



STAFF REPORT

DATE: December 4, 2018
CONSENT #14

AGENDA ITEM: Plan Review Services Agreement

SUBMITTED BY: Kristina Handt, City Administrator

REVIEWED BY: Mike Bent, Building Official

BACKGROUND:

As staff mentioned during the budgeting process, we have been looking for the most efficient ways to provide building department services. Rather than filling a third full time position we have been looking at other options to help with the peak demand times. One of those is to have a contract for services that could be used as needed.

ISSUE BEFORE COUNCIL:

Should the City Council approve the agreement with MNSPECT?

PROPOSAL:

Staff reached out to two contractors to provide assistance with plan review activities. MNSPECT's fee came in at half of the permit fee so staff began working with them on developing a contract. Included in your packet is a copy of the contract which has been reviewed by legal and approved by MNSPECT. It would allow for the city to utilize MNSPECT for plan review services on an as needed basis. It allows for termination by either party with a 30 day notice.

FISCAL IMPACT:

Dependent upon how many plan reviews are sent to MNSPECT for review. The plan review fee is determined per the fee schedule to be 65% of the building permit fee which varies based upon valuation. Staff intends to mostly use MNSPECT for commercial plan review. None of that revenue is figured into any budget documents, so a minimal impact is expected.

OPTIONS:

- 1) Approve the Agreement for Back-Up Services with MNSPECT
- 2) Amend and then approve the Agreement with MNSPECT
- 3) Do not approve the agreement

RECOMMENDATION:

If removed from the consent agenda:

“Motion to approve the Agreement for Back-up Services with MNSPECT.”

ATTACHMENTS:

- Agreement for Back-up Services

AGREEMENT FOR BACK-UP SERVICES

THIS AGREEMENT is made and entered into this _____ day of _____, 2018, by and between the City of Lake Elmo, Minnesota, a Minnesota municipal corporation (City) and MNSPECT, LLC, a Minnesota Limited Liability Company (Inspector).

WITNESSETH:

WHEREAS, the City is desirous of contracting with Inspector for the performance of back-up plan review services on an as-needed basis; and

WHEREAS, Inspector is agreeable to rendering said services on the terms and conditions hereinafter set forth;

NOW, THEREFORE, the parties hereto agree as follows:

1. Plan Review Services.

Inspector will provide the following services (Services) for the City:

- A. Perform plan review services for residential and commercial building permit applications on an as-needed basis, if and when requested by the City in the City's sole discretion.
- B. Prepare and provide records and other necessary information to the City for it to maintain permanent records of all services performed by Inspector.

Inspector shall complete plan reviews for applications related to residential properties within ten (10) days of receipt of the permit application, relevant plans, and required submittal documents and shall complete plan reviews for applications related to commercial properties within fifteen (15) days of receipt of the permit application, relevant plans, and required submittal documents.

2. Qualifications of Inspector's Employees and Contractors; Independent Contractor.

All Services provided by Inspector shall be performed by qualified individuals certified by the State of Minnesota as Building Officials or Limited Building Officials.

City and Inspector acknowledge and agree that Inspector is an independent contractor contracting with the City to perform the Services pursuant to this Agreement and is not an employee of the City. Inspector shall have control over the manner in which the Services are performed under this Agreement. Inspector shall supply, at its own expense, all personnel, materials, supplies, equipment, and tools required to provide the Services contemplated by this Agreement. Inspector shall not be entitled to any benefits from the City, including without limitation, insurance benefits, sick and vacation leave,

workers' compensation benefits, unemployment compensation, disability, severance pay, or retirement benefits. Nothing in this Agreement shall be deemed to constitute a partnership, joint venture, or agency relationship between the Parties. Inspector shall be responsible for all individuals performing Services on behalf of Inspector pursuant to this Agreement.

3. Insurance

Inspector, at its expense, shall procure and maintain in force for the duration of this Agreement, the following minimum insurance coverages:

- A. **General Liability.** Inspector agrees to maintain commercial general liability insurance in a minimum amount of \$1,000,000 per occurrence; \$2,000,000 annual aggregate. The policy shall cover liability arising from premises, operations, products-completed operations, personal injury, advertising injury, and contractually assumed liability. The City shall be endorsed as additional insured.
- B. **Automobile Liability.** If Inspector operates a motor vehicle in performing the Services under this Agreement, Inspector shall maintain commercial automobile liability insurance, including owned, hired, and non-owned automobiles, with a minimum liability limit of \$1,000,000 combined single limit.
- C. **Workers' Compensation.** Inspector agrees to provide workers' compensation insurance for all its employees in accordance with the statutory requirements of the State of Minnesota. The Contractor shall also carry employers liability coverage with minimum limits as follows:
 - i) \$500,000 – Bodily Injury by Disease per employee
 - ii) \$500,000 – Bodily Injury by Disease aggregate
 - iii) \$500,000 – Bodily Injury by Accident

Inspector shall, prior to commencing the Services, deliver to the City a Certificate of Insurance as evidence that the above coverages are in full force and effect. The insurance requirements may be met through any combination of primary and umbrella/excess insurance. Inspector's policies shall be the primary insurance to any other valid and collectible insurance available to the City with respect to any claim arising out of Contractor's performance under this Agreement. The Contractor's policies and Certificate of Insurance shall contain a provision that coverage afforded under the policies shall not be cancelled without at least thirty (30) days advanced written notice to the City.

4. Effective Date of Agreement.

The effective date of this Agreement shall be December 1, 2018.

5. Termination of Agreement.

This agreement shall remain in force and effect from the effective date until cancelled by either party, with or without cause, upon thirty (30) days' advance written notice. In the event of termination, City shall only be responsible to pay for the Services satisfactorily performed by the Inspector through the effective date of termination.

6. Cost to the City for Services.

The City shall pay Inspector for Services performed by Inspector within 30 days of submission of a written invoice to the City for the following Services at the following rates:

- A. The fee for the performance of plans examination shall be 50% of the permit fee as listed in the City's fee schedule.

Inspector shall submit logs with its invoices for services rendered under this subsection.

7. Amendments and Assignment.

Any modification or amendment to this Agreement shall require a written agreement signed by both Parties. Inspector may not assign any of its rights or duties under this Agreement without the prior written consent of the City.

8. Indemnification.

To the fullest extent permitted by law, Inspector agrees to defend, indemnify, and hold-harmless the City and its employees, officials, and agents from and against all claims, actions, damages, losses, and expenses, including reasonable attorney fees, arising out of the Inspector's negligence or Inspector's performance or failure to perform its obligations under this Agreement. Inspector's indemnification obligation shall apply to Inspector's subcontractor(s), or anyone directly or indirectly employed or hired by Inspector, who performs Services on behalf of Inspector, or anyone for whose acts Inspector may be liable. Inspector agrees this indemnity obligation shall survive the completion or termination of this Agreement. This indemnification requirement is subject to the provisions of MN Rule 1300.0110, Subpart 9.

9. Legal Compliance.

Inspector agrees to comply with all federal, state, and local laws and ordinances applicable to the Services to be performed under this Agreement, including safety standards. Inspector shall be solely responsible for the safety of all persons and property during performance of the Services. Inspector represents and warrants that it has the requisite training, skills, and experience necessary to provide the

Services and is appropriately licensed by all applicable agencies and governmental entities and will perform the Services with reasonable skills and care.

10. Ownership of Documents; Data Privacy.

All reports and other documents produced by Inspector in the performance of Services under this Agreement shall be the property of the City. Inspector agrees to abide by the applicable provisions of the Minnesota Government Data Practice Act, Minnesota Statutes, Chapter 13, and all other applicable state or federal rules, regulations, or orders pertaining to privacy or confidentiality. Inspector understands that all of the data created, collected, received, stored, used, maintained, or disseminated by Inspector in performing those functions that the City would perform is subject to the requirements of Chapter 13, and Inspector will cooperate with City to furnish or provide requested data to City. This does not create a duty on the part of Inspector to provide the public with access to public data if the public data is available from the City, except as required by the terms of this Agreement.

11. Entire Agreement.

This is the entire agreement of the parties.

12. Choice of Law.

This agreement shall be governed and construed in accordance with the State of Minnesota Law.

13. Representation of Authority.

The undersigned executing this agreement for MNSPECT, LLC, represents and warrants that he has been duly authorized to execute this agreement on behalf of MNSPECT, LLC, by the organization's Board of Directors, and that this agreement shall bind it to the terms and obligations contained herein.

IN WITNESS THEREOF, the parties have executed this agreement in duplicate this _____ day of _____, 2018.

CITY OF LAKE ELMO

MNSPECT, LLC

By: _____
Mike Pearson, Mayor

By: _____
Scott Qualle, President

Attest: _____
City Clerk