

## **Recitals**

**Whereas**, residents and visitors of the City of Cannon Beach (“City”) have a strong public interest in having well-funded municipal and emergency services;

**Whereas**, the City is located within the jurisdictional boundaries of the Cannon Beach Rural Fire Protection District (“District” or “Cannon Beach RFPD”) and the District provides fire and other emergency services to City residents and visitors;

**Whereas**, on November 2, 2021 Cannon Beach residents will vote on a five percent (5%) pass-through tax on prepared foods (“PFT”). The ballot measure explains that revenue from the tax would be split between the District and the City, and would be used to fund emergency services, operations and capital projects;

**Whereas**, the parties have the authority to enter into this agreement pursuant to their respective Charter and Principal Acts, and ORS 190.003 through 190.030;

**Whereas**, the purpose of this Agreement is to clarify when and how the parties will split the revenue from the PFT.

## **Agreement**

### **SECTION 1 DISTRIBUTION OF TAX REVENUE**

**1.1 Distribution of Tax Revenue.** Distribution amounts will be determined as follows:

- A. City collects tax revenue from businesses subject to the provisions of CBMC 3.30.
- B. The total funds collected will be equally divided between the District and the City as a first step. The District’s portion of the collected revenue will be referred to as “District Distribution.” Second, the Administrative Fee will be deducted from the District Distribution. Third, the District’s portion of the Qualified Expenses will be deducted from the remaining District Distribution. The District Distribution after deductions for Administrative Fee and Qualified Expenses will be referred to as the “Adjusted District Distribution.”

- C. City shall provide District with supporting documentation of collected tax revenue and detailed invoices delineating deducted Qualified Expenses with each distribution.
- D. The District is not entitled to any other funds outside the Adjusted District Distribution.

## **1.2 Administrative Fee**

The Administrative Fee covers all routine and on-going costs associated with collecting and enforcing the tax. These costs include: staff and clerical time, postage and equipment costs, and enforcement costs in municipal court. The Administrative Fee will be five percent (5%) of the District's Distribution.

**1.3 Qualified Expenses.** Qualified Expenses are non-routine costs associated with collecting and enforcing the tax, which, to the extent practicable, have been previously discussed between the parties, such as:

- A. Grant funding for businesses (for example, grants for point of sales system updated or any future grant program directed at relieving impact of tax). Any grant program will be agreed to in writing prior to implementation.
- B. Legal expenses incurred by City related to defending legal challenges to the PFT, as discussed in Section 2.2, and those retrospective legal expenses incurred to place the PFT on the ballot, including drafting CBMC chapter 3.30, drafting the resolution and ballot title, advising on materials related to the PFT and other similar legal expenses, currently estimated at \$20,000 total. The City will keep the District advised of any legal challenges, but does not require District agreement or approval to incur expenses in defending the PFT.
- C. Research expenses incurred by City. The research expenses will be agreed to in writing prior to implementation.
- D. Any other unanticipated and necessary expenses incurred by City related to the PFT that are not part of the Administrative Fee. The City will endeavor to discuss expenses with the District prior to implementation whenever practicable.

For the Qualified Expenses that require prior approval from the District, the City will provide notice of the Qualified Expenses in writing. The District then has fourteen (14) calendar days to respond to the notification. If the District fails to do so, the expenses will be deemed approved. The District may not unreasonably

withhold approval.

Qualified Expenses will be split equally between the parties.

**1.4 Distribution Timing.** City shall distribute Adjusted District Distribution to District within forty-five (45) days after collection from businesses.

**1.5 No Guarantee.** City does not guarantee District any minimum funding. Adjusted District Distributions are based on collections, Qualified Expenses and Administrative Fees, as described in Sections 1.2 and 1.3, above.

## **SECTION 2 CITY OBLIGATIONS**

**2.1 Collect and administer tax.** The City will collect and administer the tax as described in CBMC chapter 3.30.

**2.2 Defend Legal Challenges.** City retains sole responsibility to manage legal challenges to any aspect of the PFT, including implementation, amendments, collection, and enforcement.

**2.3 Amendments to Chapter 3.30.** City retains sole authority to amend any section of the CBMC, including chapter 3.30. Prior to making any significant amendments to chapter 3.30 that would impact the District's benefits, the City will notify the District and provide an opportunity for discussion; however, the City retains the sole authority to amend.

## **SECTION 3 DISTRICT OBLIGATIONS**

**3.1 Use of Funds.** The District will ensure that PFT revenue primarily benefits the residents and visitors of the City of Cannon Beach. Provided no changes in levy funding outside of the District's control, the Parties agree that the PFT funds are to be used for services over and above what the District currently provides the residents and visitors of the City of Cannon Beach, not to replace those services and funding sources. The Parties understand "primarily" to mean almost exclusively.

**3.2 Presentation to City Council.** The District Board and representative(s) will present twice a year (March and September) to the City Council on its use of PFT funds. The District shall describe in detail what projects or other uses the District was able to undertake because of those funds. Specifically, at the presentation in March, the District will detail how the District plans to utilize the Adjusted District

Distribution for operations that would not be possible but for the funding for the coming fiscal year. In September, the District will explain how the Adjusted District Distributions were used during the prior fiscal year.

**3.3 Audit.** During normal business hours and after providing at least two weeks advance, written notice to the District, the City auditor may examine books, papers and accounting records related to the District's use of the District Adjusted Distribution Revenue to verify the District's use of the funds.

## **SECTION 4 TERM AND TERMINATION**

**4.1 Term.** This Agreement is effective on November 3, 2021, provided the PFT is approved by voters, and will remain in effect until terminated pursuant to this Agreement.

**4.2 Termination With Notice.** This Agreement may be terminated by either Party, without cause, by the terminating Party giving the other Party written notice of its intention to terminate this Agreement. Such notice shall be given at least three (3) years prior to the effective date of the termination, although, by mutual consent of the Parties, this agreement may be terminated on shorter notice.

**4.3 Termination Without Notice.** Either Party may terminate the Agreement without a notice requirement under the following conditions:

- A. City, after complying with the dispute resolution process outline in Section 9 below, determines the District is not using the Adjusted Distributions primarily for the benefit of Cannon Beach residents and visitors.
- B. City is legally prohibited by court order from implementing or collecting the PFT.
- C. The District annexes more than ten percent (10%) of its current size from the date of this Agreement (Major Annexation), dissolves, merges or consolidates with any other organization, or otherwise changes its structure of government without following the process outlined in Section 8.
- D. The District no longer provides services within the City's jurisdictional borders.

**4.4 Mutual Agreement.** This Agreement can be terminated by mutual agreement of the parties with thirty (30) days' written notice.

## **SECTION 5 AMENDMENTS**

All amendments to this agreement must be in writing and signed by both entities.

## **SECTION 6 LIABILITY/INDEMNITY**

- 6.1 To the extent permitted by the Oregon Tort Claims Act and the Oregon Constitution, Cannon Beach RFPD shall defend, indemnify and hold harmless City of Cannon Beach, and each of City of Cannon Beach elected officials, officers, agents and employees, from and against any and all losses, claims, actions, costs, judgments, damages or other expenses resulting from injury to any person (including injury resulting in death) or damage to property (including loss or destruction), of whatever nature, arising out of or incident to the performance of this agreement by Cannon Beach RFPD, including, but not limited to, any acts or omissions of Cannon Beach RFPD officers, employees, agents, volunteers and others, if any, designated by Cannon Beach RFPD to perform services under this agreement.
- 6.2 To the extent permitted by the Oregon Tort Claims Act and the Oregon Constitution, City of Cannon Beach shall defend, indemnify and hold harmless Cannon Beach RFPD, and each of its officers, agents and employees, from and against any and all losses, claims, actions, costs, judgments, damages or other expenses resulting from injury to any person (including injury resulting in death) or damage to property (including loss or destruction), of whatsoever nature, arising out of or incident to the performance of this agreement by City of Cannon Beach, including but not limited to, the acts and omissions of City of Cannon Beach employees, agents, volunteers and others, if any, designated by City of Cannon Beach to perform services under this agreement.
- 6.3 This section does not confer any right to indemnity on any person or entity other than the entities, waive any right of indemnity or contribution from any person or entity; or waive any governmental immunity.
- 6.4 The obligations of Cannon Beach RFPD and City of Cannon Beach under this section will survive expiration or termination of this Agreement.
- 6.5 Both entities agree to maintain insurance levels or self-insurance in accordance with ORS 30.282, for the duration of this agreement at levels

necessary to protect against public body liability as specified in ORS 30.269 to 30.274.

6.6 The parties understand that legal expenses related to addressing legal challenges to the PFT are Qualified Expenses pursuant to this agreement.

## **SECTION 7 NOTICE**

Any notice required or allowed to be given by this agreement shall be given by hand delivery or by placing said notice in the United States Mail, first class postage pre-paid, and addressed as follows:

To City of Cannon Beach                      City Manager, or designee

To Cannon Beach RFPD                      Fire Chief, or designee

Said notice shall be deemed to be received when hand delivered or, if mailed, three (3) days after said mailing. If the mailing address of either Party changes, notice of the change of address shall be given to the other district in writing.

## **SECTION 8 CHANGES IN DISTRICT ORGANIZATION**

The District shall inform the City of any proposed changes in organization, such as Major Annexation, dissolution, merger or consolidation, as soon as practicable. Once the District determines that such a change may occur, the parties shall use the following process to determine how the City and District's relationship will continue.

8.1 The governing body of the proposed successor/surviving district or the governing bodies of the affected local governments considering such an organization change shall meet with the Cannon Beach City Council and shall present to the City Council how the proposed change will impact the residents and visitors of the City of Cannon Beach. The presentation shall include, at a minimum, how the change will impact service delivery within Cannon Beach, response times, personnel, equipment and District locations.

8.2. Within ninety (90) days of the presentation to the City Council, the City shall present any amendments to this Agreement to the District ("Successor Agreement"), specifically addressing how the changes in organization will impact

## Section 1 – Distribution of Tax Revenue.

8.3 If the District moves forward with the proposed changes in the organization, the Successor Agreement shall replace this Agreement when the change takes effect

## **SECTION 9 DISPUTE RESOLUTION**

The Parties hereby agree that resolution of any and all disputes arising out of the terms of this Agreement or interpretation thereof shall follow a prescribed process beginning with negotiation and potentially moving to mediation, provided the dispute remains unresolved. Within thirty (30) days following receipt of written notice regarding a dispute, the Parties shall assign a representative to participate in good faith negotiations for a period not to exceed sixty (60) days.

If after the sixty (60) day period of negotiation (or a period not to exceed ninety (90) days following the original date of receipt of notice regarding the dispute), the dispute(s) cannot be resolved, the Parties may agree to submit the matter to non-binding mediation. In that case, the Parties shall attempt to agree on a mediator in a period not to exceed thirty (30) days (or a period not to exceed one hundred twenty (120) days following the original date of receipt of notice regarding the dispute) and proceed accordingly.

After exhaustion of the preceding processes, either Party may terminate this Agreement pursuant to Section 4 above and/or bring an action in Clatsop County Circuit Court enforcing the terms of this Agreement.

## **SECTION 10 GENERAL PROVISIONS**

**10.1 Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clatsop County without giving effect to the conflict of law provisions thereof. Any claim between the District and the City that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clatsop County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this

section be construed as a waiver by either Party of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

**10.2 Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.

**10.3 Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.

**10.4 Access to Records.** Both Parties shall retain, maintain, and keep accessible all records relevant to this Agreement (“Records”) for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. Both Parties shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, each Party shall permit the other Party’s authorized representatives’ access to the Records at reasonable times and places for purposes of examining and copying with two (2) weeks’ notice.

**10.5 Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.

**10.6 Integration, and Waiver.** Except as otherwise set forth herein, this



Agreement constitutes the entire agreement between the Parties. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.

**10.7 Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

**10.8 Relationship of Parties.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.

**10.9 No Third-Party Beneficiary.** The City and the District are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

**10.10 Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.

**10.11 No Attorney Fees.** 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.

**SECTION 11 EXECUTION**

The execution of this agreement by each of the undersigned is done pursuant to the authorization of the governing body of each Party, voted upon in an open meeting in accordance with Oregon Law, and each person executing this agreement hereby certifies that they are authorized to execute this agreement on behalf of City of Cannon Beach and Cannon Beach RFPD. In witness whereof, the entities, through their duly authorized representatives, have executed this Agreement on the date or dates set forth below.

**Cannon Beach Fire District**

By: \_\_\_\_\_  
Name: Marc Reckmann  
Title: Fire Chief

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

**City of Cannon Beach**

By: \_\_\_\_\_  
Name: Bruce St. Dennis  
Title: City Manager

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