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Village of Carol Stream
INTER-DEPARTMENTAL MEMO

AGENDA ITEM
M2 7-7-08

TO: Mayor & Trustees

FROM: Joseph E. Breinig, Village Manager *[Signature]*

DATE: July 3, 2008

RE: Channahon

In the course of our normal review of sales tax receipts it was noted that sales taxes from Communication Supply Corporation (CSC) were no longer being remitted to Carol Stream. In checking with the Illinois Department of Revenue it was determined that sales taxes from CSC were being diverted to Channahon. A review of the CSC website revealed that the Carol Stream facility on Lies Road was still listed as their Chicago Area Sales office and CSC Headquarters. Additional research could not identify a Channahon office for CSC. Moreover, during the course of our work on the Streamlined Sales Tax staff learned that Channahon appeared to receive a significant amount of sales tax for its size.

After consulting the Mayor and Village Attorney a Freedom of Information Act (FOIA) request was submitted for information relating to the payment of sales tax by communication Supply Corporation to Channahon. Attached you will find that FOIA request and Channahon's reply. From the information provided it was learned that Channahon had entered into an agreement with a third party, Inspired Development, LLC to act as an intermediary. You will note that Channahon redacted information in the Ordinance approving the agreement with Inspired Development.

Believing that the response was incomplete and improper an appeal was submitted to the Mayor of Channahon. A copy of that appeal is also enclosed. Channahon responds by acknowledging receipt of the appeal and requesting an extension of time for response because their attorney was out of town. Through conversations with the Village Attorney and myself Channahon has expressed a willingness to meet to discuss this matter. They have also referenced a desire to avoid litigation. Most recently our attorney has submitted another FOIA request seeking additional information on the relationship between Channahon and Inspired Development.

CONFIDENTIAL

From: Don Sloan

To: Village of Channahon

Re: Report Regarding New Retail Client at 27734A West Bluegrass Drive

Retailer Name: Communications Supply Corporation

Trade Name: CSC

Headquarters Address: 200 East Lies Road
Carol Stream, Illinois 60188

Contact: Mr. Mike Kasper
Director of Taxes
630.221.6424

Description of Business:

Communications Supply Corporation ("CSC") is a leading national distributor of low voltage network infrastructure and industrial wire and cable products. CSC was recently acquired by Pittsburgh, Pennsylvania-based WESCO, Inc. and will consolidate its business into the WESCO family. CSC has 31 locations throughout the United States and is currently headquartered in Carol Stream, Illinois.

CSC has agreed in principle to utilize the Inspired Development, LLC ("Inspired Development") facility in Channahon, Illinois as an order acceptance point for CSC's sales to its Illinois customers. We anticipate the taxable sales volume at the facility should be no less than \$10 million per year.

Should you have any questions, please feel free to contact Don Sloan at 312.848.0123. Thank you for your consideration.

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

This Confidential Settlement Agreement and Release (hereinafter referred to as the "Agreement") is entered into by and between the Village of Carol Stream, an Illinois municipal corporation (hereinafter referred to as "Carol Stream") and the Village of Channahon, an Illinois municipal corporation (hereinafter referred to as "Channahon") as of the date of the execution of this Agreement by the parties hereto, and in accordance with the terms and conditions stated below:

Definitions

It is agreed to by the parties that the following terms shall have the following meanings:

1. "Channahon" means and includes the Village of Channahon and any and all of its present, former and future divisions, subsidiaries, affiliates, and their present, former or future President(s), Trustees, directors, principals, officers, executives, and employees or any of them, and all persons acting by or on behalf of any of them.
2. "Carol Stream" means and includes the Village of Carol Stream and any and all of its present, former and future divisions, subsidiaries, affiliates, and their present, former or future President(s), Trustees, directors, principals, officers, executives, and employees or any of them, and all persons acting by or on behalf of any of them.
3. "Sales Tax Dispute" means and includes any claim made by Carol Stream arising under common law or any state or federal statute, including but not limited to 65 ILCS 5/8-11-21, resulting from the collection of sales tax or distribution of sales tax revenue by Channahon from Communications Supply Corporation. Inc., a Connecticut corporation registered to do business in the State of Illinois ("hereinafter referred to as CSC, Inc.), or the participation in any development incentive agreement or sales tax incentive agreement by Channahon and CSC, Inc..

Recitals

WHEREAS, the parties are engaged in discussions regarding resolution of a dispute regarding the collection by Channahon of sales tax, (hereinafter defined as the "Sales Tax Dispute"); and

WHEREAS, Carol Stream and Channahon wish to settle and fully and finally resolve the Sales Tax Dispute without the necessity of litigation.

Agreements

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Channahon, within seven (7) days after the execution of this Agreement by Channahon and Carol Stream, shall pay to Carol Stream, the sum of Four Hundred and Sixty Thousand Dollars (\$460,000) by delivery of a check in that amount to Joseph E. Breinig, Village Manager, made payable to Carol Stream.

2. In consideration of the payment of Four Hundred and Sixty Thousand Dollars (\$460,000), Carol Stream forever releases, discharges and acquits Channahon and its respective present or former President(s), Trustees, directors, partners, principals, officers, employees, agents, trustees, attorneys, insurers and their reinsurers, parents, subsidiaries, affiliates, divisions, representatives, predecessors or successors, partnerships or corporations, and its and any of their respective successors and assigns, for and from any and all debts, obligations, liabilities, promises, covenants, agreements, contracts, certificates, endorsements, controversies, suits, actions, causes of action, judgments, executions, damages, claims or demand, in law or in equity, arising out of the allegations in the Sales Tax Dispute or any other matter arising out of the

payment of sales tax or the collection thereof by Channahon from CSC, Inc., or the distribution by Channahon of any such sales tax revenue, including but not limited to any cause of actions of action under any state or federal statute including 65 ILCS 5/8-11-21. Further, Carol Stream agrees on behalf of itself, its officers, directors, shareholders, successors, attorneys, employees, agents, representatives and assigns, and/or any persons acting on their behalf to release Channahon from any current or future claim for enforcement of any Freedom of Information Act requests dated May 8, 2008 or July 5, 2008 made on behalf of Carol Stream in regard to the collection of sales tax or the distribution of sales tax revenue.. Carol Stream acknowledges that the documents sought in its two previous Freedom of Information Act requests to Channahon are exempt from disclosure from the Freedom of Information Act to the extent described in Channahon's response to Carol Stream's previous requests.

3. The "Effective Date" of the Agreement shall be the date on which the Agreement is fully executed by the parties.

4. Neither this Agreement nor any of its terms, provisions or conditions shall be construed as an admission of the presence or absence of liability or wrongdoing or may be offered or received in evidence in any other action, proceeding, claim or settlement negotiation as evidence of an admission of the presence or absence of liability or wrongdoing, or for any other purpose; provided, however, that this Agreement, proof of its execution and payment of consideration under its terms shall be admissible to prove settlement and release of the claims set forth herein if the same shall be necessary.

5. All actions taken and statements made by Carol Stream and Channahon in connection with this Agreement shall be without prejudice or value as precedent beyond the scope of this Agreement.

6. This Agreement is the jointly drafted product of arms length negotiations between Carol Stream and Channahon with the benefit of advice from their legal counsel. In the event of a dispute, the parties hereto agree that neither Carol Stream nor Channahon shall be entitled to have any wording of this Agreement construed against the other on the basis that the wording at issue was selected by any particular party.

7. All matters relating to the existence, terms and negotiations of this Agreement shall be and remain strictly confidential between Carol Stream and Channahon, except that this Agreement by its terms may be disclosed to any legal counsel, tax or financial advisor, auditor, insurer, reinsurer, or agent of any party, or to enforce the terms of this Agreement, or if disclosure is required by operation of law, order of court, or by mutual written agreement of the parties. In the event that a request for disclosure relating to the existence, terms and negotiations of this Agreement is presented to either party, the other party shall be notified and, if the party receiving the request believes that disclosure is required, the other party shall be given the opportunity of advancing funds adequate to argue for the validity of nondisclosure. In the event that such funds are not promptly paid and replenished, in the event that the costs of defense should exceed the deposit, the party receiving the request shall be free to make disclosure.

8. Each party to this Agreement represents and warrants to the other that each party is fully authorized to enter into this Agreement and that this Agreement has been executed on its behalf by a duly authorized representative or officer of that party.

9. This Agreement shall be governed by, subject to, and construed in accordance with the laws of the State of Illinois.

10. If any party hereto institutes a legal or equitable proceeding against another party hereto in connection with any dispute or matter arising under this Agreement, the Sales Tax Dispute, the payment of sales tax or the collection or distribution thereof by Channahon, the

prevailing party shall be entitled to recover its attorney's fees including but not limited to court costs, costs of investigation, accounting costs and other costs reasonably related to litigation in such amount as may be determined in the sole discretion of the court having jurisdiction over such action.

11. This Agreement contains the entire agreement between the parties hereto and the terms of this Agreement are contractual and not a mere recital. This Agreement supersedes all prior discussions and agreements between the parties with respect to the subject matter hereof and contains the sole and entire agreement with respect to the subject matter hereof. The parties further state that each has carefully read the foregoing Agreement and knows the contents thereof and each has signed this Agreement of their own free act. The parties acknowledge that no representations or warranties (oral or written) have been made to them with respect to this Agreement other than the promises and covenants set forth herein and that this Agreement is executed without reliance upon any statements or representations except as set forth herein.

12. In the event that any of the provisions of this Agreement are deemed to be invalid and unenforceable, those provisions shall be severed from the remainder of this Agreement.

13. This Agreement is intended to confer rights and benefits only on the signatories hereto and is not intended to confer any right or benefit upon any other person or entity. No person or entity other than the signatories hereto shall have any legally enforceable right under this Agreement. The rights and benefits conferred pursuant to this Agreement may not be assigned to any other person or entity.

14. Each party further represents and warrants that this Agreement shall be binding and enforceable against their respective present or former President(s), Trustees, directors, partners, principals, officers, employees, agents, trustees, attorneys, insurers and their reinsurers, parents, subsidiaries, affiliates, divisions, representatives, predecessors or successors,

partnerships or corporations, and its and any of their respective successors and assigns in their capacities as such.

15. No amendments or variations of the terms of this Agreement shall be valid unless made in writing and signed by all parties.

16. No breach of any provision hereof can be waived unless done in writing. Waiver of any one breach shall not be deemed a waiver of any other breach of the same or other provisions hereof.

17. The parties agree that they may provide each other with facsimile or .pdf copies of all signature pages of this Agreement, which facsimile or .pdf signature pages shall be valid and binding on all parties as if originals.

18. This Agreement may be executed in two or more counterparts.

WE, THE UNDERSIGNED, HEREBY CERTIFY THAT WE HAVE READ THIS ENTIRE AGREEMENT AND HAVE HAD THE TERMS USED HEREIN AND THE CONSEQUENCES HEREOF EXPLAINED BY OUR RESPECTIVE ATTORNEYS. WE FULLY UNDERSTAND ALL THE TERMS AND CONSEQUENCES OF THIS AGREEMENT AND BASED UPON SUCH, EXECUTE IT.

Dated: February 2, 2009

The Village of Channahon

By: [Signature]

Title: Village President

Dated: January 20, 2009

The Village of Carol Stream

By: [Signature]

Title: Mayer