



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: Brian Stineman, Public Works Director  
FROM: Jim Edgmond, City Engineer  
DATE: 9-19-2017  
RE: Supplemental Agreement for Archeological Monitoring per memo of understanding for the project.

### INTRODUCTION:

The existing Environmental Assessment (EA) and supporting Memo Of Understanding (MOU) for Mississippi Drive Corridor project (MDC) requires the City to hire an archeologist to monitor the excavation for utilities in certain areas of the project. The original contract amount for the first phase has been spent and this supplemental agreement is needed to get through the first phase of the project. Every effort has been investigated to minimize these costs including getting the hourly rate for the inspector reduced and using an on call basis to only have the person there while the digging is going on.

### BACKGROUND:

The Environmental Consultant and the City Engineer have reviewed this supplemental agreement and continued to implement the cost savings methods used to stretch the original agreement. Funds for this will come out of the Jurisdictional Transfer Funds set aside for this project. The reason for the supplemental agreement is that the first phase is approximately 6 to 7 weeks behind schedule and therefore there has been more time spent looking into these excavations by the archeologists. Some delays are from slow production due to unforeseen underground obstructions being uncovered and some of the delay is due to coordination efforts with adjacent properties.

### RECOMMENDATION/RATIONALE:

Recommend City Council approves the expenditure of funds for this supplemental agreement. This will continue the archeological monitoring mandated by the MOU for the project.

### BACKUP INFORMATION:

1. Copy of supplemental agreement.

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



### Supplemental Professional Services Agreement

Project:	Muscatine, Mississippi Drive <u>Archeological Investigations</u>	Location:	Muscatine, Iowa
		Date:	8/29/2017

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

This SUPPLEMENTAL AGREEMENT amends AGREEMENT made the 29th day of August, 2017, 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 archeological investigations and monitoring and coordination with Iowa DOT Office of Location and Environment Staff related to potential investigation limitations (due to utility infrastructure), investigation results, and State Historic Preservation Office (SHPO) Memorandum of Agreement (MOA) stipulations for onsite archeological monitoring during construction in Muscatine, Iowa;

WHEREAS, the Provider staff have significant experience with transportation improvements-related environmental studies and working with the Iowa DOT and Federal Highway Administration cultural resource requirements including Section 106 coordination, architectural and archeological investigations, DOT Act Section 4(f) Statements, and MOAs;

WHEREAS, the intent of this effort being completed meets the MOA-required construction monitoring.

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

NOW THEREFORE, the parties agree as follows:

1. Project

This project involves completing the artifact curation of Phase I artifacts discovered during tasks association with the original Agreement for extended Phase I Archaeological Investigation for four sites along the proposed Mississippi Drive in the City of Muscatine. The four sites were previously identified as 13MC297, 13MC323, 13MC324, and the 1833 Russel Farnham Cabin (no site number yet assigned). The project involves on-site utility-line monitoring and final report writing associated with DOT/FHWA/SHPO MOA conditions during construction activities associated with the Mississippi Drive improvements.

**2. Scope of Services**

The Scope of Services for this Supplemental Agreement is limited to Provider coordination with Client, Subconsultants, and Iowa DOT as well as archeological artifact curation work, continued construction monitoring, and separate archeological monitoring report preparation for each phase of construction. Monitoring will include on-call, on-site field monitoring between Pine and Broadway Street during the next phase of construction and within 50 feet on either side of the Papoose Creek Storm Sewer along Mississippi Drive during a future phase of the street reconstruction project. This is to meet the archaeological monitoring requirements of the MOA. In addition, there may still be some monitoring needed within 50 feet of the Iowa Avenue intersection, although it appears that the future phase of the project will primarily require monitoring in the Papoose Creek Storm Sewer section. The scope also includes field monitoring for utility line excavations from Iowa Avenue to Mulberry Avenue. It is anticipated that the field monitoring will be conducted in the fall of 2017, with a summary report to follow within the prescribed schedule as outlined in the MOA.

**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.
- (iii) Complete artifact curation activities for artifacts discovered during archeological investigations.
- (iv) Complete utility-line excavation monitoring activities for construction occurring from Linn Street to Iowa Street.
- (v) Prepare a report of the findings associated with monitoring of construction from Linn Street to Iowa Street.
- (vi) Complete utility-line excavation monitoring activities for construction to occur from Iowa to Mulberry Avenue.
- (vii) Prepare a report of the findings associated with monitoring of construction from Iowa to Mulberry Avenue.
- (viii) Perform project management and coordination tasks.

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

- (i) Provide a knowledgeable representative of the project area;
- (ii) Provide access to the information related to the proposed project;
- (iii) Provide copies of any previously-completed reports that may be pertinent to completing the Scope of Services for this project;
- (iv) Provide traffic control;
- (v) Provide drilling or sawing of pavement by City workers;
- (vi) Install new paving material at the surface once testing is completed;
- (vii) Cover open holes with secured metal plates overnight for safety reasons;

**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;

Professional Services Supplemental Agreement  
Muscatine, MS Dr. Archeological Investigations  
Muscatine, Iowa  
8/29/2017

6. **Schedule.** The Project will commence immediately upon receipt of the Notice to Proceed ("NTP") from the Client. The ultimate schedule will be dictated by the schedule of construction activity.

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 1) on a cost-plus basis with an estimated fee of fifteen thousand nine hundred fifty dollars (\$15,950). The total project cost associated with the original Agreement (\$34,040) and this Supplemental Agreement (\$15,950) is forty-nine thousand nine hundred ninety dollars (\$49,990.00).

Invoices for Impact7G's services will be submitted monthly. 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 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 intrusive archeological investigations, 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.

Professional Services Supplemental Agreement  
Muscatine, MS Dr. Archeological Investigations  
Muscatine, Iowa  
8/29/2017

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 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 of the agreement shall be the last date entered below.

Professional Services Supplemental Agreement  
Muscatine, MS Dr. Archeological Investigations  
Muscatine, Iowa  
8/29/2017

City of Muscatine, IA

IMPACT7G, Inc.

Accepted  
by: \_\_\_\_\_

President: 

Printed/  
Typed  
Name: \_\_\_\_\_

Printed/  
Typed Name: Ryan Peterson

Title: \_\_\_\_\_

Date: 8-29-2017

Date: \_\_\_\_\_

## Exhibit 1



### 2017 Billing Rate Schedule

<u>Professional Title</u>	<u>Rate</u>
Principal	\$145
Senior Project Manager	\$125
Project Manager	\$110
Drilling Services Manager	\$100
Environmental Specialist II	\$85
Environmental Specialist I	\$70
GIS Technician	\$75
Drilling Technician	\$70
Field Technician	\$55
Intern	\$50
Training Coordinator	\$85
Office Manager	\$70
Administrative	\$45
Certified Industrial Hygienist	\$150

#### Reimbursable Expenses

1. All materials and supplies used in the performance of work will be billed at cost plus 10%.
2. Auto mileage will be reimbursed per the standard IRS mileage reimbursement rate.
3. Charges for sub-consultants will be billed at their invoice cost plus 15%.
4. All other direct expenses will be invoiced at cost plus 15%.