

## ORDINANCE NO. 10-43 AC CMS

AN ORDINANCE AUTHORIZING AN AMENDMENT TO THE CONTRACT WITH QUALITY CONTROL INSPECTION, INC. (QCI) OF BEDFORD, OHIO, TO PROVIDE FOR ADDITIONAL PROFESSIONAL CONSTRUCTION INSPECTION SERVICES FOR THE NORTH PROSPECT STREET SANITARY SEWER REPLACEMENT PROJECT IN THE CITY OF OBERLIN AND DECLARING AN EMERGENCY

**BE IT ORDAINED** by the Council of the City of Oberlin, County of Lorain, State of Ohio, five-sevenths (5/7ths) of all members elected thereto concurring:

**SECTION 1.** That the contract with Quality Control Inspections, Inc. (QCI), of Bedford, Ohio, for professional construction inspection services for the City of Oberlin, Ohio, as previously approved by Ordinance No. 02-53 AC CMS, as amended, is hereby amended to authorize additional payment for additional services, in accordance with Section 2 set forth hereinafter.

**SECTION 2.** That the projects for which said services shall be utilized, and the maximum fee to be charged for each is as follows:

Project	Proposed Inspection Allocation
North Prospect Street Sanitary Sewer Replacement Project	\$16,407.60

**SECTION 3.** It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

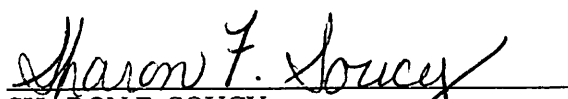
**SECTION 4.** That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of citizens of the City of Oberlin, Ohio, or to provide for the usual daily operation of a municipal department, to wit:

*"to authorize additional inspection and testing services as soon as possible in order to ensure quality construction of necessary public improvements related to a City construction project", and shall take effect immediately upon passage.*

PASSED: 1<sup>st</sup> Reading – June 21, 2010 (S)(E)  
2<sup>nd</sup> Reading –  
3<sup>rd</sup> Reading –

ATTEST:

  
BELINDA B. ANDERSON, CMC  
CLERK OF COUNCIL

  
SHARON F. SOUCY  
VICE PRESIDENT OF COUNCIL

POSTED: 6/22/2010

EFFECTIVE DATE: 6/21/2010

**Amendment  
to  
Ordinance  
02-53 AC CMS**

# Agreement



Contract No.: 136-08-066  
Expiration: 06-30-2010  
Client: City of Oberlin  
Service: Project Representation &  
Contract Administration for  
Public Works Improvements

This Agreement made this 8<sup>th</sup> day of July, 2008 by and between Quality Control Inspection, Inc. ("QCI") and the City of Oberlin ("CITY").

## 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 CITY is desirous of engaging QCI to perform professional services relating to on-site project representation as more fully set forth below: and

WHEREAS, on MAY 6, 2008 the Oberlin City Council authorized the hiring of QCI by Ordinance No. 02-53; and

WHEREAS, QCI and CITY 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 CITY hereby agree as follows:

## ARTICLE I - SCOPE OF SERVICE

QCI shall provide qualified Resident Project Representative(s) ("RPR") and Contract Administrators ("CA") for the use by the CITY and at the direction of the CITY's engineer ("ENGINEER") in responsible charge to inspect work being performed by Contractors hired by the CITY and to inspect the work of sub-dividers/developers constructing public improvements for acceptance by the City. The CITY 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.
2. Interpretation of Contract Documents. Transmit to the Contractor clarifications and interpretations of the contract documents as approved by the ENGINEER.
  3. Modification. Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report them with recommendations to ENGINEER.
  4. Reports:
    - a.) Furnish ENGINEER 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.
    - b.) Consult with ENGINEER in advance of scheduled major tests, inspections or start of important phases of work.
  5. RPR:
    - a.) 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.
    - b.) The RPR is authorized to reject non-specified materials.
  6. Payment Requisitions. Review applications for payment with Contractor for compliance with the established procedure for their submission and forward them with recommendations 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.
  7. Completion:
    - a.) Submit to Contractor, ENGINEER a list of observed items requiring completion or correction.
    - b.) Conduct final inspection in the presence of the ENGINEER and Contractor and prepare a final list of items to be completed or corrected.
    - c.) Verify that all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance.

8. 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 CA shall act as a Liaison Officer between the ENGINEER and the RPR, and shall, under the ENGINEER and CITY's 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 CITY and/or ENGINEER, the RPR 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 on the CITY or 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 CITY 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 detailed monthly invoices to the CITY, specifying the project name, total RPR hours worked, CA hours worked, personnel assigned, respective rates, gas mileage, and itemized reimbursable expenses.
  - 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. A 3% 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.
  - e.) In the event the CITY 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 June 30, 2010 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. Upon June 30, 2009, QCI rates for RPR and CA services shall increase 4% for each rate listed for the balance of the term of the agreement.

#### ARTICLE IV - INDEMNIFICATION

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

- a.) CITY 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 CITY, 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 CITY. The CITY 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 CITY shall not be applicable to the extent QCI is provided coverage under the insurance policy set forth in "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 CITY hereunder, the CITY shall have the right to designate the attorney to represent QCI, and such attorney may be the Solicitor or Law Director of the CITY.
- c.) In the event the CITY 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 CITY for such expenses reasonably incurred by it.
- d.) With respect to any claim or matter as to which the CITY shall undertake to indemnify QCI, no amount shall be paid in settlement thereof unless the CITY 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 \$1,000,000.00 and in a form generally the same as its current coverage provided by NATIONAL UNION.
- f.) In the event the CITY 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 CITY, assign to the CITY 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 CITY against QCI in connection with his performance of services for the CITY.

#### ARTICLE V - NON-SOLICITATION OF QCI EMPLOYEES

##### 1. Solicitation of QCI Employees.

- a.) Information About QCI Employees. CITY may work closely with employees of QCI performing services under this Agreement. All information about such employees which becomes known to CITY 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 CITY in soliciting employees of QCI at any time. CITY agrees to protect the confidentiality of such information.
- b.) Solicitation of Employees Prohibited. During the term QCI is performing services for CITY and from one (1) year following the cessation of such services, CITY 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. CITY 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. CITY 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. CITY therefore agrees to pay QCI a sum equal to twenty-five percent (25%) of the annual compensation previously paid by QCI to any employee(s) of QCI that leaves, as a result of CITY's breach of this Agreement, and any damages over and above this amount to which QCI may be entitled by law.

#### ARTICLE VI - COPYRIGHTS

CITY 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 CITY in violation of the rights or interest of QCI or any third party. CITY 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 CITY 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, CITY and QCI may amend this Agreement provided, however, any such amendment must be in writing and signed by both CITY 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.





## EXHIBIT "A"

### 1. Fee.

- a.) **Resident Project Representative:** \$ 45.21 per hour, per person<sup>1</sup>. 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 \$ 67.82 per hour, per person for each extra hour worked.
- b.) **Contract Administration** - \$69.01 per hour, per person.
- c.) QCI's rates conform to the following cost principles: Monday through Friday, five (5) eight (8) hour work days.
- d.) CITY shall contact QCI one (1) 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 (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.
- e.) 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.

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<sup>1</sup> Includes daily mileage and cell phone communication