

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is made this _____ day of _____, 2010, by and between the County of Flathead, a political subdivision of the State of Montana (the "County"), and the City of Whitefish, a municipal corporation (the "City"), with respect to the following:

A. During a joint work session on October 18, 2010, the County Commissioners and City Councilors discussed their mutual desire to work together for an ongoing cooperative process between the public entities;

B. The County and City expressed a willingness to find ways how to work together and develop lines of communication;

C. The County indicated its interest in land use and planning issues affecting the planning and zoning in the extraterritorial area and expressed concern about the Critical Areas Ordinance passed by the City in 2007 which resulted in the County's decision to withdraw from the 2005 Interlocal Agreement;

D. The City indicated its interest in protecting its water sources, lakeshore, watersheds, highway corridors leading into the City, the City's authority in the extraterritorial areas allowed under MCA §§ 76-2-310, 76-2-311 and 75-7-214, and corresponding interest to have land use and zoning issues decided by area residents affected by the decisions;

E. The County and City discussed their mutual interests in resolving the current litigation between the parties concerning the 2005 Interlocal Agreement and their willingness to explore possible solutions by creating a process to address current land use, zoning, and representation issues facing the extraterritorial area;

F. The County and City are in the process of amending the 2005 Interlocal Agreement, which they have discussed as a living document having been amended two times previously by the parties; and

G. The recent proposed amendments will allow for a one year termination and a term of five years. However, the parties wish to develop a process for continuing cooperation and conversation between the entities without relying upon the termination and term clauses of the proposed amendments to the 2005 Interlocal Agreement in order to protect their mutual interests.

Therefore the County and City agree as follows:

1. The County and City will make every effort to maintain an ongoing cooperative process between the two public entities through open communications and timely exchanges of information.

2. The County and City will give one another notice and an opportunity for comment upon all new zoning and land use planning legislation which may affect the other entity's interests; however, such notice shall not include individual re-zonings or other site-specific development applications ("legislation").

3. At least forty-five (45) days prior to the first public hearing on legislation, the entity will provide a copy of the proposed legislation, staff reports, and recommendations from the planning board to the other entity along with a description of the public process for considering the proposed legislation and notice of the date of hearings on the proposed legislation.

4. Within thirty (30) days following the other entity's receipt of the legislation, reports, recommendations, and other information, the other entity will provide its comments, including support for, opposition to, or suggestions for alternative language.

5. Throughout the legislative process the entities are encouraged to provide one another copies of any legislative changes, revised reports, public information, suggestions, and constructive comments.

6. Each entity will give due weight and consideration to the other entity's comments and information, and provide the opportunity for public input.

7. The City has indicated its interest in reviewing the Critical Areas Ordinance, and the County has expressed its interest in providing a list of problems with the Critical Areas Ordinance. Within 180 days of signing this Memorandum of Understanding, should the County have suggested modifications to the Critical Areas Ordinance or any other City Ordinance, the County will provide the City with a list of the suggested modifications to the City Ordinances with a written explanation of the County's concerns for discussion at subsequent joint work sessions.

8. The County and the City will schedule joint work sessions at mutually agreeable dates and times beginning in the month of January 2011. The County and the City agree the first work session will be on the Critical Areas Ordinance prepared by the City and County planning staff. At least thirty (30) days prior to the first work session, the County will provide the City with a list of suggested modifications to the Critical Areas Ordinance with a written explanation of the County's concerns for discussion at the first joint work session.

9. Should there be any costs associated with the City's review of the problem areas identified by the County on the Critical Areas Ordinance or any other City Ordinance, the County and the City agree to share the expenses for the City's review as may be mutually agreed.

10. In order to maintain an ongoing cooperative process between them, the City and the County agree to meet periodically each year for joint work sessions should any issues arise and as may be required to maintain open communications with one another.

11. Upon reaching agreement to the terms of any proposed amendments to the 2005 Interlocal Agreement, the parties agree to jointly petition for and make every effort to dismiss with prejudice *The City of Whitefish v. Board of County Commissioners of Flathead County*, Cause No. DV-08-367A, Montana, Eleventh Judicial District Court, Flathead County, Montana, before the honorable Katherine R. Curtis.

12. Except as provided by this Memorandum of Understanding, and until amended by the parties, the terms of the 2005 Interlocal Agreement remain in full force and effect.

FLATHEAD COUNTY

CITY OF WHITEFISH

By: _____
Joseph D. Brenneman, Chairman

By: _____
Charles C. Stearns, City Manager

PRELIMINARY DRAFT