

**AMENDMENT NO. 3 AND RESTATEMENT OF
INTERLOCAL AGREEMENT**

This Agreement is entered into as of the _____ 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 facts.

A. Beginning in approximately 1967, the parties have cooperated in creating and administering the Whitefish City-County Planning Board (the "Planning Board") and the Planning Board's jurisdictional area, as permitted by Montana law.

B. Currently the jurisdictional area of the Planning Board extends approximately two (2) miles from the boundaries of the City, as shown on Exhibit "A," attached hereto and incorporated herein by reference.

C. From time to time the parties have adopted and updated a Master Plan (or Growth Policy) covering the jurisdictional area of the Planning Board. The most recent version of the adopted Master Plan is entitled, "2007 Whitefish City-County Growth Policy."

D. Since 2005 the parties have cooperated in creating an area extending approximately two (2) miles beyond the City's boundaries, within which the City has established its own zoning designations, and incorporated County zoning designations, as permitted by Montana law, although some lands still retain County zoning designations. This two (2) mile area is referred to as the City's extra-territorial zoning jurisdiction and jurisdictional area.

E. The Planning Board, its jurisdictional area, as well as the City's two (2) mile extra-territorial jurisdiction, as described above, were created by joint action of the parties, through the parties' original 2005 Interlocal Agreement.

F. The parties desire that within the City's extra-territorial zoning jurisdiction, the City shall administer all planning and zoning, subdivision review, lakeshore protection regulations, and floodplain regulations, subject to the oversight by the County, as set forth more fully herein.

G. On September 20, 2005, the parties signed Amendment No. 1 to the Interlocal Agreement, which modified Paragraph 6 of the Interlocal Agreement, concerning the transition that would take place pursuant to the Interlocal Agreement.

H. On February 6, 2007, the parties signed Amendment No. 2 to the Interlocal Agreement, which modified Paragraph 4 of the Interlocal Agreement to extend the Whitefish Lake and Lakeshore Protection Regulations to include the properties surrounding Blanchard Lake, and to have a new member appointed to the Whitefish

Lake and Lakeshore Protection Committee, representing Blanchard Lake from the Blanchard Lake area.

I. The parties desire to amend the Interlocal Agreement a third time, to provide a five year term for the Interlocal Agreement, subject to renewal by mutual agreement of the parties. Also, the parties desire to provide the process for County oversight and withdrawal of a party at least one year from the date of withdrawal, allowing for notice of the withdrawal, investigation of the cause for the withdrawal, resolution, and mandatory dispute resolution process prior to the withdrawal date.

THEREFORE, the parties agree as follows:

1. Interlocal Agreement. This Agreement is established pursuant to the Interlocal Cooperation Act, § 7-11-101, et seq., MCA. The purpose of this Agreement, is among other thing, to streamline the provision of government services by centralizing the functions of planning, zoning, subdivision review and lakeshore and floodplain permitting for the area surrounding Whitefish and the Whitefish Lake in one governmental agency that will, through such centralization, develop greater expertise and efficiency than if the same functions were handled by two governmental agencies.

2. Continuation of Planning Board. It is the parties' intent to continue in effect the nine (9) member Planning Board, in the same manner and jurisdiction it has been administered and has operated in the recent past. The City shall continue to appoint four (4) members of the Planning Board pursuant to § 76-1-201(1), MCA. The County shall continue to appoint four (4) members of the Planning Board pursuant to § 76-1-201(1), MCA. The ninth member of the Planning Board shall continue to be appointed pursuant to § 76-1-201(2), MCA. The parties shall each bear their own expenses involved in advertising for and appointing Planning Board members. The City shall be responsible for and shall bear all other costs of administering and operating the Planning Board.

3. Planning Board's Jurisdiction. The parties agree that the jurisdictional area of the Planning Board shall be as shown on Exhibit "A."

4. Continuation of Lakeshore Protection Committee. The parties agree that the Lakeshore Protection Committee shall consist of eight (8) members, and shall be administered and operated in the same manner that it has been in the recent past. Pursuant to Chapter 5 of the Whitefish Lake and Lakeshore Protection Regulations, the City shall appoint three (3) committee members, all of whom shall be resident freeholders within the City and at least two (2) of whom shall be residents on either Whitefish or Lost Coon Lake. The County shall appoint four (4) members, all of whom shall be resident freeholders of rural Flathead County, at least two (2) of whom shall be residents on either Whitefish Lake or Lost Coon Lake, and at least one (1) of whom shall be a resident on Blanchard Lake. The eighth (8th) member shall be appointed by the Whitefish City-County Planning Board and shall be a City resident. The parties shall

bear their own expenses involved in advertising for and appointing Lakeshore Protection Committee members. The City shall be responsible for and shall bear all other costs of administering and operating the Lakeshore Protection Committee.

5. City's Authority in Jurisdictional Area. The parties agree that pursuant to §§ 76-2-310(1), 76-2-311, and 75-7-214, MCA, and pursuant to this Interlocal Agreement Amendment, the City, as a city of the second class, shall assume and use for the purposes of planning and zoning, subdivision review and approval, and for the administration of the lakeshore protection regulations and floodplain regulations, the boundaries of the jurisdictional area, as shown in Exhibit "A." Subject to the terms and conditions of this Agreement, within the boundaries shown on Exhibit "A," the City shall have the power to (1) establish or alter zoning designations; adopt, administer, enforce, and amend planning and zoning regulations, (2) consider and approve subdivisions and adopt, administer, enforce, and amend subdivision regulations, (3) consider and approve lakeshore permits and adopt, administer, enforce, and amend lakeshore regulations, and (4) consider and approve floodplain permits and adopt, administer, enforce, and amend floodplain regulations. The City shall be responsible for and shall bear all costs of administering the regulations identified above.

6. Transition. Subject to Paragraph 7 below, the parties shall cooperate with one another in removing Flathead County's zoning designations within the jurisdictional area, but shall do so in coordination with the City's establishment of zoning designations so that currently zoned areas will transition smoothly from County zoning to City zoning. Until Flathead County has removed its zoning designations and the City has established new zoning designations with respect to a particular parcel or parcels of property, the applicable County zoning regulations shall remain in full force and effect, and the City shall have full legal power and authority to enforce all County zoning regulations applicable to a particular parcel or parcels.

7. Highway Corridors. Based upon the City's expressed concerns about development along the Highway Corridors, the County agrees to give 30 days written notice to the City prior to the adoption of any proposed change to the County's Master Plan/Growth Policy, or any regulations, covering property in the Highway Corridors and allow City comment thereon. The Highway Corridors are defined as 1/4 mile on either side of US Highway 93 and Montana Highway 40 beyond the two (2) mile boundary of the jurisdictional area and within the boundaries of the County Master Plan/Growth Policy.

8. Land in Two Jurisdictions. If a zoning, subdivision, lakeshore or floodplain application is received by either party which involves land located inside and outside of that party's jurisdictional area, as established by this Agreement, the parties' planning staffs shall meet and determine whether such application should be processed by only one party, and if so which party is appropriate for such processing. If the proposal involves connection to the City's water and/or sewer utilities, then the City shall process such application.

9. Development in Watershed. Based upon the City's concerns with its watershed, the parties agree that if a proposed development in Sections 5, 8, 9, or 16, Township 31 North, Range 21 West, P.M.M., Flathead County, Montana, would result in a density of one dwelling unit per 5.0 acres, or higher, the boundaries of the New Jurisdictional Area shall be amended to include such property within the New Jurisdictional Area and the City shall undertake to review the project.

10. No New Entity. No separate legal entity is created pursuant to the terms of this Agreement, although the parties agree that the previously created Planning Board and Lakeshore Protection Committee shall continue in existence.

11. No Jointly Owned Property. The parties shall not jointly acquire or own any property; nor shall the parties be required to contribute funds or bear any expenses other than those identified herein.

12. Regular Review. The parties shall meet yearly to discuss generally the topics covered by this Agreement. Prior to the expiration of this Agreement the parties shall meet to determine whether the Agreement should be renewed for an additional five year term and review the jurisdictional areas identified herein to jointly determine whether any modification is warranted.

13. New Legislation Enactments.

OPTION A: The parties agree that the City Council's enactment of new zoning and land use planning legislation, resolutions and regulations, to include ~~any only the adoption of~~ new growth policy, subdivision, zoning, and shoreline protection regulations, or text amendments to such existing regulations, ("new legislation"), not including individual re-zonings or other site-specific development applications, proposed for the jurisdictional area shown on Exhibit "A," shall not become effective within the extraterritorial jurisdiction outside the City limits until the County Commissioners have granted consent pursuant to the following process. For all new legislation, the City shall include as a condition to its effectiveness within the jurisdictional area outside the City limits, a requirement that the County Commissioner grant consent to such new legislation. After passage of such conditional new legislation, the City shall provide notice and a copy of the legislation to the County Commissioners. Within 30 days of receipt of such notice, the County Commissioners shall provide public notice and conduct a public hearing for the purpose of determining whether to grant consent to the City Council's new legislation. Should the Commissioners, by majority vote, grant consent to the City's new legislation, the legislation shall become effective upon the terms stated therein. Should the County Commissioners, by majority vote, withhold consent to the new legislation, the Commissioners shall, within 10 days thereafter, provide the City Council with a written explanation of the reasons for withholding consent and the new legislation shall not become effective. Should the County Commissioners fail to conduct such a hearing within 30 days after receipt of the City's

notice, the Commissioners shall be deemed to have granted consent and the legislation shall become effective upon the terms stated therein. In the event the County ~~wishes to schedule its own public hearing(s) on the new legislation and~~ requests participation by City staff at its hearing, the County shall reimburse the City for the City's costs and expenses, documents, staff testimony, travel and attendance at County hearing(s) and public meeting(s) on the new legislation, subject to the Commissioner's prior approval of the expense amount.

Option A.a

The parties agree that the County Commission may initiate a City of Whitefish review and re-enactment of any specific examples of such defined new legislation listed above which the City enacted between February 1, 2005 and the date of execution of this agreement. The County Commission must notify the City of Whitefish of its request to initiate such review within twenty-four months of the execution of this agreement. In the event the County Commission requests such a review, it agrees to pay the entire costs of the City's labor, materials, public notices and other direct costs of such review up to a limit of\$ _____ per ordinance.

(Concepts of disagreement exist here –CS feels County should bear cost of review. Chuck would like a super-majority of 3 County Commissioners to initiate such a review – DS disagrees with both.)

Option A.b

For ~~all~~ legislation enacted after February 1, 2005, the County Commissioners, acting by a majority vote may give the City Council written notice of its intent to consider withdrawing consent to the existing legislation. Accompanying this notice shall be a summary of necessary modifications to the existing legislation to gain consent of the County Commission. The County Commission must notify the City of Whitefish of its request to initiate such review within twenty-four months of the effective date ~~execution~~ of this agreement. The County Commissioners shall then ~~(review the entire public record of the adoption of such legislation)~~, provide public notice and conduct a public hearing within 60 days for the purpose of determining whether to withdraw consent to the existing legislation. Existing legislation shall remain in effect in the extra-territorial jurisdiction outside the City limits until the County Commissioners ~~revokes~~ consent.

(cost issues, super-majority?, or meld language of both?)

OPTION B: The parties agree that, prior to enactment, the City shall give the County notice and an opportunity for comment upon all new zoning and land use planning legislation, resolutions and regulations, including adoption and revision of the growth policy, subdivision, zoning, and shoreline protection regulations ("new legislation") proposed for the jurisdictional area shown on Exhibit "A" pursuant to the following

Planning Jurisdiction Interlocal Agreement

Amendment #3

Draft 9/10/10

process. At least 45 days prior to enactment of any new legislation, the City shall provide a copy of all new legislation to the County along with the dates of City hearings and a description of the public process for considering the new legislation. At least 10 days prior to the hearing at which the City Council shall consider enacting the new legislation the County shall provide the City with its comments upon on the proposed new legislation including support for, opposition to, or suggestions for alternative language. The City shall give due weight and consideration to the County's comments and provide a written explanation to the County within 15 days after passage of the legislation describing its decision to accept, reject or modify the County's comments.

OPTION C: Delete Paragraph 13 in its entirety.

14. Term. After approval and appropriate filing, this Agreement shall become effective and shall endure five (5) years from the date of its approval by the parties, or until terminated by law, by mutual agreement of the parties or withdrawal of a party as provided by this part, whichever shall first occur.

A party may withdraw from this Agreement upon lawful resolution passed by the governing body of that party and service of written notice thereof on the remaining party at least one (1) year prior to the requested date of termination. During the one-year period of time from notice of the requested withdrawal and termination of the Interlocal Agreement, the party providing notice shall specify the nature and grounds for withdrawal within ten (10) days of the date of the notice, allowing the remaining party ninety (90) days to investigate and propose a resolution.

After ninety (90) days from the date of the notice for withdrawal, if the parties are unable to reach a mutually agreeable resolution, the parties shall attempt to resolve the stated grounds for the withdrawal and termination of the Interlocal Agreement through non-binding mediation, and, the parties shall jointly select a mediator. In the event the parties do not voluntarily and timely select a mediator within fifteen (15) days from the mediation request, the eleventh judicial district court on application of a party shall appoint a mediator. The mediator so appointed by the parties or the district court shall assist the parties to attempt to resolve their differences as provided by § 26-1-813, MCA.

This Agreement will remain in full force and effect for the parties throughout the full one (1) year period of time following service of notice of the withdrawal of a party.

15. Entire Agreement and Duration. This Agreement contains the entire agreement of the parties hereto, as amended on September 20, 2005, and February 6, 2007, and supersedes any prior written or oral agreements between them concerning the subject matter contained herein. Each party represents and warrants that the Agreement is lawful and binding on the parties, and enforceable by the remedy of specific performance and injunctive relief. There are no representations,

agreements, arrangements, or understandings, oral or written, between the parties hereto relating to the subject matter contained in this Agreement which are not fully expressed herein.

16. Governing Law. The construction of this Agreement, and the rights and liabilities of the parties hereto, shall be governed by the laws of the State of Montana.

17. Forum. Any litigation to enforce or interpret the provisions of this Agreement or the parties' rights and liabilities arising out of this Agreement or the performance hereunder shall be maintained only in the courts in the County of Flathead, Montana.

18. Captions. The captions and headings of the different paragraphs of this Agreement are inserted for convenience of reference only, and are not to be taken as part of this Agreement or to control or affect the meaning, construction, or effect of the same.

19. Necessary Acts. Each party to this Agreement agrees to perform any further acts and execute and deliver any further documents that may be reasonably necessary to carry out the provisions of this Agreement.

20. No Waiver. The waiver by one party of the performance of any covenant, conditions or promise shall not invalidate this Agreement, nor shall it be considered as a waiver by such party of any other covenant, condition or promise. The delay in pursuing any remedy or in insisting upon full performance for any breach or failure of any covenant, condition or promise shall not prevent a party from later pursuing remedies or insisting upon full performance for the same or any similar breach or failure.

21. Partial Invalidity. In the event that any word, phrase, clause, sentence, paragraph, section, or other part of the Agreement set forth herein is held invalid by a court of competent jurisdiction, such judgment shall affect only that part held invalid and the remaining provisions hereof shall continue in full force and effect.

Some arguments for no severability ! DS will explain.

FLATHEAD COUNTY

CITY OF WHITEFISH

By: _____
Dale W. Lauman, Chairman

By: _____
Charles C. Stearns, City Manager

ATTEST:

By: _____
Diana Kile, Clerk

By: _____
Necile Lorang, City Clerk

(seal)

(seal)

STATE OF MONTANA)
) s.s.
COUNTY OF FLATHEAD)

On this _____ day of _____, 2010, before me, the undersigned Notary Public for the State of Montana, personally appeared **DALE W. LAUMAN** and **DIANA KILE**, known to me to be the Chairman of the Board of Commissioners and Clerk of the Board, respectively, and acknowledged to me that the County executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year last above written.

(seal)

Printed Name: _____
Notary Public for the State of Montana
Residing: _____
My Commission expires: _____

* * * * *

STATE OF MONTANA)
) s.s.
COUNTY OF FLATHEAD)

On this _____ day of _____, 2010, before me, the undersigned Notary Public for the State of Montana, personally appeared **CHARLES C. STEARNS** and **NECILE LORANG**, known to me to be the City Manager and City Clerk respectively, and acknowledged to me that the City of Whitefish executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year last above written.

(seal)

Printed Name: _____
Notary Public for the State of Montana
Residing: _____
My Commission expires: _____