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(Cover photo) NUCA member L.G. Roloff Construction's work at 96th St. in Omaha, Neb. included using extensive rebar in the foundation forms used in the culvert reconstruction.

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by Doug Carlson, NUCA CEO

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This program is offered to NUCA members in the 20 states and the District of Columbia where FCCI writes coverage. You can find out more about the NUCA Choice program at www.nucachoice.com.

"Make NUCA Yours" in 2023 just became a lot easier. And making your investment in NUCA deliver rewards and benefits for your utility construction company is just one of the perks you can derive from NUCA membership.

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Onward and Upward,

A handwritten signature in black ink, appearing to read "Doug", written over a white rectangular background.

Doug Carlson
NUCA Chief Executive Officer



DESIGN-BUILD PROJECTS ON THE RISE

New Infrastructure Investments
Are Ahead: Time To Revisit The Risks

by Shawn R. Farrell

This more nuanced understanding of roles and work product demonstrates that the owner could have some responsibility arising out of its early design.

As design-build contracts increase in popularity with local, state and federal projects, now is the right time to revisit the different risk allocations that are associated with design-build contracts. The traditional model of bidding provides for completion of design before the contractor bids its work.

This is called the Design-bid-build approach. Under this approach, a majority of state courts have afforded a contractor with an inherent right to shift the risk of design to the owner. Namely, a contractor is entitled to defend itself against a breach of contract action from the owner if the contractor builds what has been designed. Similarly, if there are cost overruns or delays resulting from defective design, the contractor is entitled to additional compensation from the owner.

Spearin Doctrine

This common law right is called the “Spearin Doctrine”. Simply put, the Spearin Doctrine states that the owner, through its design team, impliedly warrants that the design, drawings and specifications are sound for construction. The contractor will not be responsible for the consequences of defects in the plans and specifications.

This doctrine has become so ubiquitous that it is routinely accepted in both public and private projects. But a contractor does not have this same protection when it enters into a design-build contract. Under a design-build model, the contractor will typically hire the architect or engineer of record to design the project. Therefore, a design build contract requires the contractor to take responsibility for the design.

Design mistakes, omissions or defects become the work of the contractor. The contractor’s responsibility for design is analogous to the contractor’s responsibility for the acts of its trade subcontractors.

This means the contractor who has designed nothing might be responsible for the work of the design team. These factual circumstances appear to burden the contractor with a disproportionate amount of the risk of construction. That said, an astute contractor can still protect itself, but this requires identification of the issues at the start of the bidding process.

Act At Time Of Contract

Specifically, the design-build contractor must act at the time of contract formation to avoid the inevitable push back from the owner for any delays or additional costs arising from design defects.

For example, has the owner done any design and provided this information to the design-build contractor for its reliance? Often, the owner will provide the design-build contractor with drawings that are 20%-30% completed for construction. Similarly, the owner might dictate what material, equipment or the means and methods of installation.

Alternatively, the owner's team might ultimately control acceptance of any design done by the contractor and, in doing so, limit or eliminate the contractor's opportunity to meaningfully influence the design process. If so, the contractor is not fully designing the project, but rather taking over or assisting in the completion of design.

This more nuanced understanding of roles and work product demonstrates that the owner could have some responsibility arising out of its early design. Accordingly, the contractor must clearly define and document what parts of the basis of design are mandated by the owner at the bidding stage. To the extent that design defects arise from the owner's initial design or continued involvement in acceptance of design ideas, the design-build contractor still has the potential to rely upon the Spearin Doctrine.

Accordingly, it is very important to understand the basis of design that is being provided to the design-build contractor. Equally, the design-build contractor must document what it is relying upon. On private projects, the contractor should craft its scope of work and the indemnity provisions to mirror the contractor's understanding of design.

Design Professional Subcontracts

The second way to mitigate the contractor's risk of a design-build contract arises from the subcontract with the design professional. Meaning, if defects in design arise from the work of design professional hired by the contractor, can the contractor sue the architect or engineer that is a part

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of its own design-build team? Bringing an action against a design professional raises a host of factually intensive questions that are best addressed before you sign the design professional's subcontract.

First, consider the timing of payment. Often design professionals will require that their work for the design be paid on a monthly basis. Because the design will be completed before construction and, thus, before any defects can be known, typical contract provisions concerning the withholding of monies for potential defects present unique contracting challenges. The challenge being that the contractor might have been paid all or most of the monies owed to the design professional before the error is realized.

If you intend to pay the design professional before construction, consider a stronger indemnity language. Second, design professionals often try to include a limitation of liability clauses in the contract, which could release a design professional from delay or liquidated damages; try to avoid or limit these clauses. Finally, determine in your jurisdiction whether a lawsuit for breach of contract or negligence should be brought against the design professional. A breach of contract action requires a showing that some material obligation or duty in the

contract was not performed and a negligence action arises when the conduct of the professional falls below a standard of care.

Depending on your venue, some courts have adopted the “Economic Loss Doctrine”, which precludes lawsuits under a tort theory (like negligence) from being brought when the damages are economic in nature. Economic in nature means that the damages are contractual, like the cost to complete, and not those arising from personal injury or property damage. One solution might be to include a clause in the contract that requires the work of the design professional to rise to the highest standard of care.

Conclusion

While design-build contracts bring a unique opportunity for collaboration between the contractor and the owner, it concomitantly creates a new relationship between the contractor and the design professional. This new relationship requires a deep understanding of the risks and specific contractual duties for each party.

The failure to address these issues before the time of contracting invites unintended and unwelcome financial risk. Some of these unintended consequences can be mitigated through insurance and some through contract negotiation. Take the initiative to get in front of these issues now so that you and your company are open to the opportunities of sharing in the projects for new infrastructure rebuilding. ■



Shawn R. Farrell is a partner at Cohen Seglias in Philadelphia, Penn. For more than 20 years, he has represented general contractors, construction managers, owners/developers, subcontractors, design-builders, engineers, developers, and sureties in construction-related litigation. Shawn can be reached by email at sfarrell@cohenseglias.com or 267-238-4719.

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TOP IT TRENDS FOR UTILITY CONTRACTORS

by Christian Burger

Many construction firms are moving to third-party human resource (HR) solutions and away from the HR applications that were historically available.

W

hile it is challenging to pick the most influential technologies available to utility contractors, there are certainly some that have greater potential to add value than others. This article will highlight the technologies that provide the greatest potential value. This does not include the most current or advanced, just the highest value. Some of the technologies mentioned below are relatively new and others have been around for years. But even those are not equally well used or adopted by all contractors.

After reviewing technologies utility contractors ought to consider, the article concludes with a few words on increasing adoption in the organization and how to govern IT in this new landscape we are facing.

Drones

Drones are more common on large construction sites these days. They can be deployed by a skilled operator to survey a job site and take crucial measurements for gauging production. Drones can also be used by Safety to conduct real-time inspections of fall protection or shoring without a costly drive to job sites miles apart. If the company cannot afford drones and operators there are a number of specialty firms that offer that service.

Production/Productivity

This technology is hardly new but is being improved upon. Self-perform contractors must be able to track and report production and productivity on their jobs. The baseline is frequently generated from the estimating solution in the form of units per hour or hours per unit. This can be reported and

tracked in time keeping applications as long as the foremen are willing to enter units complete each day or week. The estimating solutions well suited for this type of work are HCSS HeavyBid, B2W, and InEight and each of these have time capture and productivity reporting. Even better, these productivity measures flow back to the estimating solution, allowing an estimator to compare actual production in the field to the rate they “think” it should be produced for.

Procure-to-Pay

Many specialty contractors are evaluating their entire procure-to-pay workstream from requisition to purchase order to invoice. They want to streamline this entire flow as it represents a considerable cost and frequent degree of inefficiency. Some companies are simply implementing their Enterprise Resource Planning (ERP) solutions better while others are bolting on third-party solutions highly specialized around construction. These solutions have the added advantage of having mobile solutions for the field so they can request materials and receive against purchase orders. As

with many technologies, management has some soul searching to do when deploying these solutions to ensure that they know what policies they want to insist upon. Another thing that can help here is the availability of a bill of materials (BOM) from the estimating solution. This can often be imported into the procurement application for further manipulation and then issuance to the vendor(s).

Equipment Management

Most construction-based ERP solutions have offered integrated equipment applications for thirty years now. However, the equipment automation landscape is changing now as most heavy equipment comes with telematics devices and vehicles have some form of GPS tracking. This streaming data needs a place to go to be processed and those older ERPs are not ready. Newer web and mobile solutions have emerged to handle telematics data and perform important analytic functions with it. Equipment managers can use these applications to identify where equipment is, whether or not it has left a geo-fence, what maintenance activities are due or past due, and what the run and idle times are. Some of this data can get pushed back to the equipment application for necessary charging to jobs. Fuel consumption can also be monitored.

Human Resources

Many construction firms are moving to third-party human resource (HR) solutions and away from the HR applications that were historically available in their ERP. Some of these require processing of payroll and others can be integrated back to ERP payroll applications. If the firm in question performs Davis-Bacon prevailing wage work and/or work with union labor, the author would advise keeping payroll in ERP for now. Due to the complex nature of construction payroll, ERP payroll applications have spent years working to perfect their solutions. That being said, the HR applications are often a significant improvement for both employees, in the form of self-service, and for the HR administrators in the company. This typically includes benefits administration, training tracking, personal time off administration, and a number of other HR disciplines. Recruiting and on-boarding are normally included in these applications as well.



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Adoption

Like many things, adoption and use is more important than simply owning something; think exercise equipment. Getting adoption has proven to be challenging for many organizations, particularly in construction where resistance to change and to technology historically ran high. That barrier has come down in the last ten years, at least appreciably. Often times sufficient training is found lacking, particularly training on why rather than only how. People like to know what the value of something is that they are being asked to do. Also, piloting software during deployment to a small group of the willing can be an effective way to ensure that the bugs are worked out, the system is easy to use, and the training materials are sufficient before rolling out to the masses. Finally, having an executive sponsor available that can throw their weight behind an initiative can sometimes help convince those being asked to adopt something new.

Governance


The way in which construction firms staff IT and manage technology has changed considerably from ten years ago. In some ways there is almost no comparison. Firms have had to shift from managing IT infrastructure like data centers and servers to focusing on security, users, integrations and managing Managed Services Provider (MSP). There is also much more needed in the form of policies, procedures, training, and strategy required. Modern day network administrators are typically more open to make that kind of move. Governance will be a topic on its own in a future issue as there is too much to cover here.


Conclusion


So much good technology is available for construction now. Unfortunately, it is mixed in with some over-hyped, under-tested solutions. So, one should be careful when evaluating and assessing your business. Know what business problem you are trying to solve before you enter the fray. Establish a small team to do the evaluation and be sure to have IT there to help evaluate. Negotiate hard and then commit the organization to the successful deployment of whatever is chosen. ■





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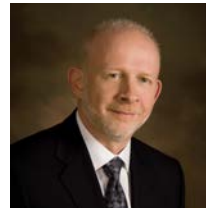
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WHY YOUR STRATEGY ISN'T LIKE A CHEESEBURGER

by Art Petty

Sharing the idea of strategy with something we can all relate to is a great approach to jump-starting thinking.

In many organizations, strategy work is still a slow, clinical exercise by a limited number of people — typically senior executives, that is imposed on the organization. Today's world demands a more agile, broader involvement process with fast cycles of ideation, execution, learning and refresh. Yet, in all settings, there's still a significant risk of what I've named the Cheeseburger Phenomenon — a state of confusion over the strategy and what it means for everyone in the organization.

In this article, I share one CEO's attempt at clarifying strategy that backfired horribly and ideas to help all leaders tap into the creative power of their organizations as they navigate strategy work.

The incident: "Our Strategy is Like a Cheeseburger"

I once worked for a creative, unconventional CEO who, with the best of intentions, dumbed down our strategy to a level that absolutely no one understood. We had worked for months, engaged consultants, clients and business partners and attempted to be open and inclusive about the strategy work. Yet, the strategy was an abstract concept for most of the firm's 400 employees working hard at their day jobs. It was made more so by what happened next.

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When this kind, thoughtful CEO at a quarterly town hall meeting who hated lengthy, confusing slide decks pronounced, “Our strategy is like a cheeseburger.” He even used a big image of a cheeseburger for all to see. People were genuinely confused, and members of the strategy teams were dumbfounded. Employee reactions included: “Are we the lettuce or the tomato?” “I bet we’re the bun.” “We’re the special sauce,” and a few other less polite comments. The debate was on. Ultimately consensus suggested we were the cheese, but no one could define what that meant in terms of our investment priorities or market moves.

I’m always hesitant to share this story because this (late) individual was a friend with a creative streak that knew no boundaries. His attempt was noble, just not well thought out in this case. He was a servant leader, and sometimes his combination of creativity and desire to serve collided and created a mess. His example is one we can learn from.

Three big ideas to ensure your strategy isn’t a cheeseburger

Help everyone understand the idea of strategy

There are two words in the business lexicon that, if you asked a dozen top executives to define, would generate wildly different

and sometimes conflicting viewpoints: leadership and strategy. We’ll leave the leadership one alone for a moment and focus on strategy.

In a nod to my former CEO, I like creative examples that help clarify complex topics. When introducing the idea of strategy to an organization for the first time, I suggest everyone think about that game that has ruined more family holiday gatherings than discussions of politics or religion. I am, of course, referencing the game of Monopoly. (I’ve used different games based and sports examples based on the culture of the individuals involved.)

For everyone who has encountered this game at some point, they know the goal is to bankrupt the other players. When I ask them what their strategy is for achieving this goal, I hear some creative, experience-based answers:

“Buy Boardwalk and Park Place of course, and build hotels as fast as possible.”

“Do anything you can to own the railroads. People land on them all the time.”

“I do everything I can to corner the orange and red properties and then collect money.”

“Buy the cheap properties, build on them and nickel and dime everyone else to death.”

“It’s the yellows for me. They’re an incredible value, and everyone lands on them.”

Those are just a few responses I’ve heard when asking this question. In a fun exchange and some interesting opinions about approaches. People suddenly understand the idea of using limited resources to make decisions in pursuit of a desired outcome, which is the essence of strategy.

Sharing the idea of strategy with something we can all relate to is a great approach to jump-starting thinking. My CEO described above attempted to do just that, yet the strategy inherent in a cheeseburger isn’t immediately or ever apparent.

Treat strategy work as a full-contact organizational activity

When working with clients, I help them build an Inform/Ask/Input loop. This is where the core strategy team members are accountable for engaging their teams, informing them of the process and progress and, importantly, asking for input.

What starts as mostly a briefing process quickly gains steam as individuals across the organization share insights and ideas. In some of the most successful examples I’ve observed, subgroups across functions formed to take on discrete tasks such as analyzing competitors, exploring new business models, identifying potentially relevant technologies, etc.

If the work of strategy is cloistered in a conference room, don’t expect people to understand it when you unveil the outcome, and don’t expect them to be able to add value quickly. While the strategy approach defined in that closed room might be viable, it’s a cheeseburger to the rest of the organization.

Embrace: minds follow hearts

I see this point, “Minds Follow Hearts,” ignored most often in strategy work. To many involved directly in strategy work, it’s clinical, critical thinking, blended with some creativity and a lot of data. And, while the resultant approach to the organization’s situation might be spot-on and brilliant, top leaders discount the need for individuals to internalize the ideas and, importantly, grow passionate about bringing a strategy to life. Because everyone knows a new strategy means new approaches and, likely, a lot

of change, people are reticent to embrace something just on logic alone.

I’ve listened as CEOs and other top executives expressed frustration over the lack of enthusiasm for a new strategy. “Why don’t they get it?” one intoned. “We’ve kept them in the loop, asked their input and been transparent the whole time,” they added.

My quick response is, “Thank goodness you did all of those things to inform and involve them, or you would be in a real mess now.” The more important question I ask is, “What have you done to appeal to them on a personal level and have them excited about the work of bringing a new strategy to life?” This is, of course, the missing part.

Too many expect the logic of the strategy to generate excitement. In reality, the ability to contribute and connect with the work of strategy at their level is the important and missing issue keeping them from committing their hearts and minds.

One solution to this is to draw upon the military concept of the Commander’s Intent. The target or mission is clearly defined, the roles of each group outlined, parameters established and then people are empowered to execute on their part. While you can change the name and avoid the military tie-ins if you desire, the concept is brilliant for moving from ideas into actions.

Leaders must create clarity and gain involvement for strategy to succeed

In my experience, those close to the customers, business partners and competitors have the best views of what’s needed in a winning strategy. It’s wrong that they’re often the last to learn a new strategy. Work unceasingly to fix this problem. Help them develop clarity on the simple concept of strategy and find ways to let them define how to get there. Or, you can wonder whether, in your strategy, what part of the cheeseburger you are and what it means. ■

This article appeared originally at SmartBrief on Leadership, and is reprinted here with permission.

Art Petty is an executive and emerging-leader coach, author, speaker and workshop presenter with experience guiding multiple software firms to positions of market leadership. To read more of his thoughts, visit his *Management Excellence* blog and *Leadership Caffeine* articles (artpetty.com/blog). His website is www.artpetty.com.

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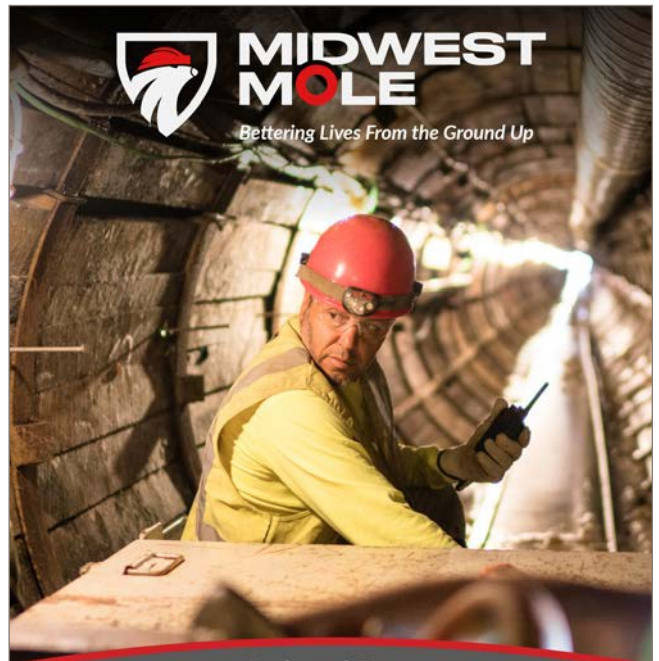
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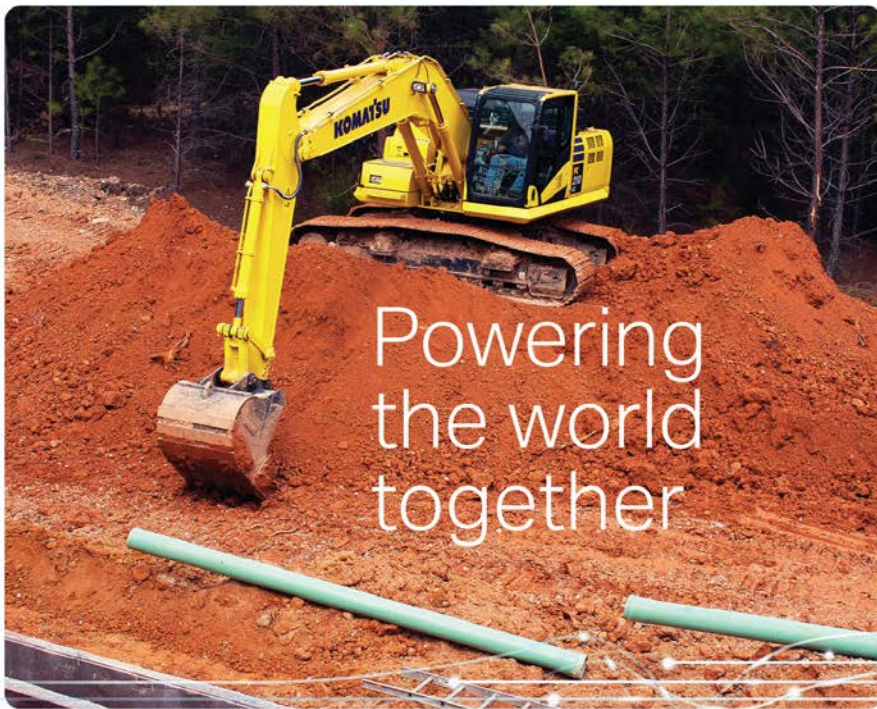


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MEMBER'S JOBS: L.G. ROLOFF CONSTRUCTION CO., INC.

96th Street & Frederick Street Emergency Culvert Construction

by Jim Rush, Utility Contractor Editor

Member's JOBS

**This project won the NUCA
2021 Top Jobs category for
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Our nation's infrastructure is in critical need of repair and the 96th Street & Frederick Street Emergency Culvert Construction project in Omaha, Nebraska, was just another example.

96th Street, one of Omaha's major collector roadways, began to show signs of settlement in spring 2021. Further investigation into the settlement led to the decision to close the street and replace a culvert under the street.

"The hazard was created by a deteriorated corrugated steel plate culvert. Corrosion at the invert of the culvert led to material loss and a loss of structural resistance to lateral earth forces. We witnessed a significant and sudden settlement event on March 25, 2021, that raised concern to the level of an imminent collapse, and we made the decision to close the roadway," said Austin E. Rowser, PE, Construction Engineer, City of Omaha, Public Works Department.

The 96th Street and Frederick Street Emergency Culvert Construction project consisted of removing an existing 18-ft by 12-ft CMP elliptical pipe culvert, and the construction of a twin 10-ft x 12-ft box culvert and associated storm inlet piping, as well as street reconstruction. The primary goal of the project was to design a new culvert that exceeds the existing culvert's hydraulic performance, while limiting the impacts to the channel and surrounding area. The project was delivered using design-build contract delivery, which allowed construction to begin well head of final design. The contract was awarded to Omaha-based contractor L.G. Roloff Construction Co. Inc., with Nexus Alliance as the engineer.

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Channel flows were a major factor in this project for a couple of important reasons. First, there was no historical information to determine anticipated flows in the channel for either dry or wet weather events. Second, the project location was in an established neighborhood, so the construction footprint had to be kept to a minimum. Roloff determined the flows from wet weather events could not be pumped and crews would have to do their best to work around wet weather events.

Roloff deployed a bypass system that would handle the usual dry weather flows, and closely monitored the forecast to avoid any major setbacks due to channel flows after wet weather events.

As with many projects on existing roadways, utility coordination is critical to a project's success. Given the emergency status of this project, there was no utility coordination up front. Due to the design-build delivery method of the project, Roloff was able to work with the utilities during design to figure out the most cost-effective solution for all parties involved. This resulted in some temporary removals and some temporary relocations.

Teamwork

Roloff self-performed 90% of the project scope. For the first time in company's history, Roloff utilized Reinforcing Steel Installers (RSI) as a subcontractor to install the reinforcing steel. The use of this subcontractor allowed Roloff to form and pour sections of the structure much more quickly vs. relying on its own people. RSI turned out to be a valuable partner. They were there when they said they would be there and were very efficient. This approach will now be considered on future projects.

Ready Mixed Concrete Co. supplied the concrete for the cast-in-place box culvert. The concrete design mix was perfect for the job and there were no quality issues. Ready Mixed Concrete Co. has a long history of providing quality material and this job was no exception. Drake-Williams Steel supplied the reinforcing steel for the culvert. Their team worked closely with Roloff to deliver steel as areas reached final design and as schedule demanded. ASP Enterprises consulted on the stream bank stabilization and furnished the gabion baskets to complete the work.

Project Benefits

The first and most important benefit of the project is safety. Had the settlement problem not been discovered and fixed immediately, it could have led to accidents or injuries for motorists or pedestrians and a public relations problem for the City of Omaha. Roloff Construction's rapid response and flexibility related to project design and the City's decision to completely close the roadway to provide adequate space for construction created efficiencies that resulted in higher production and an earlier project finish.



The roadway was restored, and things were back to normal just before the holidays. Due to increasing congestion in the area, there are plans to widen 96th Street in the future. The upside of the emergency nature of our project is that a future street-widening project can now be completed without box culvert construction, which should shorten the duration of that project.

“The timeline for completing this approximately \$2 million project was very quick, especially given the size of the culvert and the needed utility relocations,” Rowser said. “The city is very happy with the outcome of this project, the timeliness of Roloff, the quality of construction, and the urgency with which Roloff conducted the work.”

Reprinted with permission, and edited for space. The original article was published in the May-June 2022 *Utility Contractor* magazine. ■



L.G. Roloff Construction was founded in 1975, by Lorenze G. “Larry” Roloff in Louisville, Nebraska. Two years later, the first office and shop were built and the company grew its operations steadily, building hundreds of sanitary sewer, storm sewer and clean water systems and structures throughout the greater Omaha/Council Bluffs metropolitan area and in the surrounding rural Nebraska and Iowa communities. In the late 1990s, Roloff became a leading contractor for the City of Omaha’s combined sewer separation program. The company can be found online at www.rolloffinc.com.

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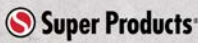


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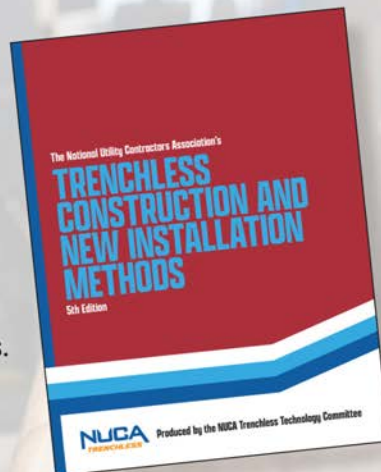
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