

MEMORANDUM OF UNDERSTANDING REGARDING HB121

This Memorandum of Understanding (“Agreement”) is entered into between Yellowstone County (“County”), the City of Billings (“Billings”) and the City of Laurel (“Laurel”) (collectively “the Parties”) for purposes of creating and implementing processes and procedures for complying with requirements set forth by the Montana Legislature in the laws collectively known as House Bill 121 (“HB121”) during the 2021 Legislative session.

WHEREAS, the County, Billings and Laurel are parties to the agreement that creates the multi-jurisdictional service district created to provide health services and health department functions known as the “Interlocal Agreement;”

WHEREAS, by virtue of HB121, the Parties are subject to various rights and responsibilities created by the Interlocal Agreement; and,

WHEREAS, it is the intent of the Parties to comply with HB121 and to set forth as clearly as possible the methods of doing so for each as well as for the Parties collectively;

THEREFORE, this Agreement sets forth the following terms pursuant to which the County, Billings and Laurel shall agree:

1. **Definitions:** This Agreement shall be subject to the following definitions:
 - (a) “Local Governing Body” shall refer to elected officials governing Yellowstone County (Board of County Commissioners), the City of Billings (Billings City Council), and the City of Laurel (Laurel City Council), respectively.
 - (b) “Local Governing Authority” shall refer to a subset of the Local Governing Bodies that is constituted and empowered to provide oversight and approval of certain Health Office and Board of Health recommendations as required under HB121 and as set forth herein.
2. **Composition of and action by the Local Governing Authority.**
 - (a) The Parties agree that, using the proportions described in the Interlocal Agreement, a five-member Local Governing Authority will be created within one (1) month of the effective date of this Agreement. Composition of the Local Governing Authority shall be as follows:
 - o Two (2) members appointed by the Yellowstone County Board of County Commissioners;
 - o Two (2) members appointed by the Billings City Council; and,
 - o One (1) member appointed by the Laurel City Council.
 - (b) The Parties agree that each member of the Local Governing Authority must be currently seated, elected members of the Local Governing Body that appoints them.

- (c) Each Local Governing Body has the sole appointment and removal authority for members of the Local Governing Authority.
- (d) Each appointed member of the local governing authority shall be appointed for a three (3) year term.
- (e) In the event that a Local Governing Body has one or more unfilled position(s) on the Local Governing Authority, then the Local Governing Authority shall continue to operate, subject to the terms of the quorum requirement that follows.
- (f) A quorum of the Local Governing Authority shall be established by the presence of at least one (1) member appointed by each Local Governing Body. In the event that a Local Governing Body has no current appointed individuals, then a quorum is achieved by the presence of at least one (1) appointed member of each remaining Local Governing Body that has made an appointment.
- (g) The Local Governing Authority shall have a chairperson for purposes of meeting management and logistics. The chairperson shall have no special powers or authorities different from or greater than any other member. The chairperson shall rotate each calendar year, starting with a representative of the County, followed by a representative of the City of Billings, and then followed by the representative of the City of Laurel. The rotation cycle shall then repeat.
- (h) The Local Governing Authority shall meet on an as-needed basis and may take action through an in-person meeting or an electronic meeting (e.g., telephone or computer) subject to all open meeting requirements. The chairperson, as part of his/her management and logistics function shall determine the manner of meeting or acting for each time a need for local governing authority discussion or action is required. The chairperson is responsible for ensuring proper public notice is made of any and all meetings of the Local Governing Authority and that minutes are recorded, as necessary.
- (i) So long as a quorum is present, actions of the local governing authority shall be determined by a simple majority vote of those present.

3. Issues Requiring Action by the Local Governing Authority.

- (a) Appointment of a new Health Officer. Upon determining the need for a new Health Officer, the Board of Health shall make its recommendation to the Local Governing Authority, which shall act to approve or disapprove the recommendation after conducting a public meeting. In the event that there is not a Health Officer in place at the time of the recommended appointment, then the person recommended by the Board of Health for appointment may fill the role until such time as the Local Governing Authority acts.
- (b) Approval of new local public health rules. Any proposed new local public health rules shall be developed and vetted by the Health Officer and Board of Health. When the development process is complete, then the Board of Health or Health Officer shall notify the Local Governing Authority that a decision is needed, and a public meeting shall be arranged by the

chairperson. The Local Governing Authority will then act to approve or disapprove the proposed local public health rule.

- (c) Approval of revised local public health rules. If the Health Officer and Board of Health determine that an existing rule needs to be modified, then they shall develop and vet the proposed revisions. When the development process is complete, then the Board of Health or Health Officer shall notify the Local Governing Authority that a decision is needed, and a public meeting shall be arranged by the chairperson. The Local Governing Authority will then act to approve or disapprove the proposed local public health rule. In the event that the Local Governing Authority disapproves the proposed revision, then any existing local public health rule shall remain in effect.
- (d) Approval of fees proposed for adoption by the local governing body to administer regulations for the control and disposal of sewage from private and public buildings and facilities.

4. Issues not Subject to Local Governing Authority Approval.

- (a) The Parties wish to clarify that the purpose and scope of this Agreement, and of the Local Governing Authority, is to comply with the terms of HB121. Therefore, it is necessary to explicitly state some, though not all, of the issues that will not be addressed by the Local Governing Authority.
- (b) HB121 states that “(i)t is not a purpose of this chapter to hinder, slow, or remove nonemergency-related powers granted to a local board of health.” [MCA 50-2-116(1)] Therefore, the local governing bodies have determined that the following activities and authorities are not subject to approval by the local governing authority:
 - Completion of and action on authorized inspections (e.g., food service inspections, public accommodation inspections, etc.), including issuance or denial of permits or licenses resulting from such inspections.
 - Issuance of quarantine and/or isolation order to individuals consistent with state law and regulations governing the control of communicable diseases.
 - Issuance of public health guidance for matters such as but not limited to emerging infectious diseases, food supply warnings and recalls, water supply warnings and recalls, etc.
 - Time-sensitive actions required to protect the public, such as but not limited to closing an unsanitary restaurant or preventing the sale of a potentially spoiled food after a truck wreck.
 - Approval of fees established under authority of the Board of Health unless otherwise specified in this Agreement.

- 5. **No Creation of Entity, Hold Harmless.** This Agreement does not create any relationship whereby the Parties create any governmental or non-governmental entity outside of the scope described herein. This Agreement shall not be construed to create, either expressly or by implication, the relationship of agency between the County, the City of Billings and/or the City of Laurel in any manner in relation to the subject matter of this Agreement, and none shall be liable for the acts, errors, or omissions of the others entered into, committed or performed with respect to or in the performance of this Agreement. Each party agrees to

indemnify and holds the others harmless against any claims arising from the acts, errors or omissions of its employees, appointees or agents.

6. **Legal Compliance.** Each Party agrees to be solely responsible for compliance with all laws, rules and requirements of each entity and agrees to abide by them as part of the Local Governing Authority.
7. **Governing Law, Dispute Resolution, Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Montana. Should a dispute arise regarding the terms of this Agreement, the Parties shall first enter into good faith discussions in an attempt to resolve the dispute. Should the dispute result in litigation, the Parties agree that proper venue lies in the Montana 13th Judicial District Court, Yellowstone County.
8. **Entire Agreement.** This Agreement embodies the entire understanding between the Parties with respect to the specific subject matter hereof, and no prior oral or written representation shall serve to modify or amend this Agreement. This Agreement may not be modified except by action of all three governing bodies.
9. **Authorized Signatures.** The Parties represent and agree that the persons signing this Agreement have authorization to bind their respective governmental entities to the terms of this Agreement and that this Agreement is not valid and enforceable until all Parties have signed.