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COMMUNITY DEVELOPMENT

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

Date: January 17, 2017
To: Mayor and City Council
From: Dave Gobin, Community Development Director
Cc: Gregg Mandsager, City Administrator
Re: Request to Approve Environmental Services Agreement

INTRODUCTION: The City is preparing to demolish several buildings on both the Carver gifted (Beach Lumber) properties and the TeStrake site. As part of the Mississippi Drive project, we intend to complete the projects by Spring and in-time for use as an equipment staging area for the road contractor.

BACKGROUND: The process of demolition requires the City to conduct an asbestos abatement review and certification to meet Iowa Law. Staff has procured a Not-to-Exceed proposal from Impact 7G and suggests an agreement to conduct the assessments.

We have also met with the Iowa DNR to provide financial assistance for a Phase 1 site assessment on the TeStrake site and Asbestos Containing Material (ACM) Inspections for asbestos on both sites.

The IDNR will give the City a reimbursement grant for the Phase 1 site assessment and ACM Inspections. They will also reimburse us 50/50 up to \$25,000 on any Phase 2 asbestos mitigation. Although we have to perform these inspections anyway, we will wait until we have the agreement with the State in place.

RECOMMENDATION: Staff is requesting Council approve the Scope of Services Agreement (attached) with Impact 7G.

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



Scope of Services for City of Muscatine

Project:	Environmental Servicers	
	TeStrake and Carver Properties	Date: 1/13/2017

Client:	City of Muscatine
Contact:	Steven Boka
Address:	215 Sycamore Street, Muscatine, IA 52761
Email:	sboka@muscatineiowa.gov
Phone:	563-262-4141

AGREEMENT made this 13th day of January, 2017, 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:

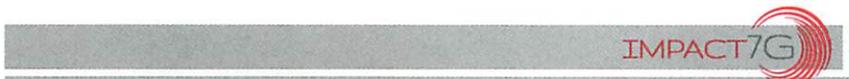
1. **Project**

Impact7G agrees to complete a Phase I ESA and Asbestos Containing Materials (ACM) Inspection for the 207 Green Street property currently owned by the TeStrake Brothers, and an ACM Inspection for the multiples parcels (Carver) associated with the former lumber mill property in Muscatine, Iowa.

2. **Scope of Services**

Phase I ESA

Impact7G uses standard methods to research the environmental condition of properties, coupled with professional judgment on research needs to meet the guidelines outlined in the American Society for Testing and Materials (ASTM) E1527-13, *Standard Practice for Environmental Site Assessments* coupled with EPA's *Rule: Standards and Practices for All Appropriate Inquiries (AAI)*. The initial part of the Phase I ESA will be a document review of each property to determine the site history. Documents reviewed will include previous ESAs, DNR records, land use and zoning information, aerial photographs, Sanborn maps, city directory, plat maps, index of deeds data, and abstracts of title, if available. Reports will also be ordered from a federal and state database "records review" information provider. These reports will provide an up-to-date regulatory status of the site and map risk sites within the ASTM search distance parameters.



Where available, interviews will be conducted with the Fire Marshall, City and/or county health department officials, and property owners to compile information regarding past and current environmental conditions. A visit will be made to the subject property to investigate any or all of the following, as required:

- Location of any known aboveground or underground fuel or bulk chemical storage tanks.
- On-site waste disposal practices.
- Evidence of unreported or unpermitted activities that are presently covered under local, state, or federal regulations.
- Location and description of existing structures.
- Photographs of selected areas.
- Use and management of hazardous and petroleum material.
- On-site presence of PCB-containing equipment.
- Location of buried septic systems, cesspool, evaporation pond, or other waste treatment units.
- Location of existing monitoring wells, drinking water wells, stock wells, and irrigation wells.
- Evidence of vegetative distress, soil discoloration, surface subsidence, or other environmental damage, if seasonal conditions permit such observations.
- Conduct an inspection of surrounding area.
- Identify possible sampling/analytical needs for Phase II assessment.

ACM Inspection

A State of Iowa licensed asbestos inspector will perform each 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 structures 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. Impact7G will patch all sampled areas, including roofs, 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. As this survey is critical for the future steps in the redevelopment process, Impact7G will place extra emphasis on providing a clear, concise and technically accurate report to the Client.



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.
 - (iv) Provide contact information for the perspective purchaser and current subject property owner.
5. **Schedule.** The Project will commence immediately upon receipt of the Notice to Proceed ("NTP") from the Client.
6. **Project Cost, Payment and Termination.** The Client shall pay Impact7G the Lump Sum Cost of Fourteen Thousand, Seven Hundred Dollars (\$14,700.00) for the performance of this Agreement. Direct costs such as communications, postage, routine printing and copying are not invoiced separately, but are included with the Lump Sum to streamline the accounting process and reduce overhead costs.

Tasks	Cost
Phase I Environmental Site Assessment (207 Green Street)	\$2,200.00
ACM Inspection (207 Green Street)	\$5,900.00
ACM Inspection (Carver Parcels (5))	\$6,600.00
TOTAL	\$14,700.00

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 \$50,000. 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.

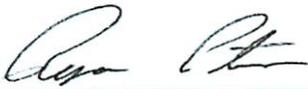
14. **Assignment.** Neither the Agreement nor any of the rights or obligations arising under the Agreement may be assigned without prior written consent.

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: 01 - 13 - 2017

Date: _____

