



City Hall, 215 Sycamore St.
Muscatine, IA 52761-3840
(563) 262-4141
Fax (563) 262-4142

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 IDNR Contract

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. The State of Iowa through the DNR's brownfield program has offered the City a reimbursement (based on the certified contractor's proposal) contract of up to \$5,200 to do the work.

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.

RECOMMENDATION: Staff is requesting Council approve the IDNR contract to reimburse the City for the ACM and LBP assessment of 500 Mulberry Avenue.



**IOWA BROWNFIELD
REDEVELOPMENT PROGRAM
COMMUNITY ASSISTANCE GRANT CONTRACT**

**IOWA DEPARTMENT OF
NATURAL RESOURCES**



Contractor: City of Muscatine

Contract Number: 19-7540-09

Contract Title: ACM / LBP Inspection – 500 Mulberry St.

Contract Amount: Price not to exceed: \$5,200.00

Federal ID Number: 42-6005008

Contractor Officer: Dave Gobin – Director of Community Development

Contractor Email Address: dgobin@muscatineiowa.gov

DNR Project Officer: Mel Pins, 515-725-8344
Land Quality Bureau

Distribution Copies: Copy One – IDNR
Copy Two – Contractor

Time of Performance: September 4, 2018 – November 30, 2018

Time of Final Documentation: December 15, 2018

Term of Contract: December 31, 2018

Submit Reporting Forms and Claim Vouchers To: Mel Pins
Iowa Brownfield Redevelopment Program
Iowa Department of Natural Resources
502 E. 9th Street
Des Moines, Iowa 50319-0034

Issue Payment To: City of Muscatine
215 Sycamore St.
Muscatine, Iowa 52761-3840

SPECIAL CONDITIONS AND GENERAL CONDITIONS

The Contractor shall deliver all information and complete all tasks detailed in the Special Conditions. The rights and obligations of the parties to this Contract shall be subject to and governed by the Special Conditions, the General Conditions, and the Appendices. To the extent of any inconsistency between the Special Conditions, the General Conditions, and the Appendices and any specifications or other conditions that are made a part of this Contract by reference or otherwise, the provisions of the Special Conditions and the General Conditions shall control. To the extent of any inconsistency between the Special Conditions and the General Conditions, the provisions of the Special Conditions shall control.

SPECIAL CONDITIONS

ARTICLE I. IDENTIFICATION OF PARTIES, PROJECT, AND PROJECT AREA

This Contract is by and between the City of Muscatine (hereinafter referred to as the Contractor) and the Iowa Department of Natural Resources (hereinafter referred to as the Department) for the purpose of assisting in cost and activities to conduct an Asbestos Containing Materials (ACM) Inspection and a lead-based paint (LBP) inspection of the Project Area and building improvements therein. The *Project Area* is, at a minimum, defined as the property and structures located at 500 Mulberry St., within the corporate limits of the City of Muscatine, Muscatine County, Iowa.

ARTICLE II. DESIGNATION OF OFFICIALS

- 2.1 **Department.** The Deputy Director of the Department shall execute any changes in the terms, conditions, or amounts specified in this Contract. Mel Pins shall negotiate on behalf of the Department and, subject to the approval of the Deputy Director, make any changes to this Contract.
- 2.2 **Contractor.** The Contractor Officer is authorized to execute any changes in the terms, conditions, or amounts specified in this Contract.
- 2.3 **Key Contract Personnel.**
Mel Pins, executive officer, Iowa Department of Natural Resources,
515-725-8344

Dave Gobin, Director of Community Development, City of Muscatine
563-262-4141

ARTICLE III. TIME OF PERFORMANCE, TERM OF CONTRACT

- 3.1 **Time of Performance.** The Contractor shall commence work under this Contract on the beginning date and complete contract tasks by the ending date, as set forth in this Contract unless changed by mutual written agreement. Contract tasks include all actions and/or submittals required of the Contractor, at the Project Area, and as submitted and approved with proper documentation by the departments' project officer in accordance with this agreement.

- 3.2 **Term of Contract.** The Contract remains open for the *Term of Contract* as stated on the title page of this Contract. The Contract and all obligations of the Department contained herein may be terminated upon the occurrence of one of the following: a) the Contract is terminated due to any default under *Section 10* of the General Conditions; or b) no claims for reimbursement are submitted prior to the *Term of Contract*.

ARTICLE IV. SCOPE OF WORK

- 4.1 **Project Description.** The Contractor shall retain the services of a certified asbestos inspector for the proper assessment, testing, and documentation of asbestos containing material (ACM), and shall conduct an inspection and documentation of lead-based paint (LBP) concentrations within and on buildings and structural components within structures at the project site.
- 4.2 **Permitting and Quality Assurance.** The Contractor shall ensure that the completion of the asbestos inspection is conducted as activities in accordance with Federal and State Laws and regulations, including but not limited to:
1. Title 29 Code of Federal Regulations Section 1910.1001, General Industry Standard for Asbestos.
 2. Title 29 Code of Federal Regulations Section 1926.1101, Construction Industry Standard for Asbestos.
 3. Title 29 Code of Federal Regulations Section 1910.134, General Industry Standard for Respiratory Protection.
 4. Title 29 Code of Federal Regulations Section 1910.2, Access to Employee Exposure and Medical Records.
 5. Title 29 Code of Federal Regulations Section 1910.1200, Hazard Communication Rule.
 6. Title 40 Code of Federal Regulations Part 61 Subpart A and Subpart M (revised Subpart B), National Emissions Standard of Hazardous Air Pollutants.
 7. Iowa Administrative Code Section 530 Chapter 81 & 82, Asbestos Control Procedures.
 8. Title 49 Code of Federal Regulations Part 171-180, Department of Transportation, Transportation of Hazardous Waste.

The most recent edition of any relevant regulations, standard, document or code shall be in effect. Where conflict among the requirements or with these Specifications exists, the most stringent requirements shall be utilized.

- 4.3 **Milestones:** The contractor shall accomplish the activities listed in the Project Milestones by the assigned date. If changes are required, the contractor must contact the Department in writing and receive approval of the amendment in writing.

PROJECT MILESTONES

Completion Date	Activity
November 30, 2018	Completion of ACM and LBP inspection at the Project Area
December 15, 2018	Submittal of ACM and LBP inspection reports and copy of invoice for each

- 4.4 **Project Budget:** The Department agrees to pay the Contractor for expenses incurred for the Project in the amounts stated in the budget outlined on this page, not to exceed the *Contract Amount* indicated on the title page of this Contract. Expenses shall be paid only for those costs invoiced to the Contractor by the selected consultant, and if such costs are less than the Price Not to Exceed, the contractor shall not make any further claim for any remaining budget amounts not expended within the invoice provided.

ITEM	Price not to exceed
ACM Inspection (price not to exceed)	\$2,700.00
LBP Inspection (price not to exceed)	\$2,500.00
TOTAL PROJECT COST: (price not to exceed)	\$5,200.00

- 4.5 **Budget Amendments:** The Contractor shall request any budget deviations between any existing budget line items. The Contractor shall provide the Department a written request of the proposed budget deviation. The proposed revised budget can not exceed the contract award amount as identified on the title page of the contract and local match requirements must be maintained. This written notice shall include:
- a statement of the reason(s) the budget deviation is requested and the impact on the intent of the project;
 - a revised budget indicating affected budget line items

The Department will respond in writing to the request. Expenses can not occur relating to the revised budget until the Contractor receives an approval letter from the Department.

4.6 Claim Submittal Procedure:

The Contractor shall submit:

- a) a request letter stating that the expenses have been incurred, the amount of the expenses, and that the Contractor is requesting reimbursement payment per the terms of the contract.
- b) Copy of the Certified Asbestos Inspection Report and LBP inspection report.
- c) Invoice or receipt from the Certified Asbestos Inspector and LBP inspector, noting the date of the inspection and report, and cost for services therein.

Claim submittals should be sent to:

Mel Pins
Iowa Department of Natural Resources
Wallace State Office Building
502 E. 9th Street
Des Moines, Iowa 50319-0034

Claims must be submitted within forty-five (45) days of the date of the oldest attached invoice. It is recommended that the Contractor submit claims as expenses are incurred

Claims shall be made only on items listed in the project budget outlined in section 4.4 of this contract.

4.7 Funding. The Department will process claims for payment within thirty (30) working days provided:

- a) all required documentation is attached per Section 4.6 above;
- b) all Contractor requirements (including local, state, and federal statutes, ordinances, rules, and regulations), to date, are completed to the satisfaction of the Department; and
- c) The Contractor is accomplishing *Project Milestones* identified in *Article IV* to the satisfaction of the Department. If any of these conditions is not met, the Department will notify the Contractor of the deficiencies and the Department may return the canceled claim voucher to the Contractor. A new claim voucher may be submitted to the Department for payment once Contract requirements are met.

ARTICLE V. REVIEW OF WORK

The Department or its advisors shall have the right to review and observe at any time, completed work or work in progress on the Project.

- 5.1 **Milestones:** Milestone activities must be met by the assigned date. If the assigned date needs to be amended, prior written Department approval must be received. Failure to accomplished milestones by contracted or amended dates may result in any or all of the following:
1. Claims based on such work not completed will not be paid by the Department, or;
 2. The Department terminates the Contract and declares the entire unpaid grant balance to be non-claimable by the contractor.
- 5.2 **Budget:** Execution of this Contract is certification that existing in-kind local match, as represented in the project budget is true, correct, and accurate. Falsely represented in-kind local match may result in any or all of the following:
1. The Department terminates the Contract and declares the entire unpaid of grant balance to be non-claimable by the contractor, and previous claims paid by the department shall be refunded by the contractor.
- 5.3 **Project Failure.** In the event that the Project fails or ceases operations as originally proposed during the *Term of Contract* and without prior Department approval the Department may:
1. The grant portion of the award will revert to a zero interest loan.
 2. The Department terminates the Contract and declares the entire paid or awarded grant balance and costs of collection immediately due and payable.
 3. The Department may repossess all nonexpendable tangible personal property used in the performance of this Contract.
- 5.4 Funding for this Project is subject to the continued financial support of the State of Iowa. If the State discontinues funding, this Contract may be terminated or amended by the Department.
- 5.5 Ninety (90) days after the end of the Time of Performance the Department shall de-obligate any un-used award monies from the Project.

ARTICLE VI. INSURANCE

- 6.1 The Contractor shall submit to the Department a copy of the Contractor's Certificate of Insurance and a written statement, if so requested by the Department, to attest that the Contractor holds an adequate level of insurance to insure items funded. This documentation shall be submitted before the time of purchase of grant and/or loan funded items unless approved by the DNR Project Officer.
- 6.2 The Department or its advisors shall have access for the purpose of examination of any insurance policy and associated records regarding insurance coverage of any item purchased or constructed using funds under this Contract.
- 6.3 The Contractor shall maintain an adequate level of insurance for the period set forth under *Term of Contract*.

GENERAL CONDITIONS

SECTION 1. ENTIRE AGREEMENT

This Contract with all attachments and references constitutes the entire Agreement between the Department and the Contractor with respect to the subject matter hereof, and the Contractor acknowledges that it is entering into the Contract solely on the basis of the terms and conditions herein contained and not in reliance upon any representative statement, inducement or promise, whether oral or written, not contained herein.

SECTION 2. AMENDMENT

The Department or the Contractor may initiate an amendment to this Contract. Any amendment is effective only if in writing and agreed to by the Department and the Contractor. The amendment shall be effective as of the date it is agreed upon, unless otherwise specified in the amendment.

SECTION 3. AVAILABILITY OF DATA

All information and data obtained by the Contractor in connection with the Contract shall be made available to the Department. Such information and data shall become the property of the Department except that which is necessary for the patent or copyright purposes of the Contractor.

SECTION 4. ASSUMPTION OF RISK AND LIABILITIES

The Contractor shall assume all risks and liabilities in connection with the performance of the Contract and shall be responsible for all claims, demands, action or causes of action of whatever nature or character arising out of or by reason of the execution or performance of the work provided for herein, except to the extent caused by the State of Iowa. The Contractor shall indemnify and hold harmless the Department, its employees, agents or representatives, and the State of Iowa from all claims, demands, actions or causes of actions, arising out of or by reason of the execution or performance of the work provided for herein, and shall be responsible for all attorney fees, costs and expenses incurred by the Department, its employees, agents or representatives and the State of Iowa, except to the extent caused by the State of Iowa.

SECTION 5. TRANSFER OF WORK

The Contractor shall not transfer or assign any part or portion of the work on the Contract without the prior written consent of the Department.

SECTION 5. REVIEW OF WORK

The Department shall have the right to review and observe, at any time, completed work or work in progress on the Contract.

SECTION 7. COMPLIANCE REQUIREMENTS

The contractor shall comply with all local, state, and federal statutes, ordinances, and rules or other requirements applicable to the establishment and operation of the contractor's facility.

SECTION 8. ACCOUNTS AND RECORDS

- 8.1 The Contractor agrees to maintain books, documents, and other records pertaining to all costs and expenses incurred and revenues acquired during this Contract to the extent and in such detail as will properly reflect all costs, direct and indirect, of labor, materials, equipment, supplies and services, and other costs and expenses of whatever nature for which reimbursement is claimed. The Contractor shall be prepared to support charges for salaries and wages by time, attendance and payroll records.
- 8.2 The Department, State Auditor, or any of their duly appointed representatives, shall have access for the purpose of audit and examination to any books, documents, papers and records of the Contractor which are pertinent at all reasonable times during the period of retention provided for in Sections 8.3, 8.4, and 8.5 below and shall have the right to make copies of excerpts or make other transcriptions thereof, subject to the provisions of 199 Iowa Administrative Code Section 1.9 and Iowa Code Chapter 22.
- 8.3 All records in the possession of the Contractor pertaining to this Contract shall be retained by the Contractor for the period of five (5) years beyond the ending date set forth under *Term of Contract*.
- 8.4 Records relating to any litigation or claim arising out of the performance of this Contract, or costs or expenses of this Contract to which exception has been taken as a result of inspection or audit, shall be retained by the Contractor until such litigation, claim, or exception has been finally settled or until five years from the ending date of *Term of Contract* has expired, whichever occurs later.
- 8.5 The Contractor, in maintaining Contract expenditure accounts and records and reports, shall make any necessary adjustments to reflect refunds, credits, underpayments or overpayments, as well as any adjustments resulting from any administrative reviews and audits by the United States or by the State of Iowa or by the Contractor. Such adjustments shall be set forth in the financial reports filed with the Department.

SECTION 9. UNALLOWABLE COSTS

The following costs are unallowable under this Contract:

- a) Legal expenses for the prosecution of claims against the Department, the State of Iowa, the Federal Government, or any subdivision thereof;
- b) The difference in costs between first class air accommodations and less than first class air accommodations, unless less than first class air accommodations are not available;
- c) Bad debts (any losses arising from uncollectible accounts and other claims and related costs);

- d) Contingencies (contributions to a contingency reserve or any similar provision for unforeseen events);
- e) Contributions or donations;
- f) Entertainment (costs of amusements, social activities, and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation, and gratuities);
- g) Fines and penalties (costs relating from violations of, or failure to comply with federal, state and local laws and regulations);
- h) Other financial costs (interest on borrowings -- however represented, bond discounts, costs of financing and refinancing operations, and legal and professional fees paid in connection therewith);
- i) Insurance premiums and other costs associated with insuring items purchased using loan funds;
- j) Office equipment such as furniture and computers, etc.

SECTION 10. TERMINATION OF CONTRACT

- 10.1 Termination for cause - The Department may terminate this Contract in whole or in part, at any time before the expiration date, whenever the Department has determined that the Contractor has materially failed to comply with the conditions of the Contract. The Department shall promptly notify the Contractor in writing of the determination and reasons for the termination, together with the effective date. Payments made to the Contractor or recoveries by the Department under Contracts terminated for cause shall be in accord with the legal rights and liabilities of the parties.
- 10.2 Termination for convenience - The Department or Contractor may terminate the Contract in whole or in part when both parties agree that the continuation of the Contract would not produce beneficial results commensurate with the future expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. The Contractor shall not incur new obligations for the terminated portion after the effective date and shall cancel as many outstanding obligations as possible. The Contractor shall prepare and deliver to the Department copies of a final report, within sixty (60) days, summarizing the work performed and the results obtained to date, together with such information and items which, if the Contract had been completed, would have been required to be furnished to the Department.

SECTION 11. PERSONNEL

- 11.1 Selection - The Contractor represents that it has, or will secure, all personnel required in performing the work and services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Department.
- 11.2 Qualification - All of the work and services required hereunder will be performed by the contractor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized under state and local law to perform such services.
- 11.3 Change of Key Personnel - Any individual specified by name under the article Key Personnel within the Special Conditions herein is considered essential to the work and services to be performed. If for any reason substitution for a specified individual becomes necessary, the contractor shall provide immediate written

notification of such to the Department. The Contractor shall provide the name and resume of qualifications for the replacement individual. Any replacement shall be subject to the approval of the Department.

SECTION 12. EFFECT OF INVALIDITY

If any of the provisions herein shall be in conflict with the laws of the State of Iowa, or shall be declared to be invalid by any court of record in this state, such invalidity shall be construed to affect only such portions as are declared invalid or in conflict with the law and such remaining portions of the Contract shall remain in effect and shall be construed as if such invalid or conflicting portions were not contained herein.

SECTION 13. LITIGATION

- 13.1 The Contractor agrees to pay the cost of any litigation arising from failure of the contractor to comply with the conditions or terms of this Contract or resulting from the negligence or incompetence of the Contractor. In carrying out the provisions of the Contract or in exercising any power or authority otherwise, it is understood that in such matters the Department acts for the State.
- 13.2 The venue for any cause of action based upon this Contract by either party to this Contract, shall be in Polk County, Iowa, and the law of the State of Iowa shall apply.

SECTION 14. ASSURANCE

- 14.1 The Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, religion, national origin, sex, age, political belief, or handicap, in its employment practices. Such employment practices may include, but are not limited to, recruitment, recruitment advertising, hiring, layoff or termination, promotion, demotion, transfer, rates of pay, training and participation in upward mobility programs, or other forms of compensation and use of facilities.
- 14.2 The Contractor will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding a notice advising the labor union or representative of the Contractor's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 14.3 The Contractor will comply with all relevant provisions of the Iowa Civil Rights Act and Iowa Code 19B.7, Iowa Executive Order #15 of 1973, and Title VI of the Civil Rights Act of 1964 (PL 88-352). The Contractor shall furnish all information and reports requested by the department and will permit access to its payroll and employment records by the Department or the Department's grantor agency for purposes of investigation to ascertain compliance with this nondiscrimination clause consistent with Iowa Code Chapter 22. The contractor may be required to make available upon request its Affirmative Action Program containing goals and time deadline. Any breach of the above provisions shall be regarded as a material breach of Contract and justification for termination for cause.
- 14.4 In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract, this Contract may be canceled, terminated or

suspended in whole or in part and the Contractor may be declared ineligible for further action, and such sanctions may be imposed and remedies invoked, as provided by the Iowa Civil Rights Act, Chapter 216, Code of Iowa, as heretofore and hereinafter amended, or as otherwise provided by law.

SECTION 15. CONTINGENT FEES

The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor, any fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the Department shall have the right to annul this Contract without liability or, in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

SECTION 16. OFFICERS NOT TO BENEFIT

No officer or employee of the State shall participate in any decision relating to this Contract which affects his or her personal interest or the interest of any corporation, partnership, or association in which he or she is directly or indirectly interested; or have any interest, direct or indirect, in this Contract or the proceeds thereof.

CONTRACT SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Contract.

CITY OF MUSCATINE

IOWA DEPARTMENT OF NATURAL RESOURCES

By: _____

By: _____

Name: Greg Mandsager

Name: Amie Davidson

Title: City Administrator

Title: Supervisor, Contaminated Sites Section

Date: _____

Date: _____