

Council of City of York, PA
Session 2015
Resolution No.

INTRODUCED BY: **Renee S. Nelson**

DATE: **January 6, 2015**

WHEREAS, Article 1761 of the Codified Ordinances of the City of York, Pennsylvania requires that all tenant occupied residential and all institutional occupancies to be licensed and inspected; and

WHEREAS, the City of York wishes to enter into an agreement with Qdot Engineering, LLC to provide administrative and inspectional services related to the requirements of Article 1761; and

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of York, Pennsylvania that the Mayor is authorized and the Controller is authorized and directed to enter into an agreement with Qdot Engineering, LLC to provide administrative and inspectional services related to the licensing and inspection of tenant occupied and institutional occupancies. Said agreement to commence on January 1, 2015 and continue for a period of forty-eight (48) months.

PASSED FINALLY:

BY THE FOLLOWING VOTE:

YEAS: _____, _____, _____, _____, _____

NAYS: _____

Carol Hill-Evans, President of Council

ATTEST:

Dianna L. Thompson-Mitchell, City Clerk

INDEPENDENT CONTRACTOR AGREEMENT

THIS INDEPENDENT CONTRACTOR AGREEMENT (“Agreement”), effective the ___ day of _____, 2014 (the “Effective Date”), is made by and between **THE CITY OF YORK**, a Pennsylvania municipality and City of the third class with its principal place of business at 101 South George Street, York, Pennsylvania 17401 (“City”), and **QDOT ENGINEERING, LLC**, a Pennsylvania limited liability company with its principal place of business at 429 N. Hartley Street, York, Pennsylvania 17404 (“QDOT”).

In consideration of the mutual covenants herein and intending to be legally bound hereby, the parties agree as follows:

BACKGROUND

The City requires the annual inspection and licensing of residential and institutional occupancies, including Group I and Group R buildings and structures, in accordance with Article 1761 “Licensing and Inspection of Tenant Occupied Residential and all Institutional Occupancies” of the City of York Code of Ordinances (“Article 1761”). QDOT employs individuals that are qualified to inspect such buildings and structures as required by Article 1761. The City wishes to enter into a contract with QDOT for Article 1761 inspection services. QDOT wishes to enter into a contract with the City to perform Article 1761 inspection services for the City, as set forth in this Agreement.

NOW THEREFORE, in consideration of the promises and mutual agreements hereinafter made by the parties, and intending to be legally bound thereby, the parties agree as follows:

ARTICLE I

Term; Services

1.1. Term; Termination. The Services (as defined herein) under this Agreement shall commence on January 1, 2015 (the “Service Date”), and continue for a period of forty-eight (48) months thereafter (such period of time referred to herein as the “Initial Term”). Unless advance notice of termination from a party is received by the other party at least thirty (30) days prior to the expiration of the then-current 48-month term, this Agreement shall automatically renew for consecutive one-year terms immediately following the preceding term (each successive year a “Renewal Year” and collectively the “Renewal Years”). Notwithstanding the provisions set forth above, after January 1, 2016, either party may terminate this Agreement by providing the other with sixty (60) days written notice.

Upon each renewal of this Agreement, all terms and conditions of this Agreement shall remain unchanged, in full force and effect.

Any reference herein to the “Term” of this Agreement shall refer to the Initial Term and all Renewal Years. Contractor shall be entitled to payment for all Services rendered hereunder through the date of termination, even if payment has not been received by the date of termination.

1.2. General Services. The City hereby grants QDOT the non-assignable right to act as the City’s inspector with regard to all inspection services contemplated by and regulated under Article 1761 (collectively, the “Services”), which shall include but shall not be limited to all Group I and Group R buildings and structures in the City. All terms of, rights in, and restrictions within this Agreement shall apply to all members, employees, and agents of QDOT whose responsibilities and/or job descriptions, express or implied, include some or all of the Services.

1.3. Permissible Activities. QDOT, consistent with the rights and powers of any City employee or representative, shall have the right to enter upon and inspect any and all premises within the City at all reasonable hours for the administration of the provisions and obligations as set forth and mandated by Article 1761.

1.4. Excluded Services. The Services shall not include:

1.4.1. Enforcement of violations of Article 1761.

1.4.2. Any inspections beyond the first re-inspection.

1.4.3. Issuing Article 1761 notices of violation, notices of revocation or summary criminal proceedings. QDOT shall notify the City of any properties that have failed the first re-inspection for enforcement by the City's Property Maintenance Inspectors.

1.4.4. Collecting Article 1761 inspection and licensing fees.

1.4.5. Sending annual licensing and inspection notices and reminders to property owners for the 2015 licensing year. Thereafter, QDOT shall be responsible for providing annual licensing and inspection notices.

ARTICLE II Administration

2.1. Resources; Access. The City shall provide appropriate access to municipal laws, ordinances, and regulations and all reasonable resources needed by QDOT to perform the Services. The City shall provide to the City all licensing and inspection notices, reports, documents, and information necessary for QDOT to perform all Services as of the Service Date. QDOT shall not be responsible for any inspections as of the Service Date for which it has not been provided all documents as directed above.

2.2. Fees Payable. Any fees provided or payable to QDOT under the ordinances pursuant to which an inspection was performed shall be paid by QDOT to the City treasurer, as feasible, for the use of the City.

2.3. Compensation. QDOT shall be paid for the Services as follows:

2.3.1. Q-Dot shall provide to the City each Monday an invoice that shall include a list of all inspections and re-inspections that were conducted during the previous week. The invoice shall include the date, address and unit number, if applicable, of each inspection. The amount invoiced for each inspection shall be in accordance with the Article 1761 fee schedule adopted by the City; however, in no case shall said fee be less than the fee in place as of January 1, 2015.

2.3.2. For 2015, an amount equal to Seventy-five (75%) percent of all Article 1761 licensing fees collected for the 2015 licensing year. Q-DOT shall invoice the City on March 1, 2015 and thereafter on the first of every month for all licensing fees due and owing hereunder. The invoice shall include the address, unit number, if applicable, and amount of license fees paid and the 75% allocation to be paid to QDOT.

2.3.3. For 2016 and each year thereafter, an amount equal to the Fee Multiplier (defined below) multiplied by all Article 1761 licensing fees collected for the applicable year. Q-DOT shall invoice the City on March 1 of each year and the first of every month thereafter for all licensing fees due and owing for the applicable inspection year. The invoice shall include the address, unit number, if applicable, and amount of license fees paid and the allocation to be paid to QDOT. The Fee Multiplier to be applied in any given year shall be equal to the percentage of Article 1761 inspections completed by Q-DOT (taking into account Article 1761 inspections conducted by City employees or other third parties) for the previous calendar year multiplied by twenty-five (25%) percent plus fifty (50%) percent.

2.3.4. All invoices shall be paid by the City within thirty (30) days of issuance by QDOT.

2.4. No Set-off. The parties to this Agreement shall be prohibited from off-setting any money payable against any money receivable under the terms herein.

2.5. Taxes, Benefits. Contractor shall be solely responsible for the payment of local, state and federal taxes due and payable with respect to compensation paid to it by the City. QDOT acknowledges that the City shall not withhold any such taxes from compensation to QDOT. Further, as an independent contractor, QDOT shall not receive, nor be entitled to, any retirement benefits, worker's compensation insurance, disability, health insurance, or any other benefit whatsoever.

ARTICLE III Confidentiality

3.1. Except as otherwise provided in the Pennsylvania Right to Know Law, QDOT acknowledges that certain information (both written and oral) has been and will be accessible to QDOT which is non-public, confidential, or proprietary in nature ("Information"). Such Information, in whole or in part, is considered confidential and subject to the non-disclosure requirements set forth below.

3.2. QDOT agrees that any and all Information will be kept confidential and (i) shall be disclosed only to the City; (ii) shall not, without the prior written consent of the City, be disclosed to any party, in any manner whatsoever, in whole or in part; and (iii) shall not be used by QDOT other than in connection with the express terms of this Agreement.

3.3. Nothing contained herein shall in any way restrict or impair Contractor's right to use, disclose or otherwise deal with:

3.4. Information which at the time of its disclosure is, or which thereafter becomes, at no fault of Contractor's, part of the public domain by publication or otherwise; and,

3.5. Information which Contractor can show was in his possession at the time of his disclosure and was not acquired, directly or indirectly, in breach or violation of any security obligation to the City.

ARTICLE IV Miscellaneous

4.1. Governing Law. This Agreement shall be governed by, interpreted, construed and enforced in accordance with the Commonwealth of Pennsylvania.

4.2. Interpretation of Provisions. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law. If any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remaining provisions of this Agreement.

4.3. Captions. Captions of this Agreement are solely for the purposes of identification and shall not in any manner alter or vary interpretation or construction of this Agreement.

4.4. Successors and Assigns. All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, personal representatives, transferees, successors and assigns; provided, however, that Contractor shall not assign this Agreement without the prior written consent of authority.

4.5. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof and shall not be modified or changed in any respect except in writing duly signed by the parties hereto.

IN WITNESS HEREOF, the parties hereto have executed this Agreement on the date first written above.

ATTEST:

Dianna Thompson, City Clerk

CITY OF YORK

C. Kim Bracey, Mayor

Robert Lambert, Controller

WITNESS:

QDOT ENGINEERING, LLC

Richard E. Merck, Member