

City of Ketchum, Idaho

P.O. Box 2315 Ketchum, ID 83340 (208) 726-3841 Fax: (208) 726-8234



April 30, 2013

Mayor Hall and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Hall and City Councilors:

Fifth Street Underground Project

Attachment 1: Map of proposed area of underground, "Fifth Street Underground Project"
Attachment 2: Proposed Streetlight locations

Introduction/History

The City voters in 2003 passed a ballot measure to increase the Idaho Power Franchise Fee from 1% to 3%. Revenues were to be used generally as follows:

- 66.6% shall be used for undergrounding of overhead power lines in the southern entrance to town and in the commercial core.
- 16.7% shall be used for maintenance, operation, and conversion of street lights to comply with the Dark Sky Ordinance.
- 16.7% shall be used for improvements in residential areas.

Staff has been working with Idaho Power for about six months to determine an appropriate project that can be completed with available funds. In October, the following projects were considered:

- 1) 5th Street from Spruce to the alley across Main Street. This project is considered a high priority, as the lines are very visible, and cross both Main Street with a feeder line in the alley behind City Hall that crosses 4th Street. This project could be split in two, with the west half from Walnut Street across Main as the high priority stretch. At grade facilities can be placed on city properties. Alleys poles from 5th to the south discussed, but some are optional based on costs, complexity, and are a lesser priority.
- 2) Highway 75/Rivers Street- rejected at this time due to very high costs and likelihood that developers will pay for this stretch with new hotel development.
- 3) YMCA/Bike path to the end of SV Road- The entire corridor was discussed in the context of a future revenue bond or contribution from Warm Springs Ranch Resort. The section from the Bike Path to Rotary

- Park (approx) may be an easy and visible stretch; need further cost estimates to determine. Plenty of good sites for transformer locations due to the city land ownership in this area.
- 4) Alley west of Helm Station south to approx. First Street. High visibility but complicated due to limited locations for at-grade facilities and CenturyTel feed. May be a good project for developer participation at 2nd Street.
 - 5) Alley west of Leadville from Chapter One bookstore north to Sun Valley Road. Complicated by limited area for transformer locations. May be able to approach property owners for an easement in exchange for increased property values associated with undergrounding.
 - 6) Alley between Washington and First Avenue from Sun Valley Road to 6th. Limited area for transformer locations.
 - 7) Warm Springs Road, west of Skiway Drive. A request was made in this area by an individual property owner. The power line, which runs on the north side of the road, does not visually impact as many property owners as the various other options under consideration.

Current Report

The Mayor and staff are recommending as a Phase I the portion of 5th Street from the alley west of Main Street to Walnut Avenue as shown on Attachment 1. Note that this also includes some of the power poles in the alley behind City Hall, south across 4th Street to Premier Cleaners, but not all of the poles in this alley due to costs of relocating individual service and difficulty of transformer locations.

A preliminary neighborhood/business meeting was conducted on April 25, 2013 at City Hall. Ten neighbors/businesses attended; all were in support of the project. A letter was sent to all affected parties on April 26, 2013, notifying them of the May 6, 2013 Council meeting regarding this project.

Based on the neighborhood meeting, the preference from the affected parties is to start construction as soon as possible (third week in May) and to avoid construction between the 4th of July and Labor Day. Idaho Power estimates the project will take eight weeks to complete. If it is not completed before the 4th of July, Idaho Power has suggested that they could lay the conduit and repair the streets/alley before the 4th of July, and come back after Labor Day to pull the wire through the conduit and remove the poles. In any case, it is proposed that the project be completed by fall 2013. Cyndi Bradshaw of Idaho Power will attend the City Council meeting to answer specific questions regarding the project.

Financial Requirement/Impact

The Franchise Fund started the fiscal year (October 1st) with a balance of \$221,088. Franchise payments, totaling \$247,451 are projected to be received from Idaho Power this fiscal year. Thus, the fund is estimated to accumulate \$468,539 by the close of the fiscal year..

Because underground projects are costly, staff is recommending that the Council consider funding projects in 2-year increments. Assuming that the City receives a similar amount next year as it received this year (\$247,000), the two-year budget is as follows:

Table 1: FY 12/13 and 13/14 Underground Funds

Year	South Entrance/Commercial Core	Street Lights/Dark Sky	Improvements in Residential areas	Total per Fiscal Year
FY-12/13 to date	\$312,047	\$78,246	\$78,246	\$468,539
FY-13/14	\$164,502	\$41,249	\$41,249	\$247,000
Total	\$476,549	\$119,495	\$119,495	\$715,539

Idaho Power has prepared an initial cost estimate of \$376,000 to underground the lines shown on Attachment 1. This does not include street lighting. Note that some of the funds in the street lighting category of the Franchise Fund have been allocated towards the Wayfinding Project for lights along First Street and Washington Avenue. Attachment 2 shows the lights associated with each project. The lighting costs are as follows:

Table 2: Street Light/Dark Sky compliance, Walkable Ketchum and 5th Street Underground

Project	Purchase of lights	Installation and Engineering costs	and soft	Total Cost
Walkable Ketchum	\$51,083	\$18,917		\$70,000
5th Street Underground	\$45,407	\$13,525		\$58,932
Total	N/A	N/A		\$128,932

The proposed 5th Street project passes several residences, in the 511 Building and at 5th and Walnut. Therefore, staff believes it is justifiable to spend a small amount (\$6,964) out of the category, "Improvements in Residential Areas" over the two year period noted in Table 1.

In summary, the costs for the proposed 5th Street Underground are as follows"

Table 3: Fifth Street Underground Project costs

Idaho Power Estimate	\$376,000
Street Lights purchase and installation	\$ 58,932
Contingency @ 9% of project total	\$ 39,144
Total	\$474,076

Recommendation

I respectfully recommend that the City Council approve the expenditure of \$474,076 over a 2-year period from the City's Underground Fund for the 5th Street Underground project, and authorize the Mayor to sign relevant documents with Idaho Power.

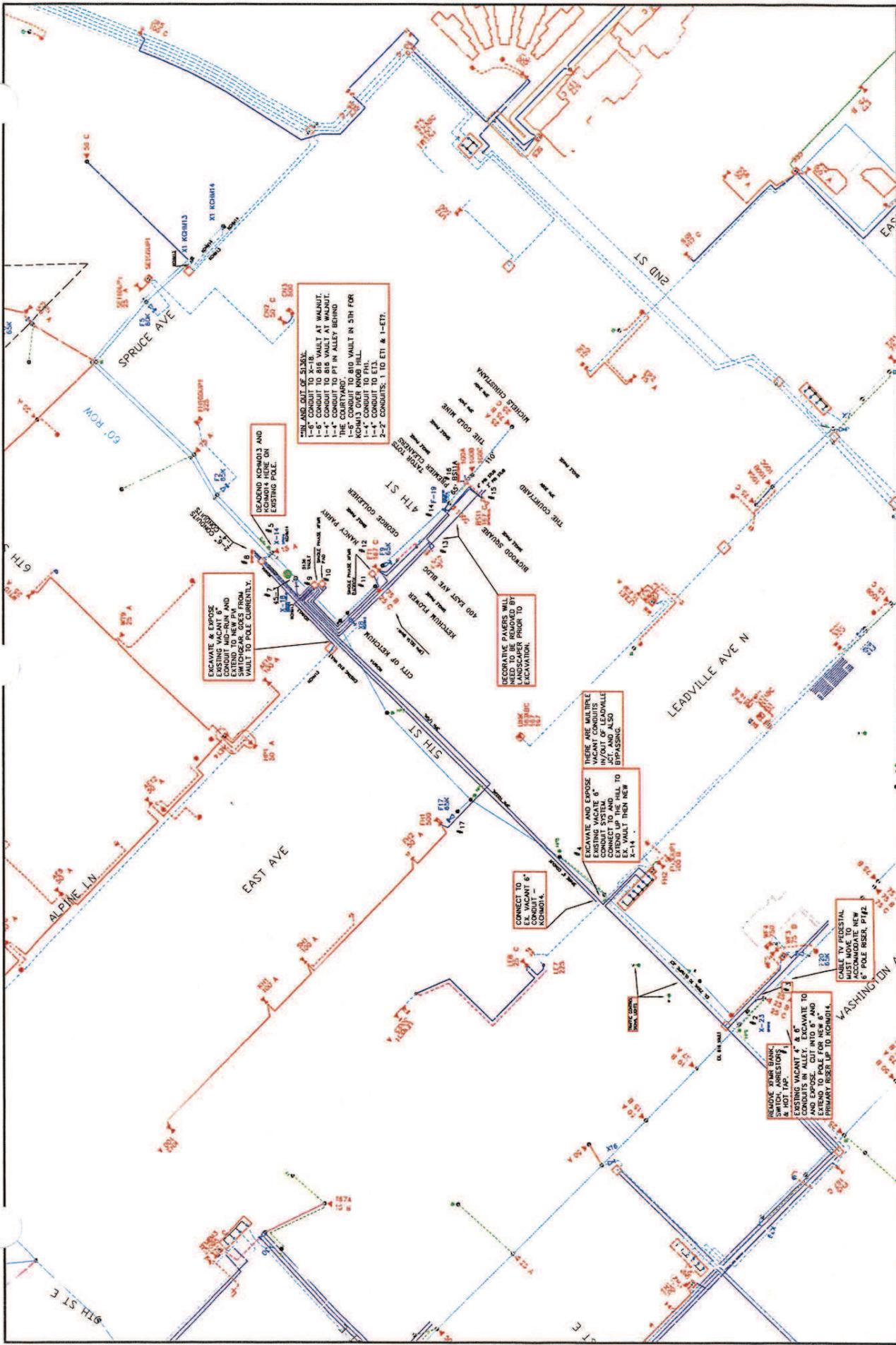
Suggested Motion

"I move to approve the expenditure of \$474,076 over a 2-year period from the City's Underground Fund for the 5th Street Underground project, and authorize the Mayor to sign relevant documents with Idaho Power."

Sincerely,

Lisa Horowitz
Community and Economic Development Director

ATTACHMENT I



THIS AND OUT OF SERVICE.
 1-6\"/>

EXCAVATE & EXPOSE
 EXISTING VACANT 6\"/>

EXCAVATE AND EXPOSE
 EXISTING VACANT 6\"/>

CONNECT TO
 CONDUIT 6\"/>

RELOCATE PAVES WILL
 BE LANDSCAPER PRIOR TO
 EXCAVATION.

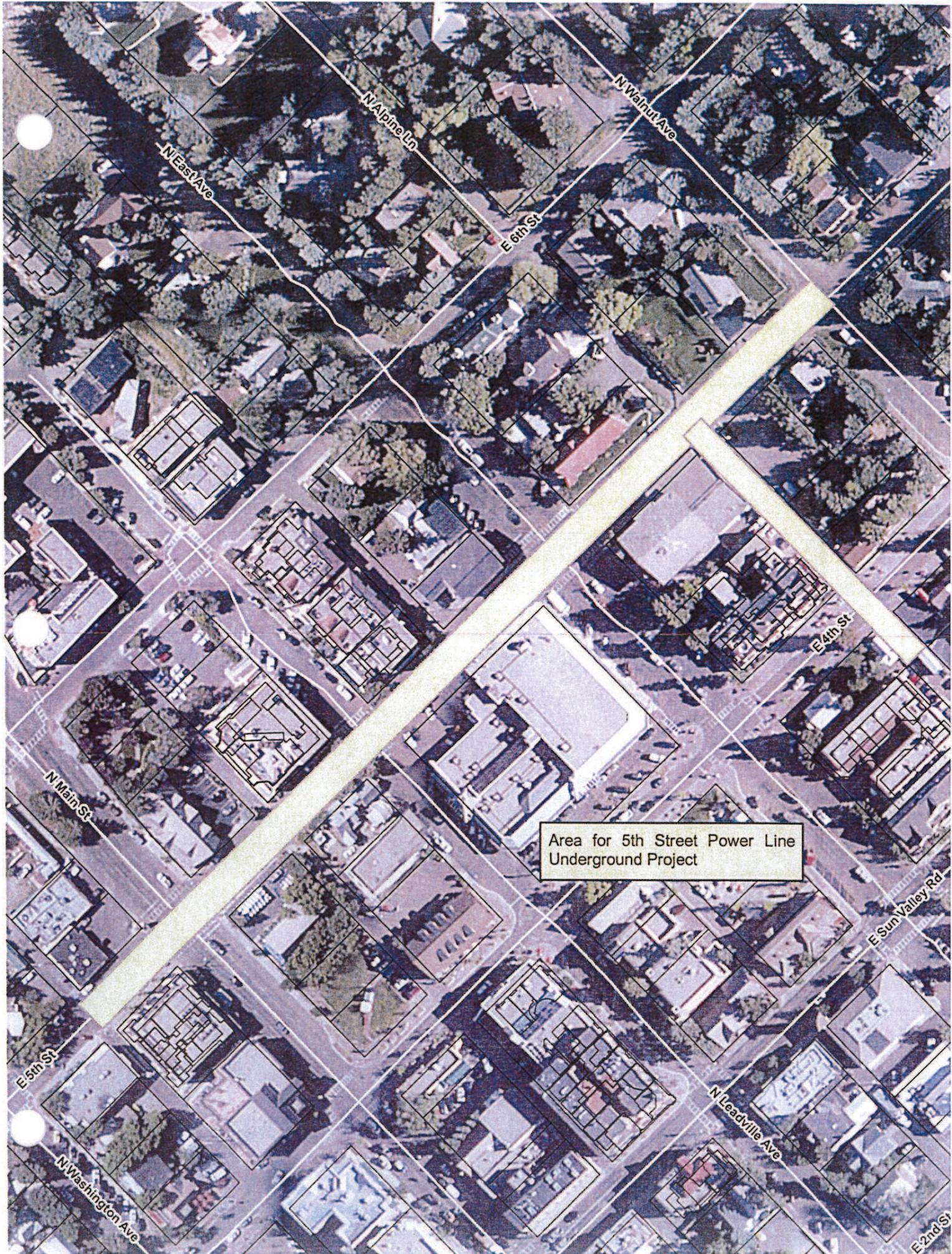
EXCAVATE AND EXPOSE
 EXISTING VACANT 6\"/>

REMOVE YOUR BANK
 SWITCH ARRESTORS
 & HOT TAP.

REMOVE EXISTING 6\"/>
 AND EXPOSE. CUT INTO 8\"/>

ABLE TO REINSTALL
 ACCOMMODATE NEW
 6\"/>

Job No: 13-0000097172 Additional Description: AND PADS FOR OVERHEAD FACILITIES TO BE REMOVED IN FALL 2013. Additional Description:	Customer: For By: JACULUS Date: _____ Arch By: _____ Date: _____	Designer: CDC0468 Design No: 0000097172 Work Order No: 27384457 Date: _____	Scale: 1" = 100' Sheet: 1 of 1
Surveyed as per GPS: YES Pre-built Date: _____ Built as Designed: _____ Construction Date: 12.5.13 Operating Voltage: _____	Feeder Map No: KCHM13 One Day: 04N Ring: 18E Sec: 8M Section: 18 Zone: 8000E	Surveyed as per GPS: YES Pre-built Date: _____ Built as Designed: _____ Construction Date: 12.5.13 Operating Voltage: _____	Scale: 1" = 100' Sheet: 1 of 1



Area for 5th Street Power Line
Underground Project

STREETLIGHT LOCATIONS

Streetlights 1-8 & 15 are a part of the Walkable Ketchum 2013 project

Streetlights 9-14 and the non-solar streetlight are part of the 5th Street Under-grounding Project.

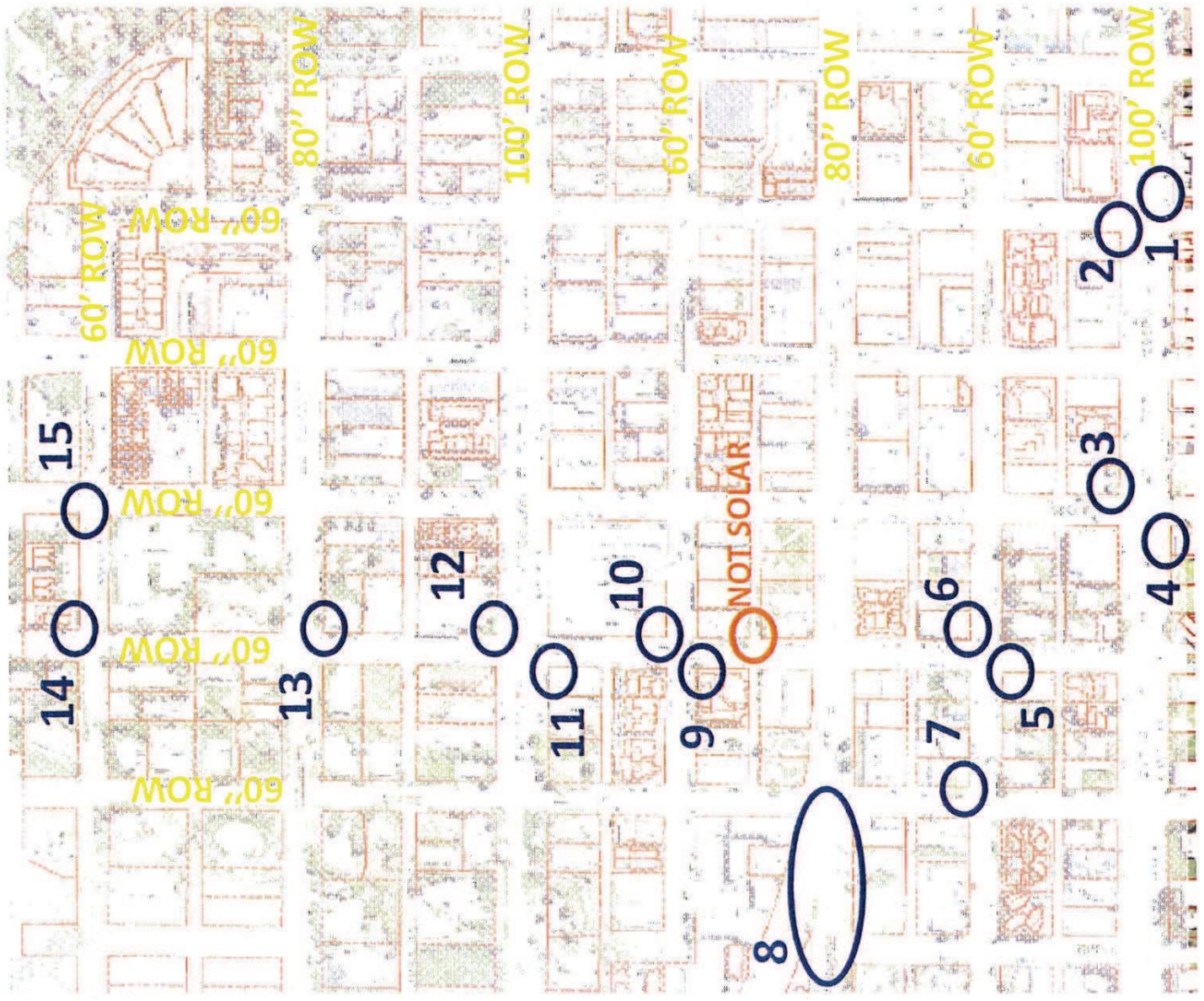
Priority for the streetlights in the Walkable Ketchum Project was given based on the Streetlight ICDGB priority plan approved by City Council and Submitted in the ICDGB grant application.

Reasons for selecting the 9 prioritized in this phase include:

- Streetlights 1-4,**
First Avenue night life including Magic Lantern, and Gallery Walk
- Streetlights 5-7**
Restaurant nightlife. No streetlights currently exist.
- Streetlight 8**
Difficult 3 way intersection. Balances out 2 streetlights on S. side of 6th St.
- Streetlight 15**
Parking lot and map kiosk at the end of 4th.

WALKABLE KETCHUM PROJECT 2013

Dale Bates 720-3609



City of Ketchum, Idaho

P.O. Box 2315 Ketchum, ID 83340 (208) 726-3841 Fax: (208) 726-8234



May 6, 2013

Mayor Hall and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Hall and City Councilors:

**Recommendation to Hold Public Hearing and to Adopt Ordinance No. 1106
Amending the FY12-13 Annual Appropriation Ordinance
By Appropriating Additional Monies and Specifying Authorized Activities**

Introduction/History

Per Idaho Code 50-1003 the City Council of each city shall, prior to the commencement of each fiscal year, pass an Ordinance to be termed the annual appropriation ordinance.

On September 4th 2012 the Council adopted Ordinance No. 1099 entitled the Annual Appropriation Ordinance for the Fiscal Year Beginning October 1, 2012, appropriating to the various budgetary funds, sums of money deemed necessary to defray all necessary expenses and liabilities within each fund for the ensuing fiscal year, authorizing a levy of a sufficient tax upon the taxable property and specifying the objects and purposes for which said appropriation is made, and providing an effective date.

The city council of any city may, by the same procedure as used in adopting the original appropriation ordinance at any time during the current fiscal year, amend the appropriation ordinance as a result of an increase in revenues from any source other than ad valorem tax revenue. A city whose property tax certification is made for the current fiscal year may amend its budget and annual appropriation ordinance, pursuant to the notice and hearing requirements of Idaho Code 50-1002.

Current Report

Ordinance Number 1106 is an ordinance, amending Ordinance Number 1099, the Annual Appropriation Ordinance for the Fiscal Year beginning October 1, 2012 and ending September 30, 2013. Ordinance No. 1106 outlines the Proposed Revenues and Proposed Expenditures in the amount of \$167,627, for the creation of the Hemingway Park Splash Pad.

Financial Requirement/Impact

If adopted by the Council on May 6, 2013, the budget amendment would appropriate additional monies in the sum of \$167,627.

Recommendation

I respectfully recommend that the Ketchum City Council hold the Public Hearing and adopt Ordinance No. 1106 Amending the FY12-13 Annual Appropriation Ordinance By Appropriating Additional Monies with the Suspension of the Rules.

Recommended Motion

1st motion:

"I move to waive the three readings of Ordinance No. 1106, and read by title only, Pursuant to Idaho Code 50-902."

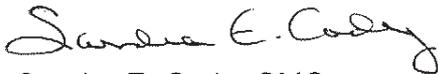
(Roll call not required)

2nd motion:

"I move to adopt Ordinance No. 1106, AN ORDINANCE OF THE CITY OF KETCHUM, IDAHO, AMENDING ORDINANCE NUMBER 1099, THE ANNUAL APPROPRIATION ORDINANCE FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2012, AND ENDING SEPTEMBER 30, 2013: APPROPRIATING ADDITIONAL MONIES TO BE RECEIVED BY THE CITY OF KETCHUM, IDAHO, IN THE SUM OF \$167,627; AND, PROVIDING AN EFFECTIVE DATE."

(Roll call required)

Sincerely,



Sandra E. Cady, CMC
City Treasurer/Clerk

ORDINANCE NO. 1106

AN ORDINANCE OF THE CITY OF KETCHUM, IDAHO, AMENDING ORDINANCE NUMBER 1099, THE ANNUAL APPROPRIATION ORDINANCE FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2012, AND ENDING SEPTEMBER 30, 2013: APPROPRIATING ADDITIONAL MONIES TO BE RECEIVED BY THE CITY OF KETCHUM, IDAHO, IN THE SUM OF 167,627; AND, PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF KETCHUM, IDAHO:

SECTION 1. That Ordinance Number 1099, the Annual Appropriation Ordinance for the City of Ketchum, Idaho, for the fiscal year commencing October 1, 2012, and ending September 30, 2013, be and the same is hereby amended as follows:

That the additional sum of 167,627 be appropriated out of the revenues received from:

GENERAL FUND:	
Donations-Splash Pad	26,460
Refunds & Reimbursements	141,167
<u>TOTAL APPROPRIATION</u>	<u>167,627</u>

To be used for the following authorized activities:

GENERAL FUND:	
Hemingway Park Splash Pad Project	167,627
<u>TOTAL APPROPRIATION</u>	<u>167,627</u>

SECTION 2. This Ordinance shall be in full force and effect from and after its passage, approval and publication.

PASSED by the City Council and APPROVED by the Mayor of the City of Ketchum, Idaho, this 6th day of May 2013.

ATTEST:

Randy Hall
Mayor

SANDRA E. CADY, CMC
City Clerk

Publish: Idaho Mountain Express
May 15, 2013

City of Ketchum, Idaho

P.O. Box 2315 Ketchum, ID 83340 (208) 726-3841 Fax: (208) 726-8234



April 30, 2013

Mayor Hall and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Hall and City Councilors:

Idaho State Tax Commission Enforcement of Ketchum local option tax

Introduction/History

Currently, the City of Ketchum has been collecting and administering its local option tax ("LOT") taxes in-house utilizing one staff member of the clerk's department. It is estimated she spends roughly 75% of her time carrying out these tasks. In 2011, the City hired the accounting firm, Denning, Downey & Associates, P.C. to conduct a LOT audit (attached hereto as "**Exhibit 1**"). The report found a high rate of failure to report and errors in calculating LOT in high risk entities such as the construction industry, internet based sales, vacation rentals, and entities with large cash sales. The report concluded significant non-compliance and difficulty in collection and enforcement.

Current Report

As reported in March, our firm has been meeting with members of the Idaho State Tax Commission and staff to discuss a possible collection agreement with the Tax Commission and the City of Ketchum ("City") to collect its local option tax under Title 50, Chapter 10 Idaho Code. Specifically, I.C. § 50-1049 provides that any city authorized to impose a LOT, may contract with the state tax commission for the "collection and administration of such taxes". See I.C. § 50-1049(a)(attached hereto as "**Exhibit 2**"). Under this section, the city has a right to review and audit the records of collection maintained by the commission and taxpayer returns to the tax. *Id.* The city always retains the right to administer and collect the tax itself as well. *Id.*

At the outcome of that city council meeting, our office was directed to continue working with the Idaho State Tax Commission and its legal counsel to finalize a Memorandum of Understanding pursuant to the terms discussed herein.

City attorneys, Susan Buxton and Chereese McLain, along with City Administrator, Gary Marks, and Mayor Randy Hall have met with the state tax commission and/or its staff and legal counsel on the following dates: August 6, 2012, August 31, 2012, September 21, 2012, November 9, 2012, December 13, 2012, and January 18, 2013. While there are over a dozen cities that collect a local option tax under Title 50, Chapter 10 Idaho Code, the City of Ketchum is the first city to approach the tax commission to explore the option of utilizing the tax commission for the collection and administration under I.C. § 50-1049. Initially, members of the tax commission expressed some concerns about sales versus use tax and the city's ability under the LOT statutes to only collect sales tax. At the request of the commission, our firm issued a memo analyzing

the authority to collect sales taxes as well as what constitutes a sales tax. It is attached hereto as “**Exhibit 3**”. Based on our subsequent meetings with the commission and staff, it is our belief that any concerns regarding that matter were taken care of with that memo.

These figures are based on the commission’s best estimates of what the actual annual costs will be to perform: 1) initial set-up into our computerized systems and creation/modification of forms and processes; 2) process the estimated number of transactions from your expected taxpayer base; and 3) an additional audit premium to perform steps to identify City of Ketchum destination sales from taxpayers outside the city boundaries. The tax commission has estimated a start-up date of January 1, 2014, with the costs occurring as shown below with a further breakdown in a spreadsheet attached hereto as “**Exhibit 4**”:

	FY2014	FY2015+
Set-up and design (one-time)	\$ 68,600	
Transaction based average cost (half year first year)	\$ 46,400	\$ 92,800
Audit premium sales destination steps (half year first year)	<u>\$ 50,000</u>	<u>\$100,000</u>
Total Administration Fees	\$165,000	\$192,800

The suggested timeline is to start in July 2013 with payment of \$68,600 to the tax commission, which is the one-time set-up and design in order for I.T. to make changes in their program software, etc. By August 2013, the tax commission is prepared to begin identifying the tax base and incorporating Ketchum information into their electronic filing system. They will have returns going out by January 2014 and begin educating the public and providing information. As part of the audit process, the tax commission will be able to identify taxpayers that are found in a “use tax” audit and then can identify the retailers and conduct a spin-off audit and find the retailers that may be subject to Ketchum’s LOT. The tax commission auditor stated he believed that a large majority of the current missing LOT revenues from the construction industry will be identified once they identify the retailers and educate them. Further, the tax commission has recently finished an informational handout on VRBO’s and will also work in identifying these entities as part of their audit effort. The handout is attached hereto as “**Exhibit 5**”.

The remaining FY 2014 owing, \$96,400, would be paid out of the reimbursement from collected tax revenue. Thereafter, pursuant to terms of an MOU, the tax commission would reimburse their costs on a quarterly basis. The standard practice used by the tax commission for other entities (auditorium districts, county local option) is to withhold the fees from distributions on a quarterly basis in the months of July, October, January, and April.

The tax commission provided us with an additional breakdown of what the “audit premium sales destination steps” would include. As shown above, the transaction based average cost to implement the LOT is \$92,800 and results in an estimated 7,800 transactions. The additional audit efforts for \$100,000 annually can be seen in “**Exhibit 6**”. It includes \$10,000 in estimated travel and an estimated additional 2,500 hours spent on sales/use audits statewide for Ketchum destination sales. All together, the proposal is for around 2.5 FTE’s from the state tax commission staff; however, it would actually be several staffers from around the state that would be conducting these audits.

The tax commission strongly believes that in order for the tax commission to fully identify the full tax base, conduct enough audits to identify non-payers, etc. the commission would need around 3 years in order for the City of Ketchum to see the full effect of the tax commission implementation. However, the MOU will provide the ability for the City to withdraw from the MOU each fiscal year.

The scope of services would be for the administration, audit, collection, and enforcement of Ketchum's LOT. We discussed options about a smaller scope of services but once we went through how their audit program and software works – there is little ability for the tax commission to do only part of the administration. However, the suggested scope of services will not completely nullify the current City employee. There are tasks for the current City employee to continue doing for LOT administration, including, the direct interface with taxpayers.

Financial Requirement/Impact

The estimated financial impact for FY 2014 is \$68,600, thereafter it would \$192,800 annually to be paid directly from reimbursement of LOT taxes.

Recommendation

I respectfully recommend the City Council approve the MOU provided with the Idaho State Tax Commission for the administration, collection, and enforcement of City LOT to commence July 1, 2013 with first collection beginning January 1, 2014.

Suggested Motion

"I move to authorize the mayor to execute the Memorandum of Understanding with the Idaho State Tax Commission."

Sincerely,

Cherese McLain
City Attorney

- Exhibit 1 Denning, Downey & Associates, P.C. report
- Exhibit 2 I.C. § 50-1049
- Exhibit 3 MSBT memo analyzing LOT tax
- Exhibit 4 Excel sheet tax commission costs
- Exhibit 5 VRBO Handout
- Exhibit 6 Excel sheet Additional Audit Breakdown

MEMORANDUM OF UNDERSTANDING
BETWEEN
IDAHO STATE TAX COMMISSION
AND CITY OF KETCHUM
REGARDING COLLECTION AND ENFORCEMENT
OF LOCAL OPTION TAXES
OF CITY OF KETCHUM LOCAL OPTION SALES TAXES

On this ____ day of _____, 2013, the Idaho State Tax Commission, (hereinafter “Commission”) and City of Ketchum (hereinafter “City”) enter into this Memorandum of Understanding to provide for the Commission to collect and remit the City of Ketchum Local Option Sales Tax (hereinafter the City tax) on behalf of the City.

The City has enacted Ordinance 712 authorizing the imposition of a City Local Option Sales Tax at the rate of one percent (1.0%) of all sales taxable pursuant to Chapter 10, Title 50, Idaho Code. The City is authorized to enact the ordinance pursuant to Chapter 10, Title 50, Idaho Code. Ordinance 712 imposes the following taxes:

- A municipal sales tax is imposed upon each sale at retail within the city of Ketchum, Idaho, at the rate of one percent (1%) of the sales price of all property subject to taxation under Idaho Code section 63-3601 *et seq.*, Idaho sales tax act, including subsequent amendments, except on the sale of “groceries” (defined in this section) and motor vehicles which are titled by the Idaho department of motor vehicles. For the purpose of this chapter, “groceries” means any edible food or foodstuffs intended for human consumption, except: 1) alcoholic beverages; 2) tobacco; and 3) any food product which is prepared and sold for consumption at any "eating place" as defined in Idaho Code section 39-1702; or 4) any sandwiches and foods prepared and sold by retailer for immediate human consumption; or 5) any food product sold through a vending machine if the sales price is more than fifteen cents (\$0.15);
- An additional one percent (1%) hotel-motel room occupancy sales tax on receipts from all short term rental (30 days or less) charges for hotel rooms, motel rooms, condominium units, tourist homes and the like;
- An additional one percent (1%) liquor by the drink sales tax on all sales at retail of liquor by the drink including liquor, beer, wine and all other alcoholic beverages, for consumption on the premises.

A. GENERAL PROVISIONS FOR REGISTRATION AND COLLECTION

Pursuant to Idaho Code §§ 50-1049 AND and 67-2326 – 67-2333, –the City and the Commission wish to contract for the Commission to collect, report and remit the tax, on behalf of the City. Accordingly, the parties hereby agree and stipulate to the following procedures and methods for the collection and remittance of the tax with the set forth limitations:

1. The Commission will collect and administer City taxes in like manner and under the definitions, rules and regulations of the state sales tax under Chapter 36, Title 63, Idaho Code. The Commission's estimated date for implementation of administration functions is January 1, 2014.
2. The Commission will automatically issue a permit to all businesses that are located in the City of Ketchum and currently have an Idaho Sales Tax Permit. The Commission ~~shall~~will mail a letter and application to all multi-City and out-of-state Idaho Sales Tax ~~taxpayer~~permit holders seeking registration for the City tax. Upon registration, the Commission will provide location permits and return forms to the registered ~~taxpayer~~permit holders to allow for the collection and remittance of taxpayers to collect, and remit the City tax. The reporting period for each ~~taxpayer~~permit holder shall be identical to its reporting for state sales and use taxes.
3. With respect to the multi-city and out-of-state ~~taxpayer~~permit holders, if a ~~taxpayer~~permit holder does not register as a ~~taxpayer~~permit holder for the City tax, the Commission will, through the regular audit process, ~~not~~ conduct any investigation to determine whether the ~~taxpayer~~permit holder ~~does have~~ has a legal responsibility to register for the City tax, ~~but the Commission will provide to the City a list of names of those taxpayers who do not register. The Commission will have no further responsibility to ensure those taxpayers do register.~~
4. In addition, the City will provide whatever notice and publicity it believes necessary to ensure that all City ~~taxpayer~~permit holders are aware of the tax. The City will instruct ~~taxpayer~~permit holders who seek information about registration to contact the Commission. The Commission will then provide the necessary information so that these ~~taxpayer~~permit holders can register to collect and remit the City tax. In the course of its normal business activities the Commission will, when it registers a new business with physical presence in City limits for the state sales tax, notify the applicant of its filing requirement with respect to the City tax. Failure of the applicant to register for the City tax will be reported to the City, ~~and the Commission will have no further responsibility to ensure those taxpayers do register.~~
5. The Commission shall draft and prepare all necessary forms, both paper and electronic, for ~~taxpayer~~permit holders to report and remit~~pay~~ the City tax. The Commission will use all reasonable efforts to ensure all ~~taxpayer~~permit holders have such forms in time to timely file the returns.
6. The City and the Commission may agree to allow ~~taxpayer~~permit holders the ability to pay their taxes ~~by~~with a credit card or through electronic funds transfer (EFT). All costs imposed by financial institutions for the use of credit cards and/or EFT processes shall be borne by the City as an amount in addition

to the agreed upon cost for the services provided by the Commission as enumerated in this Memorandum of Understanding.

7. Subject to Section B below, upon filing and payment of the tax by ~~taxpayer~~permit holders, the Commission will deposit into a specified state bank account all City funds within twenty four (24) hours of receipt. On a ~~quarterly~~monthly basis, the Commission will transfer the receipts ~~and interest~~ net of any refunds paid and fees from the state account to a financial institution and account designated by the City.
8. If a ~~taxpayer~~permit holder files a return but does not make full payment, the Commission will ~~mail two letters to the taxpayer advising them of its payment obligations. The Commission will take no further collection activity other than sending the two letters~~follow its normal collection procedure used in cases where a sales tax liability is owed to the state.
9. ~~Within thirty days following the due date of returns, the Commission will provide a report to the City identifying the names of taxpayers who either did not file a return, or filed a return but did not make full payment, for the preceding reporting period. The Commission will undertake any audit, collection, or other enforcement action for the City as is currently undertaken for Idaho sales and use tax. Such action may include unfiled return billings, assessments, liens, and issuances of notices of deficiencies as well as bringing legal action for failure to file or pay taxes or filing claims in bankruptcy court.~~
10. ~~Other than as described specifically in this agreement, the Commission will not undertake any collection, auditing or other enforcement action on behalf of the City. This includes actions such as unfiled return billings, making assessments, filing liens, issuing Notices of Deficiency, or filing claims for unpaid taxes in bankruptcy court. However, notwithstanding the terms of this Agreement, the Commission may, upon discovery of any violations of the City tax by any taxpayer, provide notice to the City of such violations. The notice may be either written or oral. The Commission may also advise each taxpayer of their duty to comply with the City tax.~~
- 11.10. The City and the Commission shall each provide a central point of contact to act as project managers to make decisions relative to the initial system set up and on-going issues relating to specific systems issues by July 14, 2013~~4~~. If project managers need to change during the life of the project written advance notice should be give at least 15 days of the occurrence.

B. PAYMENT OF COMMISSION COSTS BY THE CITY

1. For the period January 1, 2014 through June 30, 2014, the City will pay the Commission a one-time sum of \$68,600, for set-up and development work, plus a fee for transactions costs (\$46,400) and audit premium sales destination steps

(\$50,000). The one time sum of \$68,600 will be ~~deducted from the April 2014 tax receipts and the balance of the tax receipts are paid to the City.~~ paid in advance by the City to the Tax Commission after July 1, 2013, and before September 30, 2013. The six month transaction and audit costs of \$96,400 will be deducted from the ~~July~~April 2014 tax receipts and the balance will be forwarded to the City.

2. For the period July 1, 2014 -through June 30, ~~2015~~2017, the annual fee for transaction will be \$92,800 and audit costs will be \$100,000, for a total annual fee of \$192,800. ~~If after this initial period unless~~ the Commission's costs in administering the City tax ~~increases, and then,~~ the annual fee shall be increased but the increase is limited to the amount of the cost increases incurred by the Commission. The Commission will provide written notice to the City of any cost increases by no later than April 1, ~~2015~~2017. For each year thereafter the Commission may increase the annual fee effective July of any year the Commission administers the tax but must provide written notice to the City no later than April.
3. Beginning July 1, 2014, and for each year the Commission administers the tax, the annual fee shall be deducted on a quarterly basis from the ~~October~~ tax receipts in the months of July, October, January, and April. ~~and T~~the balance will be paid to the City.

C. GENERAL PROVISIONS

- ~~1. In addition to the terms of this agreement, the City will need to enter into a separate agreement with FAST Enterprises for any processing costs associated with changes to the GenTax® software. The costs incurred by the Commission in collecting the tax for the City do not include any GenTax® software changes.~~
- ~~2.1~~ This agreement does not cover any costs to issue refunds should a court declare the City tax illegal and order refunds to ~~taxpayer~~permit holders.
- ~~3.2~~ The City may review and audit the records of collection maintained by the Commission and the returns of ~~taxpayer~~permit holders relating to such tax.
- ~~4.3~~ If any ~~taxpayer~~permit holder requests a refund from the Commission and the Commission deems the request to differ in substance from what it would see in its administration of the state sales tax act, it will be the sole responsibility of the City to accept or reject the claim, following which the Commission will act accordingly. Any ensuing protest or litigation arising from the City's decision will obligate the City, and not the Commission, to compromise, arbitration or litigation defense.

~~5.4.~~ This agreement does not obligate either party to litigate or defend in litigation any issues related to the legality of any provisions of the City tax.

~~6.5.~~ Nothing in this agreement prevents the City from collecting any tax amount due, however, all amounts collected by the City must be forwarded to the Commission for processing and deposit.

~~7.6.~~ The Commission specifically does not express any opinion on the constitutionally or legality of the City tax. Or any provisions therein.

~~8.7.~~ Any administrative process allowing for ~~taxpayer~~ permit holders to challenge any payment of the tax is not part of ~~f~~ this agreement and shall be provided for by the City in a manner consistent with Ordinance 712. The Commission shall play no role or responsibility in the administrative process.

~~9.8.~~ The Commission hereby agrees to indemnify and hold the City harmless for any errors in processing returns and posting funds to the account in the financial institution selected by the City as described in paragraph A.5. Above. Upon the discovery of any underpayment, the Commission will immediately notify the City and promptly deposit into the designated account funds equal to the underpayment. Should the Commission discover that it deposited into this account an amount greater than the City is otherwise entitled to receive, it shall immediately notify the City and provide evidence of the overpayment. The City will then either reimburse the Commission or agree to let the Commission offset the amount of the overpayment against funds paid to the City in the month following the discovery of the overpayment.

~~10.9.~~ While the parties anticipate an ongoing relationship of at least three years. ~~E~~ither party may terminate this agreement by giving written notice. The written notice must be given at least sixty (60) days prior to proposed end date.

~~11.10.~~ The Commission will use its standard business practices in the collection of this tax to minimize the impact on ~~taxpayer~~ permit holders and to maximize efficient operations.

~~12.11.~~ This agreement is intended to be the entire understanding between the parties and all terms, either expressed or implied, are incorporated herein.

12. This agreement shall be binding on the parties and the person executing this agreement on behalf of the Commission is representing he or she has the legal authority to bind the Commission and the person executing this agreement- on behalf of the City is representing he or she has the legal authority -to bind the City.

For the CITY of Ketchum, ID: _____

RESOLUTION NUMBER 13-007

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KETCHUM, IDAHO, TO CONTRACT WITH THE IDAHO STATE TAX COMMISSION FOR THE ADMINISTRATION, COLLECTION, AND ENFORCEMENT OF CITY LOCAL OPTION TAXES AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, The City has enacted Ordinance 712 authorizing the imposition of a City Local Option Sales Tax at the rate of one percent (1.0%) of all sales taxable pursuant to Chapter 10, Title 50, Idaho Code; and

WHEREAS, the City of Ketchum has retained professional auditors and CPA's to identify problems or gaps with the collection of local option taxes and have determined there are some significant deficiencies in certain industries as well as non-reporting issues; and,

WHEREAS, pursuant to Idaho Code §§ 50-1049 and 67-2326 – 67-2333, the City and the Commission wish to contract for the Commission to collect, report and remit the Ketchum local option tax.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and the Ketchum City Council enter into a Memorandum of Understanding (attached as Exhibit 1) with the Idaho State Tax Commission for the administration, collection, and enforcement of the Ketchum local option tax.

This Resolution will be in full force and effect upon its adoption and approval this 6th day of May, 2012.

CITY OF KETCHUM, IDAHO

Randy Hall, Mayor

ATTEST:

Sandra E. Cady, CMC
City Treasurer/Clerk

RESOLUTION NO.

Denning, Downey & Associates, P.C.
CERTIFIED PUBLIC ACCOUNTANTS

*P.O. Box 1957, Kalispell, MT 59903-1957
(406) 756-6879 • FAX (406) 257-7879 • E-Mail dda@ddaudit.com*

Kim M. Downey, CPA, CGFM, CFF, CITP

Robert K. Denning, CPA, CGFM, CFF, CITP

October 10, 2011

City of Ketchum
Gary Marks – City Administrator

RE: Ketchum LOT tax audit

Dear Gary,

We were engaged to audit the City of Ketchum's Local Option Tax (LOT) as described in *City Sales Tax Ordinance No. 712* dated November 20, 1997 for the Months of April, May and June 2011. The purpose of our engagement was not to provide assurances on the City of Ketchum's financial statements but to review several of the local businesses for compliance with this ordinance.

Prior Audit

In the previous audit dated February 11, 2011 I established my audit sample by first stratifying the population into the following categories:

Possible High Risk Entities

- Entities with large cash sales
- Construction industry
- Internet based sales
- Vacation rentals

Possible Low Risk Entities

- Random sample of low risk entities

As noted in that report 30% of the High Risk Entities tested did not have an adequate accounting system to support the amounts reported to the City and 56% had not properly calculated and or paid their LOT tax.

Current Audit

This audit covered the period April, May and June 2011. I changed my focus on this audit based on the results of the previous engagement. This audit was more specific and targeted the higher risk entities as follows:

High Risk Entities

- Entities that were not in compliance in the previous audit.
- Entities that were identified by the City because they either
 - o Failed to comply with previous attempts by the City to bring them into compliance.
 - o Known to operate in the City and not registered with the City.
- Entities in the construction industry. The previous audit concluded that this type of business had a higher noncompliance rate.

Unregistered businesses with the City

- Search for unregistered construction companies

Summary

High Risk Entities Tested

I called in for audit 29 entities that were identified as high risk. Of these 29 entities I noted:

- 5 failed to report LOT tax to the City representing 17.2% of my sample
- 12 had errors in reporting LOT tax to the City representing 41.4% of my sample
- 12 had no exceptions representing 41.4% of my sample.

Unregistered Businesses

One day of the audit was devoted to traveling with the City building inspector to the six (6) active construction sites around the City. From the construction sites I was able to obtain a list of 59 contractors. Of these 59 contractors, I identified 37 (62.7%) which were not registered with the City for payment of the LOT tax.

These businesses or the general contractor were notified that they must go to City Hall and register as contractors prior to performing business within the City. The list was also provided to the City for follow up.

Conclusions:

High Risk Entities

Between failure to report and errors in reporting, the sample indicated problems with 58.6% of those tested. This was not a random sample of the population and interpretation of the results should be limited to the sample and not the population of all Ketchum businesses.

I recommend that the City continue in their follow up compliance efforts on known or high risk entities.

Unregistered Businesses and Contractors

Based on the number of businesses that failed to register in my small 1 day sample it appears that the City has a significant non-compliance issue with contractors. Most of the contractors that were contacted claimed they were not liable for any tax and any reporting requirements because the tax was already paid when they purchased the materials. An audit of several of the contractors indicates that this is not the case. It is difficult or impossible to argue that ALL of the products used in the construction and furnishings of a house could or were purchased in Ketchum.

Another argument posed by contractors was, "Why should I pay when my competition from outside the City is not? The result is an unfair tax to the paying contractor's that work in the City." While not a valid argument for failure to comply with the City Ordinance it is supported by the sample above indicating a large number of businesses from outside the City are not registered and it does put an unfair bidding advantage to non-registered businesses.

Since non-compliance is common, and the loss of LOT tax revenue is potentially large, the City should consider alternative collection points of LOT tax revenue.

Once suggestion might be to collect the LOT tax revenue from the general contractor at the beginning of the project and then give the general a "waiver of LOT tax certificate". This waiver would exempt them from having to pay any LOT tax on the materials for the project. This approach would increase LOT tax revenues, provide fair bidding for subcontractors and significantly reduce the collection points of the City Clerk.

Another idea would be to require all contractors and subcontractors to be registered with the City prior to the Building Code Inspector's sign off on the final completion of the project. While this approach would get more contractors registered with the City, one possible drawback is that it doesn't address the first argument by contractors, "The tax was already paid when they purchased the materials".

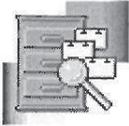
Clearly there is no easy answer to tax collection.

As always, the personnel that I worked with at the City of Ketchum were very helpful during this audit and it could not have been performed as efficiently without them. Thank you.

Thank you for the opportunity to assist the City of Ketchum.

Sincerely,

Robert K Denning CPA, CGFM, CITP, CFF



Idaho Statutes

TITLE 50 MUNICIPAL CORPORATIONS

CHAPTER 10 FINANCES

50-1049. COLLECTION AND ADMINISTRATION OF LOCAL-OPTION NONPROPERTY TAXES BY STATE TAX COMMISSION -- DISTRIBUTION. (a) A city which has levied a tax pursuant to section 50-1044, Idaho Code, may contract with the state tax commission for the collection and administration of such taxes in like manner and under the definitions, rules and regulations of the tax commission for the collection and administration of the state sales tax under chapter 36, title 63, Idaho Code. A city which levies such tax shall have the right to review and audit the records of collection thereof maintained by the commission and the returns of taxpayers relating to such tax. Alternatively, such city shall have authority to administer and collect such tax.

(b) All revenues collected by the tax commission pursuant to section 50-1044, Idaho Code, shall be distributed as follows:

(1) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized by the commission to be paid shall be paid through the state refund account and those moneys are continuously appropriated;

(2) An amount of money equal to such fee as may be agreed upon between the commission and such city for the actual cost of the collection and administration of the tax. The amount retained by the commission shall not exceed the amount authorized to be expended by appropriation by the legislature. Any unencumbered balance in excess of the actual cost at the end of each fiscal year shall be distributed as provided in paragraph (3) of this subsection;

(3) All remaining moneys received pursuant to this chapter shall be placed in an account designated by the state controller and remitted monthly to the city levying such tax.

History:

[50-1049, added 1979, ch. 221, sec. 2, p. 616; am. 1986, ch. 73, sec. 7, p. 207; am. 1994, ch. 180, sec. 93, p. 488.]

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To: City of Ketchum
From: Cherese McLain, Moore Smith Buxton & Turcke, Chtd. *MM*
Re: Local Option Tax Collection on Building Supplies
Date: November 7, 2012

Our firm has recently met with members of the Idaho State Tax Commission and staff to discuss a possible collection agreement with the Tax Commission and the City of Ketchum ("City") to collect its local option tax ("LOT") under Title 50, Chapter 10 Idaho Code. During these discussions, some issues were raised about whether the City could impose its LOT on building materials coming into the City from retailers located within other parts of the state but outside of the City. The issue is whether the tax collected would be a "sales" tax or a "use" tax under Idaho law. Based on our review of applicable statutes and case law, we conclude that the tax applicable to such transactions is appropriately identified as a "sales" tax. Further, if the sale of building materials occurs within the City of Ketchum, the City may apply its LOT to the sale.

Discussion

The issue presented for discussion is fairly narrow. The question is whether building materials coming from outside of Ketchum City limits and being delivered to contractors in Ketchum are subject to the Ketchum LOT. In answering this question, the first issue is whether building materials in general are subject to sales tax.

1) Sales v. Use Tax

The Idaho Sales Tax Act, H.B. 222, codified at Title 63, Chapter 36, Idaho Code was enacted in 1965. The Sales Tax Act covers both sales tax and its complementary use tax. At the time the Sales Tax Act was under consideration by the Idaho Legislature, the House Revenue and Taxation Committee ("Committee") submitted a report dated May 4, 1965, "House Revenue and Taxation Committee Report in Support of House Bill 222" ("Report"), summarizing each section of the Act as guidance to understanding the legislative intent and meaning of the Act's provisions. Section 9(a) of the Report discusses taxation of building materials. The Report, in part, states:



Section 9(a) is intended to insure that there will be a tax imposed on the sale of building materials and other items that will be used to erect buildings or otherwise improve real property. The process of construction is regarded as a service, and sale of materials to the contractor is taxed without regard to resale intentions. This insures that a tax will be collected. Since the sale of the building or other real property will not be taxed, sale of the materials which are used to erect or improve it must be taxed if a tax is to be imposed on consumption of this property.

House Revenue and Taxation Committee Report in Support of House Bill 222, p.1 (May 4, 1965); see also Bunker Hill Co. v. State ex rel. State Tax Com'n, 111 Idaho 457, 459-60, 725 P.2d 162 (1986), overruled on other grounds by Idaho State Tax Com'n v. Haener Bros., Inc., 121 Idaho 741 (1992)(The rationale for imposing the sales tax on tangible personal property used to construct or improve real estate is well stated in the report of the House Revenue and Taxation Committee on House Bill 222, which implemented the tax). It is therefore clear that the legislative intent was to apply sales tax to building materials purchased by contractors.

The definitions within the Act also support the conclusion that building materials purchased by contractors are subject to sales tax. Section 9 of the Act is entitled "Retail Sale" and covers transactions subject to the sales tax. See I.C. § 63-3609. In the Report, the Committee states that the definition of retail sale "is intended to apply only to sales to ultimate customers." As defined in the Act, the terms "retail sale" or "sale at retail" mean "a sale for any purpose other than resale in the regular course of business..." Idaho Code §63-3609. By its definition, a retail sale is the transaction ending with the consumer. Retail sale would thus not include a manufacturer to its retailer but would apply from retailer to consumer.

The Supreme Court of Connecticut made this distinction in Steelcase, Inc. v. Crystal, 238 Conn. 571, 680 A.2d 289 (1996). Steelcase manufactured office furniture in Michigan and sold its products to a variety of office furniture retailers in Connecticut. Id. at 573. In some instances, the Connecticut retailers would place orders for furniture with Steelcase but directed Steelcase to ship the furniture directly to the retailer's customers. Id. at 574. Connecticut tried to assess a sales tax on Steelcase for those transactions. Id. Steelcase challenged the assessment and the court agreed with Steelcase. Id. at 584. The court looked at Section 12-407(3) of the Connecticut Sales and Use Tax Act's definition of "retail sale" which "means and includes a sale for any purpose other than the resale in the regular course of business of tangible personal property."¹ Id. at 580. Interpreting that statutory language, the court determined that sales for resale were not subject to tax and Steelcase had demonstrated that its transaction with the retailers were sales for resale. Id. at 581-82. The court held that Steelcase did not make a retail sale and was not liable for sales tax.² Id. at 588. A retail sale triggering sales tax occurs between the seller and ultimate consumer of goods. See also, infra, Material Service Corp. v. Isaacs, 25 Ill.2d 137 (1962).

With respect to the question of whether the sale of building materials to contractors constitutes a "sale at retail," the Supreme Court of Illinois addressed this issue in Material

¹ Connecticut's definition is substantially similar to Idaho's definition of "retail sale."

² Steelcase was not a party to the sales contracts between the retailers and their customers. The customers made no payment to Steelcase and it did not know what amounts were owed by the customers to the retailers or whether any payments were made by the customers to the retailers. Id. at 574-75.

Service Corp. v. Isaacs, 25 Ill.2d 137 (1962). The Illinois statute defining “sale at retail” is substantially similar to Idaho’s definition; most importantly, it requires sales be “for use or consumption and not for resale in any form as tangible personal property.” See Ill.Rev.Stat.1961, chap. 120, par. 440 (emphasis added). The Illinois Supreme Court held that sales of building materials to a contractor were taxable as sales at retail since not made for resale as tangible personal property, but were for use or consumption by the contractor. 25 Ill.2d 137, 140-41. Given the similarity in the definitions of “sale at retail” under Illinois and Idaho law, it is reasonable to conclude, as the court did in Material Service, that the purchase of building materials by contractors is a retail sale under Idaho law.

The follow-up question is whether the City of Ketchum has the authority to impose its LOT on building materials. The City of Ketchum and the City of Sun Valley both have local option taxes under Title 50, Chapter 10, Idaho Code. The relevant substantive language of both ordinances is similar and comparable for this discussion. In 1991, the City of Sun Valley asked the Attorney General to render an opinion regarding whether the city could impose its LOT on building materials. See Idaho Op. Atty. Gen. No. Op. 91-6. The question presented to the Attorney General by the City of Sun Valley was:

Does the City of Sun Valley have the power under both the tax code and state law to require the collection of local option tax for building materials not purchased within the city limits of Sun Valley, but delivered in Sun Valley for use in construction of real property improvements located within Sun Valley?

The Attorney General concluded as follows:

The City of Sun Valley may impose its sales tax on sales made in the city. For the sale of goods, a sale is in the city when title passes in the city. Under the Uniform Commercial Code, title passes either when provided by contract between the parties or, if there is no express contractual provision, when the seller completes his responsibilities regarding delivery of the product sold. In no case does title pass before identification of specific goods to the sale. When delivery of building materials occurs in the City of Sun Valley, and there is no specific provision in the sales contract to the contrary, title passes at the time of delivery. That is the time of sale. If the seller is a retailer required to have a city sales tax permit, the city may require the seller to collect city sales tax on the sale and remit the tax to the city.

Idaho Op. Atty. Gen. No. Op. 91-6. The opinion discussed the difference between a “sales” tax and a “use” tax, both of which are set forth in the Idaho Sales Tax Act. In order for building materials to be taxable under a LOT, it would have to be a sales tax. Under the local option tax statutes, the cities may only tax “sales.”

Sun Valley imposes only a sales tax. As observed earlier regarding the sale of lift tickets, the city's ordinance imposes the tax “upon each retail sale within the city.” For its tax to apply to building materials, the sale of the materials must occur within the city. Although the State of Idaho can and does require an out-of-state

seller to collect Idaho use tax on property sold to an Idaho customer for delivery into Idaho (see Idaho Code § 63-3621), there is no statutory basis for the City of Sun Valley to require the collection of a city use tax on property delivered in the City of Sun Valley. *It can only require collection of its sales tax on sales transactions that occur in the city.*

Idaho Op. Atty. Gen. No. Op. 91-6 at 6 (emphasis added).

The opinion went on to examine the Idaho Code definition of “retail sale” and how the city’s sales tax ordinance defined “retail sale.” *Id.* at 6. The Attorney General concluded the definition was the same and was consistent with the Uniform Commercial Code. See Idaho Code § 63-3609 and Sun Valley tax ordinance § 3-1-2. Because the city LOT tax is limited to sales tax, the Attorney General examined the difference between a sales tax and use tax.

Use taxes are a usual complement to sales taxes. They are imposed upon the privilege of using tangible personal property within the taxing jurisdiction. Their primary purpose is to avoid economic disadvantage to merchants within the taxing jurisdiction. Without use taxes, goods can be purchased outside the taxing jurisdiction and used in the jurisdiction without payment of the tax that would be required if the same goods were purchased from a merchant within the jurisdiction.

Idaho Op. Atty. Gen. No. Op. 91-6 at 8-9. As stated above, and in conjunction with the U.S. Supreme Court in *McLeod v. J.E. Dilworth Co.*, 322 U.S. 327, 330 (1923), sales tax and use tax are different in concept and are assessments upon different transactions. For example, a department of revenue or commission could not collect both a sales and a use tax on the same transaction. *Steelcase, supra*, 238 Conn. at 578.

Under Idaho law, building materials purchased by contractors are subject to sales tax. The City of Ketchum has authority to impose an additional local option sales tax. In order for building materials to be subject to the City of Ketchum’s LOT, the City must have taxable jurisdiction over the transaction. The transaction must have occurred within City limits. Building materials are goods and are subject to the Uniform Commercial Code incorporated in the Idaho Code under Title 28. The Uniform Commercial Code and Idaho Law provides that a “sale” of goods occurs when title passes.

2) *“Sale” occurs when title passes under the Uniform Commercial Code and Idaho Law.*

The 1991 Idaho Attorney General Opinion analyzed and concluded that the purchase of building materials constitutes a “sale” pursuant to the Uniform Commercial Code which is complete upon delivery. Under this provision of the Uniform Commercial Code, title passes, and thus the sale occurs, at the time the seller delivers the building materials to a building site in the City of Sun Valley “unless otherwise explicitly agreed” between the buyer and seller. Idaho Op. Atty. Gen. No. Op. 91-6 at 11. Section 28-2-401 of the Idaho Commercial Code states, in part:

...

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading.

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

The opinion went on to find that when title passes at a place of delivery in Sun Valley, the sale is “within the City” under § 3-1-3 of the city’s sales tax ordinance. Idaho Op. Atty. 91-6, at 11. The seller is required to collect and remit the city’s sales tax on such a sale. *Id.*; see also Dial Corporation v. Iowa Department of Revenue and Finance, 643 N.W.2d 643, 649-50 (Iowa 2001)(Holding that Dial Corporation was obligated to pay local option taxes when the delivery was taken in the local option taxing district).

Unless otherwise explicitly agreed the place of “delivery” is the place where the taxable event occurs. Delivery is presumptively affected by the actual or constructive transfer of possession of goods at the place agreed upon by the parties. Steelcase, supra, 238 Conn. at 584. As discussed above, Steelcase was located in Michigan and sold office furniture to retailers in Connecticut. As directed by the retailers, Steelcase would ship the product directly to the retailer’s customer. The contract agreement was “F.O.B. factory,” which under UCC principles means that the delivery was completed at the factory at the time Steelcase provided the goods to an independent common carrier. *Id.* at 598. By specifying “F.O.B. factory” the parties agreed that Steelcase provided the product and completed the sale at the factory’s loading dock.

However, the contract specifying F.O.B. may not always be dispositive if the circumstances are different. Other state courts have gone beyond that and found that mere transfer of goods can constitute a taxable event. See Leggett & Platt, Inc. v. Ostrom, 251 P.3d 1135, 1143 (Col. Ct. App. 2010). In Leggett, the Colorado Court of Appeals held that the transfer of possession of goods is not necessarily dependent upon F.O.B. terms. Transfer of physical possession of goods is a constitutionally permissible taxable event, regardless of technical consideration regarding the time and place of passage of title which might turn on a degree of control short of transfer of physical possession. *Id.* In Leggett, the master vendor agreement held that the F.O.B. was upon “destination” but the bills of lading and invoices showed that all sales were actually F.O.B. “shipping point” and it was at shipping point that the retailer’s contractors took possession and the sale occurred for sales tax purposes. *Id.*

For purposes of this analysis, the main focus is on general UCC principles regarding place of delivery. For building materials, unless otherwise agreed, the transfer of title passes upon delivery from supplier to contractor. In the majority of the cases in Ketchum, the contractor is ordering from large building supply stores and having them deliver loads to Ketchum. In those situations, the sale would occur at the place of delivery within the boundaries of Ketchum and would therefore be subject to the LOT.

Conclusion

Building materials sold to contractors are a retail sale and subject to sales tax. Under the Idaho Uniform Commercial Code, the delivery of building materials is where the "sale" occurred unless the parties have agreed to a different point of sale. The City of Ketchum can apply its local option sales tax to sales that occur within City limits.

Idaho State Tax Commission
 General Estimate of Costs per Transaction
 FY2014 Budget Request
 City of Ketchum Proposal

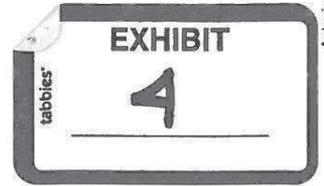
	Actual FY2009	Actual FY2010	Actual FY2011	Actual FY2012	Budget FY2013	3 Year Average	5 Year Average
Total Agency Spending	\$33,088,600	\$32,415,400	\$31,809,300	\$34,829,200	\$35,865,100	\$34,167,867	\$33,601,520
Less: Property Tax Division	(\$3,555,300)	(\$3,181,300)	(\$2,962,300)	(\$2,963,500)	(\$3,059,200)	(\$2,995,000)	(\$3,144,320)
Less: Fuels Fund activity	(\$3,611,900)	(\$3,794,600)	(\$3,554,100)	(\$3,695,800)	(\$3,796,200)	(\$3,682,033)	(\$3,690,520)
Adjusted Agency Spending	\$25,921,400	\$25,439,500	\$25,292,900	\$28,169,900	\$29,009,700	\$27,490,833	\$26,766,680
Total Estimated Number of Transactions*	2,217,000	2,226,000	2,260,000	2,315,600	2,350,000	2,308,533	2,273,720
Less: Fuels or IFTA transactions	(24,544)	(24,379)	(23,456)	(24,543)	(25,000)	(24,333)	(24,384)
Adjusted Estimated Number of Transactions	2,192,456	2,201,621	2,236,544	2,291,057	2,325,000	2,284,200	2,249,336
Average Cost per Transaction (weighting factor 1 -- 100%)	\$11.82	\$11.55	\$11.31	\$12.30	\$12.48	\$12.04	\$11.90
Average Cost per Transaction (weighting factor 2 -- 80%)	\$9.46	\$9.24	\$9.05	\$9.84	\$9.98	\$9.63	\$9.52
Average Cost per Transaction (weighting factor 3 -- 60%)	\$7.09	\$6.93	\$6.79	\$7.38	\$7.49	\$7.22	\$7.14

Weighting factor 1 = complex income and fuels tax returns, or local sales/use with special rules
 Weighting factor 2 = other "state" tax returns including audit function
 Weighting factor 3 = sales tax type returns without audit function

Note *: A transaction is generally a return plus its related payment received together.
 But a return or payment received separately would also count as a transaction.

Preliminary Estimate of City of Ketchum Administrative Fee

Approximate Number of Accounts:	# of Annual Transactions	Total Transactions	Total Transactions
Monthly	400	12	4,800
Quarterly	700	4	2,800
Annual / Other	200	1	200
	1,300		7,800
Multiply by Weighting factor 1		X	\$11.90
Subtotal			\$92,800
Additional Annual Audit Effort to Identify Use Tax			100,000
Estimated Annual Cost of City of Ketchum Transactions			\$192,800
Multiply by 1/2 year for estimated January 1 start-up		0.5	
Estimated First Year Cost of City of Ketchum Transactions			\$96,400
Add One-Time set up fees			\$68,600
Total First Year Estimated Expenses		Second Year	\$192,800



Rec'd 1/13/18

LODGING, FOOD & DRINK

An Educational Guide to Sales Tax in the State of Idaho

This publication is intended to assist restaurants, bars, and those selling lodging accommodations to understand the sales tax laws that apply to them. This information is based on the laws and rules in effect on July 1, 2012. For a list of state tax rates, visit our web site at tax.idaho.gov.

SALES

What taxes apply to sales by lodging, food, and drink providers?

Rooms rented for *sleeping accommodations*: Throughout Idaho, fees for sleeping accommodations are subject to the state sales tax plus travel and convention tax.

Rooms rented for purposes *other than sleeping*: When a lodging provider rents a room for non-sleeping purposes, such as for a business meeting, the travel and convention tax doesn't apply. Only the state sales tax applies.

Bed and breakfast: If a single fee is charged for a bed and breakfast accommodation, the entire fee is subject to the state sales tax and the travel and convention tax. If the price for the meal is charged separately to the customer, then only the room fee is subject to the two taxes. The meal is subject only to the state sales tax.

Campground spaces for overnight accommodations: Campground operators renting spaces for overnight accommodations must collect state sales tax plus travel and convention tax. Only the state sales tax applies to campgrounds operated by the state of Idaho or its political subdivisions.

Campground spaces for day use only: If the fee charged for using a campground doesn't include the right to stay overnight, only the state sales tax applies.

Other Lodging Accommodations: Rentals of a home, vacation home, cabin, lodge, condominium, townhouse, or any other structure meant to provide sleeping accommodations, for periods of less than thirty-one days, are subject to the state sales tax and travel and convention tax. The price subject to tax includes separately stated fees for credit card processing and separately stated cleaning fees.

"Hotel/Motel" means an establishment which provides lodging to members of the public for a fee, and shall include condominiums, townhouses or any other establishment which provides lodging accommodations.



Local option tax: Some Idaho counties, cities, and auditorium districts add a separate tax to the state sales tax. The Tax Commission administers the Greater Boise Auditorium District tax in the Boise area. This tax applies to hotel/motel rooms rented for sleeping accommodations and for non-sleeping purposes, such as for a business meeting. For more information on local sales taxes, contact the county, city, or auditorium district in your area. You can also visit our web site for a list of local sales taxes in Idaho.

Food and drink: The state sales tax must be charged on the price of food or drinks furnished by any restaurant, cafeteria, hotel, diner, club, or any other place serving meals or drinks. Private clubs, country clubs, athletic clubs, fraternal and similar organizations also must charge sales tax when they sell food and drinks, even if they make sales only to members. Charges for preparing and serving customer-supplied food are also taxable.

Do lodging providers use one return to pay all the different taxes they collect?

No. Lodging providers must file separate tax returns even though they can lump all the taxes into one line on the sales invoice. To apply for permits to collect state sales tax, travel and convention tax, and Greater Boise Auditorium District tax, go online at business.idaho.gov or complete the Idaho Business Registration form available on our web site or at any Tax Commission office.

When a lodging provider adds laundry, phone charges, or parking fees to a bill, are these fees taxable?

No. They aren't taxable if they're listed separately on the customer's bill.

Are gratuities taxable?

When gratuities are paid to a server they aren't taxable as long as the gratuity is meant to supplement the server's income. Service charges that are meant to cover credit card fees or something other than the server's income are taxable as part of the purchase price.

Are government employees exempt from paying room or lodging taxes?

No. If the employee pays for the room or lodging and is reimbursed by his employer, tax applies. An exemption applies only when the government agency pays the room or lodging charges directly. Here are ways the lodging provider can document exempt sales to a government agency:

- **Checks issued by government agencies:** If the charges are directly billed to the U.S. government or an Idaho government agency (state, city, or county) and paid for by the agency's check, the taxes don't apply. The lodging provider must keep a copy of the check or the remittance advice from the government check to document the exempt sale. Idaho

state, city, and county government agencies must give the lodging provider a completed form ST-101 for his records.

- **Credit card charges directly paid by government agencies:**
 - The U. S. Government Smart Pay **Purchasing Card**. All purchases made with this card are billed directly to the agency and are exempt from sales tax. To document the exempt purchase, the lodging provider should have the employee complete form ST-104-HM, Sales Tax Exemption on Lodging Accommodations.
 - The U. S. Government Smart Pay **Travel Card**. This card is used by federal employees for official travel expenses. Unlike the purchasing card, purchases with this card may or may not be tax exempt. If the purchase is billed to the employee, the sale is taxable. If the purchase is directly billed to the government agency, the sale is exempt from sales tax. To document the exempt purchase, the lodging provider should have the employee complete form ST-104-HM.
 - Some Idaho government agencies issue tax exempt **purchasing cards** to employees. This Bank of America Visa has the name of the state agency and, in most cases, the name of the state employee using the card imprinted on the bottom. The card reads: "State of Idaho — Tax Exempt." Charges to the card are directly billed to the state agency and paid for by the agency. To document the exempt purchase, the lodging provider should have the employee complete form ST-104-HM.
- **Other Credit Cards:** If the charges are to a U. S. government or Idaho (state, county, or city) government employee using any other credit card the employee claims is directly paid by his employer, he must make this claim on form ST-104-HM. The lodging provider must make sure the form is completed and keep it to document the exempt sale.

Can employees from other states claim these exemptions?

No. Governments of other states aren't exempt from Idaho sales taxes. Only charges to Idaho governments (such as state agencies, cities, or counties) and U. S. government agencies are exempt from Idaho tax.

Are any other customers exempt from these taxes?

Yes. Some of the most common exemptions you'll encounter are:

- **Persons who continually occupy** a room or campground space for 31 or more days are exempt from room taxes. However, if a corporation rents a room for 31 or more days to be used by more than one traveling employee, room taxes must be charged. The exemption applies only when the same person rents the lodging for 31 days or more. The

vendor must keep records (such as the guest registration card and invoice) to show that the exemption applies.

- **Nonprofit hospitals and nonprofit schools** (both in-state and out of state) are exempt from paying sales tax on direct billing for meals and lodging. They must provide a completed form ST-101 for direct billing or ST-104-HM for credit card payment.

If a customer other than those listed here claims to be exempt from sales tax, he must qualify for an exemption listed on form ST-101 or ST-104-HM and complete the form for your records.

PURCHASES

What can a lodging provider or campground operator buy exempt from tax?

Hotels, motels, and campgrounds and other lodging providers can buy goods without paying tax if the items are:

- Consumed by their customers in such a way that they can't be reused, *and*
- Part of the price the customer pays for the lodging or camping space.

Here are some *examples* of items that can be purchased exempt from tax if they're placed in lodging accommodations or provided to campground patrons:

- Facial tissue, toilet tissue, disposable laundry bags, and paper napkins
- Soap, lotion, shampoo, and conditioner
- Disposable drinking glasses, utensils, shoe shine cloths, and shower caps
- Candy, beverages, food, and newspapers
- Stationery, envelopes, notepads, and matches

To buy these goods without paying sales tax to the vendor, the lodging provider or campground operator must complete a form ST-101 for the supplier's records.

What purchases by a lodging provider or campground operator are taxable?

You must pay tax on any items that are:

- *not* included in the lodging or campground charge, or
- *not* directly consumed by the customer, or
- *not* disposable

Examples of items you should pay tax on include:

- Bath towels, bath mats, garbage can liners, linens, and bedding
- Glassware, silverware, and china
- Furniture and fixtures
- Bibles, books, magazines, and directories
- Any items available to the general public

What can a restaurant or bar buy exempt from tax?

Sellers of food, meals, or drinks may buy goods for resale without paying tax if the items are:

- For resale to their customers,
- Included in the fee charged to the customer, and
- Directly consumed by the customer in such a way that they can't be reused.

Here are some *examples*:

- Food and drink ingredients
- Disposable containers (paper cups and plates, "to-go" containers and sacks, pizza cartons, chicken buckets, etc.)
- Disposable supplies that are used by the customer and are included in the price of the meal or drink (drinking straws, stir sticks, paper napkins, paper placemats, plastic eating utensils, toothpicks, etc.)
- Candy, popcorn, drinks, or food included in the price of other food, meals, and drinks (such as hors d'oeuvres served to patrons in a lounge)

To buy these goods without paying sales tax to the vendor, the lodging provider, restaurant, or campground must complete a form ST-101 for the supplier's records.

What purchases by a restaurant or bar are taxable?

Items that aren't included in the fee charged to the customer and aren't directly consumed by the customer are taxable when purchased by a restaurant, bar, or similar establishment.

Examples of taxable goods include:

- Waxed paper, plastic wrap, foil, paper towels, dish soap, garbage can liners, or other products consumed by the retailer
- Linens, silverware, glassware, tablecloths, towels, and non-disposable napkins and cookware
- Furniture, fixtures, and other depreciable property
- Menus
- Any item available to the general public or employees, such as restroom supplies and matches
- Complimentary candy, popcorn, drinks, or food, when patrons aren't required to buy other food, meals, or drinks in order to receive the complimentary goods

For more information, read:

Use Tax Publication

Retailers Publication

Retailers and Wholesalers: Making Exempt Sales Publication

Sales Tax Administrative Rule #28 Hotels, Motels, and Campgrounds

Sales Tax Administrative Rule #41 Food, Meals, or Drinks

Idaho Code 67-4711 Idaho Hotel/Motel Room and Campground Sales Tax Code and Administrative Rules

For more information, contact:

- Idaho State Tax Commission: In the Boise area, 334-7660; Toll free, (800) 972-7660
- Hearing impaired: TDD (800) 377-3529
- **tax.idaho.gov**

This information was prepared by the Idaho State Tax Commission. It does not provide comprehensive explanations of Idaho tax laws or rules. Specific questions should be addressed to the Tax Commission or a qualified tax practitioner.

Idaho State Tax Commission
 Calculation of Audit Premium
 FY2014 Budget Request
 City of Ketchum Proposal

Requested Amount: \$100,000
\$10,000 \$90,000
 Additional Travel Personnel Cost Allocation

Basis: Estimate per trip: X Additional trips	\$1,000 10	X X	1250 2 \$35	\$87,500 \$90,000	Basis: Estimated number of sales/use audits statewide Extra hours spent looking for Ketchum destination sales Benefited cost per audit hour Rounded
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