

PROFESSIONAL AGREEMENT FOR SERVICES

THIS AGREEMENT is made and entered into this 6TH day of OCTOBER, 1995 by and between:
City of Othello, located in Othello, Washington, hereinafter referred to as "Employer".
and
QCL, Inc., of Ephrata, Grant County, Washington, hereinafter referred to as "Contractor".

RECITALS:

The Employer desires to obtain services for enhancing a drug-free workplace; and the undersigned Contractor is willing to perform professional services on the terms and conditions specified herein. NOW THEREFORE, in consideration of the mutual covenants herein, the parties hereto agree as follows:

1. Scope of Services

Contractor shall provide consortium services, program administration, employee training, and collection services for *DOT and Non-DOT Drug and Alcohol Testing* needs of the Employer as quoted in Appendix "A". *Other Services*, as detailed in Appendix "A", shall be made available to Employer on an additional fee basis. Contractor shall provide supervisor training in accordance with the terms as stated in Appendix B.

2. Employer Responsibilities

The Employer shall provide the Contractor with detailed employee information pertinent to the scheduling and collection of mobile unit drug and alcohol testing. Specifically, employee name, work location, shift, designated contact and/or supervisor.

3. Independent Contractor

- A. The Contractor shall operate as, and have the status of, an independent contractor and will not be an agent or employee of the Employer nor will it be entitled to any employee benefits provided by the Employer. All the Contractor's activities will be conducted at its own risk and be in compliance with all federal, state and local laws.
- B. The Contractor shall contract any and all testing with a SAMHSA certified professional laboratory and drug screen review with a Medical Review Officer (MRO). The laboratory and MRO shall be solely responsible for the accuracy of test results and shall report such directly to the Contractor or their designated agent.

4. Term - Schedule

Except as otherwise provided herein, this Agreement shall be in effect for a period of one (1) year from the date of execution and shall automatically renew for successive terms unless terminated. Either party may terminate this Agreement or renewal by giving the other party thirty (30) days prior written notice sent by certified or registered mail, return receipt requested.

5. Compensation and Payment

- A. Compensation for services rendered and all reimbursable costs shall be per the rates set forth in Appendix "A".
- B. Contractor shall submit an invoice upon execution of this Agreement to the attention of:
City of Othello
Attn: Rex Mather
512 East Main St.
Othello, WA 99344
- C. Payments will be made by Employer for program services within 10 days after receipt of said invoice.

6. Change Orders

Without invalidating this Agreement, the Employer may make changes by altering, adding or deducting from the services and/or make changes in the specifications requiring changes in the work and or materials and equipment to be furnished under this Agreement; provided such additions, deductions or changes are within the general scope of this Agreement. Except as provided herein, no employee, agent or representative of the Employer is authorized to approve any change in this Agreement and it shall be the responsibility of the Contractor before proceeding with any change, to satisfy himself that the execution of the written Change Order has been properly authorized. The Employer's designated official, REX MATHER, has authority to approve Change Orders up to \$ 1000-. Charges or credits for services covered by the approved changes shall be determined by one or more, or a combination of the following methods, at the Contractors option:

- A. Unit prices specified. B. An agreed upon lump sum. C. Labor & materials entering permanently into the work.

A written Change Order must be executed before any Change Order services are authorized. All terms and conditions contained in this Agreement shall be applicable to Change Order services. Change Orders shall be issued on the form attached as Appendix C and shall specify any change in time required for completion of the services caused by the Change Order and, to the extent applicable, the amount of any increase or decrease in the Contract price.

7. Taxes

Contractor shall be exclusively liable for the payment to the appropriate governmental authority of all required contributions and taxes applicable to be paid by the Contractor, including taxes imposed under the provisions of any unemployment insurance, Social Security or pension plan insofar as such taxes pertain to the work performed under this Agreement.

8. Insurance

Contractor shall maintain in effect during the life of the contract: Comprehensive General Liability and Automobile Liability Insurance. Limits shall be not less than the following: Professional Liability/Personal Injury \$1,000,000 per occurrence; Automobile Liability Insurance Property Damage \$500,000 per occurrence.

9. Equal Employment Opportunity

To the extent required by contract or applicable law, Contractor shall comply with Executive Order No. 11246, Executive Order No. 11701, the Vietnam Era Veterans' Readjustment Assistance Act of 1972 and the Rehabilitation Act of 1973, and all orders, rules and regulations promulgated thereunder all as the same may have been or may be amended. The 'equal opportunity clause' of 41 CFR Section 60-1.4(b), the "Affirmative Action Obligations for Disabled Veterans and Veterans of the Vietnam Era" clause of 41 CFR Section 60-250.4 and the "Affirmative Action for Handicapped Workers" clause of 41 CFR Section 60-741.4 are incorporated herein by this reference as they may pertain.

10. DOT Regulations
Contractor shall be responsible for compliance with all Department of Transportation drug & alcohol testing requirements as they apply to services performed by Contractor.
11. Governing Law
This Agreement shall be construed, for all purposes, in accordance with and pursuant to the laws of the State of Washington. Venue of any action filed to enforce or interpret the provisions of this Agreement shall be exclusively in the Superior Court of Grant County, Washington. In the event of litigation to enforce the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief allowed.
12. Notices
Any notice or other communication under this Contract given by either party shall be mailed, properly addressed and stamped with the required postage, to the intended recipient at the address and to the attention of the person specified below and shall be deemed served when received and not mailed. Either party may from time to time change such address by giving the other party notice of such change.
- | | |
|-------------------|-------------------|
| <u>Contractor</u> | <u>Employer</u> |
| Tamara Yedinak | City of Othello |
| QCL, Inc. | Rex Mather |
| P.O. Box 1104 | 512 East Main St. |
| Ephrata, WA 98823 | Othello, WA 99344 |
- For purposes of technical communications and work coordination only, the Employer designates _____ as its representative. Said individual(s), with the exception of those referenced in Section 6, shall have no authority to authorize any activity which will result in any change in the amount payable to Contractor. Such changes, if any, must be by written Change Order issued in accordance with Section 6 to be valid and binding.
13. General Provisions
- A. Determinations. The Employer shall make all determinations in its sole discretion concerning the testing of employees, any adverse employment actions and re-entry decisions.
 - B. No Third Party Beneficiaries. This Agreement shall not be construed to create rights in, or to grant remedies to, any third party (including employees) as a beneficiary of this Agreement or of any duty, obligation or undertaking.
 - C. Delays. Contractor shall promptly communicate test results to employer but shall not be responsible for any delays or deficiency in performance to the extent such delay is occasioned by an uncontrollable force. As used in this Agreement, the term "uncontrollable force" shall include; acts of God, fire, flood, severe weather conditions, strikes, court orders, changes in applicable laws, acts of regulatory agencies, collective bargaining agreement provisions, arbitration decisions, contractors, subcontractors, acts of war, insurrections, and delays attributable to the Employer or its employee.
 - D. Confidentiality. All communications regarding test results shall be confidential.
 - E. Arrangements for Testing. Employer shall provide Contractor with a list of employees subject to random, pre-employment and any other testing needs 10 days prior to testing if practicable. Upon mobile unit arrival, the designated contact at each location shall deliver all notices pertaining to testing. Such notices pertaining to random testing shall remain unannounced to the driver in accordance with DOT guidelines.
14. Termination
- A. Employer may, at any time, for any reason, terminate Contractor's services in connection with this Agreement, or any part thereof, after notice in writing, designating that portion of the services to be terminated. In case of termination pursuant to this Section (A), Employer will promptly make payment at the rates specified in this Agreement for services performed. However, in no event shall Contractor be entitled to any other payment to or any anticipated fee or profit on unperformed work.
 - B. In the event of Contractor's breach or abandonment of this Contract, the Employer notwithstanding Section 14 A. above, may thereupon and without further notice, terminate this Agreement. The Employer without waiving any other remedies available to it, may retain any moneys otherwise due Contractor under this Agreement to the extent such sums are required to compensate Employer, in whole or in part, for any loss or damage caused by Contractor's breach or abandonment.
15. Severability
Should any one or more of the provisions of this Agreement be invalid, illegal, or unenforceable in any respect under the law or court ruling, the validity, legality, and enforceability of the remaining provision contained herein shall not in any way be affected or impaired thereby.
16. Entire Agreement
This writing and Attachments appended hereto constitutes the entire Agreement between the parties hereto with respect to the subject matter hereof and merges any and all prior agreements, understandings and representations.

IN WITNESS WHEREOF, the Contractor and the Employer have executed this Agreement each by its proper respective officers and officials thereunto duly authorized the day and year first above written.

EMPLOYER

By 
Rex Mather

Title CITY ADMINISTRATOR

CONTRACTOR

By 
Tamara Yedinak

Sales Representative

QCL, INC.
 P.O. BOX 1104
 EPHRATA, WA 98823
 (509)754-3944
 July 27, 1995

CITIES INSURANCE ASSOCIATION OF WASHINGTON

Drug and Alcohol Testing and Program Administration **\$78.30 per driver***
A comprehensive "Turnkey" program which includes:

On-site Random Drug Screen: Collection, SAMHSA Certified Laboratory & Medical Review Officer

On-site Random Evidential Breath Test (alcohol screen)

Referral to Substance Abuse Professional

2 year Drug/Alcohol Testing and Treatment History (pre-employment check)

Random Generation, Selection & Notification

Program Administration (Compliant with FHWA & DOT Rules 49 CFR Parts 382 et. al.)

Driver ID Cards

Supervisor & Driver Handbooks

Off-Site Record Retention (Retained - up to 5 years in fire proof vault)

DOT Audit Support

Summary Reports, Statistical Information & DOT Required MIS Annual Report

QCL, Inc. Quarterly Newsletter & Electronic Access to Important Information & Updates

Membership Fee (one time only) **\$25.00 per driver***

Includes:

Driver Notification (1 hour session, on-site or within 30 min. travel time)

Supervisor Training (2 hour session, on-site or within 30 min. travel time)

Policy & Procedure Manual (one per school)

Other Services Billed as Incurred

Post-Accident, Pre-Employment, Reasonable Suspicion, Return-to-Duty & Follow-up Testing

* 1,000 Member Discount:

5% discount on Drug and Alcohol Testing and Program Administration fee.

20% discount on Membership Fee.

CURRICULUM FOR SUPERVISOR TRAINING
on
Reasonable Suspicion Determination

Supervisors, and other designated officials will be extended an opportunity to attend supervisor training on the signs and symptoms of controlled substance use and alcohol misuse.

QCL, Inc. training program covers the:

Speech
Physical
Behavioral &
Performance Indicators

associated with the probable misuse of alcohol and use of controlled substances and what to do about it.

This training aids supervisors and company officials in complying with 49 CFR, Part 382 drug and alcohol regulations.

Each workshop shall last a minimum of two hours and is limited to a maximum of _____ participants.

CHANGE ORDER FORM

NO. _____

Pursuant to Article 6, the following changes are hereby incorporated into this Contract:

- A. Description of Change:

- B. Time of Completion: The time of completion shall be increased/decreased by _____ calendar days. The revised completion date shall be _____.

- C. Contract Price Adjustment: As a result of this Change Order, the total contract shall be increased/decreased by the sum of \$ _____ which amount the Contractor acknowledges is full and complete compensation for the Contract Work including changes incorporated by this Change Order. This Change Order shall not provide any basis for any other payments to or claims by the Contractor as a result of or arising out of the performance of the worked described herein. The new total revised contract price is \$ _____.

- D. Except as specifically provided herein, all other Contract terms and conditions shall remain unchanged.

CONTRACTOR

EMPLOYER

Accepted by: _____

Accepted by: _____
(Authorized Signature)

Title: President

Title: _____

Date: _____

Date: _____