



Request for Council Action

TO: Mayor and City Council
THROUGH: Tim Murray, City Administrator
FROM: Deanna Kuennen, Com and Econ Dev Director
MEETING DATE: March 10, 2020
SUBJECT: Approve Professional Services Agreement with MNSPECT, LLC for Building Inspection and Building Official Services

Background:

The Building Codes Division has experienced an increase in activity over the last few years, and is anticipating that this trend will continue in 2020.

2019 Summary	2018 Summary	2017 Summary
1,429 Permits	1,244 Permits	1,193 Permits
167 Plan Reviews	140 Plan Reviews	164 Plan Reviews
2,855 Field Inspections	2,998 Field Inspections	2,635 Field Inspections
\$49,142,522 Total Valuation	\$36,406,457 Valuation	\$64,464,993 Total Valuation
17 New Home Starts	27 New Home Starts	33 New Home Starts

To prepare for the anticipated increased permit activity, and as an attempt to improve customer service levels, Staff reached out to MNSPECT, LLC to discuss contract building inspection services. The focus of the services would be to provide plan review for the large commercial projects (example: Straight River Apartment plan review, etc.), and provide backup inspection services as-needed/as-requested.

MNSPECT, LLC is located in Waconia, and specializes in providing plan review and inspection services for municipalities. Based on the conversations with Staff, Staff is recommending entering into a contract for plan review services, and field inspection on as as-needed basis. The terms of the contract include:

MNSPECT, LLC will:

- Perform Code Compliance Examinations - completing *initial* compliance reviews for residential properties within ten (10) business days, and commercial projects within fifteen (15) days.
- Prepare approved permit construction documents

- Perform field inspections on an as-needed basis
- Perform Building Official services on an as-needed basis

Fees for services:

- 75-percent of “checking for commercial plan review” and “residential plan check” fees as listed in the City’s fee schedule
- \$95.00-\$125.00 per hour for field inspection services

Recommendation:

The agreement has been reviewed, and Staff recommends approval of the attached Agreement for Building Inspection and Building Official Services with MNSPECT, LLC, authorizing the execution of said Agreement (with the same performance and payment terms).

Attachments:

- Agreement for Building Inspection and Building Official Services

AGREEMENT FOR BUILDING INSPECTION AND BUILDING OFFICIAL SERVICES

THIS AGREEMENT (“Agreement”) is made and entered into this ___ day of March, 2020 by and between the City of Faribault, 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 Building Official, code review, and inspection services provided herein; and

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

NOW, THEREFORE, the parties hereto agree as follows:

1. Code Review and Inspection Services.

Inspector will provide the following code review, inspection services, and Building Official Services (“Services”) for the City, under the direction and authority of the City’s Designated Building Official.

- A. Perform Code compliance examination services for all eligible permit applications received by the City and forwarded to the Inspector pursuant to the terms of this Agreement.
 - i) Inspector shall complete all Code compliance reviews for applications related to residential projects reviewed under the Minnesota Residential Code (MNRC) within ten (10) business days after Inspector receives the permit application, related documents, and all relevant information needed to complete the code review.
 - ii) Inspector shall complete all Code compliance reviews for applications related to commercial projects reviewed under the Minnesota Building Code (MNBC) within fifteen (15) business days after Inspector receives the permit application, related documents, and all relevant information needed to complete the code review.
- B. Prepare and provide the City with the approved permit construction documents.
- C. Perform field inspections on an as-needed basis, at the sole direction of the City.
- D. Prepare and provide the City with the associated inspection records and other necessary information that the City requires.

E. Perform Acting Building Official services, as designated by the Building Official, on an as-needed basis, at the sole direction of the City.

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

All Services provided by Inspector shall be performed by qualified individuals who are certified and/or licensed by the State of Minnesota in their respective disciplines. 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, on a form approved by the City, 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 March ____, 2020.

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 to the effective date of termination. The City shall not be liable for any costs incurred for work done following a notice of termination unless the City has provided the Inspector with prior written authorization to complete such work.

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 Inspector’s fee for the performance of Code compliance examination services shall be 75% of the “checking for commercial building plan review” and “residential plan check” fees as listed in the City’s fee schedule.

B. The fee for field inspection services shall be as follows:

- | | |
|-------------------------------------|-------------|
| i) State Delegation Inspections | \$125.00/hr |
| ii) MNBC Inspections | \$105.00/hr |
| iii) MNRC Inspections | \$95.00/hr |
| iv) Acting Building Official Duties | \$150.00/hr |
| v) Other requested inspections | \$105.00/hr |

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

Inspector's invoice shall only include charges for work which has been completed at the time of the invoice. If the Services provided with respect to a particular permit fee are performed over a period of time, Inspector shall be paid for completing the Services after they are completed. Inspector shall not be entitled to prepayment of any permit fees before the work is completed.

- C. A trip charge of \$50 for travel time each way shall apply when a field inspector is scheduled to spend less than 3 continuous hours within the City on any workday.

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 attorneys' 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 and will remain appropriately licensed by all applicable agencies and governmental entities and will perform the Services with reasonable skill 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 or applicable law.

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.

***** SIGNATURE PAGE FOLLOWS *****

IN WITNESS THEREOF, the parties have executed this Agreement in duplicate this _____ day of March, 2020.

CITY OF FARIBAULT

By: _____ Kevin Voracek
Mayor

Attest: _____ Tim Murray
City Administrator

MNSPECT, LLC

By: _____ Scott Qualle, President