

AN ORDINANCE OF THE CITY OF PORTAGE DES SIOUX, MISSOURI, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A CONTRACT WITH GEORGE BUTLER & ASSOCIATES, INC. FOR THE PURPOSE OF PERFORMING ALL ENGINEERING INVOLVED WITH THE FLOOD BUYOUT PROGRAM.

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF PORTAGE DES SIOUX, MISSOURI AS FOLLOWS:

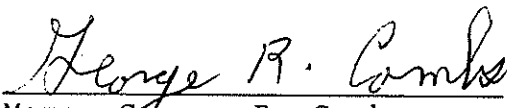
SECTION I

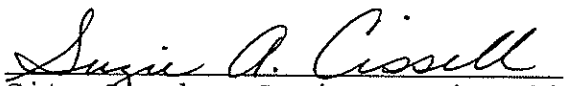
The Mayor and the City Clerk are hereby authorized to execute a contract with George Butler & Associates, Inc. for the purpose of performing all engineering involved in the city flood buyout program.

SECTION II

Due to the time frame involved, this ordinance will receive all of the required readings at the same meeting at which the Bill is introduced so that it can be passed at one meeting. This ordinance is prima facie deemed an emergency ordinance because it allows the aldermen to take immediate steps to prevent or to remedy conditions or situations which are of such a nature that it demands attention and to postpone action would result in serious injury or demand to the people, the government, or the municipality. The public urgency constituting the emergency involves the preservation of the public peace, health, safety, and welfare. This ordinance shall take effect and be in full force from and after its passage and approval by the Mayor and the Board of Aldermen.

Read the first, second and third time and passed by the Board of Aldermen of the City of Portage Des Sioux, Missouri, this twenty-ninth day of December, 1994.


Mayor George R. Combs

Attest: 
City Clerk - Suzie A. Cissell

City Seal

ENGINEERING SERVICES AGREEMENT
BETWEEN
CITY OF PORTAGE DES SIOUX, MISSOURI
AND
GEORGE BUTLER ASSOCIATES, INC.
ENGINEERS/ARCHITECTS
ARTICLES OF AGREEMENT

This Agreement is between CITY OF PORTAGE DES SIOUX, MISSOURI, as "OWNER" and GEORGE BUTLER ASSOCIATES, Inc. of O'Fallon, Missouri, as "ENGINEER".

WITNESSETH:

Whereas, the OWNER is authorized and empowered to contract with the ENGINEER to provide professional engineering services as hereinafter described; and

Whereas, the ENGINEER (a Kansas General Corporation with offices located at Suite 1100, City Center Square, 1100 Main Street, Kansas City, Missouri, and Suite 200, 225 South Main Street, O'Fallon, Missouri) are registered in accordance with the laws of the State of Missouri, and are qualified to provide the professional engineering services desired by the OWNER; now, therefore,

IT IS AGREED THAT:

SECTION 1 - SCOPE OF SERVICES

The ENGINEER agrees to furnish and perform engineering services required to include all appropriate resources to provide complete and accurate engineering plans and specifications for use in bidding for the structures and sitework demolition.

The major phases of the work are as follows:

I. PROJECT INFORMATION

- A. Firm Selection / Final Scope / Contract Negotiations
- B. Notice to Proceed
- C. Obtain Existing Information (Maximum of 25 lots to be demolished)

1. Recorded Plat(s) - City of Portage Des Sioux
2. Utility Information in All Target Areas
3. County Mapping - GIS
4. Property Information on All Properties proposed To Be Demolished
5. UST / Federal Record Search
- D. Perform Site Reconnaissance Survey
- E. Review Existing Information
- F. Prepare Detailed Site Investigation Plan
 1. Site Inspection Form
 2. Safety Check for Demolition on Correct Property
- G. Preliminary Conference with Agent to Review Status (5% Complete)
 1. Determine Status of Acquisition to Set Bid Schedule

II. SITE SURVEYS AND INVESTIGATIONS

- A. Detailed Investigations for properties acquired to date
 1. Inventory / Survey Above-Ground Feature / Utilities / Lift Station / Sheds
 2. Inventory of Potential Hazardous Materials
 3. Inventory of Septic Tank Systems
 4. Inventory of Wells / Cisterns
 5. UST
 6. Asbestos/Surveys (maximum of 25 lots to be tested)
- B. Other (Buildings / Sheds / Structures)
- C. Identify Permit Requirements (DNR / County)

III. PREPARE SITE DEMOLITION SPECIFICATIONS

Site demolition specifications will incorporate existing base map information for streets, ownership boundaries, and other pertinent information. Investigation information in Item II above will be incorporated into the site demolition specifications. RJK will provide boiler plate specifications for our use on this project. Additional land surveys, topographic and boundaries shall be considered as an additional service in accordance with Section 2.7. This contract is to provide all one bid document by April 20, 1995 and assist the OWNER to complete all demolition by July 31, 1995.

- A. Prepare Preliminary Construction Plans and Specifications
- B. Prepare Applications for Necessary Permits
 - 1. Utility Clearance
 - 2. County Demolition Permits
 - 3. Obtain State and Federal Wage Rates
- C. Prepare Final Plans and Specifications
- D. 90% Review with the Agent
- E. Submit to SEMA for Review and Approval
- F. 100% Design Completion and Submit for Review with the Owner

* Base bid quantities on result of findings on properties acquired at time of bidding and project for all properties.

IV. BIDDING PHASE

- A. Assist OWNER in obtaining one bid for the contract for demolition.
- B. Assist OWNER in administering one pre-bid meeting for contractor.
- C. Consult with and advise OWNER as to the acceptability of subcontractors and other persons and organizations proposed by the prime contractor(s) (hereinafter called "Contractor(s)") for those portions of the work as to which such acceptability is required by the Contract Documents.
- D. Consult with and advise OWNER as to the acceptability of substitute materials and equipment proposed by Contractor(s) when substitution is permitted by the Contract Documents.
- E. Assist OWNER in evaluating bids and in assembling and awarding contracts.

V. CONSTRUCTION PHASE

- A. General Administration of Construction Contract. ENGINEER shall consult with and advise OWNER and act as OWNER'S representative as provided in Articles 1 through 17, inclusive, of the Standard General Conditions of the Construction Contract, No. 1910-8 (1983 Edition) of the Engineers Joint Contract Documents Committee. The extent and limitations of the duties, responsibilities and authority of ENGINEER as assigned in said Standard General Conditions shall not be modified, except as ENGINEER may otherwise agree in writing. All of OWNER'S instructions to Contractor(s) will be issued through ENGINEER who will have authority to act on behalf of AGENT to the extent provided in said Standard General Conditions except as otherwise provided in writing.

B. Visits to Site and Observation of Construction. In connection with observations of the work of Contractor(s) while it is in progress:

- B.1.** ENGINEER shall make visits to the site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress and quality of the various aspects of Contractor(s) work. This contract is based on average of 8 hours inspection per week during the maximum of five projects. Based on information obtained during such visits and on such observations, ENGINEER shall endeavor to determine in general if such work is proceeding in accordance with the Contract Documents and ENGINEER shall keep OWNER informed of the progress of the work.
- B.2.** The purpose of ENGINEER'S visits to the site will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by ENGINEER during the Construction Phase, and, in addition, by exercise of ENGINEER'S efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed work of Contractor(s) will conform generally to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by Contractor(s). On the other hand, ENGINEER shall not, during such visits or as a result of such observations of Contractor(s)' work in progress, supervise, direct or have control over Contractor(s)' work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor(s), for safety precautions and programs incident to the work of Contractor(s) or for any failure of Contractor(s) to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor(s) furnishing and performing their work. Accordingly, ENGINEER can neither guarantee the performance of the construction contracts by Contractor(s) nor assume responsibility for Contractor(s)' failure to furnish and perform their work in accordance with the Contract Documents.
- B.3.** ENGINEER shall attend weekly or periodic meetings with the Contractor on each project until the completion of each contract.

B.4. ENGINEER shall administer pre-construction meetings.

- C. Defective Work. During such visits and on the basis of such observations, ENGINEER may disapprove or reject Contractor(s)' work while it is in progress if ENGINEER believes such work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the Project as reflected in the Contract Documents.
- D. Interpretations and Clarifications. ENGINEER shall issue necessary interpretations and clarifications of the Contract Documents and in connection therewith prepare work directive changes and change orders as required.
- E. Shop Drawings: ENGINEER shall review and approve (or take other appropriate action in respect of) Shop Drawings (as that term is defined in the aforesaid Standard General Conditions), samples and other data which Contractor(s) are required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents. Such reviews and approvals or other action shall not exceed to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto.
- F. Substitutes. ENGINEER shall evaluate and determine the acceptability of substitute materials, methods and equipment proposed by Contractor(s).
- G. Inspections and Tests. ENGINEER shall have authority, as OWNER'S representative, to require special inspection or testing of the work, and shall receive and review all certifications of inspections, testing and approvals required by laws, rules, regulations, ordinances, codes, orders or Contract Documents (but only to determine generally that their content complies with the requirements of, and the results certified indicate compliance with, the Contract Documents).
- H. Disputes between OWNER and Contractor. ENGINEER shall act as initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the work thereunder and make decisions on all claims of OWNER and Contractor(s) relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work. ENGINEER shall not be liable for the results of any such interpretations or decisions rendered in good faith.
- I. Applications for Payment. Based on ENGINEER'S on-site observations as an experienced and qualified professional and on review of applications for payment and the accompanying data and schedule:

- I.1. ENGINEER shall determine the amounts owing to Contractor(s) and recommend in writing payments to Contractor(s) in such amounts. Such recommendations of payment will constitute a representation to OWNER, based on such observations and review, that the work has progressed to the point indicated, and that, to the best of ENGINEER'S knowledge, information and belief, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of such work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation). In the case of unit price work, ENGINEER'S recommendations of payment will include final determinations of quantities and classifications of such work (subject to any subsequent adjustments allowed by the Contract Documents).
- I.2. In recommending any payment, ENGINEER will not thereby be deemed to have represented that exhaustive, continuous or detailed reviews or examinations have been made by ENGINEER to check the quality or quantity of Contractor(s)' work as it is furnished and performed beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents. ENGINEER'S Contractor(s)' work for the purposes of recommending payments will not impose on ENGINEER responsibility to supervise, direct or control such work or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto or Contractor(s) compliance with laws, rules, regulations, ordinances, codes or orders applicable to their furnishing and performing the work. It will also not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes any Contractor has used the monies paid on account of the Contract Price, or to determine that title to any of the work, materials, or equipment has passed to OWNER free and clear of any lien, claims, security interests or encumbrances, or that there may not be other matters at issue between OWNER and Contractor that might affect the amount that should be paid.
- J. Contractor(s)' Completion Documents. ENGINEER shall receive and review maintenance and operating instructions, schedules, guarantees, bonds, and certificates of inspection, tests and approvals which are to be assembled by Contractor(s) in accordance with the Contract Documents (but such review will only be to determine that their content complies with the requirements of, and in the case of certificates of inspection, tests, and approvals the results certified indicate compliance with, the Contract Documents); and shall transmit them to OWNER with written comments.

- K. Inspections. ENGINEER shall conduct an inspection to determine if the work is substantially complete and a final inspection to determine if the completed work is acceptable so that ENGINEER may recommend, in writing, final payment to Contractor(s) and may give written notice to OWNER and the Contractor(s) that the work is acceptable (subject to any conditions therein expressed), but any such recommendation and notice will be subject to the limitations expressed, but limitations expressed in paragraph 3.12.
- L. Limitation of Responsibilities. ENGINEER shall not be responsible for the acts or omissions of any Contractor, or of any subcontractor or supplier, or any of the Contractor(s)' or subcontractor's or supplier's agents or employees or any other persons (except ENGINEER'S own employees and agents) at the site or otherwise furnishing or performing any of the Contractor(s)' work; however, nothing contained in paragraphs 3.1 thru 3.8, inclusive, shall be construed to release ENGINEER from liability for failure to properly perform duties and responsibilities assumed by ENGINEER in the Contract Documents.

SECTION 2 - ADDITIONAL SERVICES OF ENGINEER

- 2.1 Services resulting from significant changes in general scope of the Project or its design including, but not limited to, changes in size, complexity, OWNER'S schedule, or character of construction; and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are due to causes beyond ENGINEER'S control.
- 2.2 Providing renderings or models for OWNER'S use.
- 2.3 Investigations involving detailed consideration of operations, maintenance and overhead expenses; and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals and valuations; detailed quantity surveys of material, equipment and labor; and audits or inventories required in connection with construction performed by OWNER.
- 2.4 Services in connection with change orders to reflect changes requested by OWNER if the resulting change in compensation for Basic Services is not commensurate with the additional services rendered, and services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of material, equipment or energy shortages.
- 2.5 Preparing to serve or serving as a consultant or witness for OWNER in any litigation, public hearing or other legal or administrative proceeding involving the Project.

- 2.6 Providing Archaeology or Cultural Resources Surveys
- 2.7 Provide land, topographic and boundary survey services.
- 2.8 Provide inspections of houses beyond 25 lots, inventory of hazardous materials, UST/GPR surveys and asbestos surveys beyond 25. The cost of additional inspections by GBA staff will be \$100.00/lot. If additional asbestos testing and sampling is required an additional \$142.10/lot will be charged.

SECTION 3 - RESPONSIBILITIES OF THE AGENT

The OWNER shall provide information and assistance to the ENGINEER, as follows:

- 3.1 Assist the ENGINEER by placing at their disposal all available information pertinent to the project including previous reports, existing site and construction plans and any other data relative to the ENGINEER'S services.
- 3.2 Arrange for access to and make all provisions for the ENGINEER to enter upon public and private property subject to County owned easements as required by ENGINEER to perform their services.
- 3.3 Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER, obtain advice of an attorney, insurance counselor and other consultants as he deems appropriate for each examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of ENGINEER.
- 3.4 Give prompt written notice to the ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER'S services.
- 3.5 The OWNER will designate a person to act as its representative with respect to the work performed under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define the OWNER'S policies and decisions pertinent to the work covered by this Agreement.
- 3.6 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
- 3.7 Furnish, or direct ENGINEER to provide, necessary Additional Services as stipulated in Section 2 of this Agreement or other services as required.

- 3.8 Furnish to ENGINEER, as required by him for performance of his services, data prepared by or services of others, such as core borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment; appropriate professional interpretations of all of the foregoing; unforeseen topographic and utility surveys and property descriptions; zoning and deed restriction; boiler plate specifications; and other special data or consultations not covered in Section 1 and 2; all of which ENGINEER may rely upon in performing his services.

SECTION 4 - PAYMENTS TO ENGINEER

4.1 Compensation.

For all work and services described in Section I - Scope of Services, the OWNER will pay the ENGINEER a maximum not to exceed amount of Thirteen Thousand Six Hundred Thirty Dollars and Fifty Cents (\$13,630.50). The estimated fees for each phase are listed below as are the additional fees for inspections and testing per lot in excess of twenty-five (25) lots.

Phases

Phase I - Project Information - \$738.00

Phase II - Site Surveys and Investigations - \$5,658.50

Phase III - Demolition Plans and Specifications - \$1,462.00

Phase IV - Construction Bidding - \$1,930.00

Phase V - Construction Administration - \$3,842.00

Asbestos sampling and testing (above 25 lots) - \$142.10/Lot

Additional Inspections by GBA Staff (Above 25 Lots) - \$100.00/Lot

4.2 Change of Scope

In the event additional services are required through changes in the scope of the Project, or other unusual or unforeseen circumstances are encountered, or for other consulting services, ENGINEER shall, upon written authorization by the OWNER, perform the additional services as mutually agreed by both parties by supplemental agreement.

4.3 Basis of Payment

Payments to the ENGINEER shall be made monthly upon receipt of an invoice to be submitted to the OWNER by the ENGINEER. The invoices will be based on actual hours spent times our hourly rates (copy attached) and expenses. Invoices shall be due and payable to the ENGINEER within thirty (30) calendar days of the receipt of the invoice.

4.4 Additional Services

Additional services rendered under paragraphs 2.1 thru and including 2.9 shall be provided on a maximum not to exceed amounts for each work task as mutually agreed upon by the OWNER and ENGINEER.

SECTION 5 - GENERAL CONSIDERATIONS

5.1 Termination

This Agreement may be terminated by either party upon thirty (30) days written notice in the event of substantial failure by the other party to perform in accordance with the terms thereof through no fault of the terminating party. In the event of termination, the ENGINEER shall be paid in full for all work previously authorized and performed up to the termination date.

5.2 Ownership of Documents

All notes, calculations, specifications, reports, plans, maps and technical data resulting from this Agreement shall be the property of the OWNER.

However, any re-use by the OWNER without written verification or adoption by the ENGINEER for a purpose other than the specific purpose intended by this written Agreement will be at the AGENT'S sole risk without liability or legal exposure to the ENGINEER. The ENGINEER shall submit the reproducible originals of the calculations, specifications, plans, maps, reports, and technical data to the OWNER. If requested, the ENGINEER shall prepare original-like copies of any of these documents, including all notes, for the County as a direct cost reimbursable engineering service. The ENGINEER shall retain copies of the work needed to assure continuity if further services are to be provided.

5.3 Successors and Assigns

OWNER and ENGINEER each binds himself and his partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement except as above, neither OWNER nor ENGINEER shall assign, sublet or transfer his interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than OWNER and ENGINEER.

5.4 Warranties

In the performance of these services, the ENGINEER shall act as an independent consulting agency, subject to general criteria as set forth in Section 1, Scope of Services. The ENGINEER shall use the engineering experience of its staff to provide reasonable diligence for the work required to address the Scope of Services outlined in Section 1. ENGINEER shall perform professional services in accordance with good engineering practice, using normally acceptable methods and to normally acceptable accuracy.

5.5 Precedence of this Agreement

Additional and amendments to this Agreement shall be made by written Amendment to this Agreement, of which the Amendment shall become a part. All provision of this Agreement shall remain in force unless specifically modified by written Amendment.

5.6 Force Majeure

Neither party hereto shall be liable for its failure to perform hereunder due to contingencies beyond its reasonable control, including, but not limited to strikes, riots, war, fire, floods, and acts of nature not including normal weather conditions.

5.7 Severability

In case anyone or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement this Agreement shall be construed as if such invalid, illegal or unenforceable provision has never been contained herein. This Agreement shall be governed by the laws of the State of Missouri.

SECTION 6 - MISCELLANEOUS

And finally, it is agreed that:

- 6.1 Services hereunder shall be carried to completion without undue interruption. Subject to acquisition of essential data from the OWNER, the services hereunder shall receive normal priority over subsequent authorizations of other clients of the ENGINEER.
- 6.2 The purpose of this investigation is to provide useful, decision-making information to OWNER. ENGINEER shall not be responsible for investigation of individuals or public records beyond those provided to ENGINEER.

- 6.3 It is intended that ENGINEER services, or any written report, not be utilized by anyone other than OWNER. Accordingly, ENGINEER'S liability in performing the services thereunder is limited to the cost of the services provided, and OWNER expressly agrees to indemnify ENGINEER and hold ENGINEER harmless from any and all claims, causes of action or suits at law or equity which may be brought against ENGINEER by any third person which arise from or are in any way connected with the ENGINEER services hereunder. This indemnity and agreement to hold harmless includes, but is not limited to, damage awards, costs of litigation (including reasonable attorney's fees) or other costs, expenses or damages of any type or nature whatsoever.
- 6.4 Due to the evolving nature of rules and regulations promulgated for recently enacted Environmental Protection Legislation, Federal and corresponding State laws and regulations, policies and administrative procedures may not be finalized and are subject to periodic amendment and revision. Therefore, the ENGINEER cannot guarantee nor accept responsibility for non-compliance with governmental rules and regulations or interpretations of laws by various Federal, State and local jurisdictions, other than as the same may exist as of the date of the execution of this Agreement.
- 6.5 ADDITIONAL SERVICES including, but not limited to supplemental reports and environmental sampling and testing may be provided by separate Agreement that is mutually acceptable to OWNER and ENGINEER.
- 6.6 This Agreement and all agreements executed in furtherance hereof, shall be interpreted and enforced under the laws of the State of Missouri. This Agreement and all agreements executed in furtherance hereof, shall be deemed as jointly drafted by the parties hereto, and each party acknowledges that it has had a full and complete opportunity to read this Agreement and seek such advice of consultation as deemed appropriate in executing same.

IN WITNESS WHEREOF, CITY OF PORTAGE DES SIOUX, MISSOURI and GEORGE BUTLER ASSOCIATES, INC., by their authorized representatives, have hereunto subscribed their names this 29th day of December, 1994.

Executed in duplicate with copies to the AGENT and ENGINEER.

GEORGE BUTLER ASSOCIATES, INC.

CITY OF PORTAGE DES SIOUX,
MISSOURI

By: William A. Coady
Title: President

By: George R. Combs
Title: Mayor

ATTEST:

ATTEST:

By: Gerald R. Hurlbert
Title: Firm Associate

By: Suzie A. Cissell
Title: City Clerk