



March 5, 2020

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of the Rural Strategic Investment Zone (RSIZ) Standardized Agreement  
for Coho Distributing LLC, dba Columbia Distributing

<b>Purpose/Outcomes</b>	Approval of the RSIZ Standardized Agreement for Coho Distributing LLC, dba Columbia Distributing
<b>Dollar Amount and Fiscal Impact</b>	See attached Columbia Distributing Tax Savings Estimate.
<b>Funding Source</b>	The RSIZ allows for a tax exemption for property with real market value in excess of the first \$25 million for the first 15 years. At the completion of the exemption, the property will be put back on the tax rolls.
<b>Duration</b>	15 years
<b>Previous Board Action</b>	Policy session was held on February 25, 2020.
<b>Strategic Plan Alignment</b>	<ul style="list-style-type: none"><li>• Grow a vibrant economy: Aligns with the BCC strategic goal of business seeking to locate or expand in Clackamas County will find serviceable commercial or industrial properties that meet their business goals.</li><li>• Aligns with BCS strategic goal of providing businesses access to innovative tools and programs to help them locate or expand Clackamas County.</li></ul>
<b>Counsel Review</b>	February 26, 2020
<b>Contact Person</b>	Cindy Moore, Economic Development Coordinator, Business & Community Services, 503-742-4328

**BACKGROUND:**

In August of 2010, the Board of County Commissioners along with City leaders from Canby, Sandy, Estacada, Molalla and portions of Happy Valley established the Rural Strategic Investment Zone (RSIZ). Traded sector businesses investing over \$25 million in new facilities or equipment are eligible for the program. Businesses who qualify will not pay property taxes for 15 years on new plant and equipment investments over \$25 million.

Columbia Distributing is the first business in Clackamas County to apply for the RSIZ tax exemption. Their new 530,000sqft facility in Canby will bring an investment of over \$65,000,000 and at full build out, will bring 300 jobs to the community.

To facilitate the RSIZ, there is a Standardized Agreement between the City of Canby, Clackamas County and Columbia Distributing. The purpose is to define the rights, responsibilities, and obligations of the parties if the exemption is granted.

County Counsel and the Assessor's Office have reviewed and approved the Standardized Agreement.

**RECOMMENDATION:**

Staff respectfully recommends Board approval of this agreement.

**ATTACHMENTS:**

- Columbia Distributing – Rural Strategic Investment Zone Standardized Agreement
- Columbia Distributing Tax Savings Estimate

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Laura Zentner". The signature is written in a cursive, flowing style.

Laura Zentner, CPA  
Director, Business & Community Services

## Columbia Distributing Tax Savings Estimate

	RMV of Existing Land	Total RMV of New Project Improvements	Total RMV w/Existing Land	RMV Cap (w/annual 3% growth)	AV if No Exemption w/3% growth	AV of Taxable Project	Abated AV	2019 Tax Rate	What Taxes Would Be w/o Exemption	Taxes on Taxable Portion w/Exemption	Abated Tax	Estimated Community Service Fee (25% of Abated)
<b>2020</b>	\$8,413,178	\$57,111,610	\$65,524,788	\$25,000,000	\$43,555,154	\$21,802,615	\$21,752,539	17.0320	\$741,831	\$371,342	\$370,489	92,622
<b>2021</b>	\$8,665,573	\$58,245,903	\$66,911,476	\$25,750,000	\$44,861,809	\$22,456,693	\$22,405,115	17.0320	\$764,086	\$382,482	\$381,604	95,401
<b>2022</b>	\$8,925,541	\$59,457,779	\$68,383,320	\$26,522,500	\$46,207,663	\$23,130,394	\$23,077,269	17.0320	\$787,009	\$393,957	\$393,052	98,263
<b>2023</b>	\$9,193,307	\$60,746,073	\$69,939,380	\$27,318,175	\$47,593,893	\$23,824,306	\$23,769,587	17.0320	\$810,619	\$405,776	\$404,844	101,211
<b>2024</b>	\$9,469,106	\$62,109,880	\$71,578,986	\$28,137,720	\$49,021,710	\$24,539,035	\$24,482,674	17.0320	\$834,938	\$417,949	\$416,989	104,247
<b>2025</b>	\$9,753,179	\$63,548,539	\$73,301,718	\$28,981,852	\$50,492,361	\$25,275,206	\$25,217,155	17.0320	\$859,986	\$430,487	\$429,499	107,375
<b>2026</b>	\$10,045,775	\$65,061,618	\$75,107,393	\$29,851,307	\$52,007,132	\$26,033,463	\$25,973,669	17.0320	\$885,785	\$443,402	\$442,384	110,596
<b>2027</b>	\$10,347,148	\$66,648,896	\$76,996,043	\$30,746,847	\$53,567,346	\$26,814,466	\$26,752,879	17.0320	\$912,359	\$456,704	\$455,655	113,914
<b>2028</b>	\$10,657,562	\$68,310,349	\$78,967,911	\$31,669,252	\$55,174,366	\$27,618,900	\$27,555,466	17.0320	\$939,730	\$470,405	\$469,325	117,331
<b>2029</b>	\$10,977,289	\$70,046,141	\$81,023,430	\$32,619,330	\$56,829,597	\$28,447,467	\$28,382,130	17.0320	\$967,922	\$484,517	\$483,404	120,851
<b>2030</b>	\$11,306,608	\$71,856,611	\$83,163,219	\$33,597,909	\$58,534,485	\$29,300,891	\$29,233,594	17.0320	\$996,959	\$499,053	\$497,907	124,477
<b>2031</b>	\$11,645,806	\$73,742,264	\$85,388,070	\$34,605,847	\$60,290,520	\$30,179,918	\$30,110,601	17.0320	\$1,026,868	\$514,024	\$512,844	128,211
<b>2032</b>	\$11,995,180	\$75,703,762	\$87,698,942	\$35,644,022	\$62,099,235	\$31,085,316	\$31,013,919	17.0320	\$1,057,674	\$529,445	\$528,229	132,057
<b>2033</b>	\$12,355,036	\$77,741,917	\$90,096,952	\$36,713,343	\$63,962,212	\$32,017,875	\$31,944,337	17.0320	\$1,089,404	\$545,328	\$544,076	136,019
<b>2034</b>	\$12,725,687	\$79,857,682	\$92,583,369	\$37,814,743	\$65,881,079	\$32,978,411	\$32,902,667	17.0320	\$1,122,087	\$561,688	\$560,398	140,100
									<b>\$13,797,258</b>	<b>\$6,906,560</b>	<b>\$6,890,698</b>	<b>1,722,674</b>

**Assumptions:**

1. Project is 100% complete with the first year's value representing the 1st year in SIP.
2. An estimated trend for Canby industrial properties was used for the next 15 years. Land and Buildings are trended at the same rate.
3. New project improvements RMV are allocated as outlined by statute ORS 307.123 (1) land, (2) building & structures, (3) M&E, (4) BPP
4. Personal property depreciates at different rates depending on the asset. For the purposes of this example all office furniture and IT equipment were combined and given a 10 year depreciation schedule for simplicity. It's RMV equals it's depreciated value.
5. For simplicity, M&E is assumed to have a depreciation of 6% annually. It's RMV equals it's depreciated value.
6. Tax rate based on tax code area 086-002 and is estimated as 17.0320 for all years.
7. Land off-site improvement costs are excluded as they are not typically valued

**Columbia Distributing  
Abated Tax by District**

Abated Assessed Value	21,752,539	22,405,115	23,077,269	23,769,587	24,482,674	25,217,155	25,973,669	26,752,879	27,555,466	28,382,130	29,233,594	30,110,601	31,013,919	31,944,337	32,902,667						1 year - 2020 Estimated Community Service Fee if Uniformly Distributed	
Tax Code: 086-002	2019 Tax Rate	Estimated 2020 Abated Tax	Estimated 2021 Abated Tax	Estimated 2022 Abated Tax	Estimated 2023 Abated Tax	Estimated 2024 Abated Tax	Estimated 2025 Abated Tax	Estimated 2026 Abated Tax	Estimated 2027 Abated Tax	Estimated 2028 Abated Tax	Estimated 2029 Abated Tax	Estimated 2030 Abated Tax	Estimated 2031 Abated Tax	Estimated 2032 Abated Tax	Estimated 2033 Abated Tax	Estimated 2034 Abated Tax	Estimated Total Abated Tax	% of Total Rate				
COM COLLEGE CLACKAMAS	0.4750	10,332	10,642	10,962	11,291	11,629	11,978	12,337	12,708	13,089	13,482	13,886	14,303	14,732	15,174	15,629	192,172	2.79%			2,583	
ESD CLACKAMAS CO	0.3144	6,839	7,044	7,255	7,473	7,697	7,928	8,166	8,411	8,663	8,923	9,191	9,467	9,751	10,043	10,345	127,198	1.85%			1,710	
SCH 086 CANBY	3.9251	85,381	87,942	90,581	93,298	96,097	98,980	101,949	105,008	108,158	111,403	114,745	118,187	121,733	125,385	129,146	1,587,992	23.05%			21,345	
<b>Education Total</b>	<b>4.7145</b>																					
CITY CANBY	3.0023	65,308	67,267	69,285	71,363	73,504	75,709	77,981	80,320	82,730	85,212	87,768	90,401	93,113	95,906	98,784	1,214,651	17.63%			16,327	
CITY CANBY LOC OPT 2017	0.4900	10,659	10,979	11,308	11,647	11,997	12,356	12,727	13,109	13,502	13,907	14,324	14,754	15,197	15,653	16,122	198,241	2.88%			2,665	
COUNTY CLACK CITY	2.0681	44,986	46,336	47,726	49,158	50,633	52,152	53,716	55,328	56,987	58,697	60,458	62,272	64,140	66,064	68,046	836,699	12.14%			11,247	
COUNTY EXTENSION SVC	0.0427	929	957	985	1,015	1,045	1,077	1,109	1,142	1,177	1,212	1,248	1,286	1,324	1,364	1,405	17,275	0.25%			232	
COUNTY LIBRARY	0.3389	7,372	7,593	7,821	8,056	8,297	8,546	8,802	9,067	9,339	9,619	9,907	10,204	10,511	10,826	11,151	137,110	1.99%			1,843	
COUNTY PUBLIC SAFETY LOC OPT 201	0.2480	5,395	5,556	5,723	5,895	6,072	6,254	6,441	6,635	6,834	7,039	7,250	7,467	7,691	7,922	8,160	100,334	1.46%			1,349	
COUNTY SOILS CONS	0.0427	929	957	985	1,015	1,045	1,077	1,109	1,142	1,177	1,212	1,248	1,286	1,324	1,364	1,405	17,275	0.25%			232	
FIRE 062 CANBY	1.3257	28,837	29,702	30,594	31,511	32,457	33,430	34,433	35,466	36,530	37,626	38,755	39,918	41,115	42,349	43,619	536,343	7.78%			7,209	
FD62 CANBY LOC OPT 2016	0.4500	9,789	10,082	10,385	10,696	11,017	11,348	11,688	12,039	12,400	12,772	13,155	13,550	13,956	14,375	14,806	182,058	2.64%			2,447	
PORT OF PORTLAND	0.0599	1,303	1,342	1,382	1,424	1,467	1,511	1,556	1,602	1,651	1,700	1,751	1,804	1,858	1,913	1,971	24,234	0.35%			326	
REC CANBY AREA PARKS	0.0000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0.00%			0	
ROAD DIST 8 CAN	0.0000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0.00%			0	
URA CITY CANBY	2.2336	48,586	50,044	51,545	53,092	54,685	56,325	58,015	59,755	61,548	63,394	65,296	67,255	69,273	71,351	73,491	903,656	13.11%			12,147	
URA CLACKAMAS COUNTY	0.0103	224	231	238	245	252	260	268	276	284	292	301	310	319	329	339	4,167	0.06%			56	
VECTOR CONTROL CLACK CO	0.0056	122	125	129	133	137	141	145	150	154	159	164	169	174	179	184	2,266	0.03%			30	
Vector Control Local Option 2015	0.0250	544	560	577	594	612	630	649	669	689	710	731	753	775	799	823	10,114	0.15%			136	
<b>Gener Government Total</b>	<b>10.3428</b>																					
COM COLL CLACK BOND	0.1122	2,441	2,514	2,589	2,667	2,747	2,829	2,914	3,002	3,092	3,184	3,280	3,378	3,480	3,584	3,692	45,393	0.66%			610	
COM COLL CLACK BOND 2015	0.0374	814	838	863	889	916	943	971	1,001	1,031	1,061	1,093	1,126	1,160	1,195	1,231	15,131	0.22%			203	
COUNTY RADIO SYSTEM BOND 2017	0.0814	1,771	1,824	1,878	1,935	1,993	2,053	2,114	2,178	2,243	2,310	2,380	2,451	2,525	2,600	2,678	32,932	0.48%			443	
FD62 CANBY BOND 2019	0.2057	4,474	4,609	4,747	4,889	5,036	5,187	5,343	5,503	5,668	5,838	6,013	6,194	6,380	6,571	6,768	83,221	1.21%			1,119	
SCH CANBY BOND	1.5380	33,455	34,459	35,493	36,558	37,654	38,784	39,948	41,146	42,380	43,652	44,961	46,310	47,699	49,130	50,604	622,234	9.03%			8,364	
<b>Excluded from Limit Total</b>	<b>1.9747</b>																					
<b>Abated Tax:</b>	<b>17.0320</b>	<b>370,489</b>	<b>381,604</b>	<b>393,052</b>	<b>404,844</b>	<b>416,989</b>	<b>429,499</b>	<b>442,384</b>	<b>455,655</b>	<b>469,325</b>	<b>483,404</b>	<b>497,907</b>	<b>512,844</b>	<b>528,229</b>	<b>544,076</b>	<b>560,398</b>	<b>6,890,698</b>					
<b>Community Service Fee</b>	<b>25%</b>	<b>92,622</b>	<b>95,401</b>	<b>98,263</b>	<b>101,211</b>	<b>104,247</b>	<b>107,375</b>	<b>110,596</b>	<b>113,914</b>	<b>117,331</b>	<b>120,851</b>	<b>124,477</b>	<b>128,211</b>	<b>132,057</b>	<b>136,019</b>	<b>140,100</b>	<b>1,722,674</b>	<b>100.00%</b>				<b>92,622</b>

This estimates uses the values and includes the same assumptions as the "Tax Savings Estimate" dated February 13, 2020

Map	Parcel No.
31E34 00100	00797828
31E34 002100	00798051
31E34 02101	00798060
31E34 02200	00798079

**CLACKAMAS COUNTY STRATEGIC INVESTMENT ZONE**

**AGREEMENT BETWEEN**

**CLACKAMAS COUNTY AND**

**THE CITY OF CANBY AND**

**COHO DISTRIBUTING LLC, dba COLUMBIA DISTRIBUTING**

**Date: March 5, 2020**

This is an agreement (the “Agreement”) by and between Clackamas County, a duly constituted governmental entity under the laws of the State of Oregon (the “County”) and the City of Canby, an Oregon municipality (the “City”), and Coho Distributing LLC, dba Columbia Distributing, (the “Company”). Its purpose is to define the rights, responsibilities, and obligations of the County, the City, and the Company in terms of the Clackamas County Strategic Investment Zone.

### **RECITALS**

- A. The County, the City, and the Company all agree that it is in their individual and mutual best interests for the Company to locate its business in Clackamas County.
- B. The County, the City, and the Company recognize that the Company is a capital intensive business as to which the elements of a strategic investment zone are especially important. Capital intensive businesses are especially attractive to the County and the City because these businesses invest in developing the skill levels of their employees, pay their employees higher wages, and contribute in other ways to the economic vitality of a region.
- C. Oregon law at ORS 285C.623 through 285C.639 and in rules established by the Oregon Business Development Department and the Oregon Department of Revenue sets out the establishment and operation of strategic investment zones. Key characteristics of strategic investment zones include:
  - 1. Businesses approved as a strategic investment zone project receive a partial property tax exemption under ORS 307.123 under the terms of which the business must pay full property taxes on the first \$25 million invested. The value of property in excess of that amount is exempt from taxation; however, this cap increases by 3% each year.
  - 2. Businesses approved as a strategic investment zone project must pay an annual Community Service Fee equal to the lesser of 25% of exempt taxes or \$500,000.00.
  - 3. Businesses approved as a strategic investment zone project must enter into a First Source Hiring Agreement, which promotes gainful work for persons already residing in the proximate area or region of the approved project.
  - 4. The Department of Revenue and the County shall make income tax distributions in accordance with ORS 285C. 635(3).

5. The term of the benefits of a strategic investment zone to a specific project is temporary, lasting no longer than 15 years.
- D. On August 19, 2010 the County approved co-sponsorship and operation of the Clackamas County Strategic Investment Zone.
- E. On August 4, 2010 the City approved co-sponsorship and operation of the Clackamas County Strategic Investment Zone.
- F. On August 19, 2010 the County and the City entered into an Intergovernmental Agreement in order to co-sponsor the establishment of the Clackamas County Strategic Investment Zone and set out their respective rights and obligations under its operation.
- G. The Company wishes to place its project (the "Project") within the Clackamas County Strategic Investment Zone, and has filed an application (the "Application"). A copy of the Application is attached as Exhibit "A".
  1. The Project is wholly located within the Clackamas County Strategic Investment Zone. The property is contiguous, and is not within an existing strategic investment zone. The Project is shown on the map in Exhibit "B" and described by a list of affected tax lot numbers in Exhibit "C".
  2. Under the terms of the Application, the Company has requested that the Company receive approval for the tax treatment of the Project within a strategic investment zone.
- H. The County, the City, and the Company have agreed to enter into this Standardized Agreement, which is a requirement of the County and City Intergovernmental Agreement and constitutes the local approval necessary for a strategic investment zone project.

NOW, THEREFORE, in consideration of the following mutual promises the County, the City, and the Company all agree as follows:

1. Limitations on Qualification of the Project for Exemption.
  - A. Only that portion of any property that the Business Development Commission has authorized as an eligible Project shall receive the tax exemption under ORS 307.123.
  - B. All other property not authorized for tax exemption according to Section 1 A above, including portions of the Project constructed prior to submission of an application for project determination to the Business Development Commission, shall be subject to the laws as to tax assessment and collection, without regard



to ORS 307.123. The parties expressly acknowledge and agree that certain construction work, including ground work and the pouring of a concrete slab, were performed prior to Company's submission of its project determination application. As such, the parties anticipate that the Business Development Commission will not consider those portions of the project eligible for tax exemption. The parties further acknowledge and agree that Business Development Commission will make the final decision as to what portions of the project are eligible for tax exemption under ORS 307.123.

## 2. Term.

This Agreement shall take effect on the date the Oregon Business Development Commission formally authorizes the Company's qualification as an eligible Project in a strategic investment zone. It shall continue for the fifteen tax years described in ORS 307.123.

## 3. The ORS 307.123 Tax Exemption for the Project.

- A. The Company's Application represents that the Project will have a total investment of \$68,277,098.00. The County, City, and the Company agree that the assessed value of the property associated with the Project shall be calculated according to ORS 307.123.
- B. Taxes assessed on the eligible portion of the Project shall be calculated according to ORS 307.123 for fifteen tax years, commencing with the tax year the Company is first eligible for the calculation.
- C. Pursuant to OAR 123-623-1600(4)(d), the Project will not consist of any property formerly or currently exempt under ORS 285C.175 and the Company shall not acquire status as an authorized business firm for any investment at the same location in an enterprise zone.
- D. The Company shall provide timely information to the Oregon Business Development Department, County Assessor, and or the Department of Revenue as may be requested, required, or otherwise necessary under ORS 307.123 or other applicable laws, including but not limited to information as to the date when any taxable property is initially placed in service, occupied, used, or operated.

## 4. Obligations of the Company.

- A. The Company shall pay a Community Services Fee ("CSF") for community services support that relates to the direct impact of the eligible project on public services as set forth in this section and ORS 285C.623(4) and other applicable law.
  - 1) Amount. For each year the Company shall pay to the County a CSF as provided in ORS 285C.623(4)(b) an amount equal to 25% of the property taxes that would, but for the tax exemption, be due on the exempt property in each assessment year, but not exceeding \$500,000 in instances where the investment is in Rural SIZ #1 and \$2 million where the investment is in Urban SIZ #2, per eligible project in any year.

2) Due Date. On or before October 25 of each year, the County shall provide the Company with a statement describing CSF calculations and the amount due. The Company upon receiving such statement shall pay the amount due by November 15 of the same year. The CSF payment shall be made to:

Tax Collector  
Assessment and Taxation Department  
Clackamas County  
Development Services Building  
150 Beaver Creek Rd.  
Oregon City, OR 97045

3) Adjustments. If the assessed value of the property is adjusted after November 15 of any tax year in such a manner that property taxes due from the Company are reduced, and the reduction reduces the CSF for that year, the County shall pay the amount of the reduction of the CSF to the Company, together with interest at the rate established by law for tax refunds under ORS 311.505(2) from the date of payment of the CSF.

a. If the County does not pay the amount by November 10 of the following year, the Company may withhold the unpaid amount, plus interest as provided in this Section, from subsequent CSF payments due from the Company.

b. If the remaining CSF payments due from the Company are less than the amount owed by the County to the Company under this Section, the County shall pay the amount due to the Company not later than December 15 of the year following the year in which the reduction occurs. An appeal of the assessed value does not defer the CSF payment obligation set forth above. Any adjustments based on the outcome of the appeal shall be in accordance with this Section 4-A-3.

4) Late Payment of CSF. Failure to pay the CSF sum in full by the due date shall result in penalty and interest being charged on the past due balance in the same amount as is provided by law for late payment of ad valorem property taxes.

5) Nonpayment of CSF. If the Company fails to pay the CSF by the end of the tax year in which it is due, the tax exemption shall be revoked and the property shall be fully taxable for the tax year following the tax year in which the fee remains unpaid.

## B. First Source Agreements.

1) The Company shall enter into a standardized First Source Hiring Agreement (“FSHA”), a copy of which is attached as Exhibit “D” to this Agreement. Its terms are incorporated by reference into this Agreement.

a. If the County designates a Publicly Funded Training Provider, the Company shall enter into a separate FSHA with the designated Publicly Funded Training Provider under substantially the same terms as set out in Exhibit D.

b. If there is a conflict between this Agreement and Exhibit D, this Agreement shall take precedence. If there is a conflict between Exhibit D and the Public Funded Training Provider First-Source Hiring Agreement, Exhibit D shall control.

2) The Company shall enter into a standardized First Source Contracting Agreement (“FSCA”), a copy of which is attached as Exhibit “E” to this Agreement. Its terms are incorporated by reference into this Agreement.

## C. Reporting Obligations.

1) In addition to any other report or filing required by law the Company shall file with the Department of Revenue the information required by ORS 308.290 in the form of the annual industrial property return.

2) In addition to any other report or filing required by law the Company shall file with the Oregon Business Development Department and Clackamas County the annual participation report required by ORS 285C.615, along with any other information related to the terms of this Agreement that the County may require.

## D. Payment of Property Taxes

The Company shall pay all property taxes owed on the Project on or before November 15<sup>th</sup> of the tax year in which they were assessed.

## 5. Obligations of the County and City

The County and the City shall, by action of the respective Commission and Council, affirmatively endorse the Company’s proposed project if the Company

submits a strategic investment zone application in accordance with Oregon statutes, rules, and the County and City strategic investment program.

6. Breach; Default; and Remedy.

A. The County and the City shall each designate a Strategic Investment Zone Manager with the duty to monitor compliance by the Company with the terms of this Agreement. The respective Strategic Investment Zone Managers are:

The County: Strategic Investment Zone Coordinator  
Business and Economic Development Department  
Development Services Building  
150 Beavercreek Rd.  
Oregon City, OR 97045

For the City: Economic Development Director  
City of Canby  
222 NE 2<sup>nd</sup> Ave.  
Canby, OR 97013

Or such other individuals as the City and County may designate from time to time.

B. If either the County or the City has cause to believe that the Company has materially failed to comply with any term of this Agreement, or the FSHA, or the FSCA, and that such failure is not excused, the County and the City shall confer.

1) If, after such consultation and examination, the County continues to believe that the Company has materially failed to comply with one or more terms of this Agreement and the failure is not excused, the County shall notify the Company of this belief and the basis therefore.

2) The Company shall not be deemed to have failed to comply with this Agreement if the failure is caused by a force majeure, as provided under Section 6-I-3 below.

C. Any required notice shall be in writing and shall be sent to the Company at the following address:

Paul Meade, Chief Financial Officer  
Columbia Distributing  
6840 North Cutter Circle  
Portland, OR 97217

Notice sent by regular mail shall be treated as if received on the third day after mailing. Notice hand delivered, sent via electronic mail, or by facsimile transmission shall be treated as having been delivered at the time of transmission, or if the transmission occurred after normal business hours, the next business day, upon confirmation of transmission.

D. Upon receipt of the notice described in Section 5-B above, the Company shall have 45 days to respond in writing. The Company's written response shall be delivered to the County at the address of its Strategic Investment Zone Manager set out in Section 5-A above.

E. The Company's response shall include such supporting documentation as is related to the issues raised by the notice described in Section 5-B above.

1) The County shall have 45 days in which to review and consider the Company's response and to notify the Company in writing if the County believes the Company is not in compliance, and to state the basis for the County's belief.

2) If the County does not give the Company such written notice within 45 days, the matter shall be deemed closed.

F. If the County notifies the Company that the County continues to believe that a failure of performance by the Company has occurred, the matter shall be submitted to mediation in front of a mediator who is an attorney and mutually acceptable to all parties.

1) Such mediation shall take place within 90 days' of a party's receipt of the mediation request, in a neutral location mutually acceptable to all parties.

2) Each party shall be responsible for paying its own costs and expenses (including legal fees, if necessary) for the mediation and share equally the expenses of the mediator.

G. In the event that the mediation is unsuccessful, either party may initiate litigation to resolve the dispute. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

H. Notwithstanding the foregoing, any dispute in which specific performance or injunctive relief is sought need not be submitted to mediation, but may instead be immediately brought by the aggrieved party to an appropriate court.

I. A breach shall be deemed to have occurred if:

- 1) The Company acknowledges that it has failed to comply with its obligations under this Agreement; or
- 2) A court of competent jurisdiction or an arbitrator, in a final judgment that is either nonappealable or whose appeal rights have lapsed, determines that the Company failed to comply with its obligations under this Agreement and the associated law.
- 3) The Company shall not be deemed to have failed to comply with this Agreement if the failure is caused by a force majeure.

a. Force majeure is defined as follows:

- 1) Acts of God; strikes, lockouts or other industrial disturbances; acts of the public enemy; orders or restraints of any kind of the government of the United States of America or of the state wherein the County is located or any of their departments, agencies or officials, or any civil or military authority; insurrections; riots; landslides; earthquakes; volcanic eruption; fires; storms; droughts; floods; explosions; breakage or accident to machinery, transmission pipes, or canals; or any similar or different cause or event not reasonably within the control of the Company; and
- 2) Any substantial reduction in market demand for the products produced at the Project which makes it economically infeasible for the Company to operate the Project at a profit and in compliance with this Agreement.

b. To excuse the performance of any obligation of the Company due to force majeure, the Company must notify the County as soon as reasonably possible after the force majeure has occurred and the Company has had an opportunity to determine the effect of the force majeure upon the Company's business and its obligations hereunder.

1) The notice shall state the nature of the occurrence, the anticipated effect of the occurrence on the Company's obligations, and when the Company will be able to resume compliance with this Agreement.

2) If the County, following consultation with the City, does not agree that the Company shall be excused from performance in the manner stated in the Company's notice, the County shall notify the Company within 90 days and the parties shall commence the dispute resolution procedures set out above.

#### J. Sanctions.

1) If the breach relates to a failure of the Company to pay the CSF or any other payment the Company is required to pay to the County under this Agreement or Oregon law, the County shall be entitled to the amount of the delinquency, plus interest in the amount set forth in Section 4 (A)(4), and in addition may recover the following penalties:

a. If the payment is made more than ten days after the payment is due and written demand has been made to the Company for payment, the County shall be entitled to receive a penalty of 10% of the delinquent amount.

b. If the payment is made more than 45 days after the payment is due and written demand has been made to the Company for payment, the County shall be entitled to receive a penalty of 100% of the delinquent amount.

c. If the Company fails to pay by the end of the tax year in which it is due, the tax exemption provided by ORS 307.123 shall be revoked and the property shall be fully taxable for the tax year following the tax year in which the fee remains unpaid.



2) If the breach relates to a failure of the Company to notify the County in accordance with the FSHA of the Company's hiring needs for job openings, the Company shall pay to the County an amount equal to twice the average gross annual salary plus benefits for the median wage paid at the Project by the Company.

If the Company fails to act in good faith to meet its obligations under the FSHA, and the failure results in effective abandonment of the FSHA by the Company, the Company shall pay as an additional payment to the County 75% of the annual payment calculated according to ORS 307.123 for each year the abandonment continues. It shall not constitute an abandonment if the Company's failure is due to nonperformance by the County of its obligations under the FSHA.

3) If the breach relates to a failure of the Company to notify the County in accordance with the FSCA of the Company's contracting opportunities, the Company shall pay as an additional payment to the County an amount equal to twice the cost of the Project, including all overhead and profit.

If the Company fails to act in good faith to meet its obligations under the FSCA, and the failure results in effective abandonment of the FSCA by the Company, the Company shall pay as an additional payment to the County 75% of the annual payment calculated according to ORS 307.123 for each year the abandonment continues. It shall not constitute an abandonment if the Company's failure is due to nonperformance by the County of its obligations under the FSCA.

4) If the breach relates to a failure of the Company to meet its reporting requirements under this Agreement or related law, the Company shall pay to the County twice the amount necessary to have an auditor investigate and prepare any report.

5) Any funds collected under Section 6-J above shall be held in a segregated fund for the Shared Community Services fund set out in Exhibit C to the Clackamas County Strategic Investment Zone #1 Intergovernmental Agreement.

## 7. General Terms.

A. No discrimination: No persons shall be denied or subject to discrimination in receipt of the benefits of any services or activities made possible by or resulting from the Agreement on the grounds of sex, sexual orientation, gender identity, race, color, creed, marital status, age, national origin, mental health or physical handicap, disabled or Vietnam era veteran status (except where there are bona fide occupational qualifications). Any violation of this provision shall be considered a material breach of the Agreement.

B. Public contracts: If applicable, the requirements of the Oregon Revised Statute Chapters 279A and B are incorporated herein by reference. This provision is intended to incorporate only those provisions which are required for all public contracts. The parties acknowledge that other portions of ORS Chapter 279 do not apply; that this Agreement is not one for a public improvement or public work; and the wages and other compensation paid by the Company to its employees are not subject to ORS Chapters 279A and 279B.

C. Governing law: This Agreement shall be governed by the law of the State of Oregon. Any actions or suits commenced in connection with this Agreement shall be in the Clackamas County Circuit Court or Federal District Court for Oregon.

D. Complete Agreement: This Agreement and its attached exhibits are the complete agreement between the parties and supersede all prior agreements or proposals, oral or written. No modifications to this Agreement will be binding on any party except as a written addendum signed by authorized agents of each party.

E. Waiver of Rights: All rights and remedies of each party shall be cumulative and may be exercised successively or concurrently. The foregoing is without limitation to or waiver of any other rights or remedies of either party according to law.

F. ORS 307.123 Payments Not Property Taxes: The parties acknowledge that any payments required under this Agreement do not constitute property taxes and are not subject to the limits under Section 11b, Article XI of the Oregon Constitution.

G. Corporate Dissolution or Bankruptcy: In the event of a corporate dissolution or a bankruptcy proceeding under the Federal Bankruptcy Code, the full real market value of the Project shall be placed on the tax roll as taxable property.

H. Successors and Assigns: Each and every provision of the Agreement is binding on any and all successors in interest to the applicant by virtue of sale, lease, assignment, merger, or any other transfer of any interests in the applicant corporation to any other person or entity, whether voluntary or involuntary

I. Good Faith Tax Contests Permitted: Nothing in this Agreement shall be construed as:

- a. Preventing the Company from contesting in good faith any tax, assessment, fees or charges assessed against it by the taxing authority; or
- b. Granting rights to any employee of the Company.

J. No Third Party Beneficiaries: The obligations of the Company in this Agreement are for the benefit of the County and the City, and for the general benefit of their citizens. No individual or entity not a party to this Agreement shall be treated as a third party beneficiary of this Agreement.

K. Counterparts: This Agreement may be signed in counterparts; when each party has signed a counterpart all parties shall be bound by this Agreement.

L. Debt Limitation. This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.

CLACKAMAS COUNTY

CITY OF CANBY

\_\_\_\_\_  
JIM BERNARD  
Chair

\_\_\_\_\_  
BRIAN HODSON  
Mayor

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
Recorder

Reviewed for legal sufficiency  
and form:

Reviewed for legal sufficiency  
and form:

\_\_\_\_\_  
Counsel

\_\_\_\_\_  
Counsel

COHO DISTRIBUTING LLC, dba COLUMBIA DISTRIBUTING

\_\_\_\_\_  
INSERT NAME OF OFFICER: \_\_\_\_\_

Date: \_\_\_\_\_

INSERT NOTARY BLOCK FOR OFFICER OR OFFICERS