** 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**

11. Except as provided herein, this Agreement cannot be assigned by Tenant or Owner unless written permission is first granted by the City, which permission shall be at the reasonable discretion of the City. Assignment without the permission of the City is allowed to: a) A wholly owned affiliate of Tenant or Owner is permissible as long as the successors or assigns agree to be bound by the terms of this Agreement without exception and the City is provided a copy of the assignment; or, b) Upon the sale of the real property and the new Owner agrees to be bound to the terms and conditions of this Agreement without exception and provides proof of the ownership of the Real Property.

## **ABATEMENT PROVISIONS**

12. 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) The tax abatements as to Personalty and Real Property improvements, as provided for herein, shall be for a period of ten (10) tax years, from January 1, 2012, through December 31, 2021 (the "Term").

(b) In accordance with all applicable federal, state, and local laws and regulations, the abatement shall be based on amounts equal to fifty (50%) of the taxable value of the Personalty and Real Property improvements for each tax year from January 1, 2012, through December 31, 2021.

(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 Paragraphs 2 and 5 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 paragraph 2 and 5 as a result of a Tenant or Owner filed protest and/or contest or the removal of Personalty from the Real Property.

## **NOTICE**

13. 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:

Internap Network Services Corporation  
Attn: Mr. Danny Groves  
Tax Director  
250 Williams Street, Suite E-100  
Atlanta, Georgia 30303

For Owner by notice to:

Behringer Harvard 1221 Coit LP  
Attn: Mr. Mark Flynt  
Senior Vice President – Portfolio Manager  
15601 Dallas Parkway, Suite 600  
Addison, Texas 75001

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**

14. 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 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.

15. 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.

16. Based upon the certification provided by Owner and Tenant, the City represents that the Personalty or Real Property do not include any property that is owned by it or its council or boards, agencies, commissions, or other entities approving, or having responsibility for the approval of this Agreement.

17. This Agreement was authorized by Resolution of the City Council at its Council meeting on the 27<sup>th</sup> day of June, 2011, authorizing the City Manager to execute the Agreement on behalf of the City.

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

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

20. Severability. 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.

This Agreement is performable in Collin County, Texas. Signed this \_\_\_\_ day of \_\_\_\_\_, 2011.

ATTEST:

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

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

\_\_\_\_\_  
Bruce D. Glasscock  
CITY MANAGER

APPROVED AS TO FORM:

\_\_\_\_\_  
Diane Wetherbee, CITY ATTORNEY

Internap Network Services Corporation  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Behringer Harvard 1221 Coit LP,  
a Texas limited partnership

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

**1221 Coit Road • Plano, Texas**

Being all of that certain tract of land situated in the Martha McBride Survey, Abstract No. 553, Collin County, Texas, as described in deed to Premier Wholesale Club, Inc., and recorded in Volume 2267, Page 438, Deed Records, Collin County, Texas, also being all of Lot 1, Block 1, AMWC/Coit Road Warehouse Addition, an addition to the City of Plano. as recorded in Cabinet F, Page 621, Plat Records, Collin County. Texas, and as shown by replat recorded in Cabinet G, Page 97, said Plat Records, and being more particularly described by metes and bounds as follows:

BEGINNING at the Southwest corner of the remainder of that certain tract of land as described in deed to JD. Sims and Co. and recorded in Volume 1958, Page 462, of said Deed Records also being on the north line of that certain tract of land as described in deed to Westwind Properties, Inc. and recorded in Volume 1803, Page 534, of said Deed Records:

THENCE North 89 degrees 26 minutes 36 seconds West, 554.28 feet along said northerly line to a one inch iron rod, found, being the northwesterly corner of said Westwind tract, also being on the easterly right-of-way line of Commerce Street (a 60 foot wide public right-of-way):

THENCE North 00 degrees 54 minutes 00 seconds East, 477.28 feet along said easterly right-of-way line to a one inch iron rod found, being the southwesterly corner of the remainder of that certain tract of land as described in deed to Charles Gartner and recorded in Volume I 007, Page 184, of said Deed Records:

THENCE South 89 degrees 06 minutes 00 seconds East, 800.00 feet along the southerly line of said Gartner tract to an "X" cut set in concrete being the southeasterly corner of said Gartner tract, also being on the Westerly right-of-way line of Coit Road (a 130' right-of-way);

THENCE South 00 degrees 23 minutes 00 seconds West, 212.48 feet along said westerly right-of-way line to an "X" cut found, being the northeasterly corner of the aforementioned Sims tract:

THENCE North 89 degrees 06 minutes 00 seconds West, 247.65 feet along the northerly line of said Sims tract to a one inch iron rod, found, being the northwesterly corner of said Sims tract;

THENCE South 00 degrees 54 minutes 00 seconds West, 261 .49 feet along the westerly line of said Sims tract to the POINT OF BEGINNING and containing 316.036 square feet or 7.255 acres of land, more or less.



**EXHIBIT "C"**  
**CERTIFICATION FORM**

[DATE]

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

RE: Certification Form – Reinvestment Zone No. \_\_\_\_\_  
Tax Abatement Agreement (the "Agreement") between Internap Network Services Corporation ("Tenant"); Beringer Harvard 1221 Coit LP ("Owner") and the City of Plano, dated as of \_\_\_\_\_

This letter certifies that Tenant and Owner are in compliance with each applicable term as set forth in the Agreement. The term of the Agreement is January \_\_\_\_\_, through \_\_\_\_\_. This form is due on November 1 of each year the Agreement is in force. Tenant makes this certification on behalf of Owner pursuant to its power of attorney in Section 9 of the Agreement.

Internap Network Services Corporation,  
a Delaware corporation,  
as Tenant and on behalf of Behringer  
Harvard 1221 Coit LP, a Texas limited  
partnership, as Owner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_