

Agreement



Contract No.: 001-23-037
Expiration: 12-31-2024
Client: City of Parma
Service: General Construction
Engineering, Contract
Administration & Project
Representation Services

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

WITNESSETH:

WHEREAS, QCI is in the business of providing consulting services relating to construction engineering, contract administration and 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 and contract administration as more fully set forth below: 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 Construction Engineer(s) ("CE"), Contract Administrators ("CA") and Resident Project Representative(s) ("RPR") 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 ENGINEER'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 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 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 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 ENGINEER.
- 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.
- e.) Reports:
- (i) Furnish 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 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 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 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 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 ENGINEER, the CE or 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.

ARTICLE II - LIMITATIONS

Except upon written instruction of the ENGINEER, the RPR(s), 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 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, and CA 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 SIXTY (60) day 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 the expiration date of December 31, 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.

- g.) The OWNER and QCI shall have the option to extend the Agreement beyond the expiration date of December 31, 2024. Should the parties mutually elect to extend the Agreement they shall confirm in writing to extend for a period of one calendar year from the expiration date. The parties shall have the option of two (2) additional one year contract extension and shall confirm to extend in writing. With each option to extend the Agreement, the parties reserve the right to modify hourly rates of services, however any/all modifications to hourly rates shall be agreed to by the OWNER and QCI.

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.) 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 V - COPYRIGHTS

OWNER acknowledges and agrees that QCI has certain licensing rights to Pegasus Project Reporting Software 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 - 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 VII - 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:

Mark D. Parra

Mark D. Parra

[print witness name]

Judith Dillard
JUDITH DILLARD

[print witness name]

[print witness name]

[print witness name]

APPROVED AS TO FORM:

Timothy G. Dobeck, Law Director

Date: _____

QUALITY CONTROL INSPECTION, INC.

By: _____

Print Name: Rick E. Capone

Title: President

CITY OF PARMA

By: _____

Print Name: Timothy DeGeeter

Title: Mayor

EXHIBIT "A"

1. Fee.

- a.) **Resident Project Representative** – \$59.63 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 \$89.44 per hour, per person for each extra hour worked.
- b.) **Construction Engineer** - \$116.73 per hour, per person.
- c.) **Contract Administration** - \$90.08 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.) **Pegasus Project Reporting Software** – Remote View License \$500.00/yr setup and archive, licenses, and usage fee.
- f.) QCI's rates conform to the following cost principles: Monday through Friday, five (5) eight (8) hour workdays.
- g.) 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.
- h.) Reimbursable expenses: mean the actual expenses incurred directly or indirectly, plus 10%, in connection with the project including: sub-consultants, 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.