



City of Ketchum

January 17, 2023

Mayor Bradshaw and City Councilors:

Recommendation to Approve LOT Settlement Agreement with Business As Usual

Recommendation and Summary

Staff is recommending the council to approve the Local Option Tax Settlement Agreement with Business As Usual:

I move to approve the Local Option Tax Settlement Agreement with Business As Usual.

Introduction and History

The City has adopted certain non-property local option taxes (“LOT”) under Ketchum Municipal Code Title 3, Chapter 3.12. Business As Usual has failed to remit and is delinquent in remission of such LOT payments. The Parties find it more effective and efficient to enter into this Agreement to resolve and settle the payment of certain delinquent LOT for the sale of taxable retail goods in the City for the filed but unpaid periods, and for the unfiled and unpaid periods.

Financial Impact

- The City of Ketchum will realize revenue of \$3,169.55 and additional payments of the unfiled and unpaid periods of delinquent LOT from approval of this agreement.

Attachments:

Business As Usual LOT Settlement Agreement

LOCAL OPTION TAX SETTLEMENT AGREEMENT

This Local Option Tax Settlement Agreement (the “Agreement”) is made and entered into effective to the ___ day of _____, 2023. The parties (“Parties”) to this Agreement are Business As Usual (“Business As Usual”), whose local address is 531 N. Main St., Ketchum, Idaho 83340, and the City of Ketchum, Idaho (“City”), whose address is P.O. Box 2315, Ketchum, ID 83340.

RECITALS

WHEREAS, Business As Usual is an office supply store in Ketchum, Idaho; and,

WHEREAS, the City has adopted certain non-property local option taxes (“LOT”) under Ketchum Municipal Code Title 3, Chapter 3.12 (“City Code”), and pursuant to the City’s authority under Idaho Code § 50-1044 (“State Law”); and,

WHEREAS, Business As Usual failed to remit and or/is delinquent in remission of such LOT payments; and,

WHEREAS, the Parties find it more effective and efficient to enter into this Agreement to resolve and settle the payment of certain delinquent LOT for the sale of taxable retail goods in the City for the filed but unpaid periods, and for the unfiled and unpaid periods; and,

WHEREAS, resolving and settling the payment of the aforementioned filed but unpaid periods of delinquent LOT requires that Business As Usual pay the City the outstanding account balance of three-thousand and one-hundred sixty-nine dollars and fifty-five cents (\$3,169.55) in accordance with the terms of this Agreement; and,

WHEREAS, resolving and settling the payment of the aforementioned unfiled and unpaid periods of delinquent LOT requires that Business As Usual submit filings and payments, including any applicable late fees, for the periods of August 2019, October 2019, December 2019, January 2020, March 2020, and April 2020; and,

THEREFORE, in consideration of and in exchange for the agreements and commitments contained in this Agreement, the Parties agree as set forth below.

TERMS OF SETTLEMENT

1. Business As Usual agrees to:

- a. Make monthly payments no later than the fifth (5th) day of each month in the amount of seven hundred fifty dollars (\$750.00) until the total amounts owed to the City are paid in full.

2. The City agrees to:
 - a. Refrain from filing any further enforcement actions against Business As Usual as long as the above-specified monthly payments are received in a timely manner.

FAILURE TO COMPLY

1. Should Business As Usual fail to make timely monthly payments as set forth above, the City will pursue further enforcement, pursuant to Ketchum City Code § 3.12.190:
 - a. Revoke the sales tax permit for Business As Usual.
 - b. Seek misdemeanor criminal charges, punishable by jail time and/or up to a \$300.00 fine for each month found to be in violation.
 - c. Place a lien on any property owned by Business As Usual and seek collection of such in a court of law.
 - d. Seek any and all other remedies as allowable under State Law and City Code.

GENERAL PROVISIONS

1. Choice of Law. This Agreement, its construction and any and all disputes arising out of or relating to it, shall be interpreted in accordance with the substantive laws of the State of Idaho without regard to its conflict of law principles. Any action to enforce, construe or seek damages for breach of this Agreement, or to rescind this Agreement, shall be brought exclusively in Blaine County, Idaho.
2. Modification. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by both Parties.
3. Merger and Integration. This Agreement contains the entire agreement of the Parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, agreements and understandings with respect thereto.
4. Incorporation of Recitals. The recitals stated above shall be and hereby are incorporated in and are an integral part of this Agreement by this reference.
5. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument. The Agreement shall become effective when a counterpart has been signed by each Party and delivered to the other Party, in its original form or by electronic mail, facsimile or other electronic means. The Parties hereby consent to the use of electronic signatures in connection with the execution of this Agreement, and further agree that electronic signatures to this Agreement shall be legally binding with the

same force and effect as manually executed signatures.

6. Attorney's Fees. In any litigation or other proceeding relating to this Agreement, the prevailing Party shall be entitled to recover its out-of-pocket costs and reasonable attorneys' fees.
7. Waiver and Cumulative Remedies. No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right or any other right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a Party at law or in equity.
8. Assignment. Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other Party (which consent shall not be unreasonably withheld).
9. Miscellaneous. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.
10. Notices. All notices arising out of, or from, the provisions of this Agreement shall be in writing either by regular mail or delivery in person at the address(es) provided in Section 1 of this Agreement.

The parties to this Agreement, either personally or through their duly authorized representatives, have executed this Agreement on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement.

By: _____
Brad Roos, President
Business As Usual, Inc.

By: _____
Neil Bradshaw, Mayor
City of Ketchum, Idaho

ATTEST: _____
Trent Donat, City Clerk