

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

INTRODUCED BY: **Renee S. Nelson**

DATE: **January 6, 2015**

WHEREAS, the City of York has opted to locally enforce the provisions of the Uniform Construction Code; and

WHEREAS, the Uniform Construction Code requires specific inspections related to the issuance of permits; and

WHEREAS, Qdot Engineering, LLC is a certified third party inspection agency within the Commonwealth of Pennsylvania; and

WHEREAS, the City of York wishes to enter into an agreement with Qdot Engineering, LLC to provide third party inspectional services related to the technical inspections required under the provisions of the Uniform Construction Code; 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 third party technical inspectional services related to Uniform Construction Code of the Commonwealth of Pennsylvania. Said agreement to commence immediately upon final approval of this resolution and continuing for a period of forty-eight (48) months thereafter.

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 423 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 Pennsylvania Department of Labor & Industry (“Department”) certifies municipal code officials to perform plan review of construction documents, inspect construction, or administer and enforce codes and regulations pursuant to the Pennsylvania Uniform Construction Code, 35 P.S. sec. 7210.101 to 7210.1103 (“UCC”) and related acts. The UCC may be administered and enforced by the retention of one or more third parties to act on behalf of a municipality. QDOT employs individuals that are certified by the Department as code officials under the UCC. The City wishes to enter into a contract with QDOT for UCC plan review and inspection services. QDOT wishes to enter into a contract with the City to perform UCC plan review and 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 _____, 2014 (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 municipal code official for the City with regard to all plan review and inspection services contemplated by and regulated under the Pennsylvania UCC (collectively, the “Services”), which shall include but

shall not be limited to the construction, alteration, repair and occupancy of all buildings 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.

In accordance with the procedure set forth below, the City hereby reserves the right to bring residential plan review and inspection disciplines in house under the direction of the Building Code Official. One year from the Service Date, the City may elect to bring one of the six residential disciplines (building, accessibility, mechanical, electrical, plumbing and energy) within the City's direction and control for residential plan review and inspections. Thereafter, and no sooner than six months from the date the City has taken direction and control of any discipline noted above, the City may elect to bring an additional discipline under its direction and control. The City shall provide QDOT with sixty (60) days prior written notice of any election to take control and direction of such residential discipline. The City shall have the right to return any discipline to QDOT for review and inspection services hereunder upon providing QDOT sixty (60) days written notice.

1.3. Permissible Activities. QDOT 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 the UCC.

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. Twenty (20) days prior to the Service Date, the City shall provide and shall direct the current code official to release and provide to the City all reports, documents, and information necessary for QDOT to perform all Services (inspections and reviews) 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 plans and documents as directed above. The City shall be responsible for ensuring that all application and inspection fees are properly allocated and paid to QDOT and the current code official for inspections and plan reviews during any transition period.

2.2. Fees Payable. Any fees provided or payable to QDOT under the UCC or 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, during the first year of the Agreement, a base fee of .515% of the value of all permitted work (the "Base Fee"). The City shall pay the Base Fee to QDOT on or before the 15th day of each month following the issuance of permits for said month. The City shall also pay to QDOT an overage fee (the "Overage Fee"). The Overage Fee, during the first year of the Agreement, shall be equal to the hours allocated to each permit by QDOT times \$67 per hour less the Base Fee paid for said permit. Prior to the issuance of an invoice for an Overage Fee, QDOT shall provide an invoice with an itemized list of the hours worked and the total amount due for the services provided thereunder. Notwithstanding the compensation structure set forth above, a Walk-Out Permit is limited to Residential construction projects less than \$5,000 in total project cost with no more than four separate inspections required, regardless of construction discipline. QDOT shall receive a fixed amount of \$65 for the first inspection, \$35 for the second inspection, \$35 for the third inspection, and \$15 for the fourth inspection for a maximum fee of \$150. PPZ shall identify the number of required inspections for the project, and QDOT shall receive fees only for those number of inspections identified by PPZ. Residential Electrical Turn-On Inspection: QDOT shall receive \$65 per individual meter/base. The "Walk-Out" and "Electric Turn On" permit charges will be included as a

separate line item on the monthly invoice. All invoices shall be paid by the City within thirty (30) days of issuance by QDOT. Annually, on the Service Date throughout the Term of this Agreement, the Base Fee and hourly rate utilized in calculating the Overage Fee, shall be increased by three (3%) percent.

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.

2.4. 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.

2.5. Certification. Certification of code officials under the UCC shall extend for a period of one (1) year. QDOT represents that his certification under the UCC is valid as of the Effective Date of this Agreement and shall be valid for the entire term of this Agreement, or, in the event QDOT's certification is due to expire during the Term of this Agreement, QDOT acknowledges that QDOT shall be solely responsible to file for recertification such that there shall be no period of time throughout the Term of this Agreement during which QDOT is not certified.

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:

3.3.1. 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,

3.3.2. 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:

CITY OF YORK

Dianna Thompson, City Clerk

C. Kim Bracey, Mayor

Robert Lambert, Controller

WITNESS:

QDOT ENGINEERING, LLC

Richard E. Merck, Member