RESOLUTION NO. 3522

A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO ENTER INTO A CONSTRUCTION AGREEMENT WITH PITTSBURG TANK & TOWER COMPANY, INCORPORATED, FOR DEMOLITION OF THE 1911 ELEVATED WATER TANK IN RIVERSIDE PARK.

WHEREAS, the City has advertised for and accepted bids for the demolition of the 1911 elevated water tank in Riverside Park;

AND WHEREAS, Pittsburg Tank & Tower Company, Incorporated, a Kansas corporation, of 1 Water Tank Place, Henderson, Kentucky was the lowest responsible bidder for such Project;

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

- 1. The Construction Agreement between the City of Miles City, Montana and Pittsburg Tank & Tower Company, Incorporated, a Kansas corporation, on file in the office of the City Clerk of the City of Miles City, and incorporated herein by reference, is hereby approved and adopted by this Council subject to final written approval of the City Attorney.
- 2. The Mayor of the City of Miles City, upon written approval of the City Attorney, is hereby empowered and authorized to execute said Construction Agreement on behalf of the City of Miles City and bind the City of Miles City thereto; and
- 3. The Mayor of the City of Miles City is hereby empowered and authorized to execute such further documents as are necessary to carry out the terms of said Construction Agreement and bind the City of Miles City thereto.

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 24TH DAY OF JULY, 2012.

C.A. Grenz, Mayor

ATTEST:

Rebecca Stanton, City Clerk

AGREEMENT TO COMPLY WITH NONDISCRIMINATION PROVISIONS OF **MONTANA STATUTE**

In compliance with §49-3-207 MCA, PITTSBURG TANK & TOWER, INC., of 1 Watertank Place, Henderson, KY 42420, as a condition precedent to the execution of its contract with the City of Miles City, Montana for the construction of the Riverside Park 1911 Elevated Tank Demolition Project, and as an additional term of the contract for such Project, agrees with the City of Miles City, as follows:

- I. PITTSBURG TANK & TOWER, INC. will conduct all hiring, and will require its subcontractors to conduct all hiring, for the project on the basis of merit and qualifications;
- 2. PITTSBURG TANK & TOWER, INC. and its subcontractors will not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin in the performance of the contract.

PITTSBURG TANK & TOWER, INC.,

DATED this 7 day of UNE 2012.

STATE OF Kentucky COUNTY OF Herderson

This instrument was acknowledged before me on the Tohnston in their capacity as Chief Executive Officer of PITTSBURG TANK

& TOWER, INC., a Kentucky corporation.

Printed Name of Notary Public

Residing at Handerson

My Commission expires:

AGREEMENT TO COMPLY WITH MONTANA RESIDENT LABOR REQUIREMENTS PROVISIONS OF MONTANA STATUTE

In compliance with §18-2-409 MCA, PITTSBURG TANK & TOWER, INC., of 1 Watertank Place, Henderson, KY 42420, as a condition precedent to the execution of its contract with the City of Miles City, Montana for the construction of the Riverside Park 1911 Elevated Tank Demolition Project, and as an additional term of the contract for such Project, agrees with the City of Miles City, as follows:

- I. PITTSBURG TANK & TOWER, INC. and its subcontractors will ensure that at least 50% of all workers performing labor on the project are bona fide Montana residents, as defined in §18-2-401 MCA. The wages paid to all workers on the project will comply with the Montana Statewide Prevailing Davis-Bacon Heavy Construction Wage Rates dated January 27, 2011.
- 11. PITTSBURG TANK & TOWER, INC. and its subcontractors will ensure that wages paid to all workers on the project will comply with the Montana Statewide Prevailing Davis-Bacon Heavy Construction Wage Rates dated January 27, 2011.

Printed Name of Notary Public

My Commission expires:

SOY . Kentucky

Residing at

SECTION 00500

AGREEMENT

This Agreement is dated as of the <u>a6</u> day of <u>July</u>	in the year 2012, by
and between City of Miles City hereinafter called Owner and	•
Pittsburg Tank & Tower Maintenance Co, Inc. hereinafter called Co	Contractor.
Owner and Contractor, in consideration of the mutual covenants hereina	after set forth, agree as
follows:	

Article 1. WORK

1.01 Contractor shall complete all work, as specified or indicated in the Contract Documents. The work is generally described as follows: Riverside Park 1911 Elevated Tank Demolition Project, dated December 2011 by:

Kadrmas, Lee & Jackson 2611 Gabel Road P.O. Box 80303 Billings, MT 59102

Article 2. THE PROJECT

2.01 The project for which the work under these Contract Documents may be the whole or only a part is generally described as follows: Riverside Park 1911 Elevated Tank Demolition Project for Miles City, Montana.

Article 3. ENGINEER

3.01 The Project has been designed by Kadrmas, Lee and Jackson, Inc., who is hereinafter called Engineer and who is to act as Owner's representative, assume all duties and responsibilities and have the rights and authority assigned to Engineer in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Article 4. CONTRACT TIME

- 4.01 Time of the Essence
- A. All the time limits for milestones, if any, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.
- 4.02 Days to achieve Substantial Completion
- A. The Work will be substantially complete within 30 calendar days after the date when the Contract Time commences to run as provided in paragraph 2.03 of the General Conditions.

- B. All punchlist items, if any, shall be completed within 14 calendar days from the issuance of the Substantial Completion Certificate. Final completion will not be achieved until all punchlist items have been completed.
- C. Liquidated Damages may be assessed if the Contractor fails to achieve Substantial Completion or Final Completion within the specified time.

4.03 Liquidated Damages

A. Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the time specified in paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration preceding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner \$ Five Hundred and 00/100 dollars (\$500.00) for each day that expires after the time specified in Paragraph 4.02 for completion and readiness for final payment.

Article 5. CONTRACT PRICE

5.01 Owner shall pay the Contractor for performance of the work in accordance with the Contract Documents the sum (subject to adjustment as provided in the Contract Documents) of Thirty Seven Thousand, Four Hundred Twenty One and 00/100 Dollars (\$ 37,421.00).

Article 6. PAYMENT PROCEDURES

- 6.01 Submittal and Processing of Payments:
- A. Contractor shall submit applications for payment in accordance with Article 14 of the General Conditions. Applications for payment will be processed, as provided in the Contract Documents.
- 6.02 Progress Payments; Retainage:
- A. Owner shall make progress payments in accordance with Article 14 of the General Conditions on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by Engineer, once each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the number of units of each bid item completed times the bid unit price in the Unit Price Schedule of the Bid Form for that item.
 - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the sum of the unit price items less the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, in accordance with paragraph 14.02 of the General Conditions.
 - a. The Owner shall retain five (5%) of the amount of each payment until final completion and acceptance of all Work covered by the Contract Documents.

- b. Retainage will be five (5%) of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to Owner as provided in paragraph 14.02 of the General Conditions).
- 2. Upon Substantial Completion and at the Owner's discretion, the amount of retainage may be further reduced if requested by the Contractor.

6.03 Final Payment:

A. Upon final completion and acceptance of the work in accordance with paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the contract price, as recommended by the Engineer as provided in said paragraph 14.07.

Article 7. INTEREST

7.01 All monies not paid when due as provided in Article 14 of the General Conditions shall bear interest at the maximum rate allowed by law at the place of the Project.

Article 8. CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents (including all Addenda) listed in paragraph 9 and the other related data identified in the Bidding Documents.
- B. Contractor has visited the site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, performance or furnishing of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state and local Laws and Regulation that may affect cost, progress, performance and furnishing of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in the Special Provisions as provided in paragraph 4.02 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Special Provisions as provided in paragraph 4.06 of the General Conditions. Contractor acknowledges that such reports and drawings are not Contract Documents and may not be complete for Contractor's purposes. Contractor acknowledges that Owner and Engineer do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site.
- E. Contractor has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise, which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and

procedures of construction to be employed by Contractor including applying the specific means, methods, techniques, sequences and procedures of construction, if any, expressly required by the Contract Documents to be employed by the Contractor, and safety precautions and programs incident thereto.

- F. Contractor does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions or the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.
- Contractor has given Engineer written notice of all conflicts, errors, ambiguities or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by Engineer is acceptable to Contractor.
- J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

Article 9. CONTRACT DOCUMENTS

9.01 Contents

- A. The Contract Documents consist of the following:
- 1. This Agreement
- 2. Contractor's executed Bid Form
- 3. Performance Bond and Payment Bond
- 4. Certificates of Insurance
- 5. Standard General Conditions
- 6. Supplementary Conditions
- 7. Modifications to the MPWSS
- 8. Prevailing Wage Rates
- 9. Special Provisions
- 10. Supplemental Specifications as listed in the Table of Contents

- 11. Technical Specifications as listed in Table of Contents
- 12. Montana Public Works Standard Specifications, Sixth Edition, dated April 2010.
- 13. Construction Plans as listed in the Table of Contents.
- 14. Addenda as listed on the executed Bid Form
- Any Modification, including Change Orders, duly delivered after execution of Agreement
- 16. Notice to Proceed, when issued
- 17. Notice of Substantial Completion, when issued
- 18. Notices of Final Completion and Acceptance, when issued
- B. There are no Contract Documents other than those listed above in this Article 9.
- C. The Contract Documents may only be amended, modified or supplemented as provided in paragraphs 3.04 of the General Conditions.

Article 10. MISCELLANEOUS

10.01 Terms

A. The terms used in this Agreement which are defined in Article 1 the General Conditions will have the meanings indicated in the General Conditions.

10.02 Assignment of Contract

A. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 Successors and Assigns

A. Owner and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

10.04 Severability

A. Any provision of part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall

continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

In Witness Whereof, Owner and Contractor have signed this Agreement in triplicate. One counterpart each has been delivered to Owner, Contractor and Engineer. All portions of the Contract Documents have been signed or identified by Owner and Contractor or by Engineer on their behalf.

This Agreement will be effective on	. 1	(which is the effective d	ate
of the Agreement).			

This Agreement shall not be effective unless and until concurred by Funding Agency's (if any) designated representative.

	Pittsburg Tank & Tower Maintenance Co, Ir (Contractor)	nc.
Ву	Be fatt-	_(SEAL & ATTEST)
Title	UP	- Curach
	(Joint Venture)	_
Ву		_(SEAL & ATTEST)
Title_		
	City of Miles City, Montana (Owner)	_
Ву	C.A. Grenz	_ (SEAL & ATTEST)
TITLE	Mayor	_

END OF SECTION 00500