

RESOLUTION NO.: 2013-R30 (AMENDED JUNE 11, 2013)
SPONSOR: MAYOR NORTON
INTRODUCED: MAY 14, 2013 **ASSIGNED TO:** TCS

A RESOLUTION AUTHORIZING THE CITY OF GREEN TO ENTER INTO A CONTRACT WITH QCI FOR CONSTRUCTION MANAGEMENT SERVICES FOR THE STEESE ROAD IMPROVEMENTS PROJECT, THE SHRIVER ROAD CURB & SIDEWALK IMPROVEMENT PROJECT, AND THE CAK INTERNATIONAL BUSINESS PARK PHASE III PROJECT, MAKING AN APPROPRIATION, AND DECLARING AN EMERGENCY.

WHEREAS, the City routinely contracts with numerous construction management firms for these types of services; and

WHEREAS, the City of Green desires to hire QCI to provide construction management services for the Steese Road Improvements Project, the Shriver Road Curb & Sidewalk Improvement Project, and the CAK International Business Park Phase III Project; and

WHEREAS, the funds necessary to pay for these services have already been approved as part of the Capital Budget, Resolution 2012-R72, which was unanimously approved by City Council at its January 22, 2013 meeting; and

WHEREAS, the Administration has determined it necessary to appropriate additional funds to pay QCI for the Steese Road Improvements Project and the Shriver Road Curb & Sidewalk Improvement Project; and

WHEREAS, as a result of the passage of Ordinance 2010-04, it is necessary for City Council to approve the hiring of QCI for the proposed services.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GREEN, COUNTY OF SUMMIT, AND STATE OF OHIO, THAT:

SECTION ONE:

City Council authorizes Green to hire QCI to provide construction management services for the Steese Road Improvements Project, the Shriver Road Curb & Sidewalk Improvement Project, and the CAK International Business Park Phase III Project, pursuant to the terms set forth in Exhibit "A" attached.

SECTION TWO:

City Council makes an additional appropriation of Three Hundred Twenty Seven Thousand One Hundred Ninety Five Dollars (\$327,195.00) to Account 403-8010-53633, from the unappropriated balance of the TIF Fund, to provide funds to pay QCI for services provided at the Steese Road Improvements Project and the Shriver Road Curb & Sidewalk Improvement Project.

SECTION TWO THREE:

The City of Green finds and determines that all formal actions of this Council concerning and relating to the adoption of this Resolution were taken in open meetings of this Council and any deliberations of this Council and any of its committees that resulted in this formal action were in meetings open to the public, in compliance with all legal requirements.

SECTION THREE FOUR:

Council declares this to be an emergency immediately necessary for the preservation of the public peace, health, safety, and welfare of the citizens of Green. Provided that this legislation receives the affirmative vote of three-fourths of the members elected or appointed 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 at the earliest time allowed by law.

ADOPTED: June 11, 2013

Molly Kapeluck
Molly Kapeluck, Clerk

Dave France
Dave France, Council President

APPROVED: June 11, 2013

Richard G. Norton
Richard G. Norton, Mayor

COPIED _____
SVCE ZONE PARK ROAD ENG
LAW FIN MAY PLAN FIRE

ENACTED EFFECTIVE: June 11, 2013

ON ROLL CALL: Colopy - *yec* France - *yec* Humphrey - *yec* Knodel - *yec*
Neugebauer - *yec* Reed - *yec* Summerville - *yec* Adopted 7-0

Suburbanite publication on June 16 and June 23

Molly Kapeluck
Molly Kapeluck, Clerk

06/06/2013 Approved as to form and content by Stephen J. Pruneski, Law Director Stephen J. Pruneski 6/6/2013
LS

Resolution
2013-R30
Exhibit "A"

Agreement



Contract No.: 174-13-365
Expiration: May 31, 2014
Client: City of Green
Service: On-Call Project Management and
Construction Engineering Services
for the City of Green, Ohio

This Agreement made this _____ day of _____, 2006 by and between QCI-CE, Inc. ("QCI") and the City of Green ("OWNER").

WITNESSETH:

WHEREAS, QCI is in the business of providing consulting services relating to project management and construction engineering; and

WHEREAS, the OWNER is desirous of engaging QCI to retain consulting services relating to and including on-call project management, construction engineering, contract administration and on-site resident project representation (inspection) during construction of various public works improvements of which services are more fully described below: and

WHEREAS, on _____, 200__ the _____ authorized the hiring of QCI by Ordinance # _____; 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 project management and construction engineering services, including full-time inspection during the duration of the Work. As part of these services QCI shall assign licensed and qualified personnel to work as: Project Manager ("PM"), Construction Engineer ("CE"), Contract Administrator ("CA"), Document Control ("DC") and Resident Project Representative ("RPR") for the use by the OWNER to manage, 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 Engineering consultants and Contractors working principally through Engineering Consultants assigned representative.
- b.) Project Management: Consult with and support the work of the Owner's Engineer with project design development, estimates, schedules, alternates, and other project management development services.

- c.) Construction Engineering and Inspection: As Owner's liaison, assist Contractor's Superintendent and assist him/her in understanding the intent of the Contract Documents.
- d.) Review of work, Rejection of Defective Work, Inspection, and Tests:
- (i) Review Contractor submittals for compliance to the contract documents for construction including: shop drawings, catalog cuts, material samples and project CPM schedule.
 - (ii) 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.
 - (iii) 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.
 - (iv) 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.
 - (v) Accompany visiting inspectors representing public or other agencies having jurisdiction over the project, record the outcome of these inspections and report to OWNER.
- d.) Interpretation of Contract Documents: Transmit to the Contractor clarifications and interpretations of the contract documents as approved by the OWNER.
- e.) Modification: Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report them with recommendations to OWNER.
- f.) 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.
- g.) Site Observation(s):
- (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.
- h.) 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.

Support the work of the OWNER in preparing Applications for Payment for third party funding, to be reimbursed to the OWNER, as part of the OWNER's project funding program for the Work.

i.) 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.

j.) Additional Duties and Responsibilities: In addition to the duties and responsibilities as spelled out in Paragraph 1 (A), QCI shall act as a Liaison Officer between the OWNER and Owner's Designer and shall under the OWNER's authority; 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.

ARTICLE II - LIMITATIONS

Except upon written instruction of the OWNER (or OWNER's Designer), QCI:

1. Shall not authorize any deviation from the Design Engineer's Contract Documents or approve any substitute materials or equipment that may not be specified within the contract documents for construction as an alternate.
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.
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 for construction.
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 hours worked for each service provided and reimbursable expenses. A 1.5% interest rate shall be charged to all invoices that are paid beyond thirty (30) days and shall be reoccurring every thirty (30) days thereafter until full payment of each invoice is received.
- d.) Payment shall be made to QCI-CE, 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 (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 May 31, 2014 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.) OWNER and QCI shall each be responsible for its individual action in the performance of their respective Work and indemnify and hold harmless the other.
- b.) QCI shall at all times maintain in force and effect professional liability insurance with a limit of liability of not less than \$1,000,000.00 and in a form generally the same as its current coverage provided by ROYAL SURPLUS LINES INS. 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.

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.

- 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 - 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:

Gail Cannata
Gail Cannata
 [print witness name]

MC
Denise Se Honor Spurio
 [print witness name]

 [print witness name]

 [print witness name]

QCI-CE, INC.

By: [Signature]
 Print Name: Rick Capone
 Title: Vice President

CITY OF GREEN

By: _____
 Print Name:
 Title:

EXHIBIT "A"

1. Fee.

- a.) QCI's rate for Project Management, Construction Engineering, Contract Administration and Resident Project Representation, Document Controls and Clerical services shall be as follows:
- b.) **Project Manager** - \$110.00 per hour, per person.
- c.) **Construction Engineer** - \$95.00 per hour, per person.
- d.) **Contract Administration** - \$75.00 per hour, per person.
- e.) **Resident Project Representative** - \$55.00 per hour, per person¹. 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 \$82.50 per hour, per person for each extra hour worked.
- f.) **Document Controller** - \$47.00 per hour, per person
- g.) **Clerical** - \$40.00 per hour, per person.
- h.) **Build A Form® Engineering Report Services** - \$1,100 two (2) client remote view licensing fees for a term of one year, including set-up, software tutorial (training), support and access
- i.) QCI's rates conform to the following cost principles: Monday through Friday, five eight (8) hour workdays.
- j.) For all RPR services, the OWNER (or his/her authorized designee) shall contact QCI one hour prior to the start of any scheduled work to terminate any scheduled daily inspections. QCI shall forgo loss of 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 hour working period, compensated for FOUR (4) hours per person for all scheduled inspection which exceeds two hours but has not exceeded a four hour working period and compensated for EIGHT (8) hours per person for all scheduled inspection exceeding four hours and not exceeding an eight hour working period.
- k.) For all PM, CE, CA, DC, and Clerical services, QCI shall charge at intervals of one half-hour (1/2 hr.).
- l.) Reimbursable expenses; mean 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.

m.) Additional Services; QCI may be requested to provide additional services not contemplated by this agreement at the written request and authorization of the OWNER. Additional services, contemplated by this agreement, may cause an increase to the Not-to-Exceed cost proposal. These additional services may include, but are not limited to: providing additional services because of material changes in the Project, changes such as size, quality, complexity; changes to the OWNER's schedule or OWNER's hired contractor schedules; changes to the scope of work; providing services made necessary by the termination or default of the Contractor or by major defects or deficiencies in the Work of a Contractor, or by failure of performance of either OWNER or contractor under a contract for Construction; providing services in evaluating an extensive number of claims submitted by a contractor or others in connection with the Work; and providing services in connection with a public hearing, arbitration proceeding or legal proceeding except where QCI is party thereto.

¹ Includes daily mileage and cell phone communication