

RESOLUTION NO 3 , 2023

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO CONTRACT WITH NATIONAL INSPECTION CORPORATION FOR PROFESSIONAL SERVICES TO SERVE AS BUILDING OFFICIAL AND TO PROVIDE PLAN REVIEW AND FIELD INSPECTION AUTHORITY AND SERVICES FOR THE CITY'S BUILDING DEPARTMENT FOR THE CALENDAR YEAR 2023**

**WHEREAS**, Section 9.03 of Article IX of the Charter of the City of Montgomery, Ohio, provides the method by which the City Manager shall make certain purchases and enter into contracts on behalf of the City; and

**WHEREAS**, it is appropriate to provide contract authority for professional services that are generally not subject to competitive bidding but will exceed a total of \$50,000 in a calendar year; and

**WHEREAS**, it is the desire of the Council of the City of Montgomery to renew the City's contract with National Inspection Corporation for calendar year 2023 to perform general building official and inspection services for the City.

**NOW THEREFORE, BE IT RESOLVED** by the Council of the City of Montgomery, Hamilton County, Ohio, that:

**SECTION 1.** The City Manager is hereby authorized to contract with National Inspection Corporation for professional services to be provided to the City of Montgomery for calendar year 2023 according to the attached Agreement submitted by National Inspection Corporation attached hereto as Exhibit "A" and incorporated herein by reference.

**SECTION 2.** The City Manager is hereby authorized to pay National Inspection Corporation according to the rates set forth in said Agreement.

**SECTION 3.** This Resolution shall be in full force and effect from and after

its passage.

PASSED: January 4, 2023

ATTEST: Connie Gaylor  
Connie Gaylor, Clerk of Council

Craig D. Margolis  
Craig D. Margolis, Mayor

APPROVED AS TO FORM:

Terrence M. Donnellon  
Terrence M. Donnellon, Law Director

## AGREEMENT

THE CITY OF MONTGOMERY, OHIO, An Ohio municipal corporation, 10101 Montgomery Road, Montgomery Ohio 45242 ("Montgomery" or "City"), and NATIONAL INSPECTION CORPORATION, an Ohio corporation, 311 Regency Ridge, Dayton, Ohio 45459, ("NIC"), hereby enter into this Agreement upon the terms and conditions as set forth herein.

WHEREAS, the Montgomery Building Department has been certified by the State Of Ohio Board of Building Standards to exercise enforcement authority, accept and approve plans and specifications, and make inspections pursuant to sections 3781.10 and 3791.04 of the Ohio Revised Code; and

WHEREAS, Ohio law authorizes the City to contract with a third party to provide plan review and field inspection authority and services for the City's Building Department; and

WHEREAS, Montgomery and NIC desire to enter into a contract for NIC to review and approve construction documents, provide building, heating, ventilation, air conditioning, electrical, and site inspection services to Montgomery, to exercise enforcement authority for plan review and inspections as set forth in this Agreement, to provide enforcement authority through NIC's Certified Inspectors to assure compliance with the adopted Building Code of Montgomery and to provide Building Official and Plan Review services to the City of Montgomery; and

WHEREAS, the services to be performed by NIC are of a technical, non-competitive and professional nature, and the appropriate authority to execute this Agreement with NIC has been granted by the Council of the City of Montgomery;

NOW, THEREFORE, Montgomery and NIC agree as follows:

1. Montgomery and NIC agree that NIC shall exercise enforcement authority for inspections and approval of plans and specifications, issue plan and specification approval and make field inspections on behalf of Montgomery for enforcement of state and local building codes, including the Ohio Building Code

and Ohio Residential Building Code, and such other regulations as Montgomery may adopt related to building construction (individually and collectively "Code"). NIC shall designate a person within NIC to serve as the Certified Building Official for the City. Such authority conveyed to NIC by this Agreement shall be no more than the authority conveyed to Montgomery, Ohio by its building codes and by state law. The extension of this authority to NIC shall not authorize NIC to waive any requirements of the zoning or building codes on behalf of the City.

2. Inspections shall be performed on a daily basis during regular business hours, except for inspections that must be performed during hours of darkness or during commercial "shut-down" conditions. Plan review shall be completed within a reasonable period of time from receipt of such plans by the Montgomery Building Department. For 1, 2, and 3 family dwellings, such review shall typically be completed within two business days of receipt, and for all other plan reviews such review typically shall be completed within three to ten business days of receipt. Plans are to be submitted to Montgomery's office at its address as written above.

3. NIC agrees that inspectors will be available by telephone for citizen and contractor queries between 8:00am and 5:00pm, Monday through Friday with the exception of legal holidays. All NIC inspectors will maintain state certification as required by law. Plan review shall be performed by a Certified plans Examiner for all plans submitted for a permit under the requirements of the Ohio Building Code (OBC).

4. Montgomery has established a statutory permit fee schedule, as enumerated in the ordinances of Montgomery. A true copy of said ordinance is appended hereto as Exhibit "A" and incorporated by reference herein. Montgomery reserves the right to amend the fee schedule from time to time. Any such change which significantly impacts the compensation to be paid to NIC under the terms of this Agreement shall authorize NIC to terminate this Agreement upon sixty (60) days advanced written notice to the City.

In accordance with the schedule of fees adopted by Montgomery, commencing January 1, 2013 Montgomery shall pay NIC for services rendered ninety percent (90%) of all fees received by Montgomery pursuant to such ordinance. The fees received by Montgomery for which NIC shall receive

compensation do not include any penalty fees or penalties assessed by Montgomery for Code enforcement. Net fees shall be the amount of the gross fees paid to the City, less such administrative fees as are required to be paid to the Ohio Board of Building Standards. Collection of permit fees shall be the sole responsibility of Montgomery. NIC shall invoice Montgomery monthly itemizing the project reviewed and fees due. Any other fees required to be collected with the building permit such as water, sewer or environmental impact fees shall be collected by Montgomery and shall not be considered as a part of the net fee structure upon which NIC shall be compensated.

5. NIC shall indemnify, defend and hold harmless Montgomery, its officers, directors, agents and employees from and against any and all loss, liability, claim for personal injury, wrongful death or property loss, damages, and expenses including attorneys fees and litigation expenses resulting from the negligence of NIC, its agents or employees in connection with NIC's services and obligations provided for under this Agreement except to the extent such loss was caused by or resulted from the negligence of Montgomery. This obligation will survive the termination or expiration of this Agreement. To the extent permitted under any policy of liability insurance issued to the City or in accordance with the rules and regulations of any self insurance pool to which the City may belong, NIC shall be entitled to full participation with Montgomery in defense of any such claim. NIC further shall be required to carry a policy of general liability insurance and errors and omissions coverage with limits not less than \$1,000,000.00 per occurrence and \$1,000,000.00 aggregate. The City of Montgomery shall be named as an Additional Insured under such liability policy with the following language included in such Certificate of Coverage:

*THE FOLLOWING ARE Additional Insureds: the City of Montgomery, Ohio, its elected and appointed officials, all employees, agents, volunteers, all boards, commissions and board members, including employees, agents and volunteers of such boards and commissions. Coverage shall be primary to the Additional insureds and not contributing with any other insurance or similar protection available to the Additional Insureds whether other available coverage is primary, contributing, or excess*

Upon a request of Montgomery, NIC shall provide to Montgomery certificates evidencing said insurance coverage's, as well as a certificate evidencing worker's compensation coverage.

6. In addition to the general services outlined above, NIC agrees to furnish the following specific services to Montgomery:

a. Provide at its expense a toll free telephone number at its offices and make same available to the city of Montgomery, its general public, and all persons or entities having business with Montgomery which would be covered by this Agreement.

b. Upon request, advise applicants on Code requirements, but shall not perform design services for the completion of inadequate applications.

c. Perform job inspections of all work described on the application and plans, including the installation of equipment. Such service shall be provided promptly in the order received or scheduled without regard to type or extent of work, but within normal scheduling.

d. Prepare permits and certificates of approval when the installed work complies with all applicable regulations, ordinances, and statutes.

e. Except in those cases where NIC is called upon to assist the City in defense of any claim asserted by a third party against the City arising from any act or omission by NIC, upon request of the Montgomery Law Director, make itself reasonably available for and shall testify in any judicial proceeding or any formal or informal dispute resolution proceeding involving issues arising from the performance of the services herein described. After the first appearance on a specific case, NIC shall be paid \$100.00 per hour for the time any of its employees or principals shall take to fulfill the requirement as set forth in this section.

f. Provide utility companies with certificates of approval when necessary for the release of new services.

g. Provide emergency inspections as necessary at the request of other Montgomery Departments for which NIC shall be entitled to charge Montgomery \$75.00 per hour, port to port.

7. All documents, including applications, plan review, job progress reports and inspection reports shall remain the property of Montgomery.

8. This Agreement shall be effective January 1, 2023. This Agreement shall be renewable for continuing one-year terms unless terminated by either party with written notice directed to the other party sixty (60) days in advance of such renewal date. Either party may terminate this Agreement without cause with sixty (60) days notice to the other party after the first anniversary of this Agreement. While this agreement is in effect and for one year after termination, Montgomery will not offer employment to, nor solicit any employment applications from employees, former employees or contractors of NIC who provided service to Montgomery under this or a predecessor Agreement.

9. All notices to be given by or to either party to this Agreement shall be sent U.S. Mail, Certified, return receipt requested to the address as is noted above or as it is duly noticed by either party. All such notices shall be effective as of the date received.

10. This Agreement shall be construed under and in accordance with the laws of the State of Ohio, and all obligations to the parties created under this Agreement are performable in Hamilton County, Ohio.

11. This Agreement shall be binding and inure to the benefit of the parties of this Agreement and their respective heirs, executors, administrators, legal representatives, successors and assigns as permitted by this Agreement.

12. If one or more of the provisions contained in this Agreement is held by a Court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality or unenforceability shall not affect any other provision. This Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

13. This Agreement constitutes the sole and only agreement of the parties and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter of this Agreement.

14. This Agreement may not be assigned by either party without express written consent of the other party, which consent may not be unreasonably withheld.

**CITY OF MONTGOMERY, OHIO**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Brian Riblet

Its: City Manager

**NATIONAL INSPECTION  
CORPORATION**

Date: 12/8/22

By: \_\_\_\_\_

Andrew McKenzie

Its: President

APPROVED AS TO FORM:

\_\_\_\_\_  
Terrence M. Donnellon  
Law Director for City of Montgomery