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September 17, 2010

Honorable Mayor Mike Jensen
And Whitefish City Councilors
PO Box 158
Whitefish, MT 59937

Re: 2005 Interlocal Agreement

Dear Mayor Jensen and City Councilors:

I've been reading with great concern the inclination of the City Council to return control of the extra-jurisdictional area surrounding Whitefish to Flathead County. I know it's not being referred to in those terms, but by giving the county veto power over city decisions, that's exactly what the practical affect would be.

In a community like Whitefish, whose economy and property values are extremely dependent on the community's appearance to others, nothing is more important than local control of the manner in which the community develops. That includes the corridors entering Whitefish and Whitefish Lake. By advocating local control, I'm not suggesting what the result should be, I'm simply saying that those decisions are best made by the people who are most affected by them. As we've seen in recent elections, if people are dissatisfied with decisions being made locally, they can replace the people making them.

I'm particularly concerned that the council is willing to cede control over territory that is critical to the community's future based simply on legal advice, which I consider misguided, that the city is unlikely to prevail in the current litigation over the 2005 Interlocal Agreement.

I have been involved in that litigation on behalf of the city during the appeal of Judge Katherine Curtis's initial ruling to the Montana Supreme Court. While assisting with the appeal, I became familiar with the bases for the county's challenge to the interlocal agreement. I do not believe, based on the merits of that

challenge, there is any reason to believe that the interlocal agreement will not ultimately be enforced. Enclosed is a copy of my previous letter to that effect.

While I do not know what Judge Curtis' ultimate decision will be, it doesn't really matter. Ultimately, the issue will be decided as a matter of first impression by the Montana Supreme Court. While it is never possible to guarantee the result of an appellate court decision, I believe it more likely than not that the court will decide in favor of the city as it did in the previous appeal.

I understand that some members of the council have been informed by attorneys for private interests that there are inconsistencies between the 2005 interlocal agreement and the Montana Interlocal Cooperation Act. Apparently, those attorneys have raised concerns that because the interlocal agreement does not have a fixed term of years, and because it can only be terminated by mutual agreement, it violates the Interlocal Cooperation Act. I disagree. On its face, the interlocal agreement is perfectly consistent with the requirements of state law. To my knowledge, both the former and current city attorney agree with that position.

Section 7-11-105, MCA, the Interlocal Cooperation Act, lists ten different components that must be included in an interlocal agreement. Among them are the agreement's "duration" and the "permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement." The city's 2005 interlocal agreement meets both of those requirements.

When interpreting and applying state law, courts look to the ordinary meaning of the words used by the legislature. Black's Law Dictionary defines "duration" as "the portion of time during which anything exists." There is no requirement that it be defined by a number of days, months, or years. Had the legislature intended to impose that requirement, it would have been a simple matter to include that language in the statute. However, the legislature recognized that to do so would be detrimental to public agencies. Therefore, many interlocal agreements are indefinite in length, simply because the services that public agencies provide are needed indefinitely.

A recent example of a similar indefinite interlocal agreement is the agreement between Flathead County and the three cities concerning the new 911 dispatch center. The 911 interlocal agreement has no term of years. It states that it will last "until terminated by the law or by mutual agreement of the parties." A copy of the relevant portion of the 911 interlocal agreement, entitled "TERM AND WITHDRAWAL OF A PARTY', is attached. Certainly the county would not

continue to enter into agreements that it considers illegal. Nor, to my knowledge, has it taken that position in this case.

Rather than require that interlocal agreements exist for a specified number of years, the legislature used a broad and general term that leaves the length of the agreement up to the parties who create the agreement. I have researched the Interlocal Cooperation Act, and there is no authority interpreting it which would support its opponent's contention that it is invalid for failing to specify its duration in terms of years.

Similarly, the requirement of §7-11-105, MCA, that all interlocal agreements specify the method of termination, does not require that all interlocal agreements provide for unilateral termination by either party. The legislature clearly left it up to the parties to determine their choice of method. Nothing in the statute even suggests that the agreement can be terminated at the whim of either party. If that was the case, all interlocal agreements would be meaningless and unenforceable. Local governments would invest money for staff, planning, and services without any assurance from one day to another that they actually had the authority to perform the services for which they contracted. It is for that reason that, to my knowledge, the county has never claimed that it has a unilateral right to terminate the interlocal agreement. This issue again was raised only by private attorneys for private parties with an interest in defeating the interlocal agreement. Not surprisingly, I have found no legal authority supporting their position.

In all the research I have done and all of the briefs that I have read related to the city's litigation over the interlocal agreement, I have seen nothing that causes me to think that the city is more likely to lose this case than to win. While the result cannot be guaranteed, based on what I have read, it is my opinion that the city is more likely to ultimately win the case than to lose it.

However, whatever the ultimate result of the litigation, the litigation should be allowed to unfold for the benefit and future guidance of all local governments who are doing the best they can to manage their affairs locally through the use of and a reliance on interlocal agreements. In a case which the city is more likely to win than lose, it makes no sense, before even getting a decision, to in effect cede authority over the extra-jurisdictional area to the county while getting nothing in return. That is the effect of the compromise being currently negotiated by a group of attorneys in which most members' primary interest is in ending extra-jurisdictional control of those areas critical to the future of Whitefish. If the City of Whitefish gives the county veto power over its future decisions in the extra-

jurisdictional area, it has already conceded the lawsuit, which is my opinion would be ill advised.

This issue is not about whether you agree or disagree with past management of the "doughnut" areas. It is about whether it is best managed by the community most directly affected by what happens there. That is the City of Whitefish.

Thank you for considering my thoughts on this important matter.

Sincerely,

TRIEWEILER LAW FIRM

By: _____
Terry N. Trieweiler

TNT:krw

Enclosures