



1459 Washington St.
Muscatine, IA 52761-5040
(563) 263-8933
Fax (563) 263-2127

Public Works

City Transit
263-8152

MEMORANDUM

Equipment Maintenance
Roadway Maintenance
Collection & Drainage
Building & Grounds
Engineering

To: Kristy Korpi, Interim Public Works Director
FROM: Jim Edgmond, City Engineer
DATE: January 4, 2015
RE: Musser to Wiggins Road Trail, Supplement to NEPA, Archeological Phase I

INTRODUCTION:

Musser to Wiggins Road Trail is designated for construction by the City in fiscal year 2016. Federal and State Funds are anticipated to be used for this project and it is anticipated that this project will be let for construction through the Iowa DOT construction letting process. Due to Right-of-Way Acquisition difficulties the route was changed. This change was sent to the IowaDOT for review and the IowaDOT's response was that the new route needed to have Phase 1 Archeological clearance and that the remainder of the previous study would then be acceptable. This Phase 1 Archeological clearance work is to be done by a consultant as the work requires specific expertise and experience in NEPA regulations and requirements.

BACKGROUND:

Because this design work is already being done, the City needed to resolve this NEPA work as quickly as possible. The City contacted Louis-Berger Consultants because they had done the original NEPA study. In addition, the City contacted Impact 7G because they were the low proposal had just been selected to do the NEPA clearance work for Grandview Ave. Impact 7G responded with a proposal fee of \$8,500.00 and Louis Berger did not respond. If this Phase 1 Archeological study can be completed quickly the design can still be completed in time for a Fiscal Year 2016 construction. This trail construction cost is estimated at \$1,200,000.

Award of NEPA Supplement Work for Musser Wiggins Road Trail:

The total cost of the consultant's proposal is \$8,500. The proposal has been reviewed by Public Works staff and is recommended to the City Council for approval. One item is excepted out as extra work that would need extra compensation. It is:

- If the project has to go through a level of environmental clearance that is higher than the Phase I work, extra hours will need to be negotiated. However, the hourly rate for these hours has been set in the consultant's proposal.

**"I remember Muscatine for its sunsets. I have never seen any
on either side of the ocean that equaled them" — Mark Twain**

RECOMMENDATION/RATIONALE:

I recommend city council approve this proposal from Impact 7-G in the amount of \$8,500.00.

BACKUP INFORMATION:

1. NA.



Professional Services Agreement

| | | | |
|----------|--|-----------|-----------------|
| Project: | Muscatine, Musser Park to Wiggins Road Trail Cultural Resource Studies, Iowa DOT Coordination | Location: | Muscatine, Iowa |
| | | Date: | 12/23/2015 |

| | |
|-----------------|----------------------------|
| Client: | City of Muscatine |
| Contact: | Jim Edgmond, City Engineer |
| Address: | 1459 Washington Street |
| City/State/Zip: | Muscatine, IA 52761 |
| Phone: | (563) 260-5724 |

AGREEMENT made this 23rd day of December, 2015, by and between the service provider, Impact7G, Inc. ("Provider"), and the Client, City of Muscatine ("Client.")

WHEREAS, the Client intends to engage the services of the Provider to complete cultural resource studies and coordination with Iowa DOT Office of Location and Environment Staff related to a proposed new trail alignment for the Musser Park to Wiggins Road Trail in Muscatine, Iowa;

WHEREAS, the Provider staff have significant experience with trail and transportation improvements-related environmental studies and National Environmental Policy Act (NEPA)-related Iowa DOT and Federal Highway Administration compliance documentation including cultural resource studies;

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

NOW THEREFORE, the parties agree as follows:

1. **Project**

This project involves completing a Phase I Archeological Review related to NEPA clearance and National Historic Preservation Act (NHPA) Section 106 compliance for proposed trail development from Dick Drake Way to Wiggins Road in Muscatine, Iowa. Current understanding of the project includes recognition that the proposed action received a federal funding allocation and that the proposed project received NEPA programmatic categorical exclusion clearance from the Iowa DOT. Changes to the proposed trail alignment necessitates an archeological review to satisfy Section 106 and Iowa DOT/FHWA NEPA requirements.

2. **Scope of Services**

The Scope of Services is limited to Provider coordination with Client and Iowa DOT as well as Phase 1 Archeological Review of the proposed trail right of way and construction staging areas from Dick Drake Way to Wiggins Road. The location of the proposed modified trial corridor is provided as Exhibit 1 to this Agreement. This Scope assumes Iowa DOT will complete Section 106 coordination with the State Historic Preservation Office (SHPO) with assistance from provider limited to coordination regarding Phase I Archeological Review results.

Based on the information provided by Client, Provider anticipates the need to conduct a Phase I archeological survey for the portion of the trail between Dick Drake Way and 41st Street. From 41st Street south, the project corridor crosses areas disturbed by gravel quarrying and then is confined to existing built road rights-of-way. Therefore, this portion of the proposed trail should not require intensive Phase I investigation. The rationale for omitting this area from the Phase I fieldwork will be discussed in the resulting report. The portion of the trail that will be examined is approximately 1.3 miles long and consists of areas along Stewart Road and Dick Drake Way and cross-country areas in between.

Provider's estimate of probable cost (Section 7) for this project is based on an assessment that the area of potential affect for the corridor will be approximately 50 feet wide and the Phase I survey portion principally crosses agricultural fields that will provide adequate surface visibility. While shovel testing will be conducted at located sites, shovel testing is not expected to be the primary means of site discovery. Provider estimate of probable cost does not include initial landowner contact to obtain access permission. Provider assumes that permission to access the corridor will have been secured prior to the start of our investigation. Provider's estimate of probable cost also presumes that no buildings in the vicinity of the corridor will require recording and assessment.

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 project area;
 - (ii) Provide access to project area and the information related to the proposed project; and
 - (iii) Provide copies of any previously-completed reports that may be pertinent to completing the Scope of Services for this project.

5. **Exclusions.** The following services are excluded from this Scope of Service:
 - (i) Preliminary or Final Engineering Design;
 - (ii) Legal review and legal advice;
 - (iii) Provide means or methods for site work;
 - (iv) Other exclusions as noted Scope of Services

6. **Schedule.** The Project will commence immediately upon receipt of the Notice to Proceed ("NTP") from the Client. The current weather forecast suggests that conditions will remain favorable to conduct this fieldwork until at least the early part of January and Provider could have a crew in the field after December 25, 2015.

7. **Project Cost, Payment and Termination.** Impact7G will provide services as specified in Section 2, Scope of Services. The Client shall pay Impact7G per Impact7G's hourly rate schedule (Exhibit 2) on a cost-plus basis with an estimated fee of eight thousand five hundred dollars (\$8,500.00). This proposed cost is based on the assumptions described in the preceding paragraph. Most importantly that ground surface exposures will be adequate for the recognition of archeological materials (i.e., the corridor is mostly within plowed fields and there is no snow cover). At the completion of the fieldwork, a report will be produced detailing the project and providing recommendations regarding the archeological properties that are located.

Invoices for Impact7G's services will be submitted on a monthly basis. 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.

Any retainer amounts shall be credited on the final invoice. Accounts that remain unpaid 30 days after the invoice date may be subject to a monthly service charge of 1.5% (or the maximum legal rate) on the unpaid balance. In the event any portion of an account remains unpaid 60 days after the billing, Impact7G may institute collection action and the Client shall pay all costs of collection, including reasonable attorney's fees.

8. **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, environmental reports, maps, and documentation 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.** For projects involving environmental contaminant sampling, investigation and cleanup, 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. For these same type of projects, 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 \$10,000. 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 planning, design or implementation 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 shall be the last date entered below.

City of Muscatine, IA

IMPACT7G, Inc.

Accepted by: _____

President:  _____

Printed/
Typed Name: _____

Printed/
Typed Name: Ryan Peterson

Title: _____

Date: 12-23-2015

Date: _____