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COMMUNITY DEVELOPMENT

**Planning,
Zoning,
Building Safety,
Construction Inspection Services,
Public Health,
Housing Inspections,
Code Enforcement**

Date: August 28, 2018
To: Mayor and City Council
From: Dave Gobin, Community Development Director
Cc: Gregg Mandsager, City Administrator
Re: Request to Approve Impact 7G Proposal

INTRODUCTION: The City has recently taken title to the property at 500 Mulberry Avenue through Iowa Code 657-A. The City is in the process of assessing the environmental conditions of the site. We have received on proposal from a certified contractor for \$5,200. This proposal is acceptable by the State DNR.

BACKGROUND: The process of demolition or construction will require the City to conduct an Asbestos Containing Material (ACM) and Lead Based Paint (LBP) assessment to meet Iowa Law before any activity on the property can take place.

This will happen at the same time the City works out the final details of an agreement with a developer of the site once the assessment has been completed.

Staff is prepared to issue a Purchase Order to Impact 7G, for a price not-to-exceed \$5,200.

RECOMMENDATION: Staff is requesting Council approve Impact 7G's proposal and a Purchase Order for ACM and LBP assessment of 500 Mulberry Avenue.



Scope of Services for City of Muscatine

Project:	ACM and LBP Inspections		
Property:	500 Mulberry St, Muscatine, IA	Date:	8/17/2018

Client:	City of Muscatine		
Contact:	David Gobin		
Address:	215 Sycamore St		
City/State/Zip:	Muscatine, IA 52761		

AGREEMENT made this 17th day of August, 2018, by and between the service provider, Impact7G, Inc. ("Impact7G"), and the Client, City of Muscatine ("Client.").

WHEREAS, the Client intends to engage the services of Impact7G to complete professional services;

WHEREAS, Impact7G agrees to provide said services pursuant to the terms of this Agreement.

NOW THEREFORE, the parties agree as follows:

1. **Project**

Impact7G agrees to completed an Asbestos Containing Materials (ACM) inspection and a Lead-Based Paint (LBP) inspection compliant with state and federal regulations. Since the building is slated for renovation activities, non-destructive sampling will be used to obtain samples throughout the structure.

2. **Scope of Services**

ACM Inspection

A State of Iowa licensed asbestos inspector will perform the survey by collecting samples of all identified and accessible suspect materials. The sampling strategy will be consistent with appropriate OSHA Regulation 1926.1101 and 40 CFR Part 61 – National emission Standards for Hazardous Air Pollutants. The samples collected will be analyzed by a certified laboratory, for asbestos content via the polarized light microscopy method (PLM). If the reported PLM result is <1%, Impact7G will contact the Client and discuss whether the sample should be reanalyzed using a Point Count method or Transmission Electron Microscopy Method.

Sampling of the structure will consist of developing a survey protocol, determining what materials will be sampled, what materials will be presumed/assumed (if any), identifying all homogeneous spaces within the structure and quantification of all asbestos containing materials. As the building is proposed for renovation, Impact7G will use non-destructive sampling to inspect the building unless otherwise directed by Client.



Impact7G will also collect roofing samples unless otherwise directed by Client. All roof samples will be patched to the best of our ability. However, we cannot guarantee the effectiveness of the patching materials when weather and building conditions violate the manufacturer's specifications and warranties. It is our recommendation that a certified roofing contractor verify all roofing components are properly sealed upon completion of sampling activities. All associated field notes, chain of custody forms, and sample identification will be checked for accuracy and completeness and documented by the Impact7G Project Manager. It will also be the role of the Project Manager to inspect the data and provide final review and approval to ensure that it meets industry standard sampling requirements.

The final report will consist of laboratory results, sample descriptions, locations of ACMs, photo documentation and State of Iowa licenses. Impact7G will place extra emphasis on providing a clear, concise and technically accurate report to the Client.

LBP Inspection

Impact7G will complete a LBP inspection of the property to identify sources of LBP. A State of Iowa licensed LBP inspector will perform the inspection. The inspector will collect samples of all painted surfaces and components within the structure for LBP using an X-Ray Fluorescence (XRF) analyzer. Paint chip samples may be collected from inconclusive or positive XRF readings and submitted to a certified laboratory for analysis. Additional XRF readings will be collected from the exterior of the structure. By collecting XRF readings from all painted surfaces from within the structure, and from the exterior of the structure, a comprehensive LBP inventory can be developed. The sampling strategy will be consistent with state and federal guidelines. Impact7G will prepare a LBP report with XRF results, photographic documentation, and positive sample locations. Recommendations for hazard control may include, but are not limited to, enclosure, encapsulation, and/or removal and waste categories, and will be dependent on the proposed use of the property.

3. **Provider Responsibilities.** Impact7G hereby agrees to:

- (i) Provide the professional services as set forth in this Agreement; and
- (ii) Perform said services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing at the same time and in the same or similar locality.

4. **Client Responsibilities.** Client hereby agrees to:

- (i) Provide a knowledgeable representative of the subject property, who will be available to coordinate all on-site work;
- (ii) Provide unrestricted access to the subject property for Impact7G to perform the services; and
- (iii) Provide copies of any previously-completed reports that may be pertinent to this Project.

5. **Schedule.** The Project will commence immediately upon receipt of the Notice to Proceed ("NTP") from the Client. Impact7G would be able to complete the initial inspections and reporting within 30 days upon receipt of NTP.

6. **Project Cost, Payment and Termination.** The Client shall pay Impact7G based on Lump Sum Task Items in the amount of Five Thousand, Two Hundred Dollars (\$5,200.00) for the performance of this Agreement. Direct costs such as communications, postage, routine printing and copying are not invoiced separately, but are included within the cost to streamline the accounting process and reduce overhead costs.

Tasks	Cost
ACM Inspection	\$2,700.00
LBP Inspection	\$2,500.00
Total	\$5,200.00

Invoices for Impact7G's services will be submitted upon project completion. Invoices shall be due and payable upon receipt. If any invoice is not paid within 30 days, Impact7G may, without waiving any claim or right against the Client, and without liability whatsoever to the Client, suspend or terminate the performance of services.

7. **Work Product.** All reports, plans, specifications, field data, field notes, laboratory test data, calculations, estimates and other documents including all documents on electronic media prepared by Impact7G as instruments of service shall remain the property of Impact7G.

All project documents including, but not limited to, plans and specifications furnished by Impact7G under this project are intended for use on this project only. Any reuse, without specific written verification or adoption by Impact7G, shall be at the Client's sole risk, and Client shall defend, indemnify and hold harmless Impact7G from all claims, damages and expenses including attorney's fees arising out of or resulting therefrom.

Under no circumstances shall delivery of electronic files for use by the Client be deemed a sale by Impact7G, and Impact7G makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall Impact7G be liable for indirect or consequential damages as a result of the Client's use or reuse of the electronic files.

Because electronic file information can be easily altered, corrupted, or modified by other parties, either intentionally or inadvertently, without notice or indication, Impact7G reserves the right to remove itself from its ownership and/or involvement in the material from each electronic medium not held in its possession. Client shall retain copies of the work performed by Impact7G in electronic form only for information and use by Client for the specific purpose for which Impact7G was engaged. Said material shall not be used by Client or transferred to any other party, for use in other projects, additions to this project, or any other purpose for which the material was not strictly intended by Impact7G without Impact7G's expressed written permission. Any unauthorized use or reuse or modifications of this material shall be at Client's sole risk. Furthermore, the Client agrees to defend, indemnify, and hold Impact7G harmless from all claims, injuries, damages, losses, expenses, and attorney's fees arising out of the modification or reuse of these materials.

8. **Project Site.** The Client agrees that it shall be solely responsible for job site safety, and warrants that this intent shall be made evident in the Client's agreements with any third parties. The Client also agrees that Impact7G and Impact7G's consultants shall be indemnified and shall be made additional insureds on the Client's general liability policies on a primary and non-contributory basis.

9. **Claims and Disputes.** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or Impact7G. Impact7G's services under this Agreement are being performed solely for the Client's benefit, and no other party or entity shall have any claim against Impact7G because of this Agreement or the performance or nonperformance of services hereunder. The Client and Impact7G agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors and other entities involved in this Project to carry out the intent of this provision.

The Client shall make no claim for professional negligence, either directly or in a third party claim, against Impact7G unless the Client has first provided Impact7G with a written certification executed by an independent professional currently practicing in the same discipline as Impact7G and licensed in the State in which the claim arises.

10. **Limited Liability.** The Client agrees, to the fullest extent permitted by law, to limit the liability of Impact7G and Impact7G's officers, directors, partners, employees, shareholders, owners and subconsultants to the Client for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert witness fees and costs, so that the total aggregate liability of Impact7G and its officers, directors, partners, employees, shareholders, owners and subconsultants to all those named shall not exceed \$100,000. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

11. **Mediation.** In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, the Client and Impact7G agree that all disputes between them arising out of or relating to this Agreement shall be submitted to non-binding mediation unless the parties mutually agree otherwise. The Client and Impact7G further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, sub-consultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

12. **Attorneys Fees.** If litigation arises for purposes of collecting fees or expenses due under this Agreement, the Court in such litigation shall award reasonable costs and expenses, including attorney fees, to the prevailing party. In awarding attorney fees, the Court shall not be bound by any Court fee schedule, but shall, in the interest of justice, award the full amount of costs, expenses, and attorney fees paid or incurred in good faith.

13. **Controlling Law.** This Agreement shall be construed and enforced in accordance with the laws of the state of Iowa.

14. **Assignment.** Neither the Agreement nor any of the rights or obligations arising under the Agreement may be assigned without prior written consent.

This agreement is approved and accepted by the Client and Impact7G upon both parties signing and dating the agreement. The effective date of the agreement shall be the last date entered below.

City of Muscatine

IMPACT7G, Inc.

Accepted
by: _____

President:  _____

Printed/
Typed
Name: _____

Printed/
Typed Name: Ryan Peterson

Title: _____

Date: 8 - 17 - 2018

Date: _____