

AGENDA

*Regular Council Meeting
City Council Chambers*

*January 22, 2013
7:00 p.m.*

**CALL TO ORDER
PLEDGE OF ALLEGIANCE
ROLL CALL**

1. **APPROVAL OF COUNCIL MINUTES/COMMITTEE MINUTES**
 - a. City Council Meeting 1/08/2013
2. **SCHEDULE MEETINGS**
3. **REQUEST OF CITIZENS& PUBLIC COMMENT**
 - a. **Ken Stabler** regarding vacant lots behind Tire Rama
4. **APPOINTMENTS**
5. **PROCLAMATIONS**
6. **STAFF REPORTS**
7. **CITY COUNCIL COMMENTS**
8. **MAYOR COMMENTS**
9. **PUBLIC HEARINGS**
 - a. **ORDINANCE NO. 1250:** An Ordinance Revising Sections 16-43 Of The Code Of Ordinances Of The City Of Miles City, Montana So As To Prohibit The Discharge Of Firearms On City Owned Or Leased Lands Within Three (3) Miles Of The City Limits Except At Approved Shooting Ranges.
10. **OLD BUSINESS**
 - a. **ORDINANCE NO. 1250:** An Ordinance Revising Sections 16-43 Of The Code Of Ordinances Of The City Of Miles City, Montana So As To Prohibit The Discharge Of Firearms On City Owned Or Leased Lands Within Three (3) Miles Of The City Limits Except At Approved Shooting Ranges

11. **BID AWARD**

BID OPENING

South Strevell/Merriam Street -- Water/Storm Sewer Project

12. **NEW BUSINESS**

- a. **ORDINANCE NO. 1249:** An Ordinance Restricting The Budgeting And Expenditure Of General Fund Cash Reserves
- b. **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

13. **ADJOURNMENT**

Public comment on any public matter that is not on the agenda of this meeting can be presented under ARequest of Citizens@ provided it is within the jurisdiction of the City to address. Public comment will be entered into the minutes of this meeting. The City Council cannot take any action on a matter unless notice of the matter has been made on an agenda and an opportunity for public comment has been allowed on the matter. Public matter does not include contested cases and other adjudicative proceedings.

REGULAR COUNCIL MEETING

**January 8, 2013
7:00 p.m.**

CALL TO ORDER

The Regular Council meeting was held Tuesday, January 8, 2013, in the City Hall Council Chambers at City Hall, 17 S. 8th Street, Miles City, Montana. Mayor C. A. Grenz called the meeting to order. Council Members present were Dwayne Andrews, Roxanna Brush, John Hollowell, Jerry Partridge, John Uden, Bill Melnik and Sue Galbraith. Councilperson Mark Ahner was absent.

Also present were Deputy City Attorney Erica Griffith, Fire Chief Dale Berg, City Planner Dianna Broadie, Police Chief Doug Colombik, Public Utilities Director Al Kelm, Grant Administrator Dawn Colton, Parks Supervisor Brady Stone, Connie Watts, Finance Clerk Linda Wildman, Human Resources/Payroll Officer Billie Burkhalter and Council Recorder City Clerk Becky Stanton.

PLEDGE OF ALLEGIANCE

Mayor Grenz led the Council in the Pledge of Allegiance.

APPROVAL OF COUNCIL & COMMITTEE MINUTES

Regular Council Minutes – 12/11/2012

- **** *Councilperson Brush moved to approve the minutes of the Regular Council Meeting of December 11, 2012, seconded by Councilperson Melnik. The motion passed unanimously, 7-0.*

Public Safety Committee Meeting – 12/18/12

- **** *Councilperson Uden moved to approve the minutes of the Public Safety Committee Meeting of December 18, 2012, seconded by Councilperson Andrews. The motion passed unanimously, 7-0.*

Flood Control Committee Meeting – 12/19/12

- ** *Councilperson Andrews moved to approve the minutes of the Flood Control Committee Meeting of December 19, 2012, seconded by Councilperson Galbraith. The motion passed unanimously, 7-0.*

Human Resources Committee Meeting – 12/28/12

- ** *Councilperson Uden moved to approve the minutes of the Human Resources Committee Meeting of December 28, 2012, seconded by Councilperson Melnik. The motion passed unanimously, 7-0.*

SCHEDULE MEETINGS

Planning Board Meeting: Tuesday, January 15, at 6:00p.m.

Flood Control Committee Meeting: Wednesday, January 16, at 6:00p.m.

REQUEST OF CITIZENS & PUBLIC COMMENT

City Health Board Chairperson Sharon Wilcox, 2504 Tompy, said that the Board had met and approved the contract for City Sanitarian Mike Rinaldi for the calendar year 2013. Councilperson Uden requested that the contract for Mr. Rinaldi be placed on the next agenda and Mayor Grenz said sure.

Mayor Grenz then called on Ken Stabler to speak about the vacant lots behind Tire Rama, but he was not in attendance. Councilperson Brush stated that there are other individuals in attendance who are interested in those lots.

Ronny Hafez, 1006 S Cottage Grove, spoke about a Suicide Prevention Community Based Media Project. They need the whole community involved, including the local government. Their office is located at 617 Main Street, which is right next door to the US Bank. They have a facebook page, <http://www.facebook.com/LetsTalkMilesCity>, and a webpage, <http://letstalkmilesity.com/family.html>. This is an issue that Montana and Miles City are both facing, and individuals need to get involved so we can lower the risk.

Colby Moore, 411 N Earling, stated that Jeremy Keebler, Curt Wiley and he would be interested in leasing the lots behind Tire Rama. Mayor Grenz noted that Councilperson Ahner wants to do a competitive bid on the lots. The Mayor will notify them when it goes to a committee.

APPOINTMENTS

Mayor Grenz announced his appointments for standing committee members. They are as follows:

Public Services members are Duane Andrews, Jerry Partridge, Sue Galbraith, and John Hollowell.

Finance members are Bill Melnik, John Uden, Mark Ahner and Roxanna Brush.

Public Safety members are Jerry Partridge, John Hollowell, Sue Galbraith and Duane Andrews.

Human Resources members are John Uden, Roxanna Brush, Bill Melnik and Mark Ahner.

Flood Control members are Sue Galbraith, Jerry Partridge, John Hollowell and Duane Andrews.

*** Councilperson Melnik moved to approve the Standing Committees as proposed by Mayor Grenz, seconded by Councilperson Brush. The motion passed unanimously, 7-0.*

Kathy Doeden and Melissa Hartman to the Historic Preservation Commission

*** Councilperson Uden moved to appoint the above individuals to the Historic Preservation Commission, seconded by Councilperson Brush. The motion passed unanimously, 7-0.*

PROCLAMATIONS

-None

STAFF REPORTS

City Clerk Stanton read some concerns that she had for her office and the citizens of Miles City. As Council was made aware on Sunday, January 6, 2013, Mayor Grenz has chosen not to fill the Deputy City Clerk's position at this time. Per the budget adopted on August 28, 2012, the Budget Committee and City Council decided that they wanted a full-time Deputy City Clerk as soon as possible. This position was budgeted for a 12 month salary. Mayor

Grenz signed an agreement with the City Clerk agreeing to a full-time Deputy City Clerk, a City Clerk, a Human Resources/Payroll Officer and starting January 1, 2013, a part-time Finance Clerk. This agreement is valid until June 30, 2013. She asked if this means that he is not a man of his word. She wondered who would be responsible in the City Clerk's absence for signing such items as all legal documents like bonds and leases, attest the Mayor's signature, supervise staff and perform many more tasks. The last time Mayor Grenz was mayor he had at least 19 grievances filed against him in the eighteen months that he was in office. The City of Miles City paid out at least \$330,000 in lawsuits, of which \$135,000 was assessed to the taxpayers. With the Public Works Director position and other issues, She felt that the City is headed in that direction again with Mr. Grenz as mayor. She is very concerned for her office and the City of Miles City.

Mayor Grenz rebutted that he does not believe a job should be posted until the job description is finalized. He said that was done Friday, December 28, 2012, at noon at the Human Resources meeting and by 5:00p.m., the position has been filled. He handed out emails to the Council to support that statement. He said that it is not that he is not going to hire one, but he thought the procedure was flawed. He said the sources state specifically that it is not the Clerk's position to hire anyone. She has no authority to do so. Everyone that elected him the second time around knew about the lawsuits. She has accused him of being a bigot, and he said he does not come into the office anymore during the daytime due to such a hostile work environment.

CITY COUNCIL COMMENTS

Councilperson Brush – asked for a moment of silence for Councilperson Ahner and his family due to the loss of his mother. She noted there are individuals attending from City Court who are serving their community service hours. She noted the discord between the Mayor's and City Clerk's offices and she hopes they work their differences out in the best interest of the citizens of Miles City.

Councilperson Uden – inquired about the posting of the City Attorney's position. City Clerk Stanton stated that it was posted this morning with Job Service for external advertisement, since there were no internal applications.

MAYOR COMMENTS

Mayor Grenz complimented the Fire Department for saving lives at the old Ben Franklin building. He asked the Council to suspend the rules for the

purchase of a tool cat, Resolution 3573 and Resolution 3574. Councilperson Ahner had told Mayor Grenz that there were not any changes to the dollar amounts in the Resolutions.

** *Councilperson Uden moved that items b & c under Old Business be moved to a consent agenda, seconded by Councilperson Brush.*

Councilperson Brush noted that both Resolutions have been to the Finance Committee several times. This is just to finalize things because a settlement has been reached. Everyone has signed off on it except the City of Miles City.

** *The motion then passed unanimously, 7-0.*

PUBLIC HEARINGS

-None

CONSENT AGENDA

RESOLUTION NO. 3573: A Resolution Authorizing Change Order No. 6 To CMG Construction, Inc. On The Contract For Water System Improvements For Phase 3 Water Main Replacement 20" Transmission Main Dated April 12, 2011.

RESOLUTION NO. 3574: A Resolution Approving A Settlement Agreement With Ahanu Construction, Inc., CMG Construction, Inc., And North American Specialties Insurance Regarding Disputes And Claims On The Contract For Water System Improvements For Phase 3 Water Main Replacement 20" Transmission Main Dated April 12, 2011 And The Claim Upon The Bond Securing Performance Of Such Contract.

** *Councilperson Brush moved to approve the items on the Consent Agenda, seconded by Councilperson Melnik. On roll call vote, the motion then passed unanimously, 7-0.*

OLD BUSINESS

Discussion on Revising Ordinance No. 1201 – Sending Ordinances to Committee between First and Second Reading

Councilperson Galbraith believes that it needs to be left as it is because of the public's right to know. Councilperson Partridge agreed. He believes there is nothing wrong with the system and it works.

There being no more discussion, the Ordinance remains unchanged.

BID AWARDS

-None

BID OPENING

-None

NEW BUSINESS

Approval of Claims

- ** *Councilperson Hollowell moved to approve December claims, seconded by Councilperson Melnik. The motion passed unanimously, 7-0.*

Election of Council President

Mayor Grenz opened nominations for Council President. Councilperson Partridge nominated Councilperson Hollowell. Councilperson Uden nominated Councilperson Ahner. Hearing no other nominations, they were closed.

- ** *Councilperson Hollowell received four votes and Councilperson Ahner received three votes. Councilperson Hollowell is the new Council President.*

ORDINANCE NO. 1250: An Ordinance Revising Sections 16-43 Of The Code Of Ordinances Of The City Of Miles City, Montana So As To Prohibit The Discharge Of Firearms On City Owned Or Leased Lands Within Three (3) Miles Of The City Limits Except At Approved Shooting Ranges.

*** Councilperson Brush moved to approve the Ordinance, seconded by Councilperson Galbraith.*

Councilperson Andrews would like two exceptions to the above Ordinance. One exception would be at the City owned property at the Airport which is fenced outside of the runways, which would be restricted to archery, hunting upland game birds, spring turkey and waterfowl. It would consist of shotgun and archery hunting. The second exception would be at the Wastewater Plant. It would provide hunting access to the river. The Airport Manager would like to see geese moved out of the area due to the safety hazard they cause the airplanes. The area is all fenced, so there would be no safety risk to anyone at the airport.

*** Councilperson Andrews made the above an amended motion, seconded by Councilperson Hollowell.*

Councilperson Hollowell stated he had visited with the Airport Manager who noted that every year or so they have called a person in to remove a geese problem. He is also glad to see archery included because the airport can have a deer problem as well. A few years back, Fish, Wildlife and Parks sent hunters to the airport to control the deer population. He also noted that Public Utilities Director Kelm said it really helps to control the geese and duck population. Councilperson Hollowell noted this also covers the Industrial Site.

Doug Martin, 63 Prima Vista Dr., mentioned that he has a problem with this Ordinance as a blanket solution. He does not believe that archery will be enough to control the deer, and that regular hunting would be a better solution. He feels that the City should look at each individual situation rather than making a blanket statement that all City property owned in a three mile radius is off limits to any shooting.

Councilperson Uden explained that the City accepts liability by allowing hunting on City owned or leased land, and they don't want to accept the liability.

Councilperson Hollowell said there is a law that prohibits shooting firearms in a certain area around the airport.

*** Councilperson Hollowell made an amendment to above an amended motion requiring permission to be on the land. For the Airport, they would*

call the Airport Manager and for the Wastewater Plant, they would call the Plant manager or operators. The motion seconded by Councilperson Galbraith and passed unanimously, 7-0.

*** On roll call vote, the amended motion then passed unanimously, 7-0.*

*** On roll call vote, the original motion then passed unanimously, 7-0.*

RESOLUTION NO. 3576: A Joint Resolution Of The Board Of Commissioners Of Custer County, Montana And The City Council Of The City Of Miles City Amending The Agreement For Joint Action For Operation Of The City-County Airport To Increase The Membership Of The Airport Commission From Five Members To Seven Members.

*** Councilperson Uden moved to approve the Resolution, seconded by Councilperson Melnik.*

Councilperson Andrews asked why they were increasing the members. Mayor Grenz stated that he is on that board and often they cannot get a quorum for a meeting.

*** On roll call vote, the motion then passed unanimously, 7-0.*

RESOLUTION NO. 3577: A Resolution Authorizing A Printing Contract Between The City Of Miles City And Star Printing Company, A Montana Corporation, Of Livingston, Montana.

*** This was tabled until a contract was developed.*

Parks Department Request to purchase Tool Cat

Mayor Grenz asked for a motion to suspend the rules to send this item to Committee. Councilperson Brush asked why. Public Utilities Director Kelm explained that Councilperson Ahner had this scheduled to go to the Finance Committee meeting on January 2, 2013. He was out of town and he talked to Mayor Grenz and said to put the items from the Finance agenda on the Council agenda. Director Kelm stated they would like to get permission to solicit bids. Once the bids are received, they will be opened at a City Council meeting. Next they will be sent to Finance Committee for approval of the expenditure which is in this year's budget.

- ** *Councilperson Partridge moved to suspend the rules to have this item go to Committee, seconded by Councilperson Brush. On roll call vote, the motion passed unanimously, 7-0.*
- ** *Councilperson Brush moved to approve the solicitation of bids for the Tool Cat, seconded by Councilperson Andrews. On roll call vote, the motion passed unanimously, 7-0.*

Councilperson Uden requested that the City Clerk's office place a notice in the Miles City Star for the City Attorney's position. Councilperson Andrews suggested the Billings Gazette also. City Clerk Stanton stated sure, if it is okay with my boss. Mayor Grenz said "Shit, I don't run the City, you do."

ADJOURNMENT

- ** *Mayor Grenz adjourned the meeting.*

The meeting was adjourned at 8:05 p.m.

C.A. GRENZ, Mayor

Becky Stanton, City Clerk

ORDINANCE NO. 1250

AN ORDINANCE REVISING SECTIONS 16-43 OF THE CODE OF ORDINANCES OF THE CITY OF MILES CITY, MONTANA SO AS TO PROHIBIT THE DISCHARGE OF FIREARMS ON CITY OWNED OR LEASED LANDS WITHIN THREE (3) MILES OF THE CITY LIMITS EXCEPT AT APPROVED SHOOTING RANGES.

The City Council of the City of Miles City having determined that the discharge of handguns, rifles and shotguns on City owned or City leased lands within three (3) miles beyond the City limits of the City of Miles City, other than at approved shooting ranges, is disruptive to the peace and safety of the users of such lands;

BE IT ORDAINED by the City Council of the City of Miles City, Montana as follows:

Section 1. Section 16-43 of the Code of Ordinances of the City of Miles City, Montana is amended to read as follows:

“Sec. 16-43. - Discharge of firearms.

(a) It shall be unlawful for any person to willfully shoot or fire off a gun, pistol or any other firearm within the limits of the city.

(b) It shall be unlawful for any person to willfully discharge a handgun, rifle or shotgun upon any City owned or City leased property within three (3) miles beyond the City limits of the City of Miles City, including, but not limited to, Spotted Eagle Recreation Area, Frank Wiley Field, the City Wastewater Treatment plant and adjoining former lagoon area, the City Water Treatment Plant property and Pumping Plant Park, and the Industrial Site west of the City limits. This prohibition shall not apply to authorized users of the Miles City Police Department pistol range adjacent to the City Water Treatment Plant, nor to shotgun users of the trap shooting range at Spotted Eagle Recreation area during daylight hours. The Following Hunting exceptions apply: with permission from the Airport manager or the Waste Water Plant Manager/Operator, archery and shotgun hunting of upland game birds, spring turkey and waterfowl on City owned property which is fenced outside of the runways at the Airport, and hunting access is also allowed at the Wastewater Plant, providing hunting access to the river.

(c) Any person who violates this section shall be punishable by a fine not exceeding \$500.00 or by imprisonment in the county jail for a period not exceeding 6 months, or both.

(d) Firearms may be discharged in an indoor or outdoor rifle, pistol, or shotgun shooting range located within the city limits if the shooting range is approved by the City Council.

(e) Subsections (a and b) do not apply if the discharge of a firearm is justifiable under Title 45, chapter 3, part 1, MCA.”

Section 2. This Ordinance shall become effective thirty (30) days after its final passage.

Said Ordinance read and put on its passage this 8th day of January, 2013.

C.A. Grenz, Mayor

ATTEST:

Rebecca Stanton, City Clerk

FINALLY PASSED AND ADOPTED this 22nd day of January, 2013.

C.A. Grenz, Mayor

ATTEST:

Rebecca Stanton, City Clerk

ORDINANCE NO. 1249

AN ORDINANCE RESTRICTING THE BUDGETING AND EXPENDITURE OF GENERAL FUND CASH RESERVES

BE IT ORDAINED by the City Council of the City of Miles City, Montana as follows:

Section 1. There is added Section 2-232 to Article V of Chapter 2 of the Code of Ordinances of the City of Miles City, Montana, to read as follows:

Sec. 2-232 Restriction on budgeting and expenditures of General Fund cash reserves:

- a. In the preparation and adoption of the annual budget, no portion of the cash reserves of the General Fund shall be appropriated for any purpose other than for matching funds for anticipated grant funds for such fiscal year except pursuant to a resolution approved by a 2/3 majority of all members of the City Council.
- b. The provisions of §7-6-4031(2) notwithstanding, except for emergency appropriations made pursuant to Title 10, Chapter 3 MCA and §7-6-4032 MCA, no amended appropriation shall be made to the annual budget that would appropriate cash reserves of the General Fund unless such amendment is pursuant to a resolution approved by a 2/3 majority of all members of the City Council.
- c. General Fund cash reserves appropriated pursuant to subsections (a) and (b), above, shall not be transferred from the appropriation item for which they were approved to another appropriation item in the same fund pursuant to §7-6-4031(1) MCA unless such transfer is pursuant to a resolution approved by a 2/3 majority of all members of the City Council.

Section 2. This ordinance shall become effective thirty (30) days following its final passage.

Said ordinance read and put on its passage this 22nd day of January, 2013.

C.A. Grenz, Mayor

ATTEST:

Rebecca Stanton, City Clerk

FINALLY PASSED AND ADOPTED this 12th day of February, 2013.

C.A. Grenz, Mayor

ATTEST:

Rebecca Stanton, City Clerk

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, Mayor

ATTEST:

Rebecca Stanton, City Clerk

SANITATION INSPECTION SERVICE AGREEMENT

THIS AGREEMENT entered into this _____ 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.

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 _____ day of January, 2013.

CITY OF MILES CITY HEALTH BOARD

By: _____
Its Chairperson

TUMBLEWOOD DEVELOPMENT, INC., a
Montana corporation

By: _____

Title: _____

