



## STAFF REPORT

DATE: April 16, 2019

### **CONSENT**

**TO:** Mayor and City Council

**AGENDA ITEM:** Approve New MNSPECT Agreement and Designate Interim Building Official

**SUBMITTED BY:** Kristina Handt, City Administrator

---

#### **BACKGROUND:**

Last month the city had appointed Toni Liljedahl as interim Building Official. She is not able to get State Delegation Authority so staff is asking to have Scott Qualle (from MNSPECT) appointed interim Building Official.

#### **ISSUE BEFORE COUNCIL:**

Should the Council appoint Scott Qualle as interim Building Official and approve the new agreement with MNSPECT?

#### **PROPOSAL:**

Included in your packet is a resolution to appoint Scott Qualle as interim Building Official and approve a new agreement with MNSPECT. The new agreement combines the two previous agreements and adds the additional service of Building Official. This agreement can be terminated with 30 days notice in its entirety or individual services may be terminated with 15 days notice. Once a long term solution to the Building Official vacancy is determined, this gives the city the flexibility to retain some other services if needed.

The approval of the contract is contingent upon City Attorney review.

#### **FISCAL IMPACT:**

The fee for plan review and inspection services remain the same from prior agreements. The fee for MNSPECT to be the Building Official is \$750/week or fraction thereof.

#### **RECOMMENDATION:**

If removed from the consent agenda:

*“Move to approve Resolution No 2019-028”*

#### **ATTACHMENTS:**

- Resolution No 2019-028
- MNSPECT Agreement

**CITY OF LAKE ELMO  
WASHINGTON COUNTY  
STATE OF MINNESOTA**

**RESOLUTION NO. 2019-028**

**A RESOLUTION DESIGNATING CERTIFIED BUILDING OFFICIAL**

WHEREAS, the City of Lake Elmo has adopted the Minnesota State Building Code; and

WHEREAS, the City is authorized and empowered to provide administration and a certified building official is required by Minnesota State Statute for implementation; and

WHEREAS, the City of Lake Elmo has determined it is in the best interests of the City and its citizens to designate Scott Qualle to provide such services to the City immediately and until such further notice;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Lake Elmo designates Scott Qualle as the Designated Certified Building Official for Lake Elmo to administer the State and Municipal Building Code,

BE IT FURTHER RESOLVED, that the City Council of the City of Lake Elmo approves the attached agreement with MNSPECT (Exhibit A) contingent upon review and approval of the City Attorney.

APPROVED by the Lake Elmo City Council on this 16th day of April, 2019.

By: \_\_\_\_\_  
Mike Pearson  
Mayor

ATTEST:

\_\_\_\_\_  
Julie Johnson  
City Clerk

## AGREEMENT FOR BUILDING INSPECTION AND BUILDING OFFICIAL SERVICES

**THIS AGREEMENT** is made and entered into this 16<sup>th</sup> day of April, 2019 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 the hereinafter specified Building Official and inspection services with the City; and

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

**NOW, THEREFORE**, the parties hereto agree as follows:

#### 1. Building Official and Inspection Services.

Inspector will provide the following building official and inspection services (Services) for the City of Lake Elmo:

- A. Inspector shall provide an individual who meets the statutory qualifications for a Designated Building Official found in the relevant Minnesota Statutes and Rules to serve as the City's Designated Building Official during times when the City does not have a satisfactory internal designee to serve as the City's Designated Building Official. During the time Inspector is acting as the Designated Building Official, Inspector shall be responsible for all duties set forth in Minnesota Rules, Chapter 1300, including items B-D below.
- B. Perform Plans Examination services for all eligible permit applications received under this agreement.
- C. Perform field inspections for all inspections requested.
- D. Prepare and provide inspection records and other necessary information to the City for it to maintain permanent records of all services performed by Inspector.

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

#### 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.

It is understood that the City may have one or more employees working in the inspections department. The day-to-day management of those employees, including work hours, work load, compensation, benefits, insurance, training, discipline, hiring, and termination decisions, along with the provision of necessary vehicles, tools, and equipment shall be the responsibility of the City. The quality and character of the work performed under the auspices of the MN State Building Code shall be the responsibility of Inspector.

As the designated Building Official, Inspector shall perform all duties for all State delegation projects delegated to the City using plans examiners and inspectors qualified and authorized to do so as determined by MN Dept. of Labor & Industry staff.

### 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. Professional (Errors and Omissions) Liability Insurance. Inspector will maintain professional liability insurance for all claims the Inspector may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to Inspector's professional services required under this Agreement. Inspector is required to carry the

following minimum limits: \$1,000,000. The retroactive or prior acts date of such coverage shall not be after the effective date of this Agreement, and Inspector shall maintain such insurance for a period of at least three (3) years following completion of the Services. If such insurance is discontinued, extended reporting period coverage must be obtained by Inspector to fulfill this requirement.

D. 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 employer's 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 April 17, 2019.

5. Termination of Agreement.

This agreement shall remain in force and effect from the effective date until cancelled by either party 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 to the effective date of termination. Discontinuance of selected services listed in Paragraph 1 (above), shall not require termination of the contract, but notice of intent to discontinue selected services shall be communicated with 15 days written notice.

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 to act as the Designated Building Official (DBO) shall be \$750 per week or portion thereof, which shall include up to 5 billable DBO hours per week.
- B. The fee for the performance of plans examination shall be 75% of the plan review fee as listed in the City's fee schedule (65% of permit fee).

C. For the services listed below, a trip charge of \$50.00 shall be imposed when the time spent in the City is less than 4 contiguous hours in a given work day. The fee for inspection personnel and services shall be as follows:

- i. Designated Building Official (Qualle) \$150.00/hr
- ii. Inspector with State Delegation \$125.00/hr
- iii. Certified Building Official (commercial) \$105.00/hr
- iv. Fire Inspector \$105.00/hr
- v. Limited Building Official (residential) \$85.00/hr

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. Indemnification shall not extend to any City employees performing services under the authority of this agreement.

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. This section applies to Inspectors' employees only, and not to City staff.

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 and supersedes all other agreements.

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 16<sup>th</sup> day of April, 2019.

**CITY OF LAKE ELMO**

**MNSPECT, LLC**

By: \_\_\_\_\_  
Mike Pearson  
Mayor

By: \_\_\_\_\_  
Scott Qualle, President

Attest: \_\_\_\_\_  
City Clerk