

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT FOR CONSTRUCTION INSPECTION SERVICES AND DECLARING AN EMERGENCY.

WHEREAS, that the City invited proposals from qualified firms for construction inspection services; and

WHEREAS, that the City Engineer and the Administration reviewed said proposals and recommended the firm of Quality Control Inspections, Inc. (QCI) of Garfield Heights, Ohio; and

WHEREAS, Council coming now to consider said proposals has determined the proposal of Quality Control Inspections, Inc. (QCI) of Garfield Heights, Ohio to be the best responsive proposal and is acceptable to this Council.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF  
THE CITY OF AVON LAKE, STATE OF OHIO:

Section No. 1: That the Mayor is hereby authorized and directed to enter into an agreement with Quality Control Inspections, Inc. (QCI) of Garfield Heights, Ohio, to provide the City with construction inspection services. (Exhibit A)

Section No. 2: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and any of its committees which resulted in such formal actions, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section No. 3: That this Ordinance is hereby declared to be an emergency measure, the emergency being the necessity of providing inspection services on the construction of new or existing homes, thus for the health, safety, and welfare of the citizens of Avon Lake. Therefore, this Ordinance shall take effect and be in full force immediately after its passage and approval by the Mayor.

PASSED: 5/09/2023

/s/ Martin E. O'Donnell  
President of Council

POSTED: 5/12/2023

APPROVED: 5/10/2023

ATTEST: /s/ Valerie E. Rosmarin  
Clerk of Council

/s/ Gregory J. Zilka  
Mayor

## Agreement



Contract No.: 2023-04  
Expiration: 04-17-2024  
Client: City of Avon Lake  
Service: Subdivision Construction  
Inspection

This Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 202\_ by and between Quality Control Inspection, Inc. ("QCI") and the City of Avon Lake ("OWNER").

### **WITNESSETH:**

WHEREAS, QCI is in the business of providing consulting services relating to construction inspection (excluding: wastewater treatment plant, water plant, water towers, landfills, hazardous waste or treatment facilities, buildings or projects adjudged by QCI to be of a specialized nature); and

WHEREAS, the OWNER is desirous of engaging QCI to retain consulting services relating to construction inspection as more fully set forth below: and

WHEREAS, on \_\_\_\_\_, 202\_ the \_\_\_\_\_ authorized the hiring of QCI by Resolution # \_\_\_\_\_; and

WHEREAS, QCI and OWNER have agreed to the terms and conditions for the consideration as more fully set forth below.

NOW THEREFORE, in consideration of the mutual promises and obligations observed and performed by the parties hereto, QCI and the OWNER hereby agree as follows:

### **ARTICLE I - SCOPE OF SERVICE**

QCI shall provide qualified Resident Project Representative(s) ("RPRs) for the on-call use by the OWNER to inspect and consult on work being performed by Contractors hired, or authorized to perform work, by the OWNER. The OWNER shall have the right to reasonably approve all personnel assigned by QCI.

#### **1. Duties and Responsibilities:**

a.) Liaison. Serve as the OWNER's liaison with Contractor working principally through Contractor's Superintendent and assist him/her in understanding the intent of the Contract Documents.

#### **b.) Review of work, Rejection of Defective Work, Inspection, and Tests:**

(i) Conduct on-site observations of the work in progress to determine if the work is proceeding in accordance with the Contract Documents and that completed work will conform to the Contract Documents. When conducting inspections, the RPR will use Owner's requirements as it's guidelines.

(ii) Report to the OWNER whenever QCI believes that any work is unsatisfactory, faulty or defective or does not conform to the Contract Documents, or does not meet the requirements of any inspections, tests, or approval required to be made or has been damaged prior to final payment; and advise OWNER when QCI believes work

should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

- (iii) Verify that tests are conducted as required by the Contract Documents and in presence of the required personnel, and that the Contractor maintains adequate records thereof; observe, record and report to the OWNER appropriate details relative to the test procedures.
  - (iv) Accompany visiting inspectors representing public or other agencies having jurisdiction over the project, record the outcome of these inspections and report to OWNER.
- c.) Interpretation of Contract Documents. Transmit to the Contractor clarifications and interpretations of the contract documents as approved by the OWNER.
- d.) Modification. Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report them with recommendations to OWNER.
- e.) Reports:
  - (i) Furnish OWNER daily reports as required for progress of the work and Contractor's compliance with the approved progress schedule and schedule of Shop Drawings submissions. Included shall be pay items completed, test data, and comments relative to observations of the day's work.
  - (ii) Consult with OWNER in advance of scheduled major tests, inspections, or start of important phases of work.
- f.) RPR:
  - (i) The RPR is authorized to call to the attention of the Contractor any failure of the work or materials that do not conform to the Specifications and Contract.
  - (ii) The RPR is authorized to reject non-specified materials.
- g.) Payment Requisitions. Review applications for payment with Contractor for compliance with the established procedure for their submission and forward those with recommendations to OWNER, noting particularly their relation to the schedule of values, work completed and materials and equipment delivered at the site, but not incorporated in the work.
- h.) Completion:
  - (i) Submit to Contractor a list of observed items requiring completion or correction.
  - (ii) Conduct final inspection in the presence of the OWNER and Contractor and prepare a final list of items to be completed or corrected.
  - (iii) Verify that all items on final list have been completed or corrected and make recommendations to OWNER concerning acceptance.
- i.) Additional Duties and Responsibilities. In addition to the duties and responsibilities as spelled out in Paragraph 1 (A), at the request of the OWNER, the RPR shall act as a Liaison Officer between the OWNER and the RPR, and shall, under the OWNER's authority and control; use best effort to resolve, rectify, remedy, correct and/or

modify all field problems of any nature whatsoever, included, but not limited to, making recommendations and/or suggestions of solutions to field problems to the OWNER.

## **ARTICLE II - LIMITATIONS**

Except upon written instruction of the OWNER, the RPR(s):

1. Shall not authorize any deviation from the Contract Documents or approve any substitute materials or equipment.
2. Shall not issue instructions contrary to the contract plans, specifications, or contract documents.
3. Shall not exceed limitations of the OWNER's authority as set forth in the Contract Documents.
4. Shall not undertake any of the responsibilities of Contractor, Subcontractor, or Contractor's Superintendent, or expedite the work.
5. Shall not advise on or issue directions relative to any aspect of the means, methods, techniques, sequences, or procedures of construction unless such is specifically called for in the Contract Documents.
6. Shall not issue directions as to safety precautions and programs in connection with the work.
7. Shall not be liable for defective work, acts of omission, or operating procedures of the Contractor.

## **ARTICLE III - FEES**

1. Fee Schedule:
  - a.) The OWNER shall pay to QCI the fees as set forth in Exhibit "A" attached hereto. The fees charged shall not include travel time to and from Avon Lake.
  - b.) The fees shall be due and payable on a monthly basis upon presentation by QCI of a detailed invoice.
  - c.) QCI shall submit a monthly invoice to the OWNER, specifying the project name, total RPR hours worked.
  - d.) Payment shall be made to Quality Control Inspection, Inc., 9500 Midwest Avenue, Garfield Heights, Ohio 44125 or QCI assigned financial agent within THIRTY (30) days of the dated invoice.
  - e.) In the event the OWNER or QCI desires to terminate this Agreement, it may be terminated upon a THIRTY (30) days written notice by the party so desiring to terminate to the other party. QCI shall be paid for work completed and services performed up to the time of notice and in the event it is permitted to complete commenced projects, QCI shall be compensated at the rate provided for herein.

- f.) This agreement shall become effective upon "Acceptance" and remain in effect through April 17, 2024 and shall not be construed to provide for exclusive use of QCI or to guarantee utilization of the above stated services to any level stated or implied.

#### **ARTICLE IV - NON-SOLICITATION OF QCI EMPLOYEES**

1. **Solicitation of QCI Employees.**

- a.) **Information About QCI Employees.** OWNER may work closely with employees of QCI performing services under this Agreement. All information about such employees which becomes known to OWNER during the course of this Agreement and which is not otherwise known to the public, including compensation or commission structure, is a Trade Secret of QCI and shall not be used by OWNER in soliciting employees of QCI at any time. OWNER agrees to protect the confidentiality of such information, to the extent that these terms are permitted under public records law.
- b.) **Solicitation of Employees Prohibited.** During the term QCI is performing services for OWNER and from one (1) year following the cessation of such services, OWNER shall not directly or indirectly ask or encourage any employee(s) or former employee(s) of QCI to leave their employment with QCI, solicit any employee(s) of QCI or former employee(s) for employment, make any offer(s) of employment to any employee(s) or former employee(s) of QCI or employ any employee(s) or former employee(s) of QCI.
- c.) **Liquidated Damages.** OWNER agrees and acknowledges that the actual damages, which would result by any breach by it of this Agreement, are uncertain and would be extremely difficult to ascertain. OWNER therefore agrees to pay QCI a sum equal to thirty-five percent (35%) of the annual compensation previously paid by QCI to any employee(s) of QCI that leaves, as a result of OWNER's breach of Article IV, and any damages over and above this amount to which QCI may be entitled by law.

#### **ARTICLE V - COPYRIGHTS**

OWNER acknowledges and agrees that QCI has certain licensing rights to Build A Form® OWNER Report System ("System") that will be utilized by QCI under this Agreement. QCI has proprietary rights in said System which shall remain the sole property of QCI and nothing herein shall be deemed to create any rights in OWNER in violation of the rights or interest of QCI or any third party. OWNER acknowledges that the remedy at law for any breach of this section will be inadequate and, accordingly, in the event of any breach or threatened breach by OWNER of this section, QCI shall be entitled, in addition to any other remedies, to any injunction restraining any such breach, without bond or other security being required.

#### **ARTICLE VI - GENERAL**

1. **Heading.** The headings to the Articles and Sections of the Agreement are inserted for convenience only and will not be deemed a part of this Agreement for purposes of interpreting or applying the provisions of this Agreement.
2. **Governing Law.** This Agreement will be governed in all respects by the laws of the State of Ohio.

3. Severability. If any provision or paragraph of this Agreement shall be prohibited by law or held to be invalid, such provision or paragraph shall be separable from this agreement without invalidating the remaining provisions or paragraphs hereof.
4. Amendments. During the term of this Agreement, OWNER and QCI may amend this Agreement provided; however, any such amendment must be in writing and signed by both OWNER and QCI.
5. Force Majeure. Neither party shall be liable for its failure to perform hereunder due to any contingency beyond its reasonable control, including acts of God or the public enemy, fire, explosion, accident, flood, drought, embargoes, war, riot, sabotage, action of any kind of governmental authority, whether valid or invalid, strikes, lockouts, labor disputes or shortages or any contingency, delay, failure or cause beyond the parties reasonable control, whether or not of the kind specified herein.
6. Waiver. The waiver by either party of any breach or violation of any provision of this Agreement shall be effective only if given in writing and signed by the waiving party. Any waiver of one breach or violation shall not operate or be construed as a waiver of any subsequent breach or violation.
7. Entire Agreement. This instrument, including the appendices, exhibits, and attachments hereto, constitutes the entire Agreement between the parties covering the subject matter and supersedes all previous agreements and all proposals and negotiations not expressly set forth herein. No modifications or amendments shall be valid unless in writing and signed by both parties. Where conflicts may arise between this Agreement and the proposal of QCI, this Agreement shall prevail.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above mentioned.

WITNESSES:

MLDR

Mark Pace  
[print witness name]

g Capone  
Gabrielle Capone  
[print witness name]

\_\_\_\_\_  
[print witness name]

\_\_\_\_\_  
[print witness name]

QUALITY CONTROL INSPECTION, INC.

By: [Signature]

Print Name: Rick E. Capone

Title: President

Date:

CITY OF AVON LAKE

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

Print Name:

Title:

Date:

## **EXHIBIT "A"**

### **1. Fee.**

- a.) **Resident Project Representative** – \$64.90 per hour, per person. Work performed on a Saturday, Sunday, Federal holiday and/or any hours that exceed a total of eight (8) hours per day will be regarded as extra hours for which compensation will be in the sum of \$97.35 per hour, per person for each extra hour worked.
- b.) **Contract Administrator** - \$90.48 per hour, per person
- c.) **Mileage Reimbursement** – QCI shall be reimbursed the current "ODOT Mileage Rate" for mileage reimbursement, approved by the OWNER for any required driving.
- d.) QCI's rates conform to the following cost principles: Monday through Friday, five (5), eight (8) hour workdays.
- e.) OWNER shall contact QCI one (1) hour prior to the start of any scheduled work to terminate any scheduled daily inspections. QCI shall forgo compensation for properly terminating scheduled daily inspection services. QCI shall be compensated for TWO (2) hours per person, for all scheduled inspection terminated before a two (2) hour working period, compensated for FOUR (4) hours per person for all scheduled inspections which exceeds two (2) hours but has not exceeded a four (4) hour working period, and compensated for EIGHT (8) hours per person for all scheduled inspection exceeding four (4) hours and not exceeding an eight (8) hour working period.
- f.) Reimbursable expenses; mean the actual expenses incurred directly or indirectly, plus 10%, in connection with the project, and authorized in advance by the OWNER, including: expendable materials, transportation and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; telephone calls, reproduction of reports, drawings and specifications and similar project related items.