

**ORDINANCE NO. 20-002**

**AN ORDINANCE TO AUTHORIZE THE MAYOR TO ENTER INTO A CONTRACT WITH QUALITY CONTROL INSPECTION, INC. FOR CONSULTING SERVICES RELATING TO CONSTRUCTION INSPECTION FOR THE PERIOD FROM JANUARY 31, 2020 THROUGH DECEMBER 31, 2022.**

WHEREAS, Council hereby finds and determines that it is in the best interest of the City of Canal Winchester to provide for consulting services relating to construction inspection for private and public capital projects in the City; and

WHEREAS, it is necessary to enter into such agreement immediately to provide for construction inspection;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CANAL WINCHESTER, STATE OF OHIO:

Section 1. That the Mayor be, and hereby is, authorized to enter into and execute an agreement with Quality Control Inspection, Inc. to provide construction inspection for private and public capital projects in the City for the Period from January 31, 2020 through December 31, 2022.

Section 2. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

DATE PASSED 2-18-2020

  
PRESIDENT OF COUNCIL

ATTEST Audra Didio  
CLERK OF COUNCIL

  
MAYOR

DATE APPROVED 2-19-2020

APPROVED AS TO FORM:

  
LEGAL COUNSEL

I hereby certify that the ordinance as set forth above was published for a period of not less than fifteen days after passage by the Council, by posting a copy thereof in not less than three (3) public places in the municipal corporation, as determined by Council and as set forth in the Canal Winchester Charter.

Audra Didio  
Clerk of Council



## Agreement

Contract No.: 110-19-05  
Expiration: 12-31-2022  
Client: City of Canal Winchester  
Service: General Project Representation/  
Contract Administration

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This Agreement made this \_\_\_\_ day of \_\_\_\_\_ 201\_\_ by and between Quality Control Inspection, Inc ("QCI") and the City of Canal Winchester ("OWNER").

### WITNESSETH:

WHEREAS, QCI is in the business of providing consulting services relating to construction inspection

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

WHEREAS, on \_\_\_\_\_, 201\_ 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) ("RPR"), and Contract Administrators ("CA") for use by the OWNER and at the direction of the OWNER's engineer ("ENGINEER") to inspect and consult on work being performed by Contractors hired, or authorized to perform work, by the OWNER.

1. RPR Classifications:

- a.) Class I RPR's shall have the technical practical experience to perform the services as described herein on public works projects of a more typical nature, *i.e.*: Roadway and underground utility construction , new development projects or other types of projects mutually agreed upon by the OWNER and QCI to be of typical nature.
- b.) Class II RPR's shall have the technical practical experience to perform the services as described herein on public works projects of a more specialized nature, *i.e.*: wastewater treatment plants, water plants, water towers, bridges, non-hazard landfills, building construction or other types of work mutually agreed upon by the OWNER and QCI to be of a highly specialized nature.

2. Duties and Responsibilities:

- a.) Liaison: Serve as the ENGINEER's liaison with Contractor working principally through Contractors 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.
- (ii) Report to the ENGINEER and 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 ENGINEER and 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 the presence of the required personnel, and that the Contractor maintains adequate records thereof; observe, record and report to the ENGINEER and 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 ENGINEER and OWNER.

c.) Interpretation of Contract Documents: Transmit to the Contractor clarifications and interpretations of the contract documents as approved by the ENGINEER.

d.) Modification: Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report them with recommendations to ENGINEER and OWNER.

e.) Reports:

- (i) Furnish ENGINEER and 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 ENGINEER and 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 ENGINEER and 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 ENGINEER, 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 ENGINEER and OWNER concerning acceptance.

i.) Additional Duties and Responsibilities: In addition to the duties and responsibilities as spelled out in Article 1 - Scope of Service, at the request of the ENGINEER, the CA shall act as a liaison Officer between the ENGINEER, and the RPR, and shall, under the ENGINEER'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 ENGINEER.

j.) At the written request of OWNER, QCI shall provide an Ohio licensed engineer for the purpose of construction engineering (CE) consulting services as may be required from time-to-time by the OWNER.

## ARTICLE II - LIMITATIONS

Except upon written instruction of the ENGINEER or OWNER, the RPR, CA or CE:

- 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 ENGINEERs 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 - OWNER RESPONSIBILITY

- 1. The OWNER Designates Mr. William Sims as its Owner's Representative to coordinate the work of QCI. The Owner's Representative shall be the source of instruction to QCI and shall have the authority to interpret OWNER's policies and procedures as necessary to maintain QCI's work schedule. The Owner Representative shall have the right to

reasonably approve all personnel assigned by QCI.

2. OWNER shall provide QCI with any additional information including approved Final Subdivision Plans, Cut Sheets, Reports, OWNER Standard Construction Drawings and Specifications, Maps and Tax Maps insofar as the information is available or may be secured by the OWNER.
3. OWNER shall bear the cost of furnishing the information indicated above as a cost separate and apart from fees paid to QCI under the terms and conditions of this Agreement, except as may be otherwise noted.

#### ARTICLE IV - FEES

1. Fee Schedule:

- a.) The OWNER shall pay to QCI the fees as set forth in Exhibit "A" attached hereto,
- 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, CA hours worked and any additional reimbursable expenses with prior approval from the OWNER.
- d.) Payment shall be made to Quality Control Inspection, Inc., 40 Tarbell Avenue, Bedford, Ohio 44146, or QCI's 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 SEVEN (7) 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 January 10, 2020 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 V - INDEMNIFICATION

1. Indemnification and Hold Harmless:

- a.) OWNER shall indemnify, defend, and hold QCI harmless from and against any and all liabilities, losses, claims, damages, suits, actions, judgments, costs, charges and other expenses of whatsoever nature or character arising out of or occasioned by injury or death to any person or persons, or damages to any property, or any other damages whatsoever, except as otherwise may be limited to this agreement, caused by reason of the performance of services hereunder as RPR/CA or otherwise for the OWNER, its servants, agents, employees, contractors, sub-contractors; provided, however, that QCI acted in good faith in a manner which, under the circumstances, a reasonable person might believe to be in or not opposed to the best interests of the OWNER. OWNER agrees not to assert as a defense to its indemnification obligations hereunder any immunity to which it may be entitled under Section 35, Article II of the Ohio Constitution or Sections 4123.74 and

4123.741 of the Ohio Revised Code. This indemnity obligation of OWNER shall not be applicable to the extent QCI is provided coverage under the insurance policy set forth in letter e.) below, or to the extent that this indemnity obligation is prohibited or limited by the laws of the State of Ohio.

- b.) In connection with the indemnification to be provided by the OWNER hereunder, the OWNER shall have the right to designate the attorney to represent QCI, and such attorney may be the Solicitor or Law Director of the OWNER.
- c.) In the event the OWNER shall incur expenses on behalf of QCI hereunder in connection with a claim or matter as to which QCI shall be adjudged to be liable for negligence or intentional misconduct or violation of civil rights, as provided above, QCI shall reimburse the OWNER for such expenses reasonably incurred by it.
- d.) With respect to any claim or matter as to which the OWNER shall undertake to indemnify QCI, no amount shall be paid in settlement thereof unless the OWNER has approved such payment.
- e.) QCI shall at all times maintain in force and effect professional liability insurance with a Limit of liability of not less than \$2,000,000.00 and in a form generally the same as its current coverage provided by Enestan Insurance Company.
- f.) In the event the OWNER indemnifies QCI hereunder in connection with a claim or matter as to which QCI's insurance carrier has denied coverage under QCI's insurance policy, QCI shall, upon request of the OWNER, assign to the OWNER all of its rights against the insurance carrier arising by reason of such denial.
- g.) As used in this Section, the term "QCI" shall include: employees; agents and sub-consultants of QCI in connection with the performance of services hereunder.
- h.) Notwithstanding any of the foregoing provisions of this Section, this Section shall not apply to any claims that may be asserted by the OWNER against QCI in connection with his performance of services for the OWNER.

#### **ARTICLE VI - 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. Any 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.) Injunctive Relief. OWNER agrees and acknowledges that the violation of any of the provisions contained herein would cause irreparable injury to QCI, that the remedy of law for any violation or threatened violation thereof would be inadequate, and that QCI shall be entitled to temporary or permanent injunctive or other equitable relief without the necessity to prove actual damages. In any proceeding by QCI to enforce any of the provision of this Agreement, the prevailing party shall be entitled to reimbursement of all costs and reasonable attorney's fees incurred in such litigation.
  
- d.) 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 leave(s), as a result of OWNER's breach of this Agreement, and any damages over and above this amount to which QCI may be entitled by law.

#### ARTICLE VII - COPYRIGHTS

OWNER acknowledges and agrees that QCI has certain licensing rights to Build A Form® Engineer 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 to 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 VIII - 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

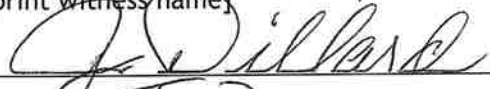
any subsequent breach or violation.

- 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:


  
 \_\_\_\_\_  
 Gabrielle Capone  
 [print witness name]

  
 \_\_\_\_\_  
 J. DILLARD  
 [print witness name]

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

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

**QUALITY CONTROL INSPECTION, INC.**

By:   
 \_\_\_\_\_  
 Print Name: Rick Capone  
 Title: President

**CITY OF CANAL WINCHESTER**

By: \_\_\_\_\_  
 Print Name: Michael Ebert  
 Title: Mayor



EXHIBIT "A"

1. Fee.
  - a.) **Resident Project Representative - Class I** - \$54.10 per hour, per person. Work performed on a Saturday, Sunday, Holiday and/or any hours, which exceed a total of eight hours (8) per day, will be regarded as an extra for which compensation will be in the sum of \$81.11 per hour, per person for each extra hour worked.
  - b.) **Resident Project Representative - Class II** - \$61.29 per hour, per person. Work performed on a Saturday, Sunday, Holiday and/or any hours, which exceed a total of eight hours (8) per day, will be regarded as an extra for which compensation will be in the sum of \$91.93 per hour, per person for each extra hour worked.
  - c.) **Contract Administration** - \$84.98 per hour, per person.
  - d.) **Construction Engineer** - \$88.58 per hour, per person.
  - d.) **Mileage Reimbursement** – QCI shall be reimbursed the current IRS “Standard Mileage Rate” for mileage reimbursement for any required driving.
  - e.) QCI's rates conform to the following cost principles: Monday through Friday, five (5) eight (8) hour workdays.
  - f.) OWNER/Developer's Representative 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 inspection 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.
  - g.) Reimbursable expenses; mean the actual expenses incurred directly or indirectly, plus 10%, in connection with the project including: expendable materials, incidental thereto; providing and maintaining field office facilities including furnishings and utilities; reproduction of reports, drawings and specifications and similar project related items.
  - i.) All QCI personnel shall have made available to them, when necessary, inspection equipment for all assignments as identified in exhibit "B".

EXHIBIT "B"

Tool Inventory List

Air Temperature Thermometer	Asphalt Thermometer
Calculator	Flashlight
Hard Hat	Level (4'-0)
Level (Torpedo)	Pick
Probe	Ruler (6'-0 Folding)
Safety Vest	Shovel
Spec. Book (City of Columbus & State of Ohio, D.O.T.)	Columbus/ODOT Standard Drawings
Wheel (Measuring)	Cellular Telephone & Digital Camera