

## AGREEMENT

### Lee Nellis - City of Three Forks, Montana

This agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between:

**CITY:** CITY of Three Forks, Montana (CITY), P.O. Box 187, Three Forks, MT, 59752, which has the need for and the authority to contract for such services and desires to have the CONTRACTOR perform them as specified in Scope of Work.

**CONTRACTOR:** Lee Nellis (CONTRACTOR), 127 Cross Street #1, Keene, NH 03431, who is authorized to do business in the State of Montana, who has authority to enter into this Agreement on his own behalf, and who represents that he is qualified to provide the requested services.

1. **SCOPE OF WORK.** CONTRACTOR shall provide the services described in the Scope of Work attached as Exhibit "A".

2. **TERM.** CONTRACTOR shall commence work on or about March 1, 2023 and complete the work as set forth in the Scope of Work no later than March 1, 2024. CONTRACTOR shall provide all services without delay, time being of the essence. Violation is a material breach.

3. **COMPENSATION.** CITY agrees to pay CONTRACTOR \$ 75.00 per hour plus the actual costs of travel, as specified in the attached scope of work, up to a maximum of \$15,000, total. CONTRACTOR agrees that all services specified in the Scope of Work shall be provided for this amount. The amount charged or paid under this agreement shall not exceed the agreed amount, unless there are change orders for additional work that are agreed to in writing prior to commencement of that additional work.

4. **PAYMENT SCHEDULE.** Payment requests shall include a billing statement specifically detailing all services that have been completed and all expenses incurred. Expense receipts shall accompany the payment request. Upon receipt of CONTRACTOR'S written payment request, CITY will assess the work and approve the payment request or provide the CONTRACTOR with a written statement detailing items not approved by the CITY and the reason for disapproval. The CITY may only disapprove the payment request or a portion thereof based upon: (i) unsatisfactory progress; (ii) failure to remedy defective work; (iii) disputed work; (iv) failure to comply with material provisions of this contract, (v) damage to the CITY; or (vi) the existence of reasonable evidence that the contract cannot be completed for the unpaid balance of the contract sum. If the CITY does not provide such a written statement to the CONTRACTOR within 14 days of receipt of a payment request, the payment request will be considered approved. CITY shall make payment within fourteen 14 days after CONTRACTOR'S payment request is approved.

5. **CONTRACT REPRESENTATIVES.** CONTRACTOR names himself as the contact person who shall act as the liaison between the CITY and the CONTRACTOR and promptly respond to requests from the CITY in writing to prevent unreasonable delay in the progress of the Scope of Work and Payment Schedule. CITY names Crystal Turner or Kelly Smith as the contact person who shall act as a liaison between the CITY and the CONTRACTOR and promptly respond to requests from the CONTRACTOR in writing to prevent unreasonable delay in the progress of the Scope of Work and Payment Schedule.

6. **INFORMATION RELEASE.** CONTRACTOR will not release information to a third party without prior written approval from CITY. "Third parties" as used in this section does not include other consultants who are involved in the Scope of Work. Both parties agree to use reasonable care to not use information developed during this project for the benefit of others except as may be authorized in writing. All documents, records, maps, drawings, or other papers produced or acquired by CONTRACTOR during this project shall remain the property of CITY.

7. **DEFAULT, REMEDIES and TERMINATION.** The parties agree each term and condition contained herein is material and of the essence. This agreement may be terminated by either party immediately should either

party fail to perform in accordance with any term or condition of this agreement after it fails to cure within ten (10) calendar days written notice. CITY may also terminate without cause upon written notice. Should this agreement terminate for any reason, payment to the CONTRACTOR shall be made on the basis of services performed to the date of termination.

8. **CONTRACTOR ADDITIONAL OBLIGATIONS.** The CONTRACTOR'S additional obligations include the following: (a) provide all services necessary to complete the Scope of Work; (b) prepare and present such information as may be pertinent and necessary for the CITY to pass critical judgment on the quality of the work; (c) perform professional services in connection with the Scope of Work at a standard of similarly situated professionals in the United States and to the full satisfaction of the CITY; (d) maintain appropriate safety standards; (e) allow the CITY upon reasonable notice and at reasonable times the right of review, inspect and examine the CONTRACTOR'S records pertaining to this agreement; and (f) all work shall carry no less than a one year warranty.

9. **LAWS AND REGULATIONS.** In performance of its obligations herein, CONTRACTOR shall comply with all applicable federal, state, and local laws, rules and regulations. If during the term of this agreement new laws or regulations become applicable, CONTRACTOR shall also comply with them without notice from CITY.

10. **WAIVER AND INDEMNIFICATION.** CONTRACTOR waives any and all claims and recourse against CITY or its officers, agents or employees, including the right of contribution for loss or damage to person or property arising from, growing out of, or in any way connected with or incident to the performance of this agreement except claims arising from the intentional acts or negligence of the CITY or its officers, agents or employees. CONTRACTOR will indemnify, hold harmless, and defend the CITY and its officers, agents, and employees against any claim, damage, liability, loss, expense, fee, action or charge (including liability where activity is inherently or intrinsically dangerous), including attorney's fees (including fees of the CITY Attorney) arising out of CONTRACTOR'S acts, errors, omissions, or negligence or from CONTRACTOR'S failure to comply with the requirements of this agreement or with any applicable law relevant to the performance of this agreement. In the event of an action filed against CITY resulting from CONTRACTOR'S performance under this agreement, CITY may elect to represent itself and incur all costs and expenses of suit. These obligations shall survive termination of this agreement.

11. **INSURANCE.** CONTRACTOR shall carry Commercial General Liability insurance in the amount no less than \$1,500,000.00 for each occurrence and Automobile Liability in the amount of \$1,500,000.00 combined single limit. All insurance policies shall be primary and noncontributory, shall name CITY as additional insured, and shall be maintained for a period of time equal to the warranty period in the prime contract, or for a period of one (1) year after completion of work, whichever is longer. Certificates of Insurance evidencing CITY as additional insured and endorsement thereof must be supplied within 10 business days after CITY's approval of this agreement. Such certificate shall require no less than fifteen (15) days notice of cancellation to CITY. CONTRACTOR shall put CITY on immediate notice of any changes or cancellation in coverage.

12. **INDEPENDENT CONTRACTOR.** CONTRACTOR is an independently established professional, rendering services to the City and others as an independent contractor. Notwithstanding its obligation to fulfill the Scope of Work, CONTRACTOR has been and will continue to be free from control or direction over his performance under this agreement and in fact. CITY will not be responsible for withholding any state or federal taxes or social security, nor will the CITY extend any of the benefits to the CONTRACTOR that it extends to its employees. The CONTRACTOR is required to maintain necessary records and withholding.

13. **ATTORNEY'S FEES.** If it is necessary for either party to bring an action to enforce the terms, covenants, or conditions of this agreement, the prevailing party shall be entitled to reasonable attorney fees and costs, including paralegal costs, to be set by the appropriate court, including fees of the City Attorney.

14. **VENUE.** An action to enforce this agreement shall be brought in the District Court of the Eighteenth Judicial District, Gallatin County, Montana.

15. **NOTICE.** All notices and certifications made pursuant to this agreement shall be delivered to the addresses in Paragraph 1 above by certified mail or personal delivery in care of the party’s representative named above. A party shall give the other prompt notice of any change in address.

16. **INTERPRETATION.** This Agreement shall be governed and interpreted according to the laws of the State of Montana. Section headings are for convenience only and are not intended to define or limit any provisions of this Agreement. The provisions of this agreement are independent and severable, and the invalidity, partial invalidity, or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision. Both parties having been given an opportunity to have this agreement reviewed by others, the Rule of Construction providing that the agreement shall be construed against the drafter will not be used in the interpretation of this agreement.

17. **ENTIRE AGREEMENT.** This document represents the entire agreement between the CITY and CONTRACTOR and supersedes all prior negotiations, agreements, or representations, either written or oral. This agreement may be amended only by a written instrument signed by both CITY and CONTRACTOR.

18. **NON-WAIVER.** Delay, waiver or failure to enforce or assert any claim, defense or provision of this agreement shall not operate as a waiver of any of the CITY’s rights and remedies at law or equity that are expressly reserved without limitation.

19. **NON-ASSIGNMENT.** It is expressly agreed that this Agreement shall not be assigned, in whole or in part, without the prior written consent of the CITY. Such consent shall not be unreasonably withheld.

20. **SUCCESSORS.** This agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, successors, and assigns.

21. **EXECUTION OF AGREEMENT.** The CITY Clerk will keep the original agreement. An exact unaltered copy of the original agreement has the same force and effect as the original.

**IN WITNESS WHEREOF** the parties have signed this Agreement.

**CONTRACTOR**

**CITY**



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**Lee Nellis**

**Randy Johnston, Mayor**

**Exhibit ‘A’ – Scope of Work - Impact Fees**

Lee Nellis will bring 49 years of planning experience, which includes both the development and the administration of capital improvements programs and impact fees, to bear on capital facilities planning for the City of Three Forks. It is noted here that capital facilities planning is a complex process involving many factors, including the City’s consulting engineers, its consulting planner, its staff, its impact fee advisory committee, and its appointed and elected officials. It is understood that the work Mr. Nellis is contracted to perform cannot be successfully completed without the full cooperation of these other actors.

Task 1: Assist Great West Engineering to ensure that the Capital Improvements Program (CIP) it is preparing for the CITY will contain the information needed, including level of service standards, and be in a format that supports the calculation of defensible impact fees. This task will include answering questions and informal conversations during Great West’s drafting of the CIP as well as a review of the draft CIP.

Task 2: Work with Great West Engineering, the City's consulting planner, and City staff and officials as necessary to complete the build-out study on which the calculation of defensible impact fees must be based. This work will include reviewing tax parcel records, the City's zoning map and ordinance, and other potentially relevant maps and documents, as well as conversations with all those involved. The decision about the level of build-out on which the calculation of impact fees will be based is necessarily a collaborative one involving all participants. Once agreement is clear, Lee will, with the assistance of others as necessary, draft a build-out report that can be incorporated by reference into the draft impact fee ordinance.

Task 3: Provide education and answer questions for the City's other contractors, its residents, development community, its Impact Fee Advisory Committee, and its staff and officials. Most of this communication will be informal, but Lee will offer formal presentations as they are called for. These presentations may be during his visits to Three Forks or remote.

Task 4: Calculate trial impact fees based on the completed CIP and build-out study, consistent with Montana law. Share these calculations with all involved and respond, as necessary and appropriate to comments and concerns.

Task 5: Incorporate all comments and concerns into a final impact fee schedule, then embody that schedule in a draft impact fee ordinance. This task will include production of a new impact fee schedule and a thorough review of the present impact fee ordinance, which will then be amended as necessary to move forward.

Task 6: Assist the City with implementation, as requested. Lee will be available to answer questions after submission of the draft impact fee ordinance. This service will continue through March 1, 2024 or may be extended via a mutual agreement to amend that date in the agreement to which this Scope of Work is attached.

#### NOTES:

This Scope of Work anticipates that Lee will be in Three Forks to meet with other contractors and City staff and officials, and to make presentations as requested, twice, with the dates of those visits being agreed upon as work progresses. Additional travel to Three Forks may be arranged via a change order, as provided in Item 3 of the agreement to which this Scope of Work is appended.