

# AGREEMENT

Lee Nellis and CITY of Three Forks, Montana

This Agreement is entered into this 3rd day of July, 2024, by and between:

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

**CONTRACTOR:** Lee Nellis 451 Westview Circle, Williston, VT 05495 (CONTRACTOR), which is authorized to do business in the State of Montana where the undersigned has authority to enter into this Agreement on CONTRACTOR'S behalf. CONTRACTOR represents it is qualified to provide materials and perform such work and services in a safe and efficient manner to the CITY.

- 1. SCOPE OF WORK.** CONTRACTOR shall provide all materials and perform all work and services to complete the project described in the Scope of Work attached as Exhibit "A".
- 2. Term.** CONTRACTOR shall commence work on estimated 9/1/2024 and complete the work as set forth in the SCOPE OF WORK no later than 12/31/2025. CONTRACTOR shall provide materials and perform all work and services, obligations and requirements without delay time being of the essence. Violation is a material breach.
- 3. COMPENSATION.** CITY agrees to pay CONTRACTOR \$ see attached exhibit (proposal). CONTRACTOR agrees that all materials, work and 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, except for change of work orders that shall be considered additional work and shall be in agreed to in writing prior to commencement of additional work.
- 4. PAYMENT SCHEDULE.** Payment requests shall include a billing statement specifically detailing all materials, work or services set forth in the SCOPE OF WORK 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 materials 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 job progress; (ii) failure to remedy defective construction work or materials; (iii) disputed work or materials; (iv) failure to comply with material provisions of the contract or accompanying documents, including but not limited to payroll certifications, lien releases, warranties, material certifications, and test data; (v) failure of a contractor to make timely payment for claims, including but not limited to claims for labor, equipment, materials, subcontracts, taxes, fees, professional services, rent, and royalties; (vi) damage to the CITY; or (vii) 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 a 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 Lee Nellis as contact person who shall act as the liaison between the CITY and the CONTRACTOR and respond to requests from the CITY in writing promptly to prevent unreasonable delay in the progress of the Scope of Work and Payment Schedule. CITY names Randy Carpenter, contract City Planner as contact person who shall act as a liaison between the CITY and the CONTRACTOR and respond to requests from the CONTRACTOR in writing promptly 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 shall not include CONTRACTOR'S agents including subcontractors or sub-consultants. 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 materials provided and services performed to the date of termination.

8. **CONTRACTOR ADDITIONAL OBLIGATIONS.** The CONTRACTOR'S additional obligations include the following: (a) provide all labor, materials, equipment, supplies and incidentals necessary to perform and 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 work and services in accordance with generally accepted commercial or accepted industry standards regarding similar type work or services; (d) perform all professional services in connection with the Scope of Work at a standard of similarly situated professionals in the United States, ~~meeting all building code requirements~~ and to the full satisfaction of the CITY; (e) maintain appropriate safety standards and keep all areas of work and adjacent areas free from foreseeable risks of harm and dangers; (f) ~~immediately inform the CITY of the presence of any hazardous condition or waste or other toxic substance identified under the Scope of Work of this agreement;~~ (g) allow the CITY upon reasonable notice and at reasonable times the right of review, inspect and examine the CONTRACTOR'S place of work and records pertaining to this agreement; and (h) all work and materials shall carry no less than a one year warranty.

9. **LAWS AND REGULATIONS.** In performance of its obligations herein, CONTRACTOR, its agents and subcontractors 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. ~~CONTRACTOR specifically acknowledges the following provisions of law and its responsibility to abide by the same if such provisions are applicable:~~

- ~~(a) Montana Labor Preference Section 18-2-403(1), Montana Code Annotated (MCA); Equal Opportunity- Section 49-3-207, MCA;~~
- ~~(b) Prevailing Wage Rates. Pursuant to Section 18-2-403, MCA, CONTRACTOR must pay the standard prevailing wage rates, fringe benefits, pension contributions and travel allowances in effect and applicable to CITY, Montana. The current standard prevailing wage rates published by the Montana Department of Labor and Industry for job classifications necessary to complete the Scope of Work are incorporated by reference into this agreement. Contractor shall maintain payroll records in a manner readily capable of being certified for not less than 3 years after completion of the work and post a statement of wages and fringe benefits. If any contract exceeds 30 months the prevailing wage must be increased 3% after the first 12 months and every 12 months thereafter. Questions regarding the requirements of this section should be directed to the Montana Department of Labor and Industry, Labor Standards Bureau.~~
- ~~(c) Registration and Withholding (1% tax withholding). CONTRACTOR shall register with the Montana Department of Labor and Industry as required in accordance with Title 39, Chapter 9, MCA and comply with Title 15, Chapter 50, MCA. CONTRACTOR shall withhold and forward gross contract receipts to the State of Montana.~~

10. **SAFETY.** CONTRACTOR, on behalf of itself and CITY, assumes sole responsibility for initiating, maintaining and supervising all health and safety precautions and programs for all employees, subcontractors, and consultants in connection with the performance of this agreement. CONTRACTOR shall ensure that its employees, consultants, and subcontractors are adequately and appropriately trained pursuant to the Montana

Safety Culture Act, Title 39, Chapter 71, Part 15, MCA. ~~CONTRACTOR shall also comply with the safety rules, codes, and provisions for occupational health and safety under Title 50, Chapter 71, MCA. CONTRACTOR shall post all notices necessary to ensure public safety for applications of chemicals.~~

~~11. LIEN. Provided that CITY has first made all payments as required herein, CONTRACTOR shall pay all valid bills and charges for material and labor incurred by it and arising out of the Scope of Work and will hold CITY free and harmless against all liens and claims of liens or services, labor and materials filed against the property upon which the Scope of Work is commenced. As evidence of payment of service providers, material men, consultants and subcontractors, CONTRACTOR may be required to file lien waivers. CONTRACTOR will also file the same for its services. CONTRACTOR shall provide the necessary information to identify all CONTRACTORS of services, materialmen, consultants and subcontractors.~~

**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 also 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.

- ~~(a) CONTRACTOR assumes all liability for person contact with chemicals applied CITY property.~~
- ~~(b) 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. If CONTRACTOR is an architect or engineer or performing other professional services it shall carry Professional Liability or Errors and Omissions coverage in the amount of \$1,500,000.00. CONTRACTOR shall disclose insurance provisions of its policies related to toxic substances or waste. ~~CITY may require an additional policy covering toxic substances or waste.~~ 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. CONTRACTOR shall require all consultants and subcontractors to meet the same insurance coverage. Certificates of Insurance evidencing CITY as additional insured and endorsement thereof must be supplied with the signed return 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, ~~its consultants and subcontractors,~~ shall at all times be considered ~~independent contractors~~ to be engaged in an independently established business or profession and rendering work and services in the course of such business as an independent contractor. Notwithstanding its obligation to fulfill the Scope of Work, ~~CONTRACTOR and its consultants and subcontractors have~~ has been and will continue to be free from control or direction over ~~their~~ 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.



## Exhibit 'A'

June 19, 2024

City of Three Forks  
Three Forks, MT 59752

### Greetings:

I am delighted to submit this proposal to assist the City of Three Forks in creating new land-use regulations. I enjoy my current consulting engagement with the city and hope to continue being of assistance.

This proposal is, as you requested, a brief one that presents a proposed work program and budget. I will use this letter to point out some of the advantages I offer.

July 1 will mark my 50<sup>th</sup> anniversary as a professional planner working mostly with rural communities. Over the years, I've done projects for similar small cities, including Anaconda, Polson, and Red Lodge, MT; American Falls and Salmon, ID; and Thermopolis, WY, as well as for larger and smaller cities; counties, nonprofit organizations, and state and federal agencies. The attached resume shows that some of those engagements earned regional or national awards. I was elected to the College of Fellows of the American Institute of Certified Planners in 2010.

I have written land-use regulations for numerous communities. Most relevant to Three Fork's needs was the work I did for Williston, VT, a town that was rapidly transitioning from rural to suburban when they asked me to help them create a new plan and regulations. In Williston, I was responsible for reviewing the largest developments in Vermont history to that time; well over a thousand dwelling units and hundreds of thousands of square feet of commercial and industrial buildings. Those projects are almost all built out, allowing me to learn from experience and you to see the result, if you want, via Google Earth (or a New England vacation).

I am familiar with Three Forks and its issues. I have, I think, developed a good working relationship with Three Forks staff and officials. The City's Contract Planner, Randy Carpenter, and I have worked together for 20 years.

I have attached an updated resume as a reminder of my qualifications. I can provide a more detailed statement of qualifications if that would be helpful.



451 Westview Circle, Williston, VT 05495 -- (307) 250-7605 – [lhnelis@gmail.com](mailto:lhnelis@gmail.com)



## Preparing New Land-Use Regulations for Three Forks

This proposal describes the work program - the major tasks - needed to create new subdivision and zoning regulations for Three Forks. It then presents a proposed budget and schedule. A statement of qualifications is attached.

### Work Program -----

The new land use regulations should be rooted in *Envision Three Forks*, the City's adopted growth policy and the requirements of Montana law. Beyond that, my work would reflect 50 years' experience in drafting and administering local land use regulations.

This project must also be responsive to the demand for development that Three Forks now faces. Given the impending proposal for development of the area south of the City, drafting the new regulations – which should be organized by neighborhoods, anyway - would begin there. This early part of the work would facilitate development review by using language that fits into the present administrative framework, while looking forward to the structure of the new regulations.

#### Task I - Educating

The first and most important continuing task in preparing new land-use regulations should be to help everyone understand how Three Forks can most effectively regulate changing land use. Upfront, this would include explaining the basic structure of land-use regulations and a bit about land use law. We would then move on to the choices the City must make about overall patterns of development and re-development, and about the numerous details guiding development in each neighborhood.

Education would begin with the Planning Board, but one of the first steps in working with them would be to agree on how to involve the larger public in drafting the new regulations. There are several options beyond simply holding open meetings. I would also, working with City Planner, Randy Carpenter (who has already begun helping local decision-makers understand the patterns of development Three Forks should expect to see) take time to understand the goals of individual landowners and citizens.

#### Task II - Drafting

My drafting of ordinances is informed by extensive experience, but is not a matter of cutting and pasting from past work. What I offer would reflect Three Forks' particular circumstances, including the state statutes; local geography, with which I am quite familiar from conducting the recent buildout study; the available infrastructure, regional and national development trends; and local public perception. Discussions with the staff about what would (and would not) be reasonable for them to administer would be critical.

It should also be noted that there is more to drafting than just the new ordinance language. The forms and checklists used to administer it are, day-to-day, equally important. I would draft these cooperatively with the staff and Planning Board members who must use them.

#### Task III - Reviewing

I would assist the City and its Planner with the public hearing process, as requested. As noted above, the public should already have had abundant opportunities to participate in drafting the new regulations.

## Task IV - Implementation

The final step in this work program would be to assist City staff in preparing to administer the new regulations. This would, as noted above, include the preparation of administrative forms and checklists. I would also be available to answer questions for 90 days after adoption of the new regulations within the scope of this proposal.

### **Budget** -----

If retained, I would bill Three Forks for \$75.00 per hour in professional fees, the actual costs of travel to meetings in Three Forks, and, when necessary, the actual costs of reproducing meeting materials. Billing would be on a monthly basis. The total cost to the City would not exceed \$35,000.00.

Please note that the City already has a current Certificate of Insurance for me. That would be updated when the policy renews in the Spring of 2025.

### **Schedule** -----

The work proposed here would begin immediately upon acceptance of this proposal and revolve around Planning Board meetings until the process switches to the Mayor and Council for final adoption. I recommend that the Board meet twice a month, most months, during this process. The reason for this recommendation is not just to ensure prompt completion of the new regulations, but more importantly, to maintain the flow of conversation and allow time for public engagement.

Completion should come within roughly one year, but it is possible that we might reach a point when it is advisable to slow the process to ensure understanding and agreement. The contract based on this proposal should be for 18 months.

### **Experience** -----

A current resume is attached. It focuses on the past two decades (which is to say that it leaves a lot out in the interest of brevity). I will be happy to answer questions about my experience or provide a more detailed statement of qualifications.

### **Resume of Lee Nellis, FAICP**

451 Westview Circle, Williston, VT 05495 – (307) 250-7605 – [lnellis@gmail.com](mailto:lnellis@gmail.com)

### **Professional Experience** -----

#### **Current & Recent Projects**

**City of Three Forks, MT.** Assisting Three Forks with an update of its impact fees.

**Boulder Town, UT.** Preparing plan and ordinance amendments since 2018. This began with commercial development standards, which are in use, then assisting in compliance with State mandates. Now helping Town officials and the public learn how to create diverse housing and small farming opportunities. *Reference: Dave Conine, colleague since '80s, former Utah State Director, USDA-Rural Development, [daveconine2@gmail.com](mailto:daveconine2@gmail.com).*



[Lake George, NY. Provided two training sessions – the first on planning for lake protection, the second on site plan review with a focus on landscaping - for village and town planning commissions. A third session – this one on compliance with NY environmental review - is scheduled for July 2024. Reference: Dan Barusch, Lake George Town and Village Planner, dbarusch@lakegeorgetown.org.](#)

**2022. Future-West, Bozeman, MT.** Retained to evaluate the feasibility of a business improvement district in downtown Deer Lodge, MT.

**2019-22. Lecturer in Environment and Society, Paul Smiths College, NY.** Taught Land Use Planning, Intro to Environment and Society, and Facilities Management.

### **Selected Employment & Projects**

**2013-15. Deputy Director, Planning and Community Development, Great Falls, MT.** Led staff of five in historic preservation, land use, and transportation planning. Managed the municipal parking system. Highlights included:

designing and facilitating the community visioning process that began the current campaign to create a National Heritage Area along the Missouri River;

negotiating a contentious agreement for a new Wal-Mart that led to authoring significant improvements in the City's development agreement practices; and

managing well over a million dollars of structural and elevator repairs to parking facilities, supervising the parking operator, taking a rate increase and ordinance updates through City Commission, representing the parking system in downtown revitalization efforts.

*Reference: Galen Steffens, former colleague in Great Falls, now with Montana Department of Commerce. [Galen.Steffens@mt.gov](mailto:Galen.Steffens@mt.gov).*

### **2008-12 Consulting Projects**

**Sonoran Institute, Tucson, AZ - Bozeman, MT.** Completed a manual on planning for wildlife habitat for Montana Fish, Wildlife, and Parks. Provided training on ranchland conservation in Sheridan County, WY. Evaluated land-use issues associated with the Yuma [AZ] Army Proving Grounds.

**Voices of the Valley, Saratoga, WY.** Helped this citizen's group educate the public and local elected officials about the impacts of wind and natural gas development.

**Town of Shelburne, VT.** Provided training on how-to manage contentious meetings for staff and local officials.

**Minnesota Forest Resources Council, St. Paul, MN.** Assisted this state agency in exploring how counties could better manage the land use impacts of changes from industrial forest land ownership.

**2009-10. Lecturer in Communication Arts, University of Wisconsin-Madison.** Taught 500-level “Theories of Deliberation and Controversy.”

**2008-09. Lecturer in Urban and Regional Planning, University of Wisconsin-Madison.** Taught 900-level studio on sustainable design of new neighborhoods.

**2004-08.** Town Planner, Town of Williston, VT. Led staff of three in conservation, historic preservation, current and long-range planning, storm water management, and stream restoration in VT’s most rapidly changing town. Highlights included:

serving as the principal reviewer and negotiator in approving VT’s largest residential, commercial, and mixed-use projects, while . . .

designing and leading a multi-year public process that led to adoption of a new plan and development bylaw (both of which I wrote);

serving as Historic Preservation Officer and Stormwater Program Manager;

helping the Conservation Commission obtain a new conservation easement and secure wetlands habitat and trails via dedication; completing a stream restoration project; and

comprehensively revising the Town’s growth management system then leading VT’s first growth center initiative. See “Honors and Awards” below for more.

*Reference: Matt Boulanger, Town Planner, [mboulanger@willistonvt.org](mailto:mboulanger@willistonvt.org)*

1999-2003. Director of Land Use Policy, Sonoran Institute, Tucson, AZ. Highlights included:

leading the public engagement effort that led to Congressional designation of the Las Cienegas National Conservation Area;

training federal land managers and local officials from gateway communities for the Office of the Secretary of the Interior, see also the Western Community Stewardship Forum under “Honors and Awards;”

leading projects addressing land use issues throughout the West, including citizen-driven planning for the Sonoita [AZ] Crossroads Community Forum; working with the National Park Service and Baker, NV; and the Rio Arriba County, NM project that appears under “Honors and Awards.”

## **Certification** -----

American Institute of Certified Planners. Elected to the College of Fellows of AICP in 2010, planning’s highest honor.

## **Honors & Awards** -----

**College of Fellows, American Institute of Certified Planners.** Elected to the College of Fellows of AICP in 2010 in recognition of contributions to planning for rural landscapes throughout the nation.

**John Keller Award for Outstanding Planning Initiatives**, Small Town and Rural Planning Division, American Planning Association. For growth management initiatives in Williston, VT.

**Sheldon Gerber Memorial Award for Excellence in Environmental Planning**, Western Planning Resources. Four times on winning teams.

*Western Community Stewardship Forum* - growth management training program for local officials by the National Association of Counties and Sonoran Institute.

*Rio Arriba County, NM* - technical support and training for this county's agricultural/cultural preservation efforts on behalf of the Sonoran Institute.

*City of Red Lodge, MT* - for the city's first master plan and helping local officials persuade the US Postal Service to keep the post office downtown.

*Fremont County, ID* - for comp plan and development code for Fremont County, ID. Also prepared plans and codes for four small towns in the county.

**Outstanding Planning Project**, Western Planning Resources. For the *Snake River Greenbelt Master Plan* and initial implementation in Idaho Falls, ID.

**Western Planner of the Year**, Western Planning Resources.

## **Education** -----

Current with continuing education requirements of the American Institute of Certified Planners.

Certificate in Dialogue, Deliberation, and Public Engagement, Fielding Graduate University, Santa Barbara. CA.

**MA in Public Policy and Administration**, University of Wisconsin-Madison.

**BA, (with honors) in Anthropology**, University of Wyoming, Laramie.