

FIRST READING: 4 27 20  
SECOND READING: 5 4 20  
THIRD READING: \_\_\_\_\_

ORDINANCE NO: 31-20

BY: JOHN B. SHEPHERD

AN EMERGENCY ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A  
CONTRACT WITH QUALITY CONTROL INSPECTION, INC. FOR THE 2020  
RIVERDALE DRIVE WIDENING PROJECT CONSTRUCTION MANAGEMENT  
SERVICES IN AN AMOUNT NOT TO EXCEED \$146,024.00

**WHEREAS:** Article VII, Section 4 of the Charter of the City of Rocky River provides for the acquisition of personal services such as unique engineering services; and

**WHEREAS:** the City of Rocky River issued a Request for Qualifications for the 2020 Riverdale Drive Widening Project Construction Management Services, and four (4) responses were received on February 14, 2020, copies of which are available at the Safety Service office; and

**WHEREAS:** the proposals were reviewed and evaluated by the Director of Public Safety Service, and it was determined to be in the best interest of the City of Rocky River to accept the proposal from Quality Control Inspection, Inc. in an amount not to exceed One Hundred Forty-Six Thousand Twenty-Four Dollars and 00/100 (\$146,024.00) as further explained in Exhibit "A".

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ROCKY RIVER, COUNTY CUYAHOGA, STATE OF OHIO:**

**SECTION 1.** That the Mayor is hereby authorized to enter into an agreement with Quality Control Inspection, Inc., 40 Tarbell Avenue, Bedford, Ohio 44146 for the Riverdale Drive Widening Project Construction Management Services in an amount not to exceed One Hundred Forty-Six Thousand Twenty-Four Dollars and 00/100 (\$146,024.00) as further explained in Exhibit "A".

**SECTION 2.** That funds for said professional engineering services shall be paid from the Capital Improvement Fund-Engineering Service account.

**SECTION 3.** That this Ordinance is hereby declared to be an emergency measure, necessary for the immediate preservation of public peace, health and safety, and for the further reason that the professional services are required to manage all facets of this project and provided it receives the affirmative vote of two-thirds (2/3) of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

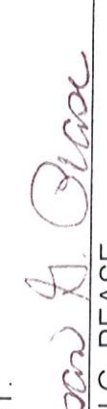
PASSED: May 4<sup>th</sup>, 2020

  
JAMES W. MORAN  
PRESIDENT OF COUNCIL

PRESENTED

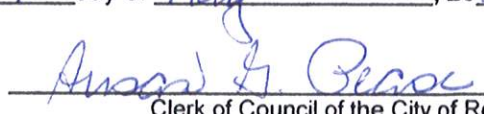
BY THE MAYOR: May 4<sup>th</sup>, 2020 APPROVED: May 4<sup>th</sup>, 2020

WITNESSETH:

  
SUSAN G. PEASE  
CLERK OF COUNCIL

  
PAMELA E. BOBST  
MAYOR

The undersigned Clerk of Council of the City of Rocky River, State of Ohio, do hereby certify that publication of the foregoing ordinance was duly made by posting a true copy thereof in the lobby of the Rocky River City Hall, in accordance with the charter of Rocky River, commencing on the 4<sup>th</sup> day of May, 2020.

  
Clerk of Council of the City of Rocky River, Ohio

  
MICHAEL THOMAS, CPA  
Director of Finance

City of Rocky River } ss  
County of Cuyahoga }

THE UNDERSIGNED CLERK OF THE COUNCIL OF THE CITY OF  
ROCKY RIVER, OHIO DOES HEREBY CERTIFY THAT THE  
FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE  
NO. 31-20 ADOPTED BY THE COUNCIL OF SAID CITY  
ON THE 12 DAY OF MAY, 20 20 THAT THE  
PUBLICATION OF SUCH ORDINANCE HAS BEEN MADE AND  
CERTIFIED OF RECORD ACCORDING TO LAW, THAT NO  
PROCEEDINGS LOOKING TO A REFERENDUM UPON SUCH  
ORDINANCE HAVE BEEN TAKEN; THAT SUCH ORDINANCE AND  
THE CERTIFICATE OF PUBLICATION THEREOF, ARE OF RECORD  
IN ORDINANCE RECORD NO. 31-20

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED  
MY NAME AND AFFIXED MY OFFICIAL SEAL THIS 14 DAY OF  
MAY, 20 20.

Wayne H. Blase  
CLERK OF COUNCIL OF THE CITY OF ROCKY RIVER, OHIO



## Agreement

Contract No.: 004-2020-0002  
Expiration: 07-31-21  
Client: City of Rocky River  
Service: Construction Management,  
Contract Administration and  
Inspection services on the Repair  
and Widening of Riverdale Drive  
Project

This Agreement, including as a part of this Agreement the following List of Attachments

1. The City of Rocky River Request for Qualifications and Proposal with Letter of Interest Letter for construction management, contract administration and inspection services in connection with the Riverdale Widening Project.
2. QCI's response to the above request dated February 14, 2020
3. The City of Rocky River's letter dated March 5, 2020 selecting QCI for the construction management, contract administration and inspection services in connection with the Riverdale Widening Project.
4. QCI's Fee Proposal for the construction management, contract administration and inspection services in connection with the Riverdale Widening Project dated March 13, 2020.

This Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by and between Quality Control Inspection, Inc. ("QCI") and the City of Rocky River ("OWNER").

### W I T N E S S E T H:

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, engineering contract administration and management as more fully set forth below: and

WHEREAS, on \_\_\_\_\_, 2020 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"), Contract Administrators ("CA") and Construction Engineers (CE) for the 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. 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.
  - (ii) Report to the OWNER and ENGINEER 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 and ENGINEER 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 and ENGINEER 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 and ENGINEER.
- c.) Interpretation of Contract Documents. Transmit to the Contractor clarifications and interpretations of the contract documents as approved by the OWNER and ENGINEER.
- d.) Modification. Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report them with recommendations to OWNER and ENGINEER.
- e.) Reports:
  - (i) Furnish OWNER and ENGINEER 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 and ENGINEER 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 and ENGINEER, 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 ENGINEER 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 and ENGINEER 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 CE and/or CA shall act as a Liaison Officer between the OWNER, ENGINEER, 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 and ENGINEER.

ARTICLE II - LIMITATIONS

Except upon written instruction of the OWNER and/or ENGINEER, the RPR(s) or CA:

- 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 ENGINEER'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.
- 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, CE and CA hours worked.
- d.) Payment shall be made to Quality Control Inspection, Inc., 40 Tarbell Avenue, Bedford, Ohio 44146, 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 (60) 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 July 31, 2021 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 - INDEMNIFICATION

##### 1. Indemnification and Hold Harmless:

- a.) 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.
- b.) 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 Evanston Insurance Co.
- c.) 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.
- d.) 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 V - 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.) 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 leaves, 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 VI - 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 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 VII - ATTORNEY'S FEES TO THE PREVAILING PARTY

The parties agree that any all disputes under this agreement will be resolved at the request of either party through binding arbitration in Cleveland, Ohio under the then-existing, pertinent Rules of American Arbitration Association ("AAA"). The proceeding, record, submissions, and materials provided in discovery shall be treated as confidential. The arbitration panel will be composed of one (1) arbitrator, either chosen by the parties or appointed by the AAA, in the event the parties cannot agree. The arbitrator's award will be final and binding upon both parties and may be enforced by any court having jurisdiction thereof.

In the event that any dispute is filed with the AAA pursuant to the terms of this agreement, the unsuccessful party in the action shall pay the successful party, in addition to all the sums either party may be called upon to pay a reasonable sum for the successful party's attorney fees and expenses.

#### 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:

THE CITY OF ROCKY RIVER

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

By: \_\_\_\_\_  
Print Name: Rich Snyder  
Title: Director of Public Safety Services

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

QUALITY CONTROL INSPECTION, INC.  
By: \_\_\_\_\_

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

Print Name: Rick E. Capone  
Title: President

## EXHIBIT "A"

1. Fee. – QCI's Not to Exceed Fee for services on the City of Rocky River Repair and Widening of Riverdale Drive Project is \$146,024.00
  - a.) **Resident Project Representative (Project Inspector)** - \$84.00 per hour, per person. Work performed on a Saturday, Sunday, Holiday and/or any hours that exceed a total of eight hours (8) per day will be regarded as an extra for which compensation will be in the sum of \$126.00 per hour, per person for each extra hour worked.
  - b.) **Resident Project Representative (Structures Inspector)** - \$84.00 per hour, per person. Work performed on a Saturday, Sunday, Holiday and/or any hours that exceed a total of eight hours (8) per day will be regarded as an extra for which compensation will be in the sum of \$126.00 per hour, per person for each extra hour worked.
  - c.) **Construction Engineer Level 1/Document Clerk/Communications** - \$63.00 per hour, per person.
  - d.) **Construction Engineer** - \$110.00 per hour, per person
  - e.) **Prevailing Wage Monitor** - \$50.00 per hour, per person
  - f.) **Mileage Reimbursement** - QCI shall be reimbursed the current IRS "Standard Mileage Rate" for mileage reimbursement for any required driving.
  - g.) QCI's rates conform to the following cost principles: Monday through Friday, five, eight (8) hour workdays (rates do not include shift work).
  - h.) 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 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.
  - i.) Reimbursable expenses are the actual expenses incurred directly or indirectly, plus 10%, in connection with the project, including: expendable materials, transportation and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; telephone calls and telegrams, reproduction of reports, drawings and specifications and similar project related items.