

RESOLUTION NO. 3571

A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO ENTER INTO AN AGREEMENT WITH TUMBLEWOOD DEVELOPMENT, INC. FOR SANITATION INSPECTION SERVICES FOR CALENDAR YEARS 2013.

WHEREAS, the City of Miles City desires to contract for sanitation inspection services on behalf of its Health Board to perform sanitation inspections of facilities within the city limits of the City of Miles City as required or permitted by Title 50 MCA for all of calendar year 2013;

AND WHEREAS Tumblewood Development, Inc., a Montana corporation, has provided such services to the City of Miles City, pursuant to a contract approved under Resolution 3434, for a portion of calendar year 2011 and all of calendar year 2012;

AND WHEREAS; the City of Miles City Health Board has recommended that the contract of Tumblewood Development, Inc., a Montana corporation, of Lewistown, Montana be renewed for calendar year 2013;

AND WHEREAS Tumblewood Development, Inc., a Montana corporation, of Lewistown, Montana, has represented that it is qualified and authorized by applicable Montana law, rules and regulations to provide such sanitation inspection services for the City of Miles City;

AND WHEREAS the City of Miles City and Tumblewood Development, Inc. have negotiated mutually acceptable terms and conditions for the supplying of such contracted sanitation inspection services for all of Calendar Year 2013;

NOW THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA AS FOLLOWS:

1. The Sanitation Inspection Services Contract between the City of Miles City, Montana and Tumblewood Development, Inc., a Montana corporation, attached hereto as Exhibit "A", and made a part hereof, is hereby approved and adopted by this Council.

2. The Chairperson of the City of Miles City Board of Health is hereby empowered and authorized to execute said Sanitation Inspection Services Contract on behalf of the City of Miles City and bind the City of Miles City thereto.

3. The Chairperson of the City of Miles City Board of Health is hereby empowered and authorized to execute such further documents as are necessary to carry out the terms of said Sanitation Inspection Services Contract and bind the City of Miles City thereto.

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM AT A DULY NOTICED SPECIAL MEETING OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 22ND DAY OF JANUARY, 2013.

C.A. Grenz
C.A. Grenz, Mayor

ATTEST:

Rebecca Stanton
Rebecca Stanton, City Clerk

SANITATION INSPECTION SERVICE AGREEMENT

THIS AGREEMENT entered into this 23 day of January, 2013, by and between THE CITY OF MILES CITY HEALTH BOARD, a board of the City of Miles City, Montana, of 17 South Eighth Street, Miles City, Montana 59301, hereinafter referred to as "*the Board*" and TUMBLEWOOD DEVELOPMENT, INC., a Montana corporation, of P.O. Box 743, Lewistown, Montana 59457, hereinafter referred to as "*Sanitarian*";

IT IS HEREBY AGREED between the parties as follows:

1. **LOCATION AT WHICH SERVICES ARE TO BE PROVIDED.** Sanitarian will provide sanitation inspection and license validation services, as further specified herein, for the Board at licensed locations within the city limits of the City of Miles City, Custer County, Montana.

2. **SERVICES TO BE PROVIDED.** Sanitarian will provide the following services to the Board:

- A. All routine and minimum required inspections, as required by, and in accordance with the regulations of, the Montana Department of Public Health and Human Services (DPHHS) of all the following types of licensed establishments within the city limits of the City of Miles City, Montana:
1. Food service establishments (encompassing all establishments requiring local inspection under Title 50, Chapter 50, MCA);
 2. Licensed liquor establishments (those requiring local health inspections under §16-4-402 MCA);
 3. Meat markets;
 4. Food manufacturers (encompassing all establishments requiring local inspection under Title 50, Chapter 57, MCA);
 5. Public accommodations (encompassing all establishments requiring local inspection under Title 50, Chapter 51, MCA);
 6. Swimming pools, spas, and other water features (encompassing all establishments requiring local inspection under Title 50, Chapter 53, MCA);

7. Trailer courts and campgrounds (encompassing all establishments requiring local inspection under Title 50, Chapter 52, MCA);
8. Daycare centers;
9. Schools; and
10. Other health related establishments as required by DPHHS

Such inspections shall also include any pre-inspections or plan pre-approvals required for licensing.

- B. Issue septic system permits and inspections of installed septic systems. Inspect, if required or advisable, main line sewage service connections, and provide enforcement of state and City of Miles City regulations for on-site sewage disposal or main line connections;
- C. Provide statutory validation of licenses issued by the DPHHS in accordance with Montana Code Annotated, Title 50;.
- D. Submit a list of all establishments inspected to DPHHS and the Board quarterly, such lists to be submitted in a format provided by or approved by DPHHS;
- E. On at least a quarterly basis, notify DPHHS of any establishments closing and/or any newly operating establishments of which the Board or Sanitarian are aware but that may not have obtained required licensure;
- F. Make all inspections for sanitary conditions using applicable environmental health rules and regulations;
- G. Timely complete and submit all reports necessary under DPHHS regulations for health and sanitation inspections under MCA Title 50, utilizing forms approved by DPHHS, and submit duplicates of each such report to the Board;

Yearly inspections hereunder are estimated to amount to approximately one hundred forty (140), as well as other unplanned inspections due to new construction, new businesses, or currently unplanned civic events.

Nothing herein shall in any way alter the requirements of a facility to comply with Montana health and sanitation laws and regulations, it being the duty of such facility to be in compliance with such laws and regulations.

3. **TERM OF AGREEMENT.** This Agreement shall be effective commencing at midnight on December 31, 2012 and shall remain in effect until midnight on December 31, 2013. The services under this Agreement shall be provided for all inspections required to be filed with DPHHS for calendar year 2013.

4. **COMPENSATION.** The above services shall be provided by Sanitarian to the Board at the above locations for the following compensation:

The sum of **Thirty Three Thousand and no/100 Dollars (\$33,000.00)**, payable by the Board to Sanitarian within _____ days after the completion of the services to be provided hereunder **for calendar year 2013.**

5. **NO ADDITIONAL COMPENSATION.** Sanitarian shall not receive any additional compensation for travel, per diem, subsistence expenses, or any other expenses, all such expenses having been included in the rates set forth in paragraph 4, above.

6. **QUALIFICATIONS OF INSPECTOR.** Sanitarian represents and warrants to Board that its personnel providing services hereunder have all licenses, certifications and qualifications required by Montana law and regulations to conduct the inspections provided for hereunder and to issue reports and validations acceptable for licensure of the facility inspected. All services hereunder will be provided by the following named individual:

Michael S. Rinaldi RS/NREHS
Montana State License No. 472

Sanitarian's use of any other person to provide services hereunder requires the prior written consent of the Board.

7. **PERSONNEL, EQUIPMENT AND SUPPLIES.** Sanitarian, at Sanitarian's expense, shall supply all personnel, equipment and supplies, transportation and lodging necessary to carry out the scope of work under this Agreement. Any personnel of Sanitarian providing services

hereunder shall, at all times while providing services hereunder, maintain the certification and have completed all training programs required under §50-50-301 MCA. All such personnel shall maintain a current working knowledge of the theories, principles and practices of environmental sanitation, federal, state, and local legislation and regulations, community resources, and agency policies and procedures. In conducting services hereunder, Sanitarian, and all personnel utilized by Sanitarian in providing such services, shall establish and maintain an effective working relationship with the Board, its members, the Mayor of the City of Miles City, other agencies, and the public.

8. **INTERNET AND E-MAIL ACCESS.** Sanitarian will, at all times during the term of the Agreement, maintain a working Internet connection and e-mail account that are accessible at all times to DPHHS and the Board. At the commencement of the term of this Agreement, Sanitarian shall supply the Board, in writing, the e-mail address for such account, and, if such address changes during the term of this Agreement, shall immediately provide DPHHS and the Board with such new address.

9. **INDEPENDENT CONTRACTOR STATUS OF CONTRACTOR; PROOF OF WORKERS' COMPENSATION COVERAGE OR EXEMPTION CERTIFICATE.** Sanitarian is an independent contractor under this Agreement and Sanitarian, and all personnel utilized by Sanitarian in carrying out this Agreement, are not the employees or agents of the Board or the City of Miles City. Sanitarian shall provide Workers' Compensation insurance coverage on all of its employees engaged in providing services under this Agreement, unless specifically exempted by law, and shall pay all payroll taxes, including FICA, Medicare, and unemployment, or self-employment taxes, for its employees providing services hereunder.

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Prior to conducting services hereunder, Sanitarian shall provide the Board with either (1) a certificate of insurance from its Workers Compensation insurer evidencing coverage throughout the period that services are to be provided hereunder and providing for at least ten (10) days prior written notice by the insurer to the Board before cancellation, termination, expiration, or nonrenewal of such policy or (2) a copy of its independent contractor exemption certificate issued by the Montana Department of Labor and Industry pursuant to §39-71-417 MCA. If Sanitarian provides such exemption certificate, it shall immediately notify the Board of any cancellation, revocation or other termination of such certificate.

10. **NONDISCRIMINATION.** In compliance with §49-3-207 MCA, all hiring by Sanitarian shall be on the basis of merit and qualification, and Sanitarian, in the performance of this Agreement, shall not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

11. **PROHIBITION OF ASSIGNMENT OR SUBCONTRACTING.** This Agreement is personal as to Sanitarian, and specifically as to Michael S. Rinaldi providing all inspections services hereunder, and may not be assigned by Sanitarian, or subcontracted in any manner, without the prior written consent of the Board.

12. **INDEMNIFICATION.** Sanitarian shall indemnify, defend, and hold the Board and the City of Miles City harmless from any and all actions, claims, or damages incurred or arising out of any negligent acts or omissions, or any wrongful intentional acts, of Sanitarian in carrying out any services under this Agreement.

13. **DEFAULT BY SANITARIAN.** In the event that Sanitarian fails to timely and competently provide services, or otherwise fails to perform or violates any of the other terms and conditions of this Agreement, the Board may give Sanitarian written notice of such default, and,

if Sanitarian does not fully cure such noticed default within ten (10) days of the giving of such written notice, the Board, without further notice, may terminate this Agreement and may pursue any remedy permitted at law or in equity. Notice shall be served upon Sanitarian by certified mail, return receipt requested, addressed to Sanitarian at:

Tumblewood Development, Inc.
P.O. Box 743
Lewistown, Montana 59457

Notice shall be deemed given as of the date of its deposit into the United States Mail. The failure or forbearance of the Board to give notice of default shall not constitute a waiver of further defaults by Sanitarian. Nothing herein shall be construed as limiting the right of the Board to terminate this Agreement for cause, without notice of default, in the event of repeated defaults noticed by the Board to Sanitarian.

14. **DEFAULT BY BOARD.** In the event that the Board fails to timely any of its obligations hereunder, or otherwise or violates any of the terms and conditions of this Agreement, Sanitarian may give the Board written notice of such default, and, if the Board does not fully cure such noticed default within ten (10) days of the giving of such written notice, the Sanitarian, without further notice, may terminate this Agreement and may pursue any remedy permitted at law or in equity. Notice shall be served upon the Board by certified mail, return receipt requested, addressed to the Board at:

City of Miles City Health Board
Attn. Chairperson.
P.O. Box 910
Miles City, Montana 59301

Notice shall be deemed given as of the date of its deposit into the United States Mail. The failure or forbearance of the Sanitarian to give notice of default shall not constitute a waiver

of further defaults by the Board. Nothing herein shall be construed as limiting the right of the Sanitarian to terminate this Agreement for cause, without notice of default, in the event of repeated defaults noticed by the Sanitarian to the Board.

15. **MODIFICATION.** This Agreement constitutes the entire Agreement of the parties and supersedes all prior negotiations and understandings of the parties. This Agreement may be modified only by written instrument executed by all parties.

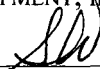
16. **LITIGATION.** In the event that it becomes necessary for either party to institute legal proceedings to enforce any of the terms of this Agreement, then the prevailing party in such proceedings shall be entitled to recover from the non-prevailing party all costs and expenses incurred in such proceedings, including reasonable attorneys fees.

17. **VENUE.** This Agreement shall be construed under the laws of the State of Montana and any action upon this Agreement shall be venued in Custer County, Montana.

18. **TIME OF THE ESSENCE.** Time is of the essence of this Agreement.

19. **BINDING EFFECT.** This Agreement is binding upon and inures to the benefit of the parties, their successors and assigns.

20. **CAPACITY; PROOF OF GOOD STANDING.** The signators to this Agreement represent and warrant that they have the legal capacity and authority to bind the entities which are the parties to this Agreement. At the time of execution of this Agreement, the Sanitarian shall provide to the Board a current Certificate of Existence issued by the Montana Secretary of State.





21. **RATIFICATION BY CITY COUNCIL.** This Agreement shall not become effective until it is approved and ratified by the City Council of the City of Miles City by appropriate resolution.

EXECUTED this 28th day of January, 2013.

CITY OF MILES CITY HEALTH BOARD

By: Sharon W Wilcox
Its Chairperson

TUMBLEWOOD DEVELOPMENT, INC., a
Montana corporation

By: Muel Piti-RS

Title: V.P